National Disability Insurance Scheme Act 2013

No. 20, 2013

This future law compilation was prepared on 4 September 2026 taking into account amendments made by the **National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Act 2026 (No 66, 2026)**.

These amendments are expected to commence on 1 October 2026.

Note: A future law compilation is not authorised as further changes may be made to the law before the compilation is ever current.

Prepared by the Office of Parliamentary Counsel, Canberra

About this compilation

This compilation

This is a future compilation of the *National Disability Insurance Scheme Act 2013* that shows the expected text of the law as amended by the *National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Act 2026* and is expected to take effect on 1 October 2026. The notes at the end of this compilation (the ***endnotes***) include information about amending laws and the amendment history of provisions of the future compilation.

Future amendments

The details of expected future amendments incorporated into the text, that have not yet commenced are underlined in the endnotes.

Any future amendments that are included in the endnotes are underlined.

Application, saving and transitional provisions for provisions and amendments

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

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

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

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

Contents

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

Chapter 1—Introduction

Part 1—Preliminary

1 Short title

This Act may be cited as the *National Disability Insurance Scheme Act 2013*.

2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
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.	28 March 2013
2. Sections 3 to 12	The day after this Act receives the Royal Assent.	29 March 2013

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
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.	1 July 2013 (*see* F2013L00994)
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.	1 July 2013 (*see* F2013L00994)
5. Chapter 4, Part 1, Divisions 2 and 3	The day after this Act receives the Royal Assent.	29 March 2013
6. Chapter 4, Parts 2 and 3	The day after this Act receives the Royal Assent.	29 March 2013
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 Royal Assent, they commence on the day after the end of that period.	1 July 2013 (*see* F2013L00994)
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.	1 July 2013 (*see* F2013L00994)
9. Chapters 6 and 7	The day after this Act receives the Royal Assent.	29 March 2013

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

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

Part 2—Objects and principles

3 Objects of Act

(1) The objects of this Act are to:

(a) in conjunction with other laws, give effect to Australia's obligations under the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12); and

(b) provide for the National Disability Insurance Scheme in Australia; and

(c) support the independence and social and economic participation of people with disability; and

(d) provide reasonable and necessary supports, including early intervention supports, for participants in the National Disability Insurance Scheme; and

(e) enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and

(f) facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability; and

(g) promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the community; and

(ga) protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services provided under the National Disability Insurance Scheme; and

(h) 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

(i) in conjunction with other laws, give effect to certain obligations that Australia has as a party to:

(i) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23); and

(ii) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5); and

(iii) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4); and

(iv) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9); and

(v) the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40).

Note: In 2013, the text of a Convention or Covenant in the Australian Treaty Series was accessible through the Australian Treaties Library on the AustLII website (www.austlii.edu.au).

(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; and

(b) adopting an insurance-based approach, informed by actuarial analysis, to the provision and funding of supports for people with disability; and

(c) establishing a national regulatory framework for persons and entities who provide supports and services to people with disability, including certain supports and services provided outside the National Disability Insurance Scheme.

(3) In giving effect to the objects of the Act, regard is to be had to:

(b) the need to ensure the financial sustainability of the National Disability Insurance Scheme; and

(c) the broad context of disability reform provided for in:

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

(ii) the *Carer Recognition Act 2010*; and

(d) the provision of services by other agencies, Departments or organisations and the need for interaction between the provision of mainstream services and the provision of supports under the National Disability Insurance Scheme.

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

4 General principles guiding actions under this Act

(1) People with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development.

(2) People with disability should be supported to participate in and contribute to social and economic life.

(3) People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime.

(4) People with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports.

(5) People with disability should be supported to receive reasonable and necessary supports, including early intervention supports.

(6) People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation.

(7) People with disability have the same right as other members of Australian society to pursue any grievance.

(8) People with disability have the same right as other members of Australian society to be able to determine their own best interests,

including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives.

(9) People with disability should be supported in all their dealings and communications with the Agency and the Commission so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs.

(9A) People with disability are central to the National Disability Insurance Scheme and should be included in a co-design capacity.

(10) People with disability should have their privacy and dignity respected.

(11) Reasonable and necessary supports for people with disability should:

(a) support people with disability to pursue their goals and maximise their independence; and

(b) support people with disability to live independently and to be included in the community as fully participating citizens; and

(c) develop and support the capacity of people with disability to undertake activities that enable them to participate in the community and in employment.

(12) The role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected.

(12A) The relationship between people with disability and their families and carers is to be recognised and respected.

(13) The role of advocacy in representing the interests of people with disability is to be acknowledged and respected, recognising that advocacy supports people with disability by:

(a) promoting their independence and social and economic participation; and

(b) promoting choice and control in the pursuit of their goals and the planning and delivery of their supports; and

(c) maximising independent lifestyles of people with disability and their full inclusion in the community.

(14) People with disability should be supported to receive supports outside the National Disability Insurance Scheme, and be assisted to coordinate these supports with the supports provided under the National Disability Insurance Scheme.

(15) In exercising their right to choice and control, people with disability require access to a diverse and sustainable market for disability supports in which innovation, quality, continuous improvement, contemporary best practice and effectiveness in the provision of those supports is promoted.

(16) Positive personal and social development of people with disability, including children and young people, is to be promoted.

(17) It is the intention of the Parliament that the Ministerial Council, the Minister, the Board, the CEO, the Commissioner and any other person or body is to perform functions and exercise powers under this Act in accordance with these principles, having regard to the need to ensure the financial sustainability of the National Disability Insurance Scheme.

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

It is the intention of the Parliament that, if this Act requires or permits an act or thing to be done by or in relation to a person with disability by another person, the act or thing is to be done, so far as practicable, in accordance with both the general principles set out in section 4 and the following principles:

(a) people with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves;

(b) people with disability should be encouraged to engage in the life of the community;

(c) the judgements and decisions that people with disability would have made for themselves should be taken into account;

(d) the cultural and linguistic circumstances, and the sex, gender identity, sexual orientation and intersex status, of people with disability should be taken into account;

(e) the supportive relationships, friendships and connections with others of people with disability should be recognised;

(f) if the person with disability is a child—the best interests of the child are paramount, and full consideration should be given to the need to:

(i) protect the child from harm; and

(ii) promote the child's development; and

(iii) strengthen, preserve and promote positive relationships between the child and the child's parents, family members and other people who are significant in the life of the child.

6 Agency may provide support and assistance

To support people with disability to exercise choice and control in the pursuit of their goals, the Agency may provide support and assistance (including financial assistance) to prospective participants and participants in relation to doing things or meeting obligations under, or for the purposes of, this Act.

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

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

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

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

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 certain supports (called NDIS 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.

This Act also provides for the regulation of persons and entities who provide supports and services to people with disability under the National Disability Insurance Scheme. It also regulates supports and services provided outside the National Disability Insurance Scheme in certain circumstances.

A person with disability may receive supports or services from registered NDIS providers (Part 3A of Chapter 4). Supports and services may also be received from providers who are not registered.

This Act also creates the National Disability Insurance Agency (Chapter 6).

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

The Agency also has more general functions, such as:

(a) developing and enhancing the disability sector, including by facilitating innovation, research and contemporary best practice in the sector; and

(b) building community awareness of disabilities and the social contributors to disabilities.

Chapter 6 also:

(a) establishes the Board of the Agency; and

(b) establishes an Independent Advisory Council; and

(c) provides for the Chief Executive Officer and staff of the Agency; and

(d) provides for reporting and financial matters.

The NDIS Quality and Safeguards Commission and the office of the NDIS Quality and Safeguards Commissioner are also established by this Act (Chapter 6A).

The functions of the Commissioner include:

(a) functions relating to the quality and safety of services and supports provided to people with disability; and

(b) registering and overseeing the operation of NDIS providers; and

(c) managing and resolving complaints about NDIS providers; and

(d) providing leadership in relation to behaviour supports; and

(e) establishing, operating and maintaining the NDIS worker screening database (Chapter 6B).

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

(a) debts; and

(c) legislative instruments.

Part 4—Definitions

9 Definitions

In this Act:

access request has the meaning given by section 18.

administrative action has the meaning given by subsection 59B(3).

Advisory Council means the Independent Advisory Council established by section 143.

aged care clearance decision has the same meaning as in the *Aged Care Act 2024*.

aged care exclusion decision has the same meaning as in the *Aged Care Act 2024*.

aged care worker screening check has the same meaning as in the *Aged Care Act 2024*.

aged care worker screening law has the same meaning as in the *Aged Care Act 2024*.

Agency means the National Disability Insurance Agency referred to in subsection 117(1).

Agency officer means:

(a) a member of the staff of the Agency under section 169; or

(b) a person assisting the Agency under section 170.

annual financial sustainability report means a report prepared under subsection 180B(1).

anti-promotion order: see subsection 73ZOA(1).

approved form, in relation to a provision of this Act, means a form approved under section 9A for the purposes of that provision.

approved quality auditor means a person or body approved by the Commissioner under section 73U.

banning order means an order made under section 73ZN.

behaviour support function has the meaning given by section 181H.

Board means the Board of the National Disability Insurance Agency referred to in section 123.

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

carer means an individual who:

(a) provides personal care, support and assistance to another individual who needs it because that other individual is a person with disability; and

(b) does not provide the care, support and assistance:

  (i) under a contract of service or a contract for the provision of services; or

  (ii) in the course of doing voluntary work for a charitable, welfare or community organisation; or

  (iii) as part of the requirements of a course of education or training.

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

CEO means the Chief Executive Officer of the Agency.

Chair means the Chair of the Board.

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

civil penalty provision has the same meaning as in the Regulatory Powers Act.

Commission means the NDIS Quality and Safeguards Commission established by section 181A.

Commissioner means the Commissioner of the NDIS Quality and Safeguards Commission referred to in section 181C.

Commission officer means:

(a) a member of the staff of the Commission under section 181U; or

(b) a person assisting the Commissioner under section 181W.

Commonwealth Ombudsman means the person for the time being holding office as Commonwealth Ombudsman under the *Ombudsman Act 1976*.

compensation has the meaning given by section 11.

complaints functions has the meaning given by section 181G.

compliance notice means:

(a) in Part 3B of Chapter 4—a notice given under section 73ZM; or

(b) in Part 3C of Chapter 4—a notice given under section 73ZSI.

conduct means an act, an omission to perform an act or a state of affairs.

core functions has the meaning given by section 181E.

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

cover, in relation to an enterprise agreement, has the same meaning as in the *Fair Work Act 2009*.

decision-maker for a reviewable decision means:

(a) for a reviewable decision referred to in column 1 of the table in subsection 99(1)—the person referred to in column 3 of that table in relation to that decision; or

(b) for a reviewable decision specified in the National Disability Insurance Scheme rules for the purposes of subsection 99(2)—the person specified in the rules as the decision-maker for that decision.

designated provision: see subsection 59B(2).

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

(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and

(b) results in substantial reduction in functional capacity in relation to one or more of the following areas of major life activity:

(i) self-care;

(ii) receptive and expressive language;

(iii) cognitive development;

(iv) motor development; and

(c) results in the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of extended duration and are individually planned and coordinated.

Note: For ***functional capacity***, in relation to an activity, see section 9B.

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

disclose, in relation to information in the NDIS worker screening database, includes provide electronic access to the information.

enforceable undertaking means:

(a) in Part 3B of Chapter 4—an undertaking accepted under:

(i) section 114 of the Regulatory Powers Act in relation to a provision of this Act mentioned in subsection 73ZP(1); or

(ii) subsection 73ZP(4); or

(b) in Part 3C of Chapter 4—an undertaking accepted under:

(i) section 114 of the Regulatory Powers Act in relation to a provision of this Act mentioned in subsection 73ZSJ(1); or

(ii) subsection 73ZSJ(4).

engage in conduct means:

(a) do an act; or

(b) omit to perform an act.

enterprise agreement has the same meaning as in the *Fair Work Act 2009*.

enters into an agreement to give up his or her right to compensation: a participant or prospective participant ***enters into an agreement to give up his or her right to compensation*** if he or she:

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

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

entity means a partnership or an unincorporated association.

evaluative determination means:

(a) a discretion being exercised; or

(b) an evaluative judgement being made; or

(c) a state of mind being formed.

Finance Minister means the Minister administering the *Public Governance, Performance and Accountability Act 2013*.

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

First Minister for a host jurisdiction means:

(a) if the host jurisdiction is a State—the Premier of the State; or

(b) if the host jurisdiction is a Territory—the Chief Minister of the Territory.

First Ministers' Council means a body (however described) that consists only of, or that includes, the following:

(a) the Prime Minister;

(b) the Premiers of each State;

(c) the Chief Ministers of the Australian Capital Territory and Northern Territory.

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

functional capacity, in relation to an activity, has the meaning given by section 9B.

funded aged care service has the same meaning as in the *Aged Care Act 2024*.

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

funding period:

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

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

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

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

host jurisdiction means the following:

(a) each of the States;
(b) the Australian Capital Territory;
(c) the Northern Territory.

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

(a) a member of the Ministerial Council; or

(b) if the host jurisdiction is a State—the Premier of the State; or

(c) if the host jurisdiction is a Territory—the Chief Minister of the Territory.

independent advocate, in relation to a person with disability, means a person who:

(a) is independent of the Agency, the Commission and any NDIS providers providing supports or services to the person with disability; and

(b) provides independent advocacy for the person with disability, to assist the person with disability to exercise choice and control and to have their voice heard in matters that affect them; and

(c) acts at the direction of the person with disability, reflecting the person with disability's expressed wishes, will, preferences and rights; and

(d) is free of relevant conflicts of interest.

Indigenous person means a person who is:

(a) a member of the Aboriginal race of Australia; or

(b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

key personnel has the meaning given by section 11A.

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

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

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

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

meets the disability requirements has the meaning given by section 24.

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

meets the residence requirements has the meaning given by section 23.

Ministerial Council means a body (however described) that consists of the Minister of the Commonwealth, and the Minister of each State and Territory, who is responsible, or principally responsible, for matters relating to the National Disability Insurance Scheme.

National Disability Insurance Scheme means the arrangements set out in Chapters 2 and 3.

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

NDIA inspector means a person appointed under subsection 73ZSK(1) as an NDIA inspector (whether or not the person is also appointed as an NDIA investigator).

NDIA investigator means a person appointed under subsection 73ZSK(1) as an NDIA investigator (whether or not the person is also appointed as an NDIA inspector).

NDIS amount means an amount paid under the National Disability Insurance Scheme in respect of supports (other than general supports) funded under a participant's plan.

NDIS Code of Conduct means the National Disability Insurance Scheme rules made for the purposes of section 73V.

NDIS Practice Standards means the National Disability Insurance Scheme rules made for the purposes of section 73T.

NDIS provider has the meaning given by section 10C.

NDIS Provider Register means the register maintained under section 73ZDA.

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

NDIS worker screening check means an assessment, under an NDIS worker screening law, of whether a person who works, or seeks to work, with people with disability poses a risk to such people.

NDIS worker screening database means the database established under section 181Y.

NDIS worker screening law means a law of a State or Territory determined in an instrument under subsection 10B(1).

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

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

nominee means the correspondence nominee of a participant or the plan nominee of a participant.

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

ongoing funded aged care service has the same meaning as in the *Aged Care Act 2024*.

otherwise engaged includes engaged on a voluntary basis.

paid work means work for financial gain or reward (whether as an employee, a self-employed person or otherwise).

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

parental responsibility has the meaning given by section 75.

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

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

participant's statement of goals and aspirations has the meaning given by subsections 32D(1) and 33(1).

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

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

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

plan nominee means a person who is appointed as a plan nominee of a participant under section 86.

Principal Member means the Principal Member of the Advisory Council.

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

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

protected Agency 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 Commission information means information about a person (including a deceased person) that is or was held in the records of the Commission, but does not include the following:

(a) if there is publication of the NDIS Provider Register in whole or part as mentioned in paragraph 73ZDA(9)(b)—information covered by that publication;

(b) if there is publication of specified information entered on that Register as mentioned in that paragraph—that information.

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.

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

reassessment date of a participant's plan means:

(a) if the plan is a new framework plan—the day after the end of the maximum period of effect specified in the plan under paragraph 32D(2)(d); or

(b) if the plan is an old framework plan—the date specified in the plan under paragraph 33(2)(c).

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

registered means registered under section 73E.

registered aged care provider means a registered provider within the meaning of the *Aged Care Act 2024*.

registered NDIS provider means a person or entity who is registered under section 73E.

registered plan management provider means an NDIS provider who is registered to manage the funding for supports under plans as mentioned in paragraph 73E(2)(a).

registration and reportable incident functions has the meaning given by section 181F.

regulated promotional conduct: see subsection 73ZOA(2).

Regulatory Powers Act means the *Regulatory Powers (Standard Provisions) Act 2014*.

reportable incident has the meaning given by subsections 73Z(4) and (5).

restrictive practice means any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.

reviewable decision has the meaning given by subsections 99(1) and (2).

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

reviewing actuary means the actuary who is nominated under section 180D.

scheme actuary means the actuary who is nominated under section 180A.

serious contravention of a provision of this Act: see subsection 11B(1).

significant failure, in relation to the conduct of an NDIS provider or member of the key personnel of an NDIS provider: see subsection 11B(2).

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

specialist aged care program has the same meaning as in the *Aged Care Act 2024*.

standard operating procedure instrument means an instrument made under subsection 59D(1).

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

statement of participant supports has the meaning given by subsections 32D(2) and 33(2).

supports includes general supports.

systematic pattern of conduct, in relation to the conduct of an NDIS provider or member of the key personnel of an NDIS provider: see subsection 11B(3).

total funding amount:

(a) for flexible funding provided under a new framework plan—means the amount specified in the plan under paragraph 32E(2)(a); and

(b) for a stated support or class of stated supports funded under a new framework plan—means the amount specified in the plan for the stated support or class of stated supports under paragraph 32G(2)(a); and

(c) for reasonable and necessary supports funded under an old framework plan—means an amount specified in the plan under paragraph 33(2A)(a).

9A Approved forms

(1) The CEO may, in writing, approve a form for the purposes of a provision of this Act.

(2) For each approved form, the CEO must publish the form, or a representation of the form, on the Agency's website.

(3) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the CEO may approve different forms for different classes of application, claim, report, request, or statement.

9B Definition of *functional capacity*

(1) A person's ***functional capacity***, in relation to an activity, is the person's ability to undertake the activity:

(a) either without assistance from other people, assistive technology or modifications, or only with:

(i) assistance from assistive technology or modifications that are commonly used and that the person would ordinarily use to undertake the activity; and

(ii) if the person is a child—assistance from other people that is appropriate to the person's age; and

(b) in a context that excludes, as far as possible, the impact of the person's environmental and personal circumstances.

(2) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of subsection (1).

(3) Without limiting subsection (2), National Disability Insurance Scheme rules made for the purposes of that subsection may prescribe:

(a) methods or criteria to be applied for the purposes of subsection (1), including classifications or thresholds relevant to an assessment of a person's ability to undertake an activity; or

(b) matters that may, must or must not be taken into account for the purposes of subsection (1); or

(c) circumstances in which a matter relevant to the application of subsection (1) is taken to exist or to not exist in relation to a person; or

(d) assistive technology or modifications that are, or are not, taken to be commonly used for the purposes of subparagraph (1)(a)(i).

Note: If a particular assistive technology or modification is not prescribed by the National Disability Insurance Scheme rules under paragraph (d), the expression "commonly used" has its ordinary meaning in relation to that assistive technology or modification. Glasses and walking sticks are examples of assistive technology or modifications that are commonly used within the ordinary meaning of that expression.

10 Definition of ***NDIS support***

Supports that are NDIS supports

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

(a) participants or prospective participants generally; or

(b) a class of participants or prospective participants that includes the person.

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

(2) Before making National Disability Insurance Scheme rules declaring a support for the purposes of subsection (1), the Minister must be satisfied:

(a) for rules to which paragraph (1)(a) applies—that the support is appropriately funded or provided through the National Disability Insurance Scheme for participants or prospective participants generally; or

(b) for rules to which paragraph (1)(b) applies—that the support is appropriately funded or provided through the National Disability Insurance Scheme for participants, or prospective participants, in the relevant class.

(3) National Disability Insurance Scheme rules may declare a support for the purposes of subsection (1) only if at least one of the following applies:

(a) the declaration of the support implements Australia's obligations under:

(i) the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006; or

(ii) any other agreement with one or more other countries;

(b) the declaration of the support enables the provision of sickness benefits.

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

Supports that are not NDIS supports

(4) The National Disability Insurance Scheme rules may declare that a support is not an ***NDIS support*** for:

(a) participants or prospective participants generally; or

(b) a class of participants or prospective participants.

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

(5) Before making National Disability Insurance Scheme rules declaring a support for the purposes of subsection (4), the Minister must be satisfied:

(a) for rules to which paragraph (4)(a) applies—that the support is not appropriately funded or provided through the National Disability Insurance Scheme for participants or prospective participants generally; or

(b) for rules to which paragraph (4)(b) applies—that the support is not appropriately funded or provided through the National Disability Insurance Scheme for participants, or prospective participants, in the relevant class.

(6) The CEO may determine, in writing, that a support is taken to not be declared under subsection (4) in relation to a participant if:

(a) the support is prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; and

(b) the support would, apart from subsection (4), be an NDIS support for the participant; and

(c) the participant applies to the CEO in accordance with subsection (7) for the determination; and

(d) the CEO is satisfied that:

(i) the support would replace one or more other supports that are NDIS supports for the participant; and

(ii) the cost of the support is the same or lower than the total of the costs of the supports it would replace; and

(iii) the support would provide the same or a better outcome for the participant than the supports it would replace; and

(iv) any other conditions specified in the National Disability Insurance Scheme rules for the purposes of this subparagraph are met in relation to the support, the participant, or both.

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

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

(7) An application under paragraph (6)(c) must:

(a) be in the form (if any) approved by the CEO; and

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

(c) be made in accordance with any other requirements specified in the National Disability Insurance Scheme rules for the purposes of this paragraph, which may include requirements as to the circumstances in which an application may, or may not, be made.

(8) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of subsection (6), including by prescribing requirements with which the CEO must comply, methods or criteria that the CEO is to apply, or matters that the CEO may, must or must not take into account, in deciding whether to make a determination under that subsection.

(9) A support is not an ***NDIS support*** for a participant or prospective participant if the support consists of the provision of:

(a) sexual services; or

(b) alcohol; or

(c) drugs, the possession of which is a contravention of a law of the Commonwealth, a State or a Territory.

10B Definition of *NDIS worker screening law*

(1) The Minister may, by legislative instrument, determine a law of a State or Territory for the purposes of the definition of ***NDIS worker screening law*** in section 9, with the agreement of that State or Territory.

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

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

(2) Before determining a law of a State or Territory, the Minister must be satisfied that the law establishes a scheme for the screening of workers for purposes including the National Disability Insurance Scheme.

10C Definition of *NDIS provider*

Persons or entities who are NDIS providers

(1) Subject to subsection (2), a person or entity is an ***NDIS provider*** if the person or entity is:

(a) a person (other than the Agency) who receives:

(i) funding under the arrangements set out in Chapter 2; or

(ii) NDIS amounts (other than as a participant); or

(b) a person or entity:

(i) who provides supports or services to people with disability other than under the National Disability Insurance Scheme; and

(ii) who is prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph.

Persons or entities who are not NDIS providers

(2) A person or entity is not an ***NDIS provider*** if the person or entity is included in a class of persons or entities prescribed by the National Disability Insurance Scheme rules for the purposes of this subsection.

11 Definitions relating to compensation

(1) In this Act:

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

(a) compensation or damages in respect of personal injury; or

(b) personal injury, under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme; or

(c) personal injury, in settlement of a claim for damages or a claim under such an insurance scheme;

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

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

(a) in the form of a lump sum or in the form of a series of periodic payments; and

(b) made within or outside Australia.

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

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

(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.

11A Definition of ***key personnel***

(1) Each of the following is one of the ***key personnel*** of a person or entity:

(a) a member of the group of persons who is responsible for the executive decisions of the person or entity;

(b) any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the person or entity.

(2) Without limiting paragraph (1)(a), a reference in that paragraph to a person who is responsible for the executive decisions of a person or entity includes:

(a) if the person or entity is a body corporate that is incorporated, or taken to be incorporated, under the *Corporations Act 2001*—a director of the body corporate for the purposes of that Act; and

(b) in any other case—a member of the person's or entity's governing body.

11B Definition of ***serious contravention***

(1) A contravention of a provision of this Act is a ***serious contravention*** if the conduct that contravenes the provision:

(a) involves a significant failure; or

(b) is part of a systematic pattern of conduct.

Significant failures

(2) The conduct of an NDIS provider (the ***relevant provider***) or a member of its key personnel involves a ***significant failure*** if the conduct represents a significant departure from the conduct that could reasonably be expected from an NDIS provider or its key

personnel, having regard to the requirements that the following are subject to under this Act:

(a) NDIS providers and their key personnel;

(b) if the relevant provider is a registered NDIS provider—registered NDIS providers and their key personnel.

Systematic pattern of conduct

(3) In determining whether the conduct of an NDIS provider or a member of its key personnel is part of a ***systematic pattern of conduct***, regard must be had to the following:

(a) the number of times the provider's or key personnel member's conduct has not complied with a provision of this Act (the ***relevant contraventions***);

(b) the period over which the relevant contraventions occurred;

(c) the number of individuals affected by the relevant contraventions;

(d) the provider's or key personnel member's response, or failure to respond, to any complaints about the relevant contraventions.

Part 5—Ministerial Council

12 Ministerial Council functions etc.

(1) The Ministerial Council is to:

(a) consider policy matters that relate to the National Disability Insurance Scheme or arise under this Act; and

(b) advise the Minister about such matters; and

(c) make recommendations to the First Ministers' Council about such matters.

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

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

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

(1) 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 provide information in relation to disability and disability supports and services; or

(aa) for the purposes of enabling those persons or entities to provide assistance in building capacity within the community in connection with the provision of goods and services to people with disability and their families and carers; or

(ab) for the purposes of enabling those persons or entities to assist people with disability to realise their potential for physical, social, emotional and intellectual development; or (ac) for the purposes of enabling those persons or entities to assist people with disability, and their families and carers, to participate in social and economic life; or

(b) otherwise in the performance of the Agency's functions.

(2) Without limiting subsection (1), the Agency may provide funding to a person or entity:

(a) to assist one or more participants to receive supports; or

(b) to assist a participant who is a child aged under 7 to access supports, before the child's plan comes into effect, in relation to the child's disability needs (whether those needs arise because the child meets the disability requirements or meets the early intervention requirements).

(3) The National Disability Insurance Scheme rules may set out matters to which the Agency must have regard in deciding whether to provide funding under subsection (2).

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.

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

16 Agency may assist in relation to doing things under Chapter

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

17 National Disability Insurance Scheme rules

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

Chapter 3—Participants and their plans

Part 1A—Principles

17A Principles relating to the participation of people with disability

(1A) In performing the CEO's functions and exercising the CEO's powers under this Chapter, the CEO must have regard to the principles in this section.

(1) People with disability are assumed, so far as is reasonable in the circumstances, to have capacity to determine their own best interests and make decisions that affect their own lives.

(2) People with disability will be supported in their dealings and communications with the Agency so that their capacity to exercise choice and control is maximised.

(3) The National Disability Insurance Scheme is to:

(a) respect the interests of people with disability in exercising choice and control about matters that affect them; and

(b) enable people with disability to make decisions that will affect their lives; and

(c) support people with disability to participate in, and contribute to, social and economic life.

(4) The principles in this section are in addition to the principles in section 4 to which the CEO is to have regard in performing the CEO's functions and exercising the CEO's powers under this Act.

Part 1—Becoming a participant

18 Person may make a request to become a participant

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

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

19 Matters relating to access requests

(1) An access request must:

(a) be in the form (if any) approved by the CEO; and

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

(c) certify that it includes all the information, and is accompanied by all the documents, required as mentioned in paragraph (b) that are in the possession or control of the person.

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

(2) If:

(a) a person has made an access request; and

(b) either of the following apply:

(i) the CEO decides that the person does not meet the access criteria, or is taken to have so decided because of subsection 21(3);

(ii) the person becomes a participant in the National Disability Insurance Scheme as a result of the request but the CEO subsequently decides under subsection 30(1), (1A) or (5), paragraph 30A(1)(c) or subsection 30A(7) to revoke the person's status as such a participant;

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

(c) a review (the ***initial review***) under subsection 100(5) of the CEO's decision;

(d) a review under section 103 of a decision on the initial review.

20 CEO must consider and decide access requests

(1) If a person (the ***prospective participant***) makes an access request, the CEO must:

(a) decide whether or not the prospective participant meets the access criteria; or

(b) make one or more requests under subsection 26(1).

(2) The CEO must do a thing referred to in paragraph (1)(a) or (b) within the following number of days of receiving the access request:

(a) 90 days, unless paragraph (b) applies;

(b) if the National Disability Insurance Scheme rules prescribe a lesser number of days for the purposes of this paragraph—that lesser number of days.

21 When a person meets the access criteria

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

(a) the CEO is satisfied that the person meets the age requirements (see section 22); and

(b) the CEO is satisfied that, at the time of considering the request, the person meets the residence requirements (see section 23); and

(c) the CEO is satisfied that, at the time of considering the request:

(i) the person meets the disability requirements (see section 24); or

(ii) the person meets the early intervention requirements (see section 25).

(2) For the purposes of paragraph (1)(c), the CEO must separately consider and decide:

(a) whether or not the prospective participant meets the disability requirements; and

(b) whether or not the prospective participant meets the early intervention requirements.

(3) The CEO is taken to have decided that the prospective participant does not meet the access criteria if:

(a) the CEO does not do a thing referred to in paragraph 20(1)(a) or (b) within the period applicable under section 20; or

(b) if subsection 26(2) applies—the CEO does not do one of the things referred to in that subsection within the 14-day period referred to in that subsection.

Note: Notice of a decision that the CEO is taken to have made must be given because of subsection 100(1) and will be automatically reviewed because of subsection 100(5).

22 Age requirements

A person ***meets the age requirements*** if the person was aged under 65 when the access request in relation to the person was made.

23 Residence requirements

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

(a) resides in Australia; and

(b) is one of the following:

(i) an Australian citizen;

(ii) the holder of a permanent visa;

(iii) a special category visa holder who is a protected SCV holder.

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

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

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

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

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

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

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

24 Disability requirements

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

(a) the person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or the person has one or more impairments to which a psychosocial disability is attributable; and

(b) the impairment or impairments are, or are likely to be, permanent; and

(c) the impairment or impairments result in substantially reduced functional capacity in relation to one or more of the following activities (considering each activity as a whole):

(i) communication;

(ii) social interaction;

(iii) learning;

(iv) mobility;

(v) self-care;

(vi) self-management; and

(d) the impairment or impairments affect the person's capacity for social or economic participation; and

(e) the person is likely to require NDIS supports under the National Disability Insurance Scheme for the person's lifetime.

Note: For ***functional capacity***, in relation to an activity, see section 9B.

(2) For the purposes of subsection (1), an impairment or impairments that vary in intensity may be permanent, and the person is likely to require NDIS supports under the National Disability Insurance Scheme for the person's lifetime, despite the variation.

(3) For the purposes of subsection (1), an impairment or impairments that are episodic or fluctuating may be taken to be permanent, and the person may be taken to be likely to require NDIS supports under the National Disability Insurance Scheme for the person's lifetime, despite the episodic or fluctuating nature of the impairments.

(4) Subsection (3) does not limit subsection (2).

Note 1: The time at which a requirement in this section needs to be met is the time the matter falls to be determined. For an access request, that time is the time of considering the request (see paragraph 21(1)(c)).

Note 2: National Disability Insurance Scheme rules may be made in relation to this section under subsection 27(1).

25 Early intervention requirements

(1) A person ***meets the early intervention requirements*** if:

(a) the person:

(i) has one or more identified intellectual, cognitive, neurological, sensory or physical impairments that are, or are likely to be, permanent; or

(ii) has one or more identified impairments to which a psychosocial disability is attributable and that are, or are likely to be, permanent; or

(iii) is a child who has developmental delay; and

(b) the CEO is satisfied that provision of early intervention supports for the person is likely to benefit the person by reducing the person's future needs for supports in relation to disability; and

(c) the CEO is satisfied that provision of early intervention supports for the person is likely to benefit the person by:

(i) mitigating or alleviating the impact of the person's impairment or impairments upon the person's functional capacity in relation to undertaking communication, social interaction, learning, mobility, self-care or self-management; or

(ii) preventing the deterioration of such functional capacity; or

(iii) improving such functional capacity; or

(iv) strengthening the sustainability of informal supports available to the person, including through building the capacity of the person's carer; and

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

Note 1: In certain circumstances, a person with a degenerative condition could meet the early intervention requirements and therefore become a participant.

Note 2: For ***functional capacity***, in relation to an activity, see section 9B.

(1A) For the purposes of subparagraph (1)(a)(i) or (ii), an impairment or impairments that are episodic or fluctuating may be taken to be permanent despite the episodic or fluctuating nature of the impairments.

(2) The CEO is taken to be satisfied as mentioned in paragraphs (1)(b) and (c) if one or more of the person's impairments are prescribed by the National Disability Insurance Scheme rules for the purposes of this subsection.

Note 1: The time at which a requirement in this section needs to be met is the time the matter falls to be determined. For an access request, that time is the time of considering the request (see paragraph 21(1)(c)).

Note 2: National Disability Insurance Scheme rules may be made in relation to this section under subsection 27(1).

26 Requests that the CEO may make

(1) The requests the CEO may make under this subsection after a prospective participant has made an access request (see paragraph 20(1)(b)) are as follows:

(a) that the prospective participant, or another person, provide information that is reasonably necessary for deciding whether or not the prospective participant meets the access criteria;

(b) that the prospective participant do either or both of the following:

(i) undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment;

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

(2) If:

(a) information or one or more reports are requested under subsection (1); and

(b) the information and each such report are received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;

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

(c) decide whether or not the prospective participant meets the access criteria; or

(d) make a further request under subsection (1).

(3) If:

(a) information or one or more reports are requested under subsection (1); and

(b) the information and each such report are not received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;

the prospective participant is taken to have withdrawn the access request, unless the CEO is satisfied that it was reasonable for the prospective participant, or the other person mentioned in paragraph (1)(a), not to have complied with the request made by the CEO within that period.

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

(1) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of section 24 (disability requirements) or 25 (early intervention requirements).

(2) Without limiting subsection (1), National Disability Insurance Scheme rules made for the purposes of that subsection may prescribe:

(a) methods or criteria to be applied, or matters that may, must or must not be taken into account, for the purposes of either of those sections; or

(b) circumstances in which a matter relevant to the application of either of those sections is taken to exist or to not exist in relation to a person.

28 When a person becomes a participant

(1) A person becomes a participant in the National Disability Insurance Scheme on the day the CEO decides that the person meets the access criteria.

(2) The CEO must give written notice of the decision to the participant, stating:

(a) the date on which the person became a participant; and

(b) whichever of the following applies:

(i) that the CEO is satisfied the participant meets the early intervention requirements;

(ii) that the CEO is satisfied the participant meets the disability requirements;

(iii) that the CEO is satisfied the participant meets both the early intervention requirements and the disability requirements.

29 When a person ceases to be a participant

(1) A person ceases to be a participant in the National Disability Insurance Scheme when:

(a) the person dies; or

(b) the person commences accessing ongoing funded aged care services on a permanent basis, other than under a specialist aged care program, and this first occurs only after the person turns 65 years of age; or

(c) the person's status as a participant is revoked under subsection 30(1), (1A) or (5), paragraph 30A(1)(c) or subsection 30A(7); or

(d) the person is taken to withdraw as a participant under subsection 29A(5).

(2) A person is not entitled to be paid NDIS amounts so far as the amounts relate to supports that are acquired or provided after the person ceases to be a participant.

(3) The National Disability Insurance Scheme rules may specify circumstances in which specified supports are taken for the purposes of subsection (2) to be, or not to be, acquired or provided after the person ceases to be a participant.

29A Withdrawing as a participant

(1) A person may make a request to the CEO to no longer be a participant, in any manner approved by the CEO in writing.

(2) As soon as practicable after receiving the request, the CEO must notify the person of receipt of the request. The notice must be in writing and must:

(a) include information about the consequences of ceasing to be a participant in the National Disability Insurance Scheme; and

(b) include information about how to cancel the request; and

(c) explain that the person will be taken to withdraw as a participant if the request is not cancelled before the end of a specified period (the ***cooling-off period***).

(3) The period specified in the notice for the purposes of paragraph (2)(c) must not be less than 90 days beginning on the day the notice is given.

(4) Before the end of the cooling-off period, the CEO may, by notice in writing given to the person, extend the period. The CEO may extend the period more than once.

(5) If a person does not cancel a request before the end of the cooling-off period, the person is taken to withdraw as a participant at the end of that period.

(6) Despite subsection 81(1), a notice given under this section to a participant's correspondence nominee must also be given to the participant.

(7) Any notice given under this section to a participant must also be given to the participant's plan nominee.

30 Revocation of participant status

Circumstances in which participant status may be revoked

(1) The CEO may revoke a person's status as a participant in the National Disability Insurance Scheme if:

(a) the CEO is satisfied that the person does not meet the residence requirements (see section 23); or

(b) the CEO is satisfied that the person does not meet at least one of the following:

(i) the disability requirements (see section 24);

(ii) the early intervention requirements (see section 25).

(1A) The CEO may also revoke a person's status as a participant in the National Disability Insurance Scheme if the CEO is satisfied that:

(a) both:

(i) the CEO has made reasonable attempts to contact the participant for the purposes of making a request under section 36 or 50 for information or reports; and

(ii) the participant is not contactable; or

(b) the participant's plan has been suspended under section 40A for at least 90 days.

(1B) The CEO cannot be satisfied that reasonable attempts to contact the participant have been made as mentioned in subparagraph (1A)(a)(i) unless the CEO is satisfied that the requirements in subsection (1C) are met in relation to:

(a) unless paragraph (b) or (c) applies—the participant; or

(b) if the participant has a nominee—the participant's nominee; or

(c) if the participant does not have a nominee but has another authorised contact or representative—that other authorised contact or representative.

(1C) The requirements in this subsection are met in relation to the person mentioned in paragraph (1B)(a), (b) or (c) (as applicable) if:

(a) at least 5 attempts have been made to contact the person using the person's preferred form of contact; and

(b) the last of those attempts was made at least 3 months, and not more than 4 months, after the first of those attempts; and

(c) if the person's preferred form of contact is not in writing—at least one additional attempt has been made, during the period between the first and last of the attempts mentioned in paragraph (a), to contact the person in writing.

(1D) If the person the CEO is attempting to contact is the participant, an attempt does not count for the purposes of subsection (1C) if, before suspending the plan, the CEO becomes aware that at the time the attempt was made, the participant was in the care of a hospital or other institution, or experiencing homelessness.

Requesting information and reports

(2) If the CEO is considering revoking a participant's status as a participant in the National Disability Insurance Scheme under subsection (1) or (1A), the CEO may make one or more requests under subsection (3) for the purposes of deciding whether or not to do so.

(3) The requests the CEO may make under this subsection are as follows:

(a) that the participant, or another person, provide information that is reasonably necessary for deciding whether or not to revoke the participant's status as a participant in the National Disability Insurance Scheme;

(b) subject to subsection (3A), that the participant do either or both of the following:

(i) undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment;

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

(3AA) A request under subsection (3) must be made in writing.

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

(3A) The CEO must not request that the participant undergo an assessment under subparagraph (3)(b)(i) or an examination under subparagraph (3)(b)(ii) unless the CEO is satisfied that the report of the assessment or examination would provide information that the CEO cannot otherwise reasonably obtain.

(4) If:

(a) information or one or more reports are requested under subsection (3); and

(b) the information and each such report are received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;

the CEO must:

(c) decide whether or not to revoke the participant's status as a participant in the National Disability Insurance Scheme; or

(d) make a further request under subsection (3).

(5) If:

(a) information or one or more reports are requested under subsection (3); and

(b) the information and each such report are not received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;

the CEO may revoke the participant's status as a participant in the National Disability Insurance Scheme.

(6) However, the CEO must not revoke the participant's status as a participant in the National Disability Insurance Scheme under subsection (5) if the CEO is satisfied that it was reasonable for the participant, or the other person mentioned in paragraph (3)(a), not to have complied with the request made by the CEO within that period.

(6A) In deciding for the purposes of subsection (6) whether or not it was reasonable for a participant or other person not to have complied with a request within a particular period, the CEO must have regard to the following matters:

(a) the length of that period;

(b) any previous failures by the participant to comply with a request for information made under this Act;

(c) any previous failures by the other person to comply with a request for information made under this Act in relation to the participant;

(d) the length of time since the CEO was last provided with information relevant to the decision whether or not to revoke the participant's status as a participant;

(e) whether the failure to comply with the request was beyond the control of the participant or other person because of a delay in the provision of information to the participant or other person;

(f) any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph;

(g) any other matters the CEO considers relevant.

Notice of decisions

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

Section 30A does not limit this section

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

30A Requirement to consider status of certain participants

Circumstances in which CEO must consider participant's status

(1) If a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this subsection applies in relation to a participant, the CEO must:

(a) decide whether or not the participant meets the early intervention requirements; and

(b) if the CEO decides under paragraph (a) that the participant does not meet the early intervention requirements—decide whether or not the participant meets the disability requirements; and

(c) if the CEO decides under paragraph (b) that the participant does not meet the disability requirements—revoke the participant's status as a participant in the National Disability Insurance Scheme.

(2) The National Disability Insurance Scheme rules may prescribe requirements with which the CEO must comply, criteria that the

CEO is to apply, or matters to which the CEO may, must or must not have regard, in making a decision under subsection (1).

(3) Any such rules apply in addition to, and not instead of, National Disability Insurance Scheme rules prescribed for the purposes of subsection 27(1).

Requesting information and reports

(4) The CEO may make one or more requests under subsection (5) for the purposes of making a decision under subsection (1).

(5) The requests the CEO may make under this subsection are as follows:

(a) that the participant, or another person, provide information that is reasonably necessary for making the decision;

(b) subject to subsection (5A), that the participant do either or both of the following:

(i) undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment;

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

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

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

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

(6) If:

(a) information or one or more reports are requested under subsection (5); and

(b) the information and each such report are received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;

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

(c) make the decision under subsection (1); or

(d) make a further request under subsection (5).

(7) If:

(a) information or one or more reports are requested under subsection (5); and

(b) the information and each such report are not received by the CEO within 90 days, or such longer period as is specified in the request, after that information or report is requested;

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

(7A) In deciding for the purposes of subsection (7) whether or not it was reasonable for a participant or other person not to have complied with a request within a particular period, the CEO must have regard to the following matters:

(a) the length of that period;

(b) any previous failures by the participant to comply with a request for information made under this Act;

(c) any previous failures by the other person to comply with a request for information made under this Act in relation to the participant;

(d) the length of time since the CEO was last provided with information relevant to the making of the decision under subsection (1);

(e) whether the failure to comply with the request was beyond the control of the participant or other person because of a delay in the provision of information to the participant or other person;

(f) any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph;

(g) any other matters the CEO considers relevant.

Notice of decisions

(8) The CEO must give a participant written notice of the following:

(a) a decision of the CEO that the circumstance mentioned in subsection (1) applies in relation to the participant;

(b) a decision under paragraph (1)(a) or (b) in relation to the participant;

(c) a decision under paragraph (1)(c) or subsection (7) to revoke the participant's status as a participant in the National Disability Insurance Scheme.

(9) The notice must state:

(a) any details prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; and

(b) if paragraph (8)(c) applies—the date on which the revocation takes effect.

Part 2—Participants' plans

Division 1—Principles relating to plans

31 Principles relating to plans

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

(a) be individualised; and

(b) be directed by the participant; and

(c) where relevant, consider and respect the role of family, carers and other persons who are significant in the life of the participant; and

(ca) where relevant, recognise and respect the relationship between participants and their families and carers; and

(d) strengthen and build capacity of families and carers to support participants who are children; and

(da) if the participant and the participant's carers agree—strengthen and build the capacity of families and carers to support the participant in adult life; and

(e) consider the availability to the participant of informal support and other support services generally available to any person in the community; and

(f) support communities to respond to the individual goals and needs of participants; and

(g) be underpinned by the right of the participant to exercise control over his or her own life; and

(h) advance the inclusion and participation in the community of the participant with the aim of achieving his or her individual aspirations; and

(i) maximise the choice and independence of the participant; and

(j) facilitate tailored and flexible responses to the individual goals and needs of the participant; and

(k) provide the context for the provision of disability services to the participant and, where appropriate, coordinate the delivery of disability services where there is more than one disability service provider.

Division 2—Preparing participants' plans

Subdivision A—Facilitating preparation of participants' plans

32 CEO must facilitate preparation of participant's plan

Initial plan

(1) If a person becomes a participant, the CEO must facilitate the preparation of the participant's plan.

(2) The CEO must commence facilitating the preparation of the participant's plan under subsection (1) within 21 days of the person becoming a participant.

Subsequent plans

(3) The CEO must also facilitate the preparation of a plan for a participant if:

(a) the CEO decides under subparagraph 48(7)(b)(ii) or 49(1)(b)(ii) to prepare a new plan with the participant; or

(b) the CEO gives the participant notice under subsection 32B(2) or (2A) that the participant is to have new framework plans.

(4) The CEO must commence facilitating the preparation of the participant's plan under subsection (3):

(a) unless paragraph (b) applies—as soon as practicable after the event mentioned in paragraph (3)(a) or (b) occurs; or

(b) if the National Disability Insurance Scheme rules specify a number of days for the purposes of this paragraph—within that number of days after the day the event mentioned in paragraph (3)(a) or (b) occurs.

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

32A Kinds of plans

(1) A ***new framework plan*** is a plan prepared in accordance with Subdivision B.

(2) An ***old framework plan*** is a plan prepared in accordance with Subdivision C.

32B Participants that are to have new framework plans

(1) The National Disability Insurance Scheme rules may specify:

(a) classes of participants that are to have new framework plans; and

(b) for each class so specified—the period within which the CEO must give notice under subsection (2) to participants in the class.

(2) The CEO must, within the period specified for the purposes of paragraph (1)(b) for a class, give a participant in the class written notice that the participant is to have new framework plans.

(2A) If a participant who is a member of a class specified for the purposes of paragraph (1)(a) requests a reassessment of the participant's plan under paragraph 48(2)(b), the CEO may give the participant written notice that the participant is to have new framework plans (even if the period specified for the purposes of paragraph (1)(b) has not ended).

Note: In this case, subsection 48(3) (decision on request) does not apply in relation to the request for reassessment (see subsection 48(4A)).

(3) A notice given under subsection (2) or (2A) must include the details (if any) specified in the National Disability Insurance Scheme rules for the purposes of this subsection.

(4) The CEO may revoke a notice given to a participant under subsection (2) if the CEO is satisfied it is not reasonably practicable to facilitate the preparation of new framework plans for the participant.

(5) If a notice to a participant is so revoked:

(a) the CEO must inform the participant in writing of the revocation and the effect of the revocation; and

(b) for the purposes of this Act, the notice is taken never to have been given to the participant.

(6) The revocation under subsection (4) of a notice given to a participant under subsection (2) does not prevent the CEO giving the participant a subsequent notice under subsection (2).

32BA Notice of impairments

Giving notice of impairments

(1) The CEO must give a participant a notice in writing in accordance with subsection (2):

(a) as soon as practicable after the participant becomes a participant; or

(b) if a circumstance specified in the National Disability Insurance Scheme rules for the purposes of this paragraph applies in relation to the participant.

(2) The notice must state:

(a) if the participant meets the disability requirements—the categories of impairments under subsection (3) that cover the impairments in relation to which the participant meets those requirements; and

(b) if the participant meets the early intervention requirements because of subparagraph 25(1)(a)(i) or (ii)—the categories of impairments under subsection (3) that cover the impairments in relation to which the participant meets those requirements; and

(c) if the participant meets the early intervention requirements because of subparagraph 25(1)(a)(iii)—that the participant has developmental delay.

(3) Each of the following is a category of impairments for the purposes of paragraphs (2)(a) and (b):

(a) intellectual impairments;

(b) cognitive impairments;
(c) neurological impairments;
(d) sensory impairments;
(e) physical impairments;
(f) impairments to which a psychosocial disability is attributable.

(4) A notice given under paragraph (1)(b) replaces any previous notice given under paragraph (1)(a) or (b) to the participant.

Varying notice of impairments

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

(6) An application under subparagraph (5)(a)(i) must:
(a) be in the form (if any) approved by the CEO; and
(b) include any information, and be accompanied by any documents, required by the CEO; and
(c) be made in accordance with any other requirements specified in the National Disability Insurance Scheme rules for the purposes of this paragraph, which may include requirements as to the circumstances in which an application may, or may not, be made.

Subdivision B—Content of new framework plans

32C Application of this Subdivision

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

(a) a new framework plan has at any time come into effect for the participant; or

(b) the participant has been given a notice under subsection 32B(2) or (2A) that the participant is to have new framework plans; or

(c) the CEO starts to prepare the plan after the end of the following period starting on the commencement of this section:

(i) 5 years (subject to subparagraph (ii));

(ii) such shorter or longer period as is specified in the National Disability Insurance Scheme rules for the purposes of this subparagraph.

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

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

Participant's statement of goals and aspirations

(1) A participant's plan must include a statement (the ***participant's statement of goals and aspirations***) prepared by the participant that specifies:

(a) the goals, objectives and aspirations of the participant; and

(b) the environmental and personal context of the participant's living, including the participant's:

(i) living arrangements; and

(ii) informal community supports and other community supports; and

(iii) social and economic participation.

Statement of participant supports

(2) A participant's plan must include a statement (the ***statement of participant supports***), prepared with the participant and approved by the CEO, that specifies:

(a) the participant's reasonable and necessary budget in accordance with sections 32E to 32K; and

(b) the general supports (if any) that will be provided to, or in relation to, the participant; and

(c) having regard to the needs assessment report for the plan, whichever of the following applies:

(i) that the participant meets the disability requirements;

(ii) that the participant meets the early intervention requirements;

(iii) that the participant meets both the disability requirements and the early intervention requirements; and

(d) the plan's maximum period of effect, starting on the day the plan is approved; and

(e) any circumstances in which the Agency must reassess the plan under Division 4; and

(f) the management of the funding for supports under the plan (see also Division 3), and the funding (if any) that will be provided under the plan to or in relation to the participant for that management; and

(g) the management of other aspects of the plan.

How general supports may be specified in plan

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

Time limits for approving statement of participant supports

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

(5) However, subsection (4) does not apply if the preparation of the participant's plan is suspended under:
- (a) subparagraph 36(3)(b)(i) (which deals with failure to provide information or reports for an assessment under section 32L); or
- (b) subsection 40A(1) (which deals with participants who are not contactable).

Requirements for CEO in approving statement of participant supports

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

(c) have regard to the principle that a participant should manage the participant's plan to the extent that the participant wishes to do so; and

(d) have regard to the operation and effectiveness of any previous plans of the participant; and

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

(f) be satisfied of any matters specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

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

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

Plan may deal with additional matters

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

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

Statement of goals and aspirations to be recorded in writing

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

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

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

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

Flexible funding

(2) If the needs assessment report for the plan indicates that the participant needs at least some supports that are NDIS supports but not stated supports for the participant, the reasonable and necessary budget must provide:

(a) that certain funding (***flexible funding***), up to a specified amount (the ***total funding amount***), will be provided under the plan to or in relation to the participant for those supports; and

(b) that the flexible funding may be spent on any NDIS supports for the participant and only on such supports, subject to any restrictions under subsection 32F(6) that require the funding to be spent on particular supports.

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

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

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

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

Stated supports

(3) If:

(a) the needs assessment report for the plan indicates that the participant needs a particular support or class of supports; and

(b) the support, or each support in the class, is both an NDIS support and a stated support for the participant;

the reasonable and necessary budget must provide, for each such support or class of supports:

(c) that certain funding will be provided under the plan to or in relation to the participant for that support or class of supports; and

(d) that the funding provided for that support or class of supports may be spent:

(i) only on the support, or supports in the class, for which the particular funding is provided; and

(ii) only on supports that are NDIS supports for the participant.

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

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

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

(4) A support is a ***stated support*** for a participant if the support is declared by National Disability Insurance Scheme rules made for the purposes of this subsection to be a stated support:

(a) for participants generally; or

(b) for a class of participants that includes the participant.

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

32F Reasonable and necessary budget—flexible funding

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

Funding periods for flexible funding

(2) The reasonable and necessary budget must provide:

(a) that the flexible funding will be provided under the plan during specified periods (each of which is a ***funding period***); and

(b) when each funding period for that funding starts and ends; and

(c) the proportion of the total funding amount for flexible funding that will be provided under the plan during each of those funding periods.

(3) For the purposes of paragraph (2)(b):

(a) a funding period must be no more than 12 months; and

(b) the duration of a particular funding period may be different from the duration of any other funding period; and

(c) the first funding period for flexible funding must start on the day the plan comes into effect; and

(d) each other funding period for flexible funding must start immediately after the end of the immediately preceding funding period for that funding.

(4) For the purposes of paragraph (2)(c), the proportion for a particular funding period may be nil.

Rolling over unspent funding

(5) The reasonable and necessary budget must provide that the amount of flexible funding that will be provided during a funding period will be increased above the proportion provided for the funding period under paragraph (2)(c) by an amount equal to the amount by which:

(a) the amount of flexible funding that could have been provided under the plan during the immediately preceding funding period; exceeds

(b) the amount of flexible funding that was actually provided.

Restriction on how flexible funding is spent

(6) If the CEO is satisfied that a circumstance mentioned in subsection (7) exists, the reasonable and necessary budget may provide that the provision of flexible funding under the plan is subject to the restriction that one or more specified proportions of the flexible funding provided during specified funding periods may be spent only on specified NDIS supports for the participant.

(7) For the purposes of subsection (6), the circumstances are as follows:

(a) the participant would be likely to suffer physical, mental or financial harm if the flexible funding were not subject to the restriction;

(b) section 46 (acquittal of NDIS amounts) has not been complied with in relation to any of the participant's plans;

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

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

32G Reasonable and necessary budget—stated supports

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

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

(2) The reasonable and necessary budget must, for each stated support or class of stated supports, do at least one of the following:

(a) provide that funding will only be provided under the plan for the support or class of supports up to an amount (the ***total funding amount***) specified for the purposes of this paragraph for the support or class of supports;

(b) specify requirements under subsection 32H(1) in relation to the acquisition or provision of the support or class of supports.

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

Funding periods for stated supports

(3) Subject to subsection (4), the reasonable and necessary budget must, for each stated support or class of stated supports for which a total funding amount is specified, provide:

(a) that funding will be provided under the plan for the support or class of supports during periods (each of which is a ***funding period***) specified for the support or class of supports; and

(b) when each funding period for the support or class of supports starts and ends; and

(c) the proportion of the total funding amount for the support or class of supports that will be provided under the plan during each funding period for the support or class of supports.

(4) The National Disability Insurance Scheme rules may provide that subsection (3) does not apply in relation to supports prescribed for the purposes of this subsection.

(5) For the purposes of paragraph (3)(b):

(a) a funding period must be no more than 12 months; and

(b) the duration of a particular funding period may be different from the duration of any other funding period; and

(c) the first funding period for a stated support or class of stated supports must start on the day the plan comes into effect; and

(d) each other funding period for a stated support or class of stated supports must start immediately after the end of the immediately preceding funding period for that support or class of supports.

Rolling over unspent funding

(6) If the reasonable and necessary budget provides as mentioned in subsection (3), it must also provide that the amount of funding that will be provided during a funding period for a stated support or class of stated supports will be increased above the proportion provided for the funding period under paragraph (3)(c) by an amount equal to the amount by which:

(a) the amount of funding that could have been provided for that stated support or class of stated supports under the plan during the immediately preceding funding period; exceeds

(b) the amount of funding that was actually provided for that stated support or class of stated supports.

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

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

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

(2) Requirements specified under subsection (1) may include the following:

(a) a requirement that the supports be provided by a specified person or persons in a specified class;

(b) a requirement that a specified process be undertaken before the supports are acquired or provided;

(c) a requirement that specified conditions be satisfied in relation to the participant before the supports are acquired or provided;

(d) a requirement to comply with any requirements specified in the National Disability Insurance Scheme rules for the purposes of this paragraph;

(e) a requirement that the CEO be satisfied of matters relating to the acquisition or provision of the supports specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

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

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

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

(a) requirements with which the CEO must comply; and

(b) methods or criteria that the CEO is to apply; and

(c) matters that the CEO may, must or must not take into account;

in making a decision under any of those sections.

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

(1A) The following amounts specified in the reasonable and necessary budget for a participant's plan are to be worked out in accordance with subsection (1):

(a) the total funding amount for flexible funding (see paragraph 32E(2)(a));

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

(1) To work out the amounts, apply the information included as required by paragraph 32L(6)(a) (about the participant's relevant disability support needs) in the needs assessment report for the plan in accordance with the applicable method specified in the National Disability Insurance Scheme rules for the purposes of this subsection.

Note 1: In making National Disability Insurance Scheme rules for the purposes of this subsection, the Minister must have regard to the objects and principles of this Act (see in particular the principles set out in subsections 4(5), (9A) and (11)) and the financial sustainability of the National Disability Insurance Scheme: see subsection 209(3).

Note 2: In specifying a method for the purposes of this subsection, the National Disability Insurance Scheme rules may apply, adopt or incorporate any matter contained in a document prepared by the Agency (such as a document setting out prices or pricing benchmarks) as in force or existing from time to time: see subsection 209(2).

(2) Subsection (1) does not limit the information that may be used in working out the amounts.

(3B) Without limiting subsection (1), a method specified in National Disability Insurance Scheme rules made for the purposes of that subsection may:

(a) make provision in relation to the identification of NDIS supports or stated supports, or groups or classes of NDIS supports or stated supports, needed by participants; and

(b) specify one or more levels of need for NDIS supports or stated supports, or groups or classes of NDIS supports or stated supports; and

(c) make provision in relation to the identification of a level of need for NDIS supports or stated supports, or groups or classes of NDIS supports or stated supports, for participants; and

(d) specify one or more funding amounts for specified levels of need for NDIS supports or stated supports or groups or classes of NDIS supports or stated supports.

(3C) A funding amount specified as mentioned in paragraph (3B)(d) may be more than, equal to or less than the actual cost of providing or acquiring the support or group or class of supports.

(3D) A method specified in National Disability Insurance Scheme rules made for the purposes of subsection (1) may specify a maximum amount of funding for a support or a group or class of supports.

(3E) A method specified in National Disability Insurance Scheme rules made for the purposes of subsection (1) must have the effect that no maximum specified for the purposes of subsection (3D) is exceeded in working out the total funding amount for flexible funding or total funding amount for a stated support or class of stated supports.

(4) Without limiting subsection (1), National Disability Insurance Scheme rules made for the purposes of that subsection may relate to how to take into account:

(a) lump sum compensation payments that specifically include an amount for the cost of supports; and
(b) lump sum compensation payments that do not specifically include an amount for the cost of supports; and
(c) periodic compensation payments that the CEO is satisfied include an amount for the cost of supports; and
(d) amounts that a participant or prospective participant did not receive by way of a compensation payment because he or she entered into an agreement to give up his or her right to compensation; and
(e) supports in respect of personal injury that may be funded or provided under a scheme of insurance, or under a Commonwealth, State or Territory law.

(4A) National Disability Insurance Scheme rules made for the purposes of subsection (1) as mentioned in subsection (4) may make provision in relation to a matter mentioned in subsection (4) in a way that involves the exercise of a discretion by the CEO, in the circumstance that a participant receives:

(a) a compensation payment; or
(b) supports in respect of personal injury, if the supports are funded or provided under a scheme of insurance or under a Commonwealth, State or Territory law.

(5) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901* or subsection 209(1A) of this Act, National Disability Insurance Scheme rules made for the purposes of subsection (1) of this section may make different provision in relation to:

(a) different classes of participants; and
(b) for the purposes of paragraph (1A)(b) of this section—different classes of stated supports.

32KA Increasing funding for stated supports under new framework plans to reflect changes in maximum amounts under section 45C

(1) If the Minister makes or varies a determination under section 45C, the Minister may also consider whether to make a determination under this section. The Minister must not make a determination under this section in any other circumstances.

(2) The Minister may, by legislative instrument, determine, in relation to new framework plans generally, or a class of new framework plans:
(a) an increase, or a method for working out an increase, in relation to a specified stated support or a specified class of stated supports; and
(b) a day, or a method for working out a day, (the ***indexation day***) on which the increase takes effect; and
(c) a method for applying the increase on the indexation day.

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

(3) The Minister must determine an increase or method for working out an increase by reference to whether the making or variation of the determination under section 45C has resulted in a higher maximum amount than was previously the case for the acquisition or provision of the specified support or the supports in the specified class.

(4) On the indexation day, the determination has the effect, in relation to each new framework plan to which it applies, that the total funding amount for the specified stated support or specified class is taken to be increased in accordance with the method determined for the purposes of paragraph (2)(c).

Note: This means that the total funding amount for the support or class of supports, as increased, is the total funding amount that has effect for the purposes of references in this Act to the total amount of funding provided under a plan for a stated support or class of stated supports (for example, in paragraphs 45(4)(b)).

(5) The determination does not have the effect of altering, or requiring alterations to, the text of the plans to which it applies.

32KB Increasing funding for flexibly funded supports under new framework plans to reflect changes in maximum amounts under section 45C

(1) If the Minister makes or varies a determination under section 45C, the Minister may also consider whether to make a determination under this section. The Minister must not make a determination under this section in any other circumstances.

(2) The Minister may, by legislative instrument, determine, in relation to new framework plans generally, or a class of new framework plans:

(a) an increase, or a method for working out an increase, in relation to a category of NDIS supports; and

(b) a day, or a method for working out a day, (the ***indexation day***) on which the increase takes effect; and

(c) a method for applying the increase on the indexation day.

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

(3) The Minister must determine an increase or method for working out an increase by reference to whether the making or variation of the determination under section 45C has resulted in a higher maximum amount than was previously the case for the acquisition or provision of the category of supports to which the determination relates.

(4) On the indexation day, if the category of supports to which the determination relates is included in the needs assessment report for

a new framework plan to which the determination applies, the determination has the following effect in relation to the plan:

(a) the portion of the flexible funding under the plan that is attributable to the category of supports is taken to be increased in accordance with the method determined for the purposes of paragraph (2)(c); and

(b) the total funding amount for flexible funding under the plan is taken to be correspondingly increased.

Note: This means that the total funding amount for the category of supports as increased, is the total funding amount that has effect for the purposes of references in this Act to the total amount of funding provided under a plan for a stated support or class of stated supports (for example, in paragraphs 45(4)(a)).

(5) The determination does not have the effect of altering, or requiring alterations to, the text of the plans to which it applies.

32L Assessment of participant's need for supports

CEO to arrange assessment of participant's need for supports

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

(1A) For the purposes of subsection (1), a participant's disability support needs do not include managing the funding of supports under the participant's plan.

What an assessment covers

(2) The assessment must be undertaken using the assessment tool, and in accordance with any other requirements (including requirements for the purpose of assessing whether a participant's disability support needs arise directly from impairments in relation to which the participant meets the disability requirements or the early intervention requirements), specified in the National Disability Insurance Scheme rules for the purposes of this subsection.

Note: In specifying an assessment tool or another requirement for the purposes of this subsection, the National Disability Insurance Scheme rules may apply, adopt or incorporate any matter contained in a document prepared by the Agency (such as a questionnaire or manual) as in force or existing from time to time: see subsection 209(2).

(4) The assessment:

(a) must have regard to any information and reports requested under subsection 36(2) for the purposes of the assessment; and

(b) must have regard to any information prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; and

(c) must not have regard to any information prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

Who may undertake an assessment

(4A) The assessment must be undertaken by:

(a) a member of the staff of the Agency mentioned in section 169; or

(b) a consultant engaged by the Agency under section 171; or

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

Needs assessment reports

(5) A report of the assessment must be prepared and given to the CEO as soon as practicable after the assessment is completed.

(6) The report must:

(a) include information about the participant's disability support needs arising directly from impairments in relation to which the participant meets the disability requirements or the early intervention requirements; and

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

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

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

Replacement assessments

(7) If:

(a) an assessment (the ***existing assessment***) has been undertaken under subsection (1) or paragraph (c) of this subsection in connection with a plan; and

(b) in deciding whether or not to approve a statement of participant supports for the plan, the CEO is satisfied that another assessment (the ***replacement assessment***) of the participant's need for supports should be undertaken;

then:

(c) the CEO must arrange for the replacement assessment to be undertaken; and

(d) subsections (2) to (6A) apply in relation to the replacement assessment in the same way as they applied in relation to the existing assessment; and

(e) the replacement assessment is taken to replace the existing assessment; and

(f) the needs assessment report prepared for the replacement assessment is taken to replace the needs assessment report prepared for the existing assessment.

Note: In reviewing a decision to approve a statement of participant supports, a reviewer or the Administrative Review Tribunal has all the powers of the CEO in making the original decision and must therefore arrange for a replacement assessment to be undertaken if satisfied as mentioned in paragraph (b) (subject to any applicable National Disability Insurance Scheme rules).

(7A) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of paragraph (7)(b), including by prescribing:

(a) circumstances in which the CEO must or must not decide under that paragraph that another assessment should be undertaken; or

(b) requirements with which the CEO must comply, methods or criteria that the CEO is to apply, or matters that the CEO may, must or must not take into account, in making a decision under that paragraph whether another assessment should be undertaken.

National Disability Insurance Scheme rules

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

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

Subdivision C—Content of old framework plans

32M Application of this Subdivision

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

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

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

Participant's statement of goals and aspirations

(1) A participant's plan must include a statement (the ***participant's statement of goals and aspirations***) prepared by the participant that specifies:

(a) the goals, objectives and aspirations of the participant; and

(b) the environmental and personal context of the participant's living, including the participant's:
   (i) living arrangements; and
   (ii) informal community supports and other community supports; and
   (iii) social and economic participation.

Statement of participant supports

(2) A participant's plan must include a statement (the ***statement of participant supports***), prepared with the participant and approved by the CEO, that specifies:
   (a) the general supports (if any) that will be provided to, or in relation to, the participant; and
   (b) the reasonable and necessary supports (if any) that will be funded under the National Disability Insurance Scheme; and
   (c) the date by which, or the circumstances in which, the Agency must reassess the plan under Division 4; and
   (d) the management of the funding for supports under the plan (see also Division 3); and
   (e) the management of other aspects of the plan.

Total funding amounts, funding component amounts and funding periods

(2A) In addition to the matters mentioned in paragraphs (2)(a) to (e), the statement of participant supports must:
   (a) specify that funding will be provided under the plan to or in relation to the participant, for all reasonable and necessary supports funded under the plan taken as a whole, up to a specified amount (the ***total funding amount***) worked out under subsection (2B); and
   (b) in accordance with any requirements determined under subsection (2E) for the purposes of this paragraph, categorise the reasonable and necessary supports specified under paragraph (2)(b) into one or more groups of supports identified in the statement; and

(c) specify that funding will be provided under the plan to or in relation to the participant, for supports in each group identified under paragraph (b) of this subsection, up to an amount (a ***funding component amount***) specified in the statement for the group that is worked out in accordance with any requirements determined under subsection (2E) for the purposes of this paragraph; and

(d) specify that funding will be provided under the plan to or in relation to the participant for reasonable and necessary supports during specified periods (each of which is a ***funding period***).

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

(2B) For the purposes of paragraph (2A)(a), the total funding amount specified in a statement of participant supports must be an amount equal to:

(a) if the statement specifies more than one funding component amount—the sum of those amounts; or

(b) if the statement specifies a single funding component amount—that amount.

(2C) For the purposes of paragraph (2A)(d), the statement must:

(a) specify funding periods for funding for either:

(i) all reasonable and necessary supports funded under the plan, taken as a whole; or

(ii) each group of supports identified under paragraph (2A)(b); and

(b) specify when each funding period starts and ends; and

(c) specify, for each funding period:

(i) if funding periods are specified as mentioned in subparagraph (a)(i) of this subsection—the proportion of the total funding amount that will be provided as funding under the plan, during the funding period, for reasonable and necessary supports; or

(ii) if funding periods are specified as mentioned in subparagraph (a)(ii) of this subsection—the proportion of the funding component amount for the group of supports to which the funding period relates that will be provided as funding under the plan, during the funding period, for supports in the group; and

(d) if funding periods are specified as mentioned in subparagraph (a)(i) of this subsection—specify that the amount of funding for reasonable and necessary supports that will be provided during a funding period will be increased above the proportion specified for the funding period under subparagraph (c)(i) of this subsection by an amount equal to the amount by which:

(i) the amount of funding that could have been provided under the plan for reasonable and necessary supports during the immediately preceding funding period; exceeds

(ii) the amount of funding that was actually provided for such supports; and

(e) if funding periods are specified as mentioned in subparagraph (a)(ii) of this subsection—specify that the amount of funding, for supports in a group to which a funding component amount relates, that will be provided during a funding period for that group will be increased above the proportion specified for the funding period under subparagraph (c)(ii) of this subsection by an amount equal to the amount by which:

(i) the amount of funding that could have been provided under the plan for supports in that group during the immediately preceding funding period for that group; exceeds

(ii) the amount of funding that was actually provided for supports in that group.

(2D) For the purposes of paragraph (2C)(b):

(a) a funding period must be no more than 12 months; and

(b) the duration of a particular funding period may be different from the duration of any other funding period; and

(c) without limiting paragraph (b) of this subsection, if the funding periods are specified as mentioned in subparagraph (2C)(a)(ii), then the duration of the funding periods for one group of supports identified in the plan under paragraph (2A)(b) may be different from the duration of funding periods for any other group of supports identified in the plan under paragraph (2A)(b); and

(d) if funding periods are specified as mentioned in subparagraph (2C)(a)(i):

(i) the first funding period must start on a day worked out in accordance with any requirements determined under subsection (2E) for the purposes of this subparagraph; and

(ii) each other funding period must start immediately after the end of the immediately preceding funding period; and

(e) if funding periods are specified as mentioned in subparagraph (2C)(a)(ii):

(i) the first funding period for a group of supports must start on a day worked out in accordance with any requirements determined under subsection (2E) for the purposes of this subparagraph; and

(ii) each other funding period for the group of supports must start immediately after the end of the immediately preceding funding period for that group.

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

(a) requirements for categorising reasonable and necessary supports into groups for the purposes of paragraph (2A)(b); and

(b) how to work out a funding component amount for a group of supports; and

(c) how to work out when a first funding period is to start for the purposes of subparagraph (2D)(d)(i) or (e)(i); and

(d) requirements with which the CEO must comply, methods or criteria that the CEO is to apply, and matters that the CEO may, must or must not take into account, in doing any of the following:
   (i) working out a funding component amount;
   (ii) specifying funding periods for the purposes of paragraph (2C)(a);
   (iii) deciding any other matter for the purposes of subsection (2A), (2C) or (2D).

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

(2F) Despite subsection 14(2) of the *Legislation Act 2003*, a determination under subsection (2E) of this section may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(2G) Without limiting subsection (2F), that subsection applies even if the instrument or other writing was created for the purpose of being applied, adopted or incorporated by the determination. If the determination makes provision as mentioned in subsection (2F) in relation to a matter contained in an instrument or other writing created for that purpose:
(a) the Minister must ensure that the instrument or other writing is published on the Agency's website; and
(b) the instrument or other writing is not a legislative instrument.

(2H) To the extent that the determination making provision as mentioned in subsection (2F) constitutes a subdelegation of the Minister's power to make such determinations, that subdelegation is authorised.

How supports may be specified in plan

(3) The supports that will be funded or provided under the National Disability Insurance Scheme may be specifically identified in the

plan or described generally, whether by reference to a specified purpose or otherwise.

Time limits for approving statement of participant supports

(4) The CEO must decide whether or not to approve the statement of participant supports:

(a) within the period worked out in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this paragraph (which may take account of section 36 (information and reports)); or

(b) if there are no such rules—as soon as reasonably practicable, including what is reasonably practicable having regard to section 36 (information and reports).

Requirements for CEO in approving statement of participant supports

(5) In deciding whether or not to approve a statement of participant supports under subsection (2), the CEO must:

(a) have regard to the participant's statement of goals and aspirations; and

(b) have regard to relevant assessments conducted in relation to the participant; and

(c) be satisfied as mentioned in section 34 in relation to the reasonable and necessary supports that will be funded and the general supports that will be provided; and

(d) apply the National Disability Insurance Scheme rules (if any) made for the purposes of section 35; and

(e) have regard to the principle that a participant should manage his or her plan to the extent that he or she wishes to do so; and

(f) have regard to the operation and effectiveness of any previous plans of the participant; and

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

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

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

Plan may deal with additional matters

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

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

Statement of goals and aspirations to be recorded in writing

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

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

34 Reasonable and necessary supports

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

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

(a) the support will assist the participant to pursue the goals, objectives and aspirations included in the participant's statement of goals and aspirations;

(b) the support will assist the participant to undertake activities, so as to facilitate the participant's social and economic participation;

(c) the support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support;

(d) the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice;

(e) the funding or provision of the support takes account of what it is reasonable to expect families, carers, informal networks and the community to provide;

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

Note: For the purposes of paragraph (aa), the time at which the disability requirements or the early intervention requirements need to be met is the time the CEO decides to approve the statement of participant supports.

(2) The National Disability Insurance Scheme rules may prescribe methods or criteria to be applied, or matters to which the CEO is to have regard, in deciding whether or not he or she is satisfied as mentioned in any of paragraphs (1)(aa) to (f).

34A Determination reducing funding for groups of supports

(1) For the purposes of ensuring the financial sustainability of the National Disability Insurance Scheme, the Minister may, by legislative instrument, determine:

(a) a percentage for reducing funding component amounts for a group of supports specified in the determination; and

(b) the class of participants' plans to which the percentage applies, which may be:

(i) all old framework plans that commence on or after the day the determination commences; or

(ii) the class of such plans specified in the determination.

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

(1A) For the purposes of paragraph (1)(a), a specified group of supports must be supports for one of the following:
(a) assistance with social, economic and community participation;
(b) improved daily living skills.

(1B) The determination may specify one or both groups of supports. If it specifies both, it may specify the same or a different percentage for each group.

(1C) The determination may specify a subgroup within a specified group of supports as an excluded subgroup for the purposes of subsection (2A). The excluded subgroup may consist of one or more kinds of supports.

Note: Excluded subgroups will include supports in employment and disability related health supports.

(1CA) If the determination specifies an excluded subgroup, the determination may specify, in relation to the class of participants' plans to which the percentage applies, a subclass of plans for the purposes of subsection (2A). The subclass may be specified by reference to matters relating to the plans, or the participants, or both, including matters identified by reference to information in records held by the Agency.

(1D) For the purposes of paragraph (1)(b), a class of participants' plans may be specified by reference to features of plans, features of participants, or both.

(2) While the determination of a percentage is in force for a group of supports, it has the following effects in relation to each old framework plan in the class of participants' plans to which the percentage applies:
(a) the funding component amount stated in the plan for the group of supports is taken instead to be the amount worked out under subsection (2A);
(b) the reduction applies to funding during each funding period so as not to alter the proportion of the following provided during each funding period:

(i) if the plan specifies funding periods as mentioned in subparagraph 33(2C)(a)(i)—the total funding amount;

(ii) if the plan specifies funding periods as mentioned in subparagraph 33(2C)(a)(ii)—the funding component amount for the group of supports to which the funding period relates;

(c) the total funding amount stated in the plan is taken instead to be the stated amount as reduced by the dollar amount by which all the funding component amounts that are stated in the plan for groups of supports specified in the determination are reduced.

Note: This means that the amounts as reduced are the amounts that have effect for the purposes of references in this Act to a total funding amount or a funding component amount.

(2A) For the purposes of paragraph (2)(a), the funding component amount for the specified group of supports is the amount worked out as follows:

$$\text{FCA} - (\text{specified percentage} \times \text{net FCA})$$

where:

FCA means the funding component amount stated in the plan for the group of supports.

net FCA means:

(a) unless paragraph (b) applies—the funding component amount stated in the plan for the specified group of supports; or

(b) if:

(i) the determination specifies an excluded subgroup within the specified group; and

(ii) for a determination that specifies a subclass of plans as mentioned in subsection (1CA)—the plan is in the specified subclass;

the funding component amount stated in the plan for the group of supports minus so much of the funding component amount as is attributable to the supports in the excluded subgroup.

(2B) For the purposes of paragraph (b) of the definition of ***net FCA*** in subsection (2A), the determination must specify how to determine the portion of the funding component amount that is attributable to funding for the supports in the excluded subgroup.

(3) In making the determination, the Minister must have regard to the safety of participants.

(4) The determination does not have the effect of altering, or requiring alterations to, the text of the plans to which it applies.

(5) To avoid doubt, the determination has effect even if the result is either or both of the following:

(a) the funding provided under a participant's plan for a reasonable and necessary support is less than the total cost of the support;

(b) the funding provided under a participant's plan for all reasonable and necessary supports funded under the plan taken as a whole is less than the total costs of the supports.

34B Increasing funding under old framework plans to reflect changes in maximum amounts under section 45C

(1) If the Minister makes or varies a determination under section 45C, the Minister must also consider whether to make a determination under this section. The Minister must not make a determination under this section in any other circumstances.

(2) The Minister may, by legislative instrument, determine, in relation to old framework plans generally, or a class of old framework plans:

(a) an indexation factor, or a method for working out an indexation factor, for the funding component amount for a specified group of NDIS supports; and

(b) a day, or a method for working out a day, (the ***indexation day***) on which the indexation factor is applied.

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

(3) The Minister must determine the indexation factor or method by reference to whether the making or variation of the determination under section 45C has resulted in a higher maximum amount than was previously the case for the acquisition or provision of supports in the group to be specified as mentioned in paragraph (2)(a).

(4) On the indexation day, the determination has the following effect in relation to each old framework plan to which it applies:

(a) the amount of the funding component amount for supports in the specified group that is unclaimed immediately before the indexation day is taken to be increased by the indexation factor;

(b) the total funding amount is taken to be correspondingly increased.

Note: This means that the amounts as increased are the amounts that have effect for the purposes of references in this Act to a total funding amount or a funding component amount (for example, in paragraph 45(4)(c)).

(5) The determination does not have the effect of altering, or requiring alterations to, the text of the plans to which it applies.

35 National Disability Insurance Scheme rules for statement of participant supports

(1) The National Disability Insurance Scheme rules may make provision in connection with the funding or provision of reasonable and necessary supports or general supports, including but not limited to prescribing:

(a) methods or criteria to be applied, or matters to which the CEO is to have regard, in deciding, the reasonable and necessary supports or general supports that will be funded or provided under the National Disability Insurance Scheme; and

(b) reasonable and necessary supports or general supports that will not be funded or provided under the National Disability Insurance Scheme; and

(c) reasonable and necessary supports or general supports that will or will not be funded or provided under the National Disability Insurance Scheme for prescribed participants.

(2) The National Disability Insurance Scheme rules referred to in subsection (1) may relate to the manner in which supports are to be funded or provided and by whom supports are to be provided.

(4) The National Disability Insurance Scheme rules referred to in subsection (1) may relate to how to take into account:

(a) lump sum compensation payments that specifically include an amount for the cost of supports; and

(b) lump sum compensation payments that do not specifically include an amount for the cost of supports; and

(c) periodic compensation payments that the CEO is satisfied include an amount for the cost of supports; and

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

(5) The National Disability Insurance Scheme rules referred to in subsection (1) may relate to how to take into account amounts that a participant or prospective participant did not receive by way of a compensation payment because he or she entered into an agreement to give up his or her right to compensation.

Subdivision D—Information and reports

36 Requesting information and reports

(1) The CEO may make one or more requests under subsection (2) for any of the following purposes:

(a) the undertaking of an assessment under section 32L for a participant;

(b) preparing a statement of participant supports for a participant;

(c) deciding whether to approve a statement of participant supports for a participant.

(2) The requests the CEO may make are as follows:

(a) that the participant, or another person, provide information that is reasonably necessary for a purpose mentioned in paragraph (1)(a), (b) or (c);

(b) that the participant do either or both of the following:

(i) undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment;

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

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

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

(3) If a request under subsection (2) is made for a purpose mentioned in paragraph (1)(a):

(a) the request must specify a period of at least 28 days for the information or reports to be received by the CEO; and

(b) if the CEO does not receive the information or reports within the period specified in the request—the CEO must:

(i) unless subparagraph (ii) applies—suspend the preparation of the new framework plan; or

(ii) if the CEO is satisfied that it was reasonable for the participant or the other person mentioned in paragraph (2)(a) not to have complied with the request within that period—make a further request under subsection (2).

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

(3A) In deciding for the purposes of subparagraph (3)(b)(ii) whether or not it was reasonable for a participant or other person not to have complied with a request within a particular period, the CEO must have regard to the following matters:

(a) the length of that period;

(b) any previous failures by the participant to comply with a request for information made under this Act;

(c) any previous failures by the other person to comply with a request for information made under this Act in relation to the participant;

(d) the length of time since the CEO was last provided with information relevant to the purpose mentioned in paragraph (1)(a), (b) or (c) for which the request was made;

(e) whether the failure to comply with the request was beyond the control of the participant or other person because of a delay in the provision of information to the participant or other person;

(f) any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph;

(g) any other matters the CEO considers relevant.

(4) If the CEO suspends the preparation of a new framework plan for a participant under subparagraph (3)(b)(i):

(a) the CEO must give the participant written notice of the decision; and

(b) the statement of participant supports in any other plan that is in effect for the participant (whether an old framework plan or a new framework plan) is suspended from the day specified in the notice for the purposes of this paragraph until the day the CEO receives the information or reports requested; and

(c) the CEO must recommence the preparation of the new framework plan if the CEO subsequently receives the information or reports.

(5) If a request under subsection (2) is made for a purpose mentioned in paragraph (1)(b) or (c), the CEO:

(a) may prepare the statement of participant supports, or decide whether to approve a statement of participant supports, before all the information and reports requested are received by the CEO; but

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

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

Subdivision E—When a plan is in effect etc.

37 When plan is in effect

(1) A participant's plan comes into effect when the CEO has:

(a) received the participant's statement of goals and aspirations from the participant; and

(b) approved the statement of participant supports.

Note: Division 4 deals with varying and replacing plans.

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

(a) when the plan is replaced by another plan (see subsection (4));

(b) if the plan is a new framework plan—immediately after the end of the maximum period of effect specified in the plan under paragraph 32D(2)(d);

(c) in any case—when the participant ceases to be a participant.

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

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

38 Copy of plan to be provided

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

39 Agency must comply with the statement of participant supports

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

40 Effect of temporary absence on plans

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

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

(a) 6 weeks beginning when the participant leaves Australia; or

(b) if the CEO is satisfied that it is appropriate for the grace period to be longer than 6 weeks—such longer period as the CEO decides, having regard to any matters and applying any criteria prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

(3) If a participant for whom a plan is in effect is temporarily absent from Australia after the end of the grace period for the absence, the participant's plan is suspended from the end of the grace period until the participant returns to Australia.

(4) For the purposes of this section, a person's absence from Australia is temporary if, throughout the absence, the person does not cease to reside in Australia (within the meaning of paragraph 23(1)(a)).

40A Participants who are not contactable

(1) The CEO may suspend a participant's plan if the CEO is satisfied that:

(a) the CEO has made reasonable attempts to contact the participant for the purposes of making a request under section 36 or 50 for information or reports; and

(b) the participant is not contactable.

Note: A decision to suspend a participant's plan is a reviewable decision (see section 99).

(1A) The CEO cannot be satisfied that reasonable attempts to contact the participant have been made as mentioned in paragraph (1)(a) unless the CEO is satisfied that the requirements in subsection (1B) are met in relation to:

(a) unless paragraph (b) or (c) applies—the participant; or

(b) if the participant has a nominee—the participant's nominee; or

(c) if the participant does not have a nominee but has another authorised contact or representative—that other authorised contact or representative.

(1B) The requirements in this subsection are met in relation to the person mentioned in paragraph (1A)(a), (b) or (c) (as applicable) if:

(a) at least 5 attempts have been made to contact the person using the person's preferred form of contact; and

(b) the last of those attempts was made at least 3 months, and not more than 4 months, after the first of those attempts; and

(c) if the person's preferred form of contact is not in writing—at least one additional attempt has been made, during the period between the first and last of the attempts mentioned in paragraph (a), to contact the person in writing.

(1C) If the person the CEO is attempting to contact is the participant, an attempt does not count for the purposes of subsection (1B) if, before suspending the plan, the CEO becomes aware that at the time the attempt was made, the participant was in the care of a hospital or other institution, or experiencing homelessness.

(2) If the CEO decides to suspend the plan:

(a) the CEO must give the participant a written notice of the decision, specifying the day on which the suspension takes effect; and

(b) the plan is suspended from the specified day.

(3) If the participant contacts the Agency within 90 days after the suspension decision is made, the CEO must, within 28 days of the contact, do one of the things mentioned in subsection (4).

(4) The CEO must either:

(a) decide to cease the suspension of the plan that is in effect at that time and give the participant a written notice of the cessation decision; or

(b) make a request under section 36 or 50 for information or reports in relation to the participant.

(5) If the CEO decides, in accordance with paragraph (4)(a), to cease the suspension, the suspension ceases at the time the CEO makes the decision.

(6) If:

(a) the CEO decides, in accordance with paragraph (4)(b), to make a request under section 36 or 50 for information or reports; and

(b) the information or reports are received by the CEO within the period specified in the request;

subsection (4) of this section applies again so that the CEO must, within 28 days of receiving the information or reports, do one of the things mentioned in paragraph (4)(a) or (b).

(7) If information or reports requested under section 36 or 50 in the circumstances mentioned in paragraph (4)(b) are not received by the CEO within the period specified in the request:

(a) subparagraph 36(3)(b)(i) and subsection 36(4) do not apply; and

(b) the suspension continues until the participant contacts the Agency or the CEO revokes the participant's status as a participant, whichever happens sooner.

(8) Despite the 90 day period specified in subsection (3), the CEO may (but need not) do one of the things mentioned in subsection (4) as if subsection (3) applied, if the participant contacts the Agency more than 90 days after the suspension decision is made and at a time when the suspension is still in effect.

41 Suspension of plans

(1) A statement of participant supports in a participant's plan is suspended:

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

(a) as mentioned in subsection 40(3) (which deals with temporary absence from Australia); and

(aaa) as mentioned in section 40A (which deals with participants who are not contactable); and

(b) as mentioned in subsection 105(2) (which deals with obtaining compensation).

(2) The effect of suspension of a statement of participant supports in a participant's plan is that the plan remains in effect but, during the period of suspension:

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

(b) the Agency is not required to provide or fund other supports under the plan, but is not prevented from doing so if the CEO considers it appropriate; and

(c) the participant is not entitled to make a request under subsection 47A(2) for a variation of the plan or make a request under subsection 48(2) for a reassessment of the plan.

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

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

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

(1) For the purposes of this Act, ***managing the funding for supports*** under a participant's plan means doing one or more of the following:

(a) purchasing the supports funded under the plan (including paying any applicable indirect costs, such as taxes, associated with the supports);

(b) receiving any funding provided by the Agency;

(ba) managing any funding provided by the Agency;

(c) acquitting any funding provided by the Agency.

(2) For the purposes of the statement of participant supports in a participant's plan, in specifying the management of the funding for supports under the plan as mentioned in paragraph 32D(2)(f) or 33(2)(d), the plan must specify that such funding is to be managed wholly, or to a specified extent, by:

(a) the participant; or

(b) a registered plan management provider; or

(c) the Agency; or

(d) the plan nominee.

43 Choice for the participant in relation to plan management

(1) A participant for whom a plan is in effect or is being prepared may make a request (a ***plan management request***):

(a) that he or she manage the funding for supports under the plan wholly or to the extent specified in the request; or

(b) that the funding for supports under the plan be managed wholly, or to the extent specified in the request, by a registered plan management provider he or she nominates; or

(c) that the funding for supports under the plan be managed wholly, or to the extent specified in the request, by the Agency.

(2) If a participant makes a plan management request, the statement of participant supports in the plan must give effect to the request, except to the extent set out in subsections (2A) to (6).

(2A) If the plan is a new framework plan:

(a) the CEO may, if satisfied that a circumstance mentioned in subsection (2C) exists, decide that:

(i) a person mentioned in subsection (2B) is to manage a particular proportion of flexible funding provided under the plan; or

(ii) a person mentioned in subsection (2B) is to manage funding provided under the plan for a particular stated support or class of stated supports; and

(b) the statement of participant supports in the plan must give effect to the decision.

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

(2AA) The statement of participant supports for a new framework plan must provide for the funding for supports under the plan to be wholly managed by the Agency if:

(a) in the case the participant has made a plan management request covered by paragraph (1)(a) and the participant does not have a plan nominee—the participant has been convicted of an offence against a law of the Commonwealth, a State or a Territory that:

(i) is punishable by imprisonment for 2 years or more; or

(ii) involves fraud or dishonesty; or

(b) in the case the participant has made a plan management request covered by paragraph (1)(a) and the participant has a plan nominee—the plan nominee has been convicted of an offence against a law of the Commonwealth, a State or a Territory that:

(i) is punishable by imprisonment for 2 years or more; or

(ii) involves fraud or dishonesty.

(2B) For the purposes of subparagraphs (2A)(a)(i) and (ii), the persons are as follows:

(a) the Agency;

(b) the participant, if the participant has made a plan management request covered by paragraph (1)(a) and the participant does not have a plan nominee;

(c) if:

(i) the participant has a plan nominee; and

(ii) the participant has made a plan management request covered by paragraph (1)(a); and

(iii) the decision would be consistent with the terms of the plan nominee's appointment;

the plan nominee;

(d) a registered plan management provider, if the participant has made a plan management request covered by paragraph (1)(b) that nominates the provider.

(2C) For the purposes of paragraph (2A)(a), the circumstances are as follows:

(a) the participant would be likely to suffer physical, mental or financial harm were the CEO to not make the decision;

(b) section 46 (acquittal of NDIS amounts) has not been complied with in relation to the plan or any of the participant's previous plans;

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

(2D) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of paragraph (2A)(a), including but not limited to:

(a) requirements with which the CEO must comply; and

(b) methods or criteria that the CEO is to apply; and

(c) matters that the CEO may, must or must not take into account;

in making any decision under paragraph (2A)(a).

(3) If:

(a) a participant makes a plan management request covered by paragraph (1)(a); and

(b) subsection 44(1) applies in relation to the participant;

the statement of participant supports in the plan must provide for the funding for supports under the plan:

(c) if paragraph 44(1)(a) or (aa) applies—to be wholly managed by the Agency; and

(d) if paragraph 44(1)(b) or (c) applies—to be managed by the Agency to the extent covered by that paragraph.

(4) If:

(a) a participant makes a plan management request covered by paragraph (1)(b); and

(b) subsection 44(2) applies in relation to the registered plan management provider;

the statement of participant supports in the plan must provide for the funding for supports under the plan to be managed by the Agency to the extent covered by that subsection.

(4A) If:

(a) a participant makes a plan management request covered by paragraph (1)(b); and

(b) subsection 44(2AA) applies in relation to the registered plan management provider;

the statement of participant supports in the plan may provide for the funding for supports under the plan to be managed by the Agency to the extent covered by that subsection.

(5) If:

(a) the participant has a plan nominee; and

(b) subsection 44(2A) does not apply in relation to the nominee; and

(c) the terms of the plan nominee's appointment deal with the management of certain funding for supports under the plan;

the statement of participant supports in the plan must provide for that funding to be managed in accordance with those terms.

(6) If:

(a) the participant has a plan nominee; and

(b) subsection 44(2A) applies in relation to the nominee; and

(c) the terms of the plan nominee's appointment deal with the management of certain funding for supports under the plan;

the statement of participant supports in the plan must provide for that funding:

(d) if paragraph 44(2A)(a) or (aa) applies—to be wholly managed by the Agency; and

(e) if paragraph 44(2A)(b) or (c) applies—to be managed by the Agency to the extent covered by that paragraph.

(7) The following provisions have effect:

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

(b) subsection (3) or (4) does not apply to funding to the extent that subsection (5) or (6) applies to the funding;

(c) subsection (5) does not apply to funding to the extent that paragraph (2A)(b) applies to the funding.

No plan management request

(8) If a participant does not make a plan management request, the statement of participant supports in the plan must provide that the funding for supports under the plan is to be wholly managed by the Agency.

44 Circumstances in which persons must not manage funding

Participant

(1) For the purposes of paragraph 43(3)(b), this subsection applies in relation to a participant if:

(a) the participant is an insolvent under administration; or

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

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

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

Registered plan management provider

(2) For the purposes of paragraph 43(4)(b), this subsection applies in relation to a registered plan management provider if the CEO is satisfied that the provider's management of the funding for supports under the plan to a particular extent would present an unreasonable risk to the participant.

(2AA) For the purposes of paragraph 43(4A)(b), this subsection applies in relation to a registered plan management provider if the CEO is satisfied that section 46 (acquittal of NDIS amounts) would be unlikely to be complied with if the provider were to manage the funding for supports under the plan to a particular extent.

Plan nominee

(2A) For the purposes of paragraphs 43(5)(b) and (6)(b), this subsection applies in relation to a plan nominee if:
(a) the plan nominee is an insolvent under administration; or

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

(b) the CEO is satisfied that the plan nominee's management of the funding for supports under the plan to a particular extent would present an unreasonable risk to the participant; or

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

National Disability Insurance Scheme rules relating to unreasonable risk

(3) The National Disability Insurance Scheme rules may prescribe criteria the CEO is to apply and matters to which the CEO is, or is not, to have regard in considering whether any of the following would present an unreasonable risk to the participant:

(a) a participant managing the funding for supports under the plan;

(aa) a registered plan management provider managing the funding for supports under the plan;

(b) a plan nominee managing the funding for supports under the plan.

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

National Disability Insurance Scheme rules relating to compliance with section 46

(5) The National Disability Insurance Scheme rules may prescribe criteria the CEO is to apply and matters to which the CEO is, or is

not, to have regard in considering whether section 46 (acquittal of NDIS amounts) would be unlikely to be complied with if any of the following were to manage the funding for supports under a plan to any extent:

(a) the participant;

(b) a registered plan management provider;

(c) a plan nominee.

45 Payment of amounts payable under the National Disability Insurance Scheme—general

(1) An amount payable under the National Disability Insurance Scheme in respect of a participant's plan is to be paid:

(a) to the person determined by the CEO; and

(b) either:

(i) in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this subparagraph; or

(ii) if there are no such rules—in the manner determined by the CEO.

(2) Paragraph (1)(b) extends to dealing with:

(a) whether amounts are to be paid in instalments or as lump sums; and

(b) if amounts are to be paid in instalments—the amounts of those instalments; and

(c) the timing of payments of amounts.

(3) The National Disability Insurance Scheme rules may provide that an amount is not payable to a person until the person nominates a bank account into which the amount is to be paid.

(3A) The Agency must not pay an amount under the National Disability Insurance Scheme to any person in respect of a participant's plan if the person who made a claim under section 45A for payment of the amount has not given the CEO the information or documents requested under subsection (3B) within the specified period.

Note: If an amount cannot be paid because of this subsection, the person may resubmit a claim for the amount in accordance with section 45A.

(3B) The CEO may, by written notice, require a person who makes a claim for a payment under section 45A to give the CEO such further information or documents in relation to the claim as the CEO reasonably requires.

(3BA) However, the CEO must not require under subsection (3B) the person to give information or documents unless the CEO is satisfied that requiring the information or documents would not unreasonably interfere with or prejudice the person's privacy.

(3C) A notice under subsection (3B) must specify a period, which must not be less than 14 days, within which the information or documents must be given.

(3D) Before the end of the specified period, the CEO may, by notice in writing given to the person, extend the period. The CEO may extend the period more than once.

(3E) The Agency may, if the CEO is satisfied it is appropriate to do so, treat an amount as if the person who made the claim under section 45A for payment of the amount has given the CEO information or documents requested under subsection (3B) within the specified period, whether or not the information or documents were given at all, or were given within the specified period.

(4) The Agency must not pay an amount under the National Disability Insurance Scheme to any person in respect of a participant's plan if:

(a) the plan is a new framework plan that provides that flexible funding will be provided under the plan and the payment would result in any of the following events occurring:

(i) the total amount of flexible funding provided under the plan exceeding the total funding amount specified in the plan under paragraph 32E(2)(a);

(ii) the total amount of flexible funding provided under the plan during a funding period exceeding the amount of funding that is to be provided under the plan during the funding period; or

(b) the plan is a new framework plan that provides that funding will be provided under the plan for a stated support, or class of stated supports, and the payment would result in any of the following events occurring:

(i) the total amount of funding provided under the plan for the stated support or class of stated supports exceeding any total funding amount specified in the plan under paragraph 32G(2)(a);

(ii) the total amount of funding provided under the plan for the stated support or class of stated supports during a funding period for the support or class of supports exceeding the amount of funding that is to be provided under the plan during the funding period for the support or class of supports; or

(c) the plan is an old framework plan and the payment would result in any of the following events occurring:

(i) the total amount of funding provided under the plan for reasonable and necessary supports exceeding the total funding amount specified in the plan;

(ii) the total amount of funding provided under the plan for reasonable and necessary supports in a group of supports to which a funding component amount relates exceeding that funding component amount;

(iii) if the plan specifies funding periods for all reasonable and necessary supports funded under the plan, taken as a whole—the total amount of funding provided under the plan for such supports during a funding period exceeding the amount of funding for such supports that is to be provided under the plan during the funding period;

(iv) if the plan specifies funding periods for one or more groups of reasonable and necessary supports—the total amount of funding provided under the plan for supports in such a group during a funding period for that group exceeding the amount of funding for supports in that group that is to be provided under the plan during the funding period.

(5) Subsection (4) does not apply in relation to the payment of an amount if the CEO is satisfied that:

(a) the relevant event would occur because the participant has experienced fraud or financial exploitation; or

(b) making the payment is necessary to prevent or lessen an imminent threat to an individual's life, health or safety; or

(c) the participant has been unable to request a variation or reassessment of the participant's plan because of one or more of the participant's impairments or a lack of decision-making support; or

(d) the participant has requested a variation of the participant's plan covered by subparagraph 47A(1)(d)(i) or (1AB)(j)(i) (crisis or emergency funding as a result of a significant change to the participant's support needs), and neither of the following apply:

(i) the CEO has made a decision on the request to vary the plan and the variation has taken effect;

(ii) the CEO has made a decision on the request not to vary the plan (including because of the operation of subsection 47A(5)); or

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

(6) To avoid doubt, the exception in paragraph (5)(c) does not extend to the circumstance of a participant requesting a reassessment that is not conducted because the conditions in section 48A are not satisfied.

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

(1) An amount is not payable under the National Disability Insurance Scheme in respect of the acquisition or provision of a support under a participant's plan unless the CEO is satisfied that a claim

for the payment has been made to the CEO in accordance with subsections (2), (3) and (5).

(2) A claim may be made only by:

(a) the person who, under the statement of supports in the plan, is to manage the funding for the support, unless paragraph (b) applies; or

(b) if the person mentioned in paragraph (a) is the Agency—the person who provides the support to the participant.

(3) A claim must:

(a) be made in the approved form (if any); and

(aa) be made in the manner approved (if any), in writing, by the CEO; and

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

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

(3A) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, the CEO may approve different manners for different classes of claim.

(4) The CEO may treat a claim that does not meet the requirements of subsection (3) as having been made in accordance with that subsection if the CEO is satisfied that it is appropriate to do so.

(5) A claim must be made in accordance with subsection (3) before the end of the following period starting on the day the support is provided to the participant:

(a) unless paragraph (b) of this subsection applies—2 years;

(b) if the National Disability Insurance Scheme rules prescribe a shorter period for that kind of claim—that period.

(6) The CEO may treat a claim made after the end of the applicable period as having been made in accordance with subsection (5) if the CEO is satisfied that:

(a) there are exceptional circumstances applying to the claim that justify the claim being made after the end of the applicable period; and

(b) the claim was made within a reasonable period having regard to those circumstances.

(7) A claim may be withdrawn by the person who makes the claim. The CEO is not required to take any action in relation to a claim that is withdrawn.

45B Keeping and retaining records relating to claims etc.

NDIS providers

(1) An NDIS provider must, for the period mentioned in subsection (2), keep and retain a record that relates to:

(a) a claim for the payment of an NDIS amount; or

(b) the provision of an NDIS support to which a claim for the payment of an NDIS amount relates;

if the record is of a kind prescribed by the National Disability Insurance Scheme rules.

Note: See also subsection 182(4) (debts due to the Agency).

(2) The period is:

(a) unless paragraph (b) applies—the period of 7 years beginning on the day the claim is made; or

(b) if the National Disability Insurance Scheme rules prescribe a period (the ***shorter period***) that ends before the end of the period mentioned in paragraph (a)—the shorter period.

(3) A person contravenes this subsection if:

(a) the person is subject to a requirement under subsection (1) to keep and retain a record for a period; and

(b) the person refuses or fails to comply with the requirement.

Civil penalty: 120 penalty units.

(4) Subsection (3) does not apply to a person if the circumstances prescribed by the National Disability Insurance Scheme rules apply to the person.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

Participants

(5) A participant who makes a claim for the payment of an NDIS amount must, for the period mentioned in subsection (6), keep and retain a record that relates to:

(a) the claim; or

(b) the provision of an NDIS support to which the claim relates;

if the record is of a kind prescribed by the National Disability Insurance Scheme rules.

Note: See also subsection 182(4) (debts due to the Agency).

(6) The period is:

(a) unless paragraph (b) applies—the period of 3 years beginning on the day the claim is made; or

(b) if the National Disability Insurance Scheme rules prescribe a period (the ***shorter period***) that ends before the end of the period mentioned in paragraph (a)—the shorter period.

Other persons

(7) If a person, who is not an NDIS provider or a participant, makes a claim for the payment of an NDIS amount, the person must, for the period mentioned in subsection (8), keep and retain a record that relates to:

(a) the claim; or

(b) the provision of an NDIS support to which the claim relates;

if the record is of a kind prescribed by the National Disability Insurance Scheme rules.

Note: See also subsection 182(4) (debts due to the Agency).

(8) The period is:

(a) unless paragraph (b) applies—the period of 5 years beginning on the day the claim is made; or

(b) if the National Disability Insurance Scheme rules prescribe a period (the ***shorter period***) that ends before the end of the period mentioned in paragraph (a)—the shorter period.

Language requirements

(9) If a person is required to keep and retain a record in accordance with this section, the record must be in English, or be readily accessible and convertible into English.

45C Maximum amounts payable under the National Disability Insurance Scheme—funding not managed by participants

(1) The Minister may, by legislative instrument, determine the maximum amount, or the method for determining the maximum amount, for the acquisition or provision of an NDIS support or class of NDIS supports.

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

(2) A determination under subsection (1) does not apply in relation to the acquisition or provision of a support or class of supports under a participant's plan unless the funding for the support or class of supports is managed by:

(a) a registered plan management provider; or

(b) the Agency.

(3) The Agency must not pay an amount under the National Disability Insurance Scheme to any person in respect of the acquisition or provision of a support under a participant's plan if the amount exceeds the maximum amount determined for the acquisition or provision of the support under subsection (1).

(4) The determination may also prescribe circumstances for the purposes of this subsection. Subsection (3) does not apply in

relation to the payment of an amount if the CEO is satisfied that a prescribed circumstance exists.

(5) If a claim is made for the payment of an amount that exceeds the maximum amount specified for the acquisition or provision of a support in a determination under subsection (1), the Agency may:

(a) refuse to pay the amount; or

(b) pay the maximum amount specified for the support in the determination.

Note: The Agency refusing to pay an amount under this subsection does not, by itself, prevent a person from making a subsequent claim for the acquisition or provision of the support that does not exceed the maximum amount.

(6) A person is not entitled to the payment, from the Agency, of so much of an amount for the acquisition or provision of a support as exceeds the maximum amount specified for the acquisition or provision of the support in a determination under subsection (1).

Note: This means that so much of the payment as exceeds the maximum amount is a debt due to the Agency: see section 182.

(7) An NDIS provider must not charge more than the maximum amount determined under subsection (1) for the acquisition or provision of a support in circumstances where the determination applies in relation to the acquisition or provision.

(8) A determination under subsection (1) may specify requirements for particular processes to be undertaken by an NDIS provider or participant before supports are acquired or provided under a participant's plan.

Note: For example, the determination may require a participant to obtain a particular number of quotes.

(9) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a determination under subsection (1) of this section may make different provision in relation to the following:

(a) different kinds of supports or classes of supports, including, without limitation, in relation to:

(i) the intensity of the provision of the supports; or

(ii) whether the costs of providing the supports or classes of supports are greater due to the remoteness of the location in which they are provided; or

(iii) whether the supports or classes of supports are provided remotely or in person;

(b) different kinds of providers, including, without limitation, in relation to:

(i) qualifications or experience; or

(ii) whether the providers are registered NDIS providers;

(c) different kinds of participants, including, without limitation, in relation to how funding is managed under the participants' plans;

(d) any other matters or circumstances.

(10) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, a determination under subsection (1) of this section may be of general application or be limited as provided in the determination.

(11) Despite subsection 14(2) of the *Legislation Act 2003*, a determination under subsection (1) of this section may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(12) Without limiting subsection (11), that subsection applies even if the instrument or other writing was created for the purpose of being applied, adopted or incorporated by the determination. If the determination makes provision as mentioned in subsection (11) in relation to a matter contained in an instrument or other writing created for that purpose:

(a) the Minister must ensure that the instrument or other writing is published on the Agency's website; and

(b) the instrument or other writing is not a legislative instrument.

(13) To the extent that the determination making provision as mentioned in subsection (11) constitutes a subdelegation of the

Minister's power to make such determinations, that subdelegation is authorised.

(14) The Agency must, from time to time (on its own initiative or in response to a request from the Minister), provide advice about pricing of NDIS supports and classes of NDIS supports for the purposes of the Minister making determinations under subsection (1). The advice must have regard to the following considerations:

(a) the cost of safe, efficient, high-quality acquisition or provision of supports and value for money;

(b) supporting diversity and competition in the NDIS market, as far as practicable;

(c) supporting the financial sustainability of the National Disability Insurance Scheme.

(15) The advice must deal with any other matter relating to pricing of NDIS supports and classes of NDIS supports that the Minister has requested be dealt with.

(16) The advice may also deal with any other matter the CEO considers relevant to pricing of NDIS supports and classes of NDIS supports.

(16A) If the Agency provides advice to the Minister under subsection (14), the Agency must at the same time provide a summary of the advice to the Minister.

(16B) The Minister must cause a copy of advice provided to the Minister under subsection (14), or the summary of the advice provided under subsection (16A), to be tabled in each House of the Parliament within 5 sitting days after the Minister makes the determination to which the advice relates.

(17) When making a determination under subsection (1), the Minister must have regard to:

(a) any relevant advice provided by the Agency under subsection (14); and

(b) the need to ensure the financial sustainability of the National Disability Insurance Scheme; and

(c) the objects and principles of this Act.

46 Acquittal of NDIS amounts

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

(1) A participant who receives an NDIS amount, or a person who receives an NDIS amount on behalf of a participant:

(a) may spend the money only on NDIS supports for the participant; and

(b) must spend the money in accordance with the participant's plan (subject to paragraph (a)).

Note 1: A failure to comply with this subsection (including due to the operation of subsection (1A) or (1B)) may lead to a variation of the participant's plan under section 47A:

(a) to change the management of the funding for supports under the plan (see sections 43 and 74); or

(b) for a new framework plan—to specify a proportion of flexible funding that may be spent only on specified NDIS supports for the participant (or to change such a proportion); or

(c) for any plan—to reduce the duration of funding periods for particular funding under the plan and the amount of funding that will be provided during any particular funding period.

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

(1A) If:

(a) a participant acquires a support for themselves or a support is provided to a participant; and

(b) either:

(i) the support is not an NDIS support for the participant; or

(ii) the participant's plan is not complied with in connection with the acquisition or provision of the support; and

(c) a payment is made under the National Disability Insurance Scheme in relation to the support, whether to the participant or another person;

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

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

(1B) If:
(a) a person (the ***first person***) other than a participant acquires a support for a participant or provides a support to a participant; and
(b) either:
(i) the support is not an NDIS support for the participant; or
(ii) the participant's plan is not complied with in connection with the acquisition or provision of the support; and
(c) a payment is made under the National Disability Insurance Scheme in relation to the support, whether to the first person or any other person;

then the first person is taken for the purposes of subsection (1):
(d) to have received an NDIS amount on behalf of the participant that is equal to the payment; and
(e) if subparagraph (b)(i) of this subsection applies—to have spent that money other than on NDIS supports for the participant; and
(f) if subparagraph (b)(ii) of this subsection applies—to have not spent that money in accordance with the participant's plan.

46A Protection of NDIS amounts

(1) An NDIS amount is absolutely inalienable, whether by way of, or in consequence of, sale, assignment, charge, execution, bankruptcy or otherwise.

(2) This section is subject to Part 1 of Chapter 7.

46B Garnishee orders

General rule

(1) A court must not make an order in the nature of a garnishee order in respect of an account with a financial institution if:

(a) one or more NDIS amounts for a particular participant have been paid to the credit of the account; and

(b) the account has been kept solely for the purpose of managing the funding for supports under the participant's plan.

Exception

(2) However, a court may make an order in the nature of a garnishee order in respect of the account if:

(a) the order is made in favour of a person in relation to a debt that arose because of the person providing goods or services in relation to the participant; and

(b) the goods or services are supports (other than general supports) funded under the participant's plan.

Division 4—Varying and replacing participants' plans

47 Variation of participant's plan—change of participant's statement of goals and aspirations

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

Note 1: The participant may make a request under subsection 47A(2) for a variation of the participant's plan or (if the conditions in section 48A are satisfied) make a request under subsection 48(2) for a reassessment of the participant's plan.

Note 2: The CEO may vary the plan under subsection 47A(1) or may reassess the plan under section 48, 49 or 49A.

(2) If a participant gives a changed version of the participant's statement of goals and aspirations to the CEO, the participant's plan is taken to have been varied so that it includes that changed version.

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

47A Variation of participant's plan on request of participant or CEO's own initiative

(1) The CEO may, in writing, vary a participant's plan (except the participant's statement of goals and aspirations) if:

(a) the variation:

(i) is covered by subsection (1AA) (for a new framework plan) or (1A) (for an old framework plan); or

(ii) is a correction of a minor or technical error; and

(b) any conditions prescribed by the National Disability Insurance Scheme rules are satisfied.

Each variation must be prepared with the participant.

Permitted variations—new framework plans

(1AA) For the purposes of subparagraph (1)(a)(i), the following variations of a new framework plan are covered:

(a) a variation of the participant's reasonable and necessary budget covered by subsection (1AB);

(b) a variation relating to the general supports (if any) that will be provided to or in relation to the participant under the plan;

(c) a variation of the statement of participant supports included in the plan in relation to the management of:

(i) the funding for supports under the plan; or

(ii) other aspects of the plan;

(d) a variation of the maximum period of effect specified in the plan under paragraph 32D(2)(d);

(e) a variation of the circumstances in which the Agency must reassess the plan under this Division.

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

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

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

(a) a variation of:

(i) the total funding amount for flexible funding; or

(ii) the total funding amount for a stated support or class of stated supports;

for the purposes of dealing with a variation of the maximum period of effect specified in the plan under paragraph 32D(2)(d);

(b) a variation to provide for a total funding amount for a stated support or class of stated supports;

(c) a variation of the number or duration of the funding periods for flexible funding, or for a stated support or class of stated supports;

(d) a variation of the proportion of the total funding amount for flexible funding, or for a stated support or class of stated supports, that will be provided under the plan during one or more funding periods;

(e) a variation to provide for:

(i) funding periods for a stated support or class of stated supports (disregarding paragraph 32G(5)(c) for this purpose); and

(ii) the proportion of the total funding amount for the stated support or class of stated supports that will be provided under the plan during each funding period;

(f) a variation of a restriction provided for under subsection 32F(6);

(g) if the CEO is satisfied that a circumstance mentioned in subsection 32F(7) exists—a variation to provide for a restriction under subsection 32F(6);

(h) if the CEO is satisfied that none of the circumstances mentioned in subsection 32F(7) exist—a variation to remove a restriction imposed under subsection 32F(6);

(i) a variation to provide for, change, add or remove a requirement under subsection 32H(1) relating to the acquisition or provision of supports;

(j) a variation of the participant's reasonable and necessary budget if:

(i) the CEO is satisfied that the participant requires crisis or emergency funding as a result of a significant change to the participant's support needs; or

(ia) the CEO is satisfied that the participant requires funding because the participant has experienced fraud or financial exploitation; or

(ib) the CEO is satisfied that the variation is necessary to prevent or lessen a threat to the participant's life, health or safety (whether current or future); or

(ii) after the participant's plan comes into effect, the CEO receives information in response to a request that had been made under subsection 36(2) or 50(2) in relation to the plan (other than a request made under subsection 50(2) for the purposes of varying the plan on the CEO's own initiative), and the variation relates to that information; or

(iii) the CEO is satisfied that a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph exists in relation to the participant.

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

Permitted variations—old framework plans

(1A) For the purposes of subparagraph (1)(a)(i), the following variations of an old framework plan are covered:

(a) a variation of the plan's reassessment date or the circumstances in which the Agency must reassess the plan under this Division;

(ab) if the statement of participant supports included in the plan specifies one or more funding component amounts—a variation of the categorisation of the reasonable and necessary supports, specified under paragraph 33(2)(b), into one or more groups of supports;

(ac) for the purposes of dealing with a variation covered by paragraph (ab) of this subsection—a variation of one or more funding component amounts, or the number of those amounts, specified in the statement of participant supports, other than a variation that would result in an increase in the total funding amount for the plan;

(ad) if the statement of participant supports included in the plan specifies funding periods for all reasonable and necessary supports funded under the plan, taken as a whole—the following variations of the statement:

(i) a variation of the number or duration of such funding periods;

(ii) a variation of the proportion of the total funding amount that will be provided as funding under the plan for reasonable and necessary supports during one or more funding periods;

(ae) if the statement of participant supports included in the plan specifies funding periods for one or more groups of reasonable and necessary supports—the following variations of the statement:

(i) a variation of the number or duration of the funding periods for such a group;

(ii) a variation of the proportion of the funding component amount for such a group that will be provided as funding under the plan, during one or more funding periods that group, for reasonable and necessary supports in that group;

(ag) a variation relating to the general supports (if any) that will be provided to or in relation to the participant under the plan;

(b) a variation of the statement of participant supports included in the plan in relation to the management of:

(i) the funding for supports under the plan; or

(ii) other aspects of the plan;

(c) a variation of the statement of participant supports included in the plan if:

(i) the statement specifies that a support is to be provided by a specified provider, or in a specified manner; and

(ii) the variation is to specify that the support is to be provided by another provider, or in another manner, as the case may be;

(d) a variation of the statement of participant supports included in the plan, or of the funding of supports under the plan, if:

(i) the CEO is satisfied that the participant requires crisis or emergency funding as a result of a significant change to the participant's support needs; or

(ii) after the participant's plan comes into effect, the CEO receives information in response to a request that had been made under subsection 36(2) or 50(2) in relation to the plan (other than a request made under subsection 50(2) for the purposes of varying the plan on the CEO's own initiative), and the variation relates to that information; or

(iii) the variation is made for the purposes of dealing with a change to the reassessment date of the participant's plan; or

(iv) the variation is a minor variation that results in an increase to the funding of supports under the participant's plan.

Note 1: Information mentioned in subparagraph (d)(ii) could relate to a support such as an item of assistive technology or a home modification.

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

Note 3: In varying the participant's plan in relation to the statement of participant supports, the CEO must have regard to the matters set out in subsection (3) of this section.

Provisions to avoid doubt

(1B) To avoid doubt:

(aa) a variation of a total funding amount under subsection (1) may increase or decrease that total funding amount, unless either of the following expressly provides otherwise:

(i) this Act;

(ii) the National Disability Insurance Scheme rules made for the purposes of another provision of this Act (including but not limited to paragraph (1)(b) of this section); and

(a) a variation covered by any of paragraphs (1A)(ab) to (ae) must be made in accordance with subsections 33(2A) to (2D) and any determination in force for the purposes of subsection 33(2E); and

(b) a total funding amount for an old framework plan cannot be varied except by a variation covered by paragraph (1A)(d) of this section.

Conditions not limited

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

Variation on request of participant or CEO's own initiative

(2) The CEO may vary the participant's plan on request of the participant or on the CEO's own initiative.

Requirements for CEO—new framework plans

(2A) In varying a new framework plan in relation to the statement of participant supports, the CEO must:

(a) have regard to the participant's statement of goals and aspirations; and

(b) be satisfied as mentioned in paragraph 32D(6)(b) in relation to any general supports to be provided; and

(c) have regard to the principle that a participant should manage the participant's plan to the extent that the participant wishes to do so; and

(d) have regard to the operation and effectiveness of the plan and any previous plans of the participant; and

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

(f) be satisfied of any matters specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

Requirements of CEO—old framework plans

(3) In varying an old framework plan in relation to the statement of participant supports, the CEO must:

(a) have regard to the participant's statement of goals and aspirations; and

(b) have regard to relevant assessments conducted in relation to the participant; and

(c) be satisfied as mentioned in section 34 in relation to the reasonable and necessary supports that will be funded and the general supports that will be provided; and

(d) apply the National Disability Insurance Scheme rules (if any) made for the purposes of section 35; and

(e) have regard to the principle that a participant should manage the participant's plan to the extent that the participant wishes to do so; and

(f) have regard to the operation and effectiveness of any previous plans of the participant; and

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

Decision on request

(4) If the participant requests a variation of the participant's plan, the CEO must before the end of the period of 21 days beginning on the day the CEO receives the request:

(a) make a decision under subsection (1) varying the plan; or

(b) make a decision not to vary the plan; or

(d) inform the participant that the CEO requires further time to decide whether or not the plan needs to be varied.

Note: If the CEO informs the person that the CEO requires further time to decide whether or not the plan needs to be varied, see subsection (8) for the period for making a decision on the request.

(5) If the CEO does not do a thing under subsection (4) within that 21-day period, the CEO is taken to have decided not to vary the plan.

Matters to which the CEO must have regard

(6) The National Disability Insurance Scheme rules may set out matters to which the CEO must have regard:
   (a) in deciding whether to vary a participant's plan on the CEO's own initiative; or
   (b) in doing a thing under subsection (4).

Time for decision on request

(8) If, under paragraph (4)(d), the CEO informs the participant that the CEO requires further time to decide whether or not the plan needs to be varied, the CEO must then vary the plan under subsection (1) or make a decision not to vary the plan:
   (a) within the period worked out in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this paragraph (which may take account of section 50 (information and reports)); or
   (b) if there are no such rules—as soon as reasonably practicable, including what is reasonably practicable having regard to section 50 (information and reports).

Variation may be different from the one the participant requested

(9) If the participant requests a variation of the participant's plan, any variation under subsection (1) may be different from the one requested.

When variation takes effect

(10) A variation under subsection (1) takes effect on the day specified in the variation (which must not be earlier than the day the variation is made).

Agency to give participant a copy of varied plan

(11) The Agency must provide a copy of the varied plan to the participant within 7 days of the variation taking effect.

47B Variation of participant's plan when determination under section 34A takes effect

Request for variation

(1) If:

(a) a determination under section 34A reducing funding for groups of supports (the ***section 34A determination***) starts to apply in relation to a participant's plan; and

(b) the section 34A determination has the effect that the total funding amount stated in the plan is taken instead to be the amount as reduced under paragraph 34A(2)(c); and

(c) the participant is a high support needs participant;

the participant may, in the approved form (if any), request the CEO to vary the plan under subsection (8).

(2) For the purposes of this section, a ***high support needs participant*** is a participant who is a member of the class of participants specified in a determination made under paragraph (12)(a).

(3) The participant's request must be made:

(a) unless paragraph (b) applies—before the end of the period of 90 days beginning on the day the section 34A determination started to apply in relation to the plan; or

(b) if, because of exceptional circumstances, the CEO, by notice in writing given to the participant, extends that period—by the end of the period as extended.

Decisions on request

(4) The CEO must, before the end of the period of 21 days beginning on the day the request is made:

(a) decide whether the participant is a high support needs participant; or

(b) inform the participant that the CEO requires further time to decide whether or not the participant is a high support needs participant.

(5) If the CEO decides that the participant is a high support needs participant, the CEO must, before the end of the period of 21 days beginning on the day that decision is made:
- (a) having regard to a determination (if any) made under paragraph (12)(b), either:
  - (i) vary the plan under subsection (8); or
  - (ii) decide not to vary the plan; or
- (b) inform the participant that the CEO requires further time to decide whether or not to vary the plan under subsection (8).

(6) The CEO is taken to have decided not to vary the plan if the CEO does not do a thing referred to in subsection (4) or (5) within the period applicable.

Note: Notice of a decision that the CEO is taken to have made must be given because of subsection 100(1) and will be automatically reviewed because of subsection 100(5).

(7) If, under paragraph (4)(b) or (5)(b), the CEO informs the participant that the CEO requires further time to make the decision mentioned in the paragraph, the CEO must then make the decision as soon as reasonably practicable.

Variation

(8) The CEO may vary the plan to increase the funding component amount stated in the plan for one or more groups of supports covered by subsection (9). However, the CEO must not do so in a way that would result in funding component amounts stated in the plan for groups of supports being increased by an amount that, in total, would exceed the difference between the 2 amounts mentioned in paragraph (1)(b).

(9) For the purposes of subsection (8):
- (a) the following groups of supports are covered by this subsection:
  - (i) assistance with daily living;
  - (ii) home and living;

(iii) any group of supports specified under paragraph (12)(c); and

(b) the following groups of supports are not covered by this subsection:

(i) assistance with social, economic and community participation;

(ii) improved daily living skills.

(10) A variation may be different from the variation requested.

Copy of varied plan to be provided

(11) If the plan is varied, the Agency must provide a copy of the varied plan to the participant within 7 days of the variation taking effect.

Determinations

(12) The Minister may, by legislative instrument, make a determination specifying any of the following:

(a) a class of participants for the purposes of subsection (2);

(b) for the purposes of paragraph (5)(a)—any of the following in relation to the decision whether to vary a plan under subsection (8) or not to vary a plan:

(i) methods or criteria to be applied;

(ii) matters that may, must or must not be taken into account;

(iii) circumstances in which a matter is or is not taken to exist in relation to a person;

(c) a group of supports for the purposes of subparagraph (9)(a)(iii).

(13) A class of participants may be specified as mentioned in paragraph (12)(a) by reference to matters relating to participants' plans, or participants, or both, including matters identified by reference to information in records held by the Agency.

Note: Broadly, high support needs participants are those who require continuous 24-hour care to meet disability-related care needs arising directly from impairments in relation to which the participant meets the disability requirements (see section 24) or meets the early intervention requirements (see section 25).

48 Reassessment of participant's plan on request of participant or CEO's own initiative

(1) The CEO may conduct a reassessment of a participant's plan at any time.

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

Reassessment on CEO's initiative or participant's request

(2) The CEO may do so:

(a) on the CEO's own initiative; or

(b) if the conditions in section 48A are satisfied—on request by:

(i) the participant; or

(ii) the participant's plan nominee; or

(iii) if the participant is a child—the person who, in accordance with section 74, may do things required or permitted by this Act to be done by the child.

(2A) A request for a reassessment of a participant's plan 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 request if this requirement is not complied with (see section 197).

Decision on request

(3) If a request for reassessment of the participant's plan is made in accordance with paragraph (2)(b) and the conditions in section 48A are satisfied, the CEO must, before the end of the period of 90 days beginning on the day the CEO receives the request:

(a) make a decision that the plan needs to be varied under subsection 47A(1); or

(b) make a decision that the plan needs to be reassessed; or

(c) make a decision not to conduct a reassessment of the plan.

Note 1: If the CEO decides the plan needs to be reassessed, see subsection (8) for the period for completing the reassessment.

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

(4) If the CEO does not make a decision under paragraph (3)(a), (b) or (c) before the end of the period of 90 days, the CEO is taken to have decided not to conduct a reassessment of the plan.

(4A) Subsection (3) does not apply if, before the end of the period of 90 days, the CEO gives the participant written notice under subsection 32B(2A) that the participant is to have new framework plans.

Note: In this case, subsections 32(3) and (4) apply instead to require the CEO to facilitate the preparation of a new framework plan for the participant.

Matters to which the CEO must have regard

(5) The National Disability Insurance Scheme rules may set out matters to which the CEO must have regard:

(a) in deciding whether to conduct a reassessment of a participant's plan on the CEO's own initiative; or

(b) in making a decision under paragraph (3)(a), (b) or (c).

Notification of decision

(6) The CEO must notify the participant of the following:

(a) a decision of the CEO to conduct a reassessment of the participant's plan on the CEO's own initiative;

(b) a decision of the CEO under paragraph (3)(a) or (b).

Note: For notification of a decision under paragraph (3)(c), see subsection 100(1).

Outcome of reassessment

(7) If the CEO conducts a reassessment under subsection (1) of a participant's plan, the CEO must:
- (a) complete the reassessment; and
- (b) either:
  - (i) vary, under subsection 47A(1), the participant's plan as a result of that reassessment; or
  - (ii) prepare a new plan with the participant in accordance with Division 2 and approve, under subsection 32D(2) or 33(2), the statement of participant supports in the new plan.

Time for completing reassessment

(8) The CEO must do the things under paragraphs (7)(a) and (b):
- (a) within the period worked out in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this paragraph (which may take account of section 50 (information and reports)); or
- (b) if there are no such rules—as soon as reasonably practicable, including what is reasonably practicable having regard to section 50 (information and reports).

48A Conditions for conducting reassessment of participant's plan on request

(1) For the purposes of paragraph 48(2)(b), the conditions are that:
- (a) there has been a significant change to those ongoing support needs of the participant that arise from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements; and
- (b) the significant change to those needs results from either or both of the following:
  - (i) an alteration in the participant's functional capacity in relation to an activity covered by paragraph 24(1)(c) or subparagraph 25(1)(c)(i);

(ii) an alteration in the participant's personal or environmental circumstances; and

(c) to the extent that the alteration is as mentioned in subparagraph (b)(i)—the condition in subsection (2) is met in relation to the alteration; and

(d) to the extent that the alteration is as mentioned in subparagraph (b)(ii)—the condition in subsection (3) is met in relation to the alteration.

Note: For ***functional capacity***, in relation to an activity, see section 9B.

(2) The condition in this subsection is met in relation to the alteration mentioned in subparagraph (1)(b)(i) if:

(a) the alteration in the participant's functional capacity in relation to the activity is significant and ongoing; and

(b) the alteration in the participant's functional capacity in relation to the activity:

(i) directly relates to a change in an existing impairment in relation to which the participant meets the disability requirements or early intervention requirements; or

(ii) arises from a new or acquired impairment in relation to which the participant meets the disability requirements or early intervention requirements; and

(c) the participant has experienced a substantial reduction in the participant's ability to perform daily activities.

(3) The condition in this subsection is met in relation to the alteration mentioned in subparagraph (1)(b)(ii) if there has been a significant and ongoing alteration in the participant's:

(a) living arrangements; or

(b) education arrangements; or

(c) work arrangements; or

(d) network for informal support.

49 Reassessment of participant's plan before plan's reassessment date

(1) The CEO must do the following before the reassessment date of a participant's plan:

(a) complete a reassessment of the plan;

(b) either:

(i) vary, under subsection 47A(1), the participant's plan as a result of that reassessment; or

(ii) prepare a new plan with the participant in accordance with Division 2 and approve, under subsection 32D(2) or 33(2), the statement of participant supports in the new plan.

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

(2) The CEO must start the reassessment under subsection (1) before the period (if any) worked out in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this subsection.

49A Reassessment of participant's plan in circumstances specified in plan

The CEO must conduct a reassessment of a participant's plan in the circumstances, if any, specified in the plan.

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

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

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

50 Information and reports for the purposes of varying or reassessing a participant's plan

(1) For the purposes of varying or reassessing a participant's plan, the CEO may make one or more requests under subsection (2).

(2) The requests the CEO may make are as follows:

(a) that the participant, or another person, provide information that is reasonably necessary for the purposes of varying or reassessing the participant's plan; or

(b) that the participant do either or both of the following:

(i) undergo an assessment and provide to the CEO the report, in the approved form, of the person who conducts the assessment;

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

(3) The CEO may vary or reassess 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.

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

Chapter 4—Administration

Part 1—General matters

Division 1—Participants and prospective participants

50J CEO to comply with requirements in relation to prospective participants or participants

The National Disability Insurance Scheme rules may prescribe requirements with which the CEO must comply in relation to the following:

(a) the preparation of plans for participants;

(b) plans that have come into effect for participants;

(c) giving effect to decisions of the Administrative Review Tribunal in relation to prospective participants or participants.

51 Requirement to notify change of circumstances

(1) A participant or a prospective participant must notify the CEO if:

(a) an event or change of circumstances happens that affects, or might affect, his or her access request, status as a participant or plan; or

(b) the participant or prospective participant becomes aware that such an event or change of circumstances is likely to happen.

(2) The participant or prospective participant must notify the CEO:

(a) in the manner set out in a written notice given to him or her under section 52; and

(b) as soon as reasonably practicable after he or she becomes aware that the event or change of circumstances has happened or is likely to happen.

52 Requirements relating to notices

(1) The CEO must approve a manner of notification that a participant or prospective participant is to use when notifying the CEO in relation to an event or change of circumstances under section 51.

(2) The CEO must, by written notice, notify the participant or prospective participant of the approved manner of notification.

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

CEO may require information or documents

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

(2) The matters are as follows:

- (a) the monitoring of supports funded for, or provided to, a participant;
- (b) whether NDIS amounts paid to the participant or to another person have been spent in accordance with the participant's plan;
- (c) determining whether the participant was not entitled to be paid NDIS amounts because of the misleading statements or fraud of any person;
- (d) whether the participant or other person has complied with section 46;
- (e) whether the participant or prospective participant receives:
  - (i) supports or funding through a statutory compensation scheme or a statutory care or support scheme; or
  - (ii) any other disability or early intervention supports;
- (f) the functions of the Agency.

Civil penalty

(3) A person contravenes this subsection if:

(a) the person is subject to a requirement under subsection (1) to give information or produce a document; and

(b) the person refuses or fails to comply with the requirement.

Civil penalty: 60 penalty units.

54 Written notice of requirement

(1) A requirement under section 53 must be made by written notice given to the person of whom the requirement is made.

Contents of notice

(2) The notice must specify:

(a) the nature of the information or document that is required to be given or produced; and

(b) how the person is to give the information or produce the document; and

(c) the period within which the person is to give the information or produce the document to the Agency; and

(d) the Agency officer to whom the information is to be given or the document is to be produced; and

(e) that the notice is given under this section;

(f) that failure to comply with the notice may expose the person to a civil penalty under subsection 53(3); and

(g) that the person is not required to give the information or produce the document if doing so might tend to incriminate the person or expose the person to a penalty.

(3) The period specified under paragraph (2)(c) must be at least 14 days beginning on the day on which the notice is given.

Notice may require person to appear and answer questions

(4) The notice:

(a) may require the person to give the information by appearing before a specified Agency officer to answer questions; and

(b) if it does—must specify a time and place at which the person is to appear, which must be at least 14 days after the notice is given.

Division 2—Other persons

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

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

(2) The matters are as follows:

(a) whether a prospective participant meets the access criteria;

(b) whether a participant continues to meet the access criteria;

(c) whether a person purporting to act on a person's behalf for the purposes of this Act has the authority to do so;

(d) the preparation, variation or reassessment of a participant's plan;

(e) the monitoring of supports funded for, or provided to, a participant;

(f) whether NDIS amounts paid to the participant or to another person have been spent in accordance with the participant's plan;

(g) whether a participant or other person has complied with section 46;

(h) whether a participant receives:

(i) supports or funding through a statutory compensation scheme or a statutory care or support scheme; or

(ii) any other disability support;

(k) the functions of the Agency.

55A Power of Commissioner to obtain information from other persons to ensure the integrity of the National Disability Insurance Scheme etc.

(1) If the Commissioner reasonably believes that a person, other than a prospective participant or a person receiving supports or services from an NDIS provider, has information, or has custody or control of a document, that may be relevant to one or more of the matters mentioned in subsection (2), the Commissioner may require the person to give the information, or produce the document, to the Commissioner.

(2) The matters are as follows:
- (a) whether an NDIS provider is contravening or has contravened subsection 73B(2) (requirement to be a registered NDIS provider);
- (b) whether a person applying for registration under subsection 73E(1) satisfies the requirements mentioned in that subsection;
- (c) whether a registered NDIS provider is meeting or has met the conditions of registration mentioned in subsection 73F(1);
- (d) whether an NDIS provider, a person who is or was employed or otherwise engaged by an NDIS provider or a person who is or was a member of the key personnel of an NDIS provider is complying or has complied with the requirements of the NDIS Code of Conduct;
- (e) if an NDIS provider, or other person, is or was subject to a banning order—whether the provider or person is providing or has provided supports or services, or engaged in activities, in contravention of the order;
- (f) the functions of the Commissioner.

56 Written notice of requirement

(1) A requirement under section 55 or 55A must be made by written notice given to the person of whom the requirement is made.

(2) The notice must specify:

(a) the nature of the information or document that is required to be given or produced; and

(b) how the person is to give the information or produce the document; and

(c) the period within which the person is to give the information or produce the document to the Agency or Commissioner; and

(d) if the notice is given by the CEO:

(i) the Agency officer to whom the information is to be given or the document is to be produced; and

(ii) that failure to comply with the notice may be an offence under subsection 57(1); and

(iii) if the person is an individual—that the individual is not required to give the information or produce the document if doing so might tend to incriminate the individual or expose the individual to a penalty; and

(da) if the notice is given by the Commissioner—the Commission officer to whom the information is to be given or the document is to be produced; and

(e) that the notice is given under this section.

(3) The period specified under paragraph (2)(c) must be at least 14 days beginning on the day on which the notice is given (subject to subsection (6) in the case of a notice given by the Commissioner).

Notice may require person to appear and answer questions

(4) If the notice is given by the CEO:

(a) the notice may require the person to give the information by appearing before a specified Agency officer to answer questions; and

(b) if paragraph (a) applies—the notice must specify a time and place at which the person is to appear, which must be at least 14 days after the notice is given.

(5) If the notice is given by the Commissioner:

(a) the notice may require the person to give the information by appearing before a specified Commission officer to answer questions; and

(b) if paragraph (a) applies—the notice must specify a time and place at which the person is to appear, which must be at least 14 days after the notice is given (subject to subsection (6)).

Notice given by Commissioner may specify shorter period or earlier time

(6) However, if all the conditions in subsection (7) are satisfied, the notice may specify:

(a) a shorter period for the purposes of subsection (3); or

(b) an earlier time for the purposes of paragraph (5)(b).

(7) For the purposes of subsection (6), the conditions are as follows:

(a) the notice is given by the Commissioner;

(b) the Commissioner reasonably believes that not specifying the shorter period or earlier time would significantly increase the risk of serious harm to a participant;

(c) the shorter period or earlier time is reasonable in the circumstances.

57 Refusal or failure to comply with requirement

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

Penalty: 30 penalty units.

(1A) A person is liable to a civil penalty if the person contravenes subsection (1) in relation to a requirement made by the Commissioner under section 55A.

Civil penalty: 60 penalty units.

(2) Subsections (1) and (1A) do not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

(3) It is a reasonable excuse for an individual to refuse or fail to give information or produce a document on the ground that to do so might tend to incriminate the individual or expose the individual to a penalty.

Division 3—Interaction with other laws

58 Obligations not affected by State or Territory laws

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

(a) giving information; or

(b) producing a document; or

(c) giving evidence;

that the person is required to give or produce to the Agency, an Agency officer, the Commissioner or a Commission officer for the purposes of this Act.

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

(a) the person would, apart from subsection (1), be prevented from doing so under a law of a State or Territory; and

(b) the law of the State or Territory is prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

59 Interaction with Commonwealth laws

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

Division 4—Penalties for fraudulent conduct

59A False or misleading statements, information or documents to the Commission

(1) A person contravenes this subsection if:
   (a) the person makes a statement or provides information or a document to the Commissioner or a Commission officer; and
   (b) the person does so knowing that the statement, information or document:
      (i) is false or misleading; or
      (ii) omits any matter or thing without which the statement, information or document is misleading; and
   (c) the statement is made, or the information or document is provided, for the purposes of this Act (other than in, or in connection with, an application for registration).

Note: For false or misleading information or documents provided in, or in connection with, an application for registration, see section 73D.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty:
   (a) for a serious contravention by an NDIS provider—imprisonment for 5 years or 1,000 penalty units, or both; or
   (b) in any other case—imprisonment for 12 months or 120 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or
(b) in any other case—120 penalty units.

Defences

(4) Subsection (1) does not apply:
(a) as a result of subparagraph (1)(b)(i) if the statement, information or document is not false or misleading in a material particular; or
(b) as a result of subparagraph (1)(b)(ii) if the statement, information or document did not omit any matter or thing without which the statement, information or document is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to a matter in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

(5) Subsection (1) does not apply if:
(a) the person is a participant or a prospective participant; and
(b) before the statement was made, or information or document was provided, the Commissioner or a Commission Officer did not take reasonable steps to inform the person of the existence of the offence against subsection (2).

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

(6) For the purposes of subsection (5), it is sufficient if the following form of words is used:
“Giving false or misleading information is a serious offence”.

59AB False or misleading statements, information or documents to the Agency

(1) A person contravenes this subsection if:
(a) the person makes a statement or provides information or a document to the Agency or an Agency officer; and

(b) the person does so knowing that the statement, information or document:
   (i) is false or misleading; or
   (ii) omits any matter or thing without which the statement, information or document is misleading; and
(c) any of the following subparagraphs apply:
   (i) the statement is made, or the information or document is provided, in or in connection with a request under Part 1 of Chapter 3;
   (ii) the statement is made, or the information or document is provided, to a person who is exercising powers or performing functions under, or in connection with, Part 2 of Chapter 3;
   (iii) the statement is made, or the information or document is provided, in compliance or purported compliance with a requirement under Division 1 or 2 of Part 1, or Division 1 of Part 5, of Chapter 4.

Note: See sections 97 and 98 for protections of nominees against criminal or civil liability in certain circumstances.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty:
(a) for a serious contravention by an NDIS provider—imprisonment for 5 years or 1,000 penalty units, or both; or
(b) in any other case—imprisonment for 12 months or 120 penalty units, or both.

Civil penalty

(3) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or

(b) in any other case—120 penalty units.

Defences

(4) Subsection (1) does not apply:

(a) as a result of subparagraph (1)(b)(i) if the statement, information or document is not false or misleading in a material particular; or

(b) as a result of subparagraph (1)(b)(ii) if the statement, information or document did not omit any matter or thing without which the statement, information or document is misleading in a material particular.

Note: A defendant bears an evidential burden in relation to a matter in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

(5) Subsection (1) does not apply if:

(a) the person is a participant or a prospective participant; and

(b) before the statement was made, or information or document was provided, the Agency or an Agency officer did not take reasonable steps to inform the person of the existence of the offence against subsection (2).

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

(6) For the purposes of subsection (5), it is sufficient if the following form of words is used:

"Giving false or misleading information is a serious offence".

59AC Obtaining etc. payment that is not payable

(1) A person contravenes this subsection if:

(a) the person engages in conduct that results in:

(i) a payment being made to the person or another person that is, or purports to be, a payment of an NDIS amount; or

(ii) an NDIS amount becoming payable or purportedly payable to, or in respect of, the person or another person; and

(b) the person knows that:

(i) the person or other person is not entitled to the payment of the NDIS amount; or

(ii) the NDIS amount paid or payable, is in excess of the amount that the person or other person is entitled to.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty:

(a) for a serious contravention by an NDIS provider—imprisonment for 5 years or 1,000 penalty units, or both; or

(b) in any other case—imprisonment for 12 months or 120 penalty units, or both.

59AD Obtaining etc. payment through fraud

(1) A person contravenes this subsection if:

(a) the person engages in conduct that results in:

(i) a payment being made to the person or another person that is, or purports to be, a payment of an NDIS amount; or

(ii) an NDIS amount becoming payable or purportedly payable to, or in respect of, the person or another person; and

(b) the person knows that:

(i) the person or other person is not entitled to the payment of the NDIS amount; or

(ii) the NDIS amount paid or payable, is in excess of the amount that the person or other person is entitled to; and

(c) the person does so dishonestly, by a deception or by means of impersonation.

Offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty:

(a) for a serious contravention by an NDIS provider—imprisonment for 10 years or 2,000 penalty units, or both; or

(b) in any other case—imprisonment for 5 years or 1,000 penalty units, or both.

Dishonesty

(3) In a prosecution for an offence against subsection (2), the determination of dishonesty is a matter for the trier of fact.

Definitions

(4) In this section:

dishonest means:

(a) dishonest according to the standards of ordinary people; and

(b) known by the defendant to be dishonest according to the standards of ordinary people.

59AE Concealing, disposing etc. records required to be kept

A person commits an offence if:

(a) the person is required under the Act to keep a record; and

(b) the person:

(i) conceals, disposes of, mutilates, alters or falsifies the record; or

(ii) causes or directs another person to conceal, dispose of, mutilate, alter or falsify the record; and

(c) the person does so with intent to:

(i) defraud; or

(ii) prevent, delay or obstruct the carrying out of an audit, review, investigation, monitoring, compliance or enforcement activity under the Act.

Penalty: Imprisonment for 2 years or 240 penalty units, or both.

59AF Serious contraventions of offences

(1) If the prosecution intends to prove a serious contravention of an offence against subsection 59A(2), 59AB(2), 59AC(2) or 59AD(2), the charge must allege the serious contravention of that provision.

Note: For a serious contravention of a provision of this Act: see subsection 11B(1).

(2) In order to prove a serious contravention of subsection 59A(2), 59AB(2), 59AC(2) or 59AD(2), the prosecution must prove:

(a) a circumstance mentioned in paragraph 11B(1)(a) or (b) exists in relation to the defendant's contravention of the provision; and

(b) the defendant knew of or was reckless as to the existence of the circumstance.

Alternative verdict

(3) In a prosecution for a serious contravention of an offence against subsection 59A(2), 59AB(2), 59AC(2) or 59AD(2), the trier of fact may find the defendant not guilty of that offence but guilty of an offence against that subsection if:

(a) the trier of fact:

(i) is not satisfied that the defendant is guilty of a serious contravention of the offence; but

(ii) is satisfied beyond reasonable doubt that the defendant is guilty of the offence; and

(b) the defendant has been accorded procedural fairness in relation to that finding of guilt.

Division 5—Automation of administrative action

59B Automation of administrative action

(1) The CEO may, in writing, arrange for the use, under the CEO's oversight, of computer programs to take administrative action that may or must be taken by the CEO under a provision that is one of the following:

(a) a provision of this Act that is specified in subsection 59C(1);

(b) a provision of this Act that is specified in an instrument made under subsection 59C(2);

(c) a provision of a legislative instrument made under this Act that is specified in an instrument made under subsection 59C(2);

(d) a provision of a legislative instrument made under the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* that is specified in an instrument made under subsection 59C(2).

Note: This subsection is not intended to imply that the making of an arrangement is the only means by which a computer program may be used to take administrative action if that action would otherwise not require statutory authorisation in order to be validly taken. For example, statutory authorisation would not generally be needed if a computer program is only being used to assist a decision-maker to make a decision. Statutory authorisation would also not be needed in order to implement a provision that creates an outcome through the operation of law and does not involve an administrative decision being made, such as subsections 34A(2) and 34B(4) and section 50A.

(2) A provision covered by subsection (1) is a ***designated provision***.

(3) ***Administrative action*** is any of the following:

(a) making, or refusing or failing to make, a decision, or a part of a decision, under a designated provision;

(b) exercising, or refusing or failing to exercise, a power under a designated provision;

(c) performing, or refusing or failing to perform, a function or duty under a designated provision;

(d) doing, or refusing or failing to do, anything (including giving a notice) related to making a decision or a part of a decision, exercising a power or performing a function or duty under a designated provision.

Note: A number of administrative actions may be covered by a particular designated provision. For example, a designated provision might provide for multiple decisions to be made as part of making a broader overarching decision. In this case, any of those administrative actions can be automated in accordance with an arrangement under subsection (1).

Evaluative administrative action

(4) Subsection (1) includes administrative action that involves one or more of the following:

(a) a discretion being exercised;

(b) an evaluative judgement being made;

(c) a state of mind being formed.

Note: Section 59D provides for the making of a standard operating procedure instrument in relation to this kind of administrative action.

CEO is treated as having taken administrative action

(5) Administrative action taken by the operation of a computer program under an arrangement under subsection (1) is treated, for all purposes, as administrative action taken by the CEO.

(6) To avoid doubt, the CEO is not prevented by subsection 100(5A) from personally reviewing a reviewable decision that the CEO is taken to have made under subsection (5) of this section.

Substituted actions

(7) The CEO may take administrative action (the ***substituted action***) in substitution for administrative action the CEO is treated as having taken under subsection (5) if the CEO is satisfied that the administrative action taken by the operation of the computer program is not correct or preferable.

(8) The substituted action takes effect on:

(a) if the CEO specifies the day on which the substituted action takes effect (which may be earlier than the day the substituted action is taken)—that specified day; or
(b) otherwise—the day of the administrative action taken by the operation of the computer program.

(9) The day specified under paragraph (8)(a) may be earlier than the day the substituted action is taken, but not earlier than the day of the administrative action taken by the operation of the computer program.

CEO may still take administrative action

(10) An arrangement under subsection (1) does not prevent the CEO from taking administrative action under a designated provision.

Substituted action does not limit right to review or reconsideration of administrative action

(11) Subsection (7) does not limit any other provision of this Act or a legislative instrument mentioned in subsection (1) that provides for the review or reconsideration of an administrative action.

Arrangement not a legislative instrument

(12) An arrangement under subsection (1) is not a legislative instrument.

59C Designated provisions

Listed provisions

(1) For the purposes of paragraph 59B(1)(a), the following provisions of this Act are specified:
(a) section 33;
(b) section 45;
(c) section 45A;
(d) section 45C.

Specified provisions

(2) For the purposes of paragraphs 59B(1)(b), (c) and (d), the Minister may, by legislative instrument, specify a provision of:

(a) this Act; or

(b) a legislative instrument made under this Act; or

(c) a legislative instrument made under the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*.

(3) However, if administrative action taken under a provision involves one or more evaluative determinations, then before specifying the provision under subsection (2), the Minister must be satisfied that it is appropriate to do so.

59D CEO must make standard operating procedure instrument

(1) The CEO must make a written instrument (a ***standard operating procedure instrument***) if:

(a) particular administrative action is proposed to be:

(i) taken under a designated provision by the operation of a computer program (as authorised by section 59B); and

(ii) taken in relation to matters dealt with by the Agency; and

(b) the administrative action involves one or more evaluative determinations.

Content of instrument etc.

(2) If the CEO makes a standard operating procedure instrument:

(a) the instrument must not deal with matters other than evaluative determinations; and

(b) the CEO must, in relation to each evaluative determination, specify in the instrument particular circumstances in which the CEO is satisfied, if those circumstances exist or do not exist, that evaluative determination should always be made in a way specified in the instrument; and

(c) the CEO must, in specifying those circumstances, be satisfied that the instrument is consistent with how the evaluative determination may be made by the CEO.

Objective circumstances

(3) The CEO must be satisfied that the circumstances covered by paragraph (2)(b) are sufficiently objective in nature, such that their existence, or non-existence, can be ascertained by the operation of the computer program.

Computer program to be programmed consistently with instrument

(4) If the CEO makes a standard operating procedure instrument, the CEO must ensure that the arrangement under subsection 59B(1) provides for the making of each evaluative determination in a way that is consistent with the standard operating procedure instrument.

Instrument may deal with more than one administrative action

(5) A standard operating procedure instrument may deal with more than one administrative action.

CEO must publish proposed instrument

(5A) At least 7 days before making a standard operating procedure instrument, the CEO must cause a copy of the proposed instrument to be published on the Agency's website.

Instrument is a notifiable instrument

(6) A standard operating procedure instrument is a notifiable instrument.

59E Oversight and safeguards for automation of administrative action

CEO to ensure administrative action is action that could be validly taken

(1) The CEO must take all reasonable steps to ensure that administrative action taken by the operation of a computer program under an arrangement under subsection 59B(1) is administrative action that the CEO could validly take under a designated provision.

(2) Without limiting subsection (1), the CEO must do the things (if any) determined by a legislative instrument made under subsection (9).

Note: Administrative action may still be invalid even if subsections (1) and (2) are complied with.

(3) A failure to comply with subsection (1) or (2) does not affect the validity of the administrative action taken by the operation of a computer program under an arrangement under subsection 59B(1).

Notification of decisions made by the operation of computer programs

(4) If:

(a) in accordance with section 59B, administrative action is taken by the operation of a computer program under an arrangement under subsection (1) of that section; and

(b) another provision of this Act or a legislative instrument mentioned in that subsection requires a notice of the administrative action to be given to a person;

the notice must inform the person of the fact that the administrative action was taken by the operation of a computer program.

(5) A failure to comply with subsection (4) does not affect the validity of the administrative action taken by the operation of the computer program.

Publication

(6) If the CEO makes an arrangement under subsection 59B(1) in relation to particular designated provisions, the CEO must cause a statement to be published on the Agency's website:
   (a) to the effect that the CEO has made such an arrangement; and
   (b) setting out those particular designated provisions.

Details in annual report

(7) The CEO, when preparing the Agency's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, must include the following information in that report:
   (a) the kinds of substituted actions taken by the CEO under subsection 59B(7) of this Act in that period;
   (b) the kinds of administrative action taken by the operation of the computer program that the CEO was satisfied were not correct or preferable.

(8) The CEO may also include in the report any other information (other than personal information within the meaning of the *Privacy Act 1988*) about the operation of this Division in that period that the CEO considers appropriate.

Legislative instrument

(9) The Minister may, by legislative instrument, determine one or more things that the CEO must do for the purposes of subsection (2).

Part 2—Privacy

Division 1—Information held by the Agency

60 Protection of information held by the Agency etc.

(2) A person may:
  (a) make a record of protected Agency information; or
  (b) disclose such information to any person; or
  (c) otherwise use such information;
 if:
  (d) the making of the record, or the disclosure or use of the information, by the person is made:
   (i) for the purposes of this Act; or
   (ii) for the purpose for which the information was disclosed to the person under section 66; or
   (iii) with the express or implied consent of the person to whom the information relates; or
  (e) the person believes on reasonable grounds that the making of the record, or the disclosure or use of the information, by the person is for the purpose of, or in relation to, preventing or lessening a threat (whether current or future) to an individual's life, health or safety; or
  (f) the person believes on reasonable grounds that the making of the record, or the disclosure or use of the information, by the person is for the purpose of, or in relation to, reporting a past threat to an individual's life, health or safety.

(3) Without limiting subsection (2), the recording, disclosure or use of information by a person is taken to be for the purposes of this Act if the CEO believes, on reasonable grounds, that it is reasonably necessary for one or more of the following purposes:
  (a) research into matters relevant to the National Disability Insurance Scheme;

(b) actuarial analysis of matters relevant to the National Disability Insurance Scheme;
(c) policy development.

(4) The CEO or an Agency officer may disclose protected Agency information to the Commissioner or a Commission officer if the disclosure is for, or in connection with, the performance of the Commissioner's functions or the exercise of the Commissioner's powers.

62 Offence—unauthorised use or disclosure of protected Agency information

A person commits an offence if:

(a) the person:
  (i) makes a record of information; or
  (ii) discloses information to any other person; or
  (iii) otherwise makes use of information; and
(b) the person is not authorised or required by or under this Act to make the record, disclosure or use of the information that is made by the person; and
(c) the information is protected Agency information.

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

63 Offence—soliciting disclosure of protected Agency information

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

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

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

64 Offence—offering to supply protected Agency information

(1) A person commits an offence if:

(a) the person offers to supply (whether to a particular person or otherwise) information about another person; and

(b) the person knows the information is protected Agency information.

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

(2) A person commits an offence if:

(a) the person holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person; and

(b) the person knows the information is protected Agency information.

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

(3) Subsections (1) and (2) do not apply to a person acting in the performance or exercise of his or her duties, functions or powers under this Act.

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

66 Disclosure of information by CEO

(1) Despite sections 62, 64 and 67G, the CEO may:

(a) if the CEO is satisfied on reasonable grounds that it is in the public interest to do so in a particular case or class of cases—disclose information acquired by a person in the performance of his or her functions or duties or in the exercise of his or her powers under this Act to such persons and for such purposes as the CEO determines; or

(b) disclose any such information:

(i) to the Secretary of a Department of State of the Commonwealth, or to the head of an authority of the

Commonwealth, for the purposes of that Department or authority; or

(ii) to a person who has the express or implied consent of the person to whom the information relates to collect it; or

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

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

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

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

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

(a) relates to the participant; and

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

(4) If:

(a) the CEO or an Agency officer is served with a summons or notice, or is otherwise subject to a requirement, under the *Royal Commissions Act 1902*; and

(b) in order to comply with the summons, notice or requirement, the CEO or Agency officer would be required to disclose information that is protected Agency information;

then, despite sections 62 and 67G of this Act, the CEO or Agency officer must, subject to the *Royal Commissions Act 1902*, disclose that information. The information is taken to have been disclosed for the purposes of the *Royal Commissions Act 1902* and of the Royal Commission concerned.

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

The National Disability Insurance Scheme rules may make provision for and in relation to the exercise of the CEO's power to disclose information for the purposes of paragraph 66(1)(a) or subparagraph 66(1)(b)(i) or (v).

Division 2—Information held by the Commission

67A Protection of information held by the Commission etc.

(1) A person may:
(a) make a record of protected Commission information; or
(b) disclose such information to any person; or
(c) otherwise use such information;
if:
(d) the making of the record, or the disclosure or use of the information, by the person is made:
(i) for the purposes of this Act; or
(ii) for the purpose for which the information was disclosed to the person under section 67E; or
(iii) with the express or implied consent of the person to whom the information relates; or
(da) the disclosure of the information by the person is to a State or Territory, or to an authority of a State or Territory, for one or more of the following purposes:
(i) the carrying out of an NDIS worker screening check or aged care worker screening check;
(ii) any other purpose of an NDIS worker screening law or aged care worker screening law;
(iii) the screening of a worker employed or otherwise engaged by a registered NDIS provider, or of a member of the key personnel of a registered NDIS provider, as mentioned in paragraph 73T(3)(d); or
(daa) the disclosure or use of the information by the person is made for the purposes of complying with the worker screening requirements prescribed by rules made for the purposes of section 152 of the *Aged Care Act 2024*; or
(db) the disclosure of the information by the person is to a person or body, prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph, for the purpose prescribed by those rules; or

(e) the person reasonably believes that the making of the record, or the disclosure or use of the information, by the person is for the purpose of, or in relation to, preventing or lessening a threat (whether current or future) to an individual's life, health or safety; or

(f) the person reasonably believes that the making of the record, or the disclosure or use of the information, by the person is for the purpose of, or in relation to, reporting a past threat to an individual's life, health or safety.

(2) Without limiting subsection (1), the recording, disclosure or use of information by a person is taken to be for the purposes of this Act if the Commissioner reasonably believes that it is reasonably necessary for one or more of the following purposes:

(a) research into matters relevant to the National Disability Insurance Scheme;

(b) policy development.

(3) The Commissioner or a Commission officer may disclose protected Commission information to the Agency or an Agency officer if the disclosure is for, or in connection with, the performance of the Agency's or CEO's functions or the exercise of the Agency's or CEO's powers.

67B Unauthorised use or disclosure of protected Commission information

Offence

(1) A person commits an offence if:

(a) the person:

(i) makes a record of information; or

(ii) discloses information to any other person; or

(iii) otherwise makes use of information; and

(b) the person is not authorised or required by or under this Act to make the record, disclosure or use of the information that is made by the person; and

(c) the information is protected Commission information.

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

Civil penalty

(2) A person contravenes this subsection if:
- (a) the person:
  - (i) makes a record of information; or
  - (ii) discloses information to any other person; or
  - (iii) otherwise makes use of information; and
- (b) the person is not authorised or required by or under this Act to make the record, disclosure or use of the information that is made by the person; and
- (c) the information is protected Commission information.

Civil penalty: 120 penalty units.

67C Soliciting disclosure of protected Commission information

Offence

(1) A person commits an offence if:
- (a) the person solicits the disclosure of information from a Commission officer or another person, whether or not any protected Commission information is actually disclosed; and
- (b) the disclosure would be in contravention of this Part; and
- (c) the information is protected Commission information.

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

Civil penalty

(2) A person contravenes this subsection if
- (a) the person solicits the disclosure of information from a Commission officer or another person, whether or not any protected Commission information is actually disclosed; and
- (b) the disclosure would be in contravention of this Part; and

(c) the information is protected Commission information.

Civil penalty: 120 penalty units.

67D Offering to supply protected Commission information etc.

Offering to supply protected Commission information—offence

(1) A person commits an offence if:

(a) the person offers to supply (whether to a particular person or otherwise) information about another person; and

(b) the person knows the information is protected Commission information.

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

Offering to supply protected Commission information—civil penalty

(1A) A person contravenes this subsection if:

(a) the person offers to supply (whether to a particular person or otherwise) information about another person; and

(b) the information is protected Commission information.

Civil penalty: 120 penalty units.

Persons holding themselves out as able to supply protected Commission information—offence

(2) A person commits an offence if:

(a) the person holds himself or herself out as being able to supply (whether to a particular person or otherwise) information about another person; and

(b) the person knows the information is protected Commission information.

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

Persons holding themselves out as able to supply protected Commission information—civil penalty

(2A) A person contravenes this subsection if:

(a) the person holds themselves out as being able to supply (whether to a particular person or otherwise) information about another person; and

(b) the information is protected Commission information.

Civil penalty: 120 penalty units.

Exception—performing or exercising duties, functions or powers under this Act

(3) Subsections (1), (1A), (2) and (2A) do not apply to a person acting in the performance or exercise of the person's duties, functions or powers under this Act.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code* and section 96 of the Regulatory Powers Act.

67E Disclosure of information by Commissioner

(1) Despite sections 67B, 67D and 67G, the Commissioner may:

(a) if the Commissioner is satisfied on reasonable grounds that it is in the public interest to do so in a particular case or class of cases—disclose information acquired by a person in the performance of his or her functions or duties or in the exercise of his or her powers under this Act to such persons and for such purposes as the Commissioner determines; or

(b) disclose any such information:

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

(ii) to a person who has the express or implied consent of the person to whom the information relates to collect it; or

(iii) to a Department of State of a State or Territory, or to an authority of a State or Territory, that has responsibility for matters relating to people with disability, including the provision of supports or services to people with disability; or

(iv) to the chief executive (however described) of a Department of State of a State or Territory, or to the head of an authority of a State or Territory, for the purposes of that Department or authority.

(2) In disclosing information for the purposes of paragraph (1)(a) or subparagraph (1)(b)(i), (iii) or (iv), the Commissioner must act in accordance with the National Disability Insurance Scheme rules made for the purposes of section 67F.

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

(a) relates to the participant; and

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

(4) If:

(a) the Commissioner or a Commission officer is served with a summons or notice, or is otherwise subject to a requirement, under the *Royal Commissions Act 1902*; and

(b) in order to comply with the summons, notice or requirement, the Commissioner or Commission officer would be required to disclose information that is protected Commission information;

then, despite sections 67B and 67G of this Act, the Commissioner or Commission officer must, subject to the *Royal Commissions Act 1902*, disclose that information. The information is taken to have been disclosed for the purposes of the *Royal Commissions Act 1902* and of the Royal Commission concerned.

67F National Disability Insurance Scheme rules for exercise of Commissioner's disclosure powers

The National Disability Insurance Scheme rules may make provision for and in relation to the exercise of the Commissioner's power to disclose information for the purposes of paragraph 67E(1)(a) or subparagraph 67E(1)(b)(i), (iii) or (iv).

Division 3—Information generally

67G Production of documents or information to courts etc.

General rule

(1) A person is not required to produce a document, or disclose any information, matter or thing, to a court, tribunal, authority or other person or entity having the power to make such a requirement, if:

(a) the person is, or has been, a person mentioned in subsection (2); and

(b) the document, information, matter or thing has come to the knowledge, or into the possession, or to the notice, of the person because of:

(i) the performance or exercise of the person's duties, functions or powers under this Act; or

(ii) the performance of services by the person for the Agency or the Commission.

(2) Each of the following is a person for the purposes of paragraph (1)(a):

(a) the CEO;

(b) a Board member;

(c) the Commissioner;

(d) a member of the Advisory Council;

(e) the scheme actuary;

(f) the reviewing actuary;

(g) an Agency officer;

(h) a Commission officer;

(i) a consultant engaged under section 171 or 181V;

(j) a person performing services:

(i) for the Agency under a contract with the Agency; or

(ii) for the Commission under a contract with the Commission.

(3) For the avoidance of doubt, a requirement to produce a document, or disclose any information, matter or thing, includes a requirement to produce or disclose the document, information, matter or thing:
   (a) in writing; and
   (b) by means of answering questions or giving evidence in an appearance before a person or entity; and
   (c) by any other means.

Exceptions

(4) Subsection (1) does not apply to the extent that the production or disclosure is necessary for the purposes of:
   (a) this Act or a legislative instrument made under this Act; or
   (b) the *Australian Crime Commission Act 2002*; or
   (c) the *National Anti-Corruption Commission Act 2022*; or
   (d) the *Royal Commissions Act 1902*.

67H Part does not affect the operation of the *Freedom of Information Act 1982*

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

Part 3A—NDIS providers

Division 2—Registered NDIS providers

73B Requirement to be a registered NDIS provider

Requirement to be a registered NDIS provider

(1) The National Disability Insurance Scheme rules may require that specified classes of supports provided under participants' plans are to be provided only by persons who are registered under section 73E to provide those classes of supports.

Note: See also subsections 32D(7) and 33(6), which provide that, if the funding for supports under a plan is managed by the Agency, supports are to be provided only by a registered NDIS provider.

Failing to comply with requirement to be registered

(2) A person (the ***first person***) contravenes this subsection if:

(a) the first person provides a support to another person; and

(b) the support is provided under a participant's plan; and

(c) the National Disability Insurance Scheme rules require the first person to be registered to provide the support under the plan; and

(d) the first person is not so registered.

Unregistered persons holding themselves out as being registered

(3) A person contravenes this subsection if:

(a) the person holds themselves out as being able to provide a support under a participant's plan; and

(b) the National Disability Insurance Scheme rules require the person to be registered to provide the support under the plan; and

(c) the person is not so registered.

Fault-based offence

(4) A person commits an offence if the person contravenes subsection (2) or (3). Absolute liability applies to the physical elements in paragraphs (2)(c) and (3)(b).

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

Strict liability offence

(5) A person commits an offence of strict liability if the person contravenes subsection (2) or (3).

Penalty: 60 penalty units.

Civil penalty

(6) A person is liable to a civil penalty if the person contravenes subsection (2) or (3).

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or
(b) in any other case—250 penalty units.

73C Application to be a registered NDIS provider

(1) A person may apply to the Commissioner to be a registered NDIS provider in relation to one or more of the following:

(a) the provision of supports or services under the arrangements set out in Chapter 2;
(b) managing the funding for supports under participants' plans;
(c) the provision of supports under participants' plans.

Note: An unincorporated association or a partnership may also apply for registration under this section (see section 203).

(2) A person may also apply to the Commissioner to be a registered NDIS provider in relation to the provision of services or supports to people with disability other than under the National Disability

Insurance Scheme if the person is included in a class of persons prescribed for the purposes of subparagraph 10C(1)(b)(ii).

(3) The application must:
  (a) be in writing; and
  (b) be in a form (if any) approved in writing by the Commissioner; and
  (c) include any information, and be accompanied by any documents, required by the Commissioner.

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

(4) The Commissioner may, by written notice, require an applicant for registration to give the Commissioner such further information or documents in relation to the application as the Commissioner reasonably requires.

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

(5) A notice under subsection (4) may specify a period, which must not be less than 14 days, within which the information or documents must be given.

Withdrawal of application

(6) An applicant for registration may at any time, by writing to the Commissioner, withdraw the application.

(7) A person's application is taken to have been withdrawn if the person's registration is revoked under section 73P while that application is pending.

73D False or misleading information or documents in application

A person contravenes this section if the person:
  (a) provides information or a document in, or in connection with, an application for registration; and
  (b) knows the information or document is false or misleading in a material particular.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or

(b) in any other case—120 penalty units.

73E Registration as a registered NDIS provider

Registration

(1) The Commissioner may register a person as a registered NDIS provider if:

(a) the person (the ***applicant***) makes an application under section 73C; and

(c) the applicant has been assessed by an approved quality auditor as meeting the applicable standards and other requirements prescribed by the NDIS Practice Standards; and

(d) the Commissioner is satisfied that the applicant is suitable to provide supports or services to people with disability, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; and

(e) the Commissioner is satisfied that the applicant's key personnel (if any) are suitable to be involved in the provision of supports or services for which the applicant will be registered to provide, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; and

(f) the applicant satisfies any other requirements prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

(2) A person may be registered in respect of one or more of the following:

(a) managing the funding of supports under participants' plans;

(b) providing specified classes of supports under participants' plans;

(c) providing specified classes of supports or services under the arrangements set out in Chapter 2;

(d) providing specified classes of supports or services to people with disability other than under the National Disability Insurance Scheme.

(3) Despite subsections (1) and (2), if a banning order is in force in relation to the applicant, the Commissioner must not register the applicant in a way that would be inconsistent with the banning order.

Note: Under subsection 73ZN(3), a banning order may be of general or limited application.

Notice of decision to register

(4) The Commissioner must:

(a) give written notice of a decision to register, or not to register, a person as a registered NDIS provider, including reasons for the decision; and

(b) if the decision is to register the person—provide a certificate of registration, specifying the matters mentioned in subsection (5), to the person.

Certificate of registration

(5) A certificate of registration must specify:

(a) which of the following the person is a registered NDIS provider in relation to:

(i) managing the funding for supports under plans;

(ii) the provision of supports under plans;

(iii) the provision of supports or services under the arrangements set out in Chapter 2;

(iv) the provision of services or supports to people with disability other than under the National Disability Insurance Scheme; and

(b) the classes of supports or services the person is registered to provide; and

(c) if the person is registered in respect of a class of persons—the class of persons in respect of which the provider is registered; and

(d) the conditions (if any) on the registration imposed by the Commissioner under section 73G; and

(e) the period for which the registration is in force; and

(f) any other matter determined in writing by the Commissioner for the purposes of this paragraph.

Note: The registration of a person may be varied (see section 73L), suspended (see section 73N) or revoked (see section 73P) and the period for which the registration is in force may be extended (see section 73K) or varied (see section 73L).

(6) A determination made under paragraph (5)(f) is not a legislative instrument.

73F Registration is subject to conditions

(1) The registration of a person as a registered NDIS provider is subject to the following conditions:

(a) the conditions set out in subsection (2);

(b) the conditions (if any) imposed by the Commissioner under section 73G;

(c) the conditions (if any) determined by the National Disability Insurance Scheme rules under section 73H.

(2) The registration of a person as a registered NDIS provider is subject to the following conditions:

(a) a condition that the person comply with all applicable requirements imposed by a law of the Commonwealth or a law of the State or Territory in which the person or entity operates as a registered NDIS provider;

(b) a condition that the person comply with all applicable requirements of the NDIS Code of Conduct;

(c) a condition that the person comply with all applicable standards and other requirements of the NDIS Practice Standards;

(d) a condition that the person comply with all applicable requirements relating to record keeping prescribed by the National Disability Insurance Scheme rules for the purposes of section 73Q;

(e) a condition that the person implement and maintain the applicable complaints management and resolution system in accordance with section 73W;

(f) a condition that the person comply with all applicable requirements relating to complaints prescribed by the National Disability Insurance Scheme rules for the purposes of section 73X;

(g) a condition that the person implement and maintain the applicable incident management system in accordance with section 73Y;

(h) a condition that the person comply with all applicable requirements relating to reportable incidents prescribed by the National Disability Insurance Scheme rules for the purposes of section 73Z;

(i) a condition that the person give to the Commissioner, on request, information or documents specified in the request within the period specified in the request (which must not be less than 14 days).

(3) Despite paragraph (2)(i), the Commissioner may specify a shorter period within which the information or documents are to be given if:

(a) the Commissioner reasonably believes that to not do so would significantly increase the risk of serious harm to a participant; and

(b) the shorter period is reasonable in the circumstances.

(4) To avoid doubt, paragraph (2)(i) confers on the Commissioner a power to request information that has effect independently of, and does not limit, any other provision of this Act.

73G Conditions specified in certificate of registration

(1) The Commissioner may impose conditions to which the registration of a person as a registered NDIS provider is subject.

(2) A condition may be imposed at the time of registration, or at a later time.

Note: Conditions imposed under this section may also be varied or revoked (see section 73L).

(3) The conditions may include, but are not limited to, conditions relating to the following matters:

(a) the types of quality audits the provider must undergo;

(b) the timing of such quality audits;

(c) requirements relating to supports or services for which the provider is registered to provide, including circumstances in which supports or services for which the provider is registered can or cannot be provided.

73H Conditions determined by NDIS rules

The National Disability Insurance Scheme rules may determine that each registration, or each registration included in a specified class of registration, is taken to include one or more specified conditions.

73J Registered NDIS providers must comply with conditions of registration

A person contravenes this section if the person:

(a) is a registered NDIS provider; and

(b) breaches a condition to which the registration of the person is subject.

Civil penalty:

(a) for a serious contravention—10,000 penalty units; or

(b) in any other case—250 penalty units.

73K Extension of period for which registration is in force

(1) Subsection (2) applies if:

(a) the registration of a person as a registered NDIS provider will cease to be in force on a particular day; and

(b) within 6 months before that day, the person makes an application under section 73C.

(2) Despite paragraph 73E(5)(e), the registration of the person continues in force until the Commissioner makes a decision on the application under subsection 73E(1).

73L Variation of registration

(1) The Commissioner may vary the registration of a registered NDIS provider, by written notice given to the provider:

(a) at any time, on the Commissioner's own initiative; or

(b) on application by the provider under section 73M.

(2) The Commissioner may vary the registration of a registered NDIS provider if the Commissioner considers it appropriate in all the circumstances to do so.

(3) Without limiting subsection (1), the Commissioner may vary the registration of an NDIS provider to:

(a) impose, vary or revoke conditions to which the registration is subject under section 73G; or

(b) reduce or extend the period for which the registration is in force; or

(c) extend, modify or reduce the supports or services the provider is registered to provide.

(4) If the Commissioner decides to vary the registration of a registered NDIS provider, the Commissioner must give a certificate of registration as varied to the provider.

(5) If, after receiving an application under section 73M, the Commissioner refuses to vary the registration of a registered NDIS

provider, the Commissioner must give written notice of the refusal, including reasons for the refusal.

(6) A variation of the registration of a registered NDIS provider takes effect on the day specified in the notice given under subsection (1).

73M Application for variation of registration

(1) A registered NDIS provider may apply for a variation to the provider's registration.

(2) The application must:

(a) be in writing; and

(b) be in a form (if any) approved in writing by the Commissioner; and

(c) include any information, and be accompanied by any documents, required by the Commissioner.

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

(3) The Commissioner may, by written notice, require an applicant for a variation to give the Commissioner such further information or documents in relation to the application as the Commissioner reasonably requires.

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

(4) A notice under subsection (3) may specify a period, which must not be less than 14 days, within which the information or documents must be given.

73N Suspension of registration

Suspension on Commissioner's own initiative

(1) The Commissioner may, in writing, suspend the registration of a person as a registered NDIS provider for a specified period if:

(a) the Commissioner reasonably believes that the person has contravened, is contravening, or is proposing to contravene, this Act; or

(b) the Commissioner reasonably believes that the application for registration by the person contained information that was false or misleading in a material particular; or

(c) the person is an insolvent under administration; or

(d) the Commissioner is satisfied that the person is no longer suitable to provide the supports or services to people with disability, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; or

(e) the Commissioner is no longer satisfied that the key personnel of the person (if any) are suitable to be involved in the provision of supports or services to people with disability, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; or

(f) a circumstance exists that is a circumstance prescribed by National Disability Insurance Scheme rules for the purposes of this paragraph.

(2) The period specified under subsection (1) must not be longer than 30 days.

(3) To avoid doubt, subsection (2) does not prevent the Commissioner suspending the registration of a person as a registered provider more than once.

(4) In deciding whether to suspend the registration of a person under subsection (1), the Commissioner must have regard to the following matters:

(a) the nature, significance and persistence of any contravention, or proposed contravention, of this Act;

(b) action that can be taken to address any contravention, or proposed contravention, of this Act;

(c) the extent (if any) to which the person is conducting its affairs as a registered NDIS provider in a way that may cause harm to, or jeopardise, public trust in the National Disability Insurance Scheme;

(d) the health, safety or wellbeing of people with disability receiving supports or services from the person;

(e) any other matter the Commissioner considers relevant.

(5) If the registration of a person is suspended under subsection (1), the Commissioner must give the person written notice of the suspension and the reasons for the suspension.

Suspension at the request of registered NDIS provider

(6) The Commissioner may, in writing, suspend the registration of a person as a registered NDIS provider for a specified period if the person requests the Commissioner, in writing, to suspend the registration.

Effect of suspension

(7) If the registration of a person is suspended under this section, the registration ceases to have effect until the suspension ceases to be in force.

73P Revocation of registration

(1) The Commissioner may, in writing, revoke the registration of a person as a registered NDIS provider if:

(a) the Commissioner reasonably believes that the person has contravened, is contravening, or is proposing to contravene, this Act; or

(b) the application for registration by the person contained information that was false or misleading in a material particular; or

(c) the person is an insolvent under administration; or

(d) the Commissioner is satisfied that the person is no longer suitable to provide supports or services to people with disability, having regard to any matters prescribed by the

National Disability Insurance Scheme rules for the purposes of this paragraph; or

(e) the Commissioner is no longer satisfied that the key personnel of the person (if any) are suitable to be involved in the provision of supports or services for which the person is registered to provide, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; or

(f) a circumstance exists that is a circumstance prescribed by National Disability Insurance Scheme rules for the purposes of this paragraph.

(2) In deciding whether to revoke the registration of a person under subsection (1), the Commissioner must have regard to the following matters:

(a) the nature, significance and persistence of any contravention, or proposed contravention, of this Act;

(b) action that can be taken to address any contravention, or proposed contravention, of this Act;

(c) the extent (if any) to which the person is conducting its affairs as a registered NDIS provider in a way that may cause harm to, or jeopardise, public trust in the National Disability Insurance Scheme;

(d) the health, safety or wellbeing of people with disability receiving supports or services from the person;

(e) any other matter the Commissioner considers relevant.

(3) The Commissioner may, in writing, revoke the registration of a person as a registered NDIS provider if the person requests the Commissioner, in writing, to revoke the registration.

(4) Before deciding to revoke the registration of a person under subsection (1), the Commissioner must notify the person that revocation is being considered. The notice must be in writing and must:

(a) include the Commissioner's reasons for considering the revocation; and

(b) invite the person to make submissions, in writing, to the Commissioner within the period specified in the notice (which must not be less than 28 days); and

(c) inform the person that if no submissions are made within the period specified in the notice, any revocation may take effect as early as 7 days after the end of the period specified in the notice.

(5) In deciding whether to revoke the registration, the Commissioner must consider any submissions given to the Commissioner within the period specified in the notice.

(6) The Commissioner must notify the person, in writing, of the decision.

(7) The notice under subsection (6) must be given within 28 days after the end of the period for making submissions. If the notice is not given within this period, the Commissioner is taken to have decided not to revoke the registration.

73Q Record keeping by registered NDIS providers

A registered NDIS provider must keep records of the kind, for the period and in the form prescribed by the National Disability Insurance Scheme rules.

Note: Compliance with this section is a condition of registration (see paragraph 73F(2)(d)), breach of which is a civil penalty provision (see section 73J).

73R Record keeping by former registered NDIS providers

(1) A person who has ceased to be a registered NDIS provider must keep records that the person was required to retain under section 73Q immediately before the person ceased to be a registered NDIS provider.

(2) The records must be kept for 3 years commencing on the day that the person ceased to be a registered NDIS provider.

(3) A person contravenes this section if the person:

(a) is subject to a requirement under this section; and
(b) fails to comply the requirement.

Civil penalty: 60 penalty units.

73S Grants of financial assistance in relation to registration

(1) The Commissioner may, on behalf of the Commonwealth, make a grant of financial assistance to a person or entity in relation to applications for registration, or variations to registration, as a registered NDIS provider under this Act.

(2) The terms and conditions on which that financial assistance is granted are to be set out in a written agreement between the Commonwealth and the person or entity.

(3) An agreement under subsection (2) may be entered into by the Commissioner on behalf of the Commonwealth.

Division 3—Quality assurance

73T NDIS Practice Standards

(1) The National Disability Insurance Scheme rules may make provision for or in relation to standards concerning the quality of supports or services to be provided by registered NDIS providers.

Note: Non-compliance with the NDIS Practice Standards by registered NDIS providers constitutes a breach of condition of registration (see paragraph 73F(2)(c) and section 73J).

(2) Rules made for the purposes of subsection (1) are to be known as the ***NDIS Practice Standards***.

(3) Without limiting subsection (1), the NDIS Practice Standards may deal with the following:

(a) standards to be complied with to become a registered NDIS provider;

(b) standards to be complied with to remain a registered NDIS provider;

(c) matters relating to assessing compliance with the standards;

(d) matters relating to the screening of workers employed or otherwise engaged by registered NDIS providers or of members of the key personnel of registered NDIS providers.

73U Approved quality auditors

(1) The Commissioner may, in writing, approve a person or body to be an approved quality auditor for the purposes of this Act.

(2) The Commissioner may do so on request of the person or body.

(3) If a person or body requests an approval, the Commissioner must:

(a) make a decision under subsection (1) to give the approval; or

(b) make a decision to refuse to give the approval.

(4) If the Commissioner refuses to give the approval, the Commissioner must give notice to the person or body of the refusal and of the reasons for the refusal.

Conditions

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

(5) The Commissioner may make an approval subject to conditions specified in the approval.

(5A) Without limiting subsection (4A) or (5), a condition specified under either of those subsections may have the effect of requiring an approved quality auditor to not:

(a) employ or engage, or continue to employ or engage, a person against whom a banning order has been made; or

(b) have, or continue to have, such a person as a member of the approved quality auditor's key personnel.

Variation

(6) The Commissioner may, in writing, vary an approval given under subsection (1) by:

(a) imposing new conditions on the approval; or

(b) varying or removing existing conditions (other than conditions specified under subsection (4A)).

(7) The Commissioner must give notice to the person or body of the variation and of the reasons for the variation. The notice must specify the day the variation takes effect (which must not be earlier than the day the notice is given).

Revocation

(8) The Commissioner may, in writing, revoke an approval given under subsection (1).

(9) The Commissioner must give notice to the person or body of the revocation and of the reasons for the revocation. The notice must specify the day the revocation takes effect (which must not be earlier than the day the notice is given).

National Disability Insurance Scheme rules relating to approved quality auditors

(9A) The National Disability Insurance Scheme rules may prescribe requirements with which the Commissioner must comply, criteria that the Commissioner is to apply, or matters to which the Commissioner may, must or must not have regard, in deciding the following:

(a) whether to give, or refuse to give, an approval under subsection (1);

(b) whether or not to make an approval given under subsection (1) subject to conditions;

(c) whether or not to vary or revoke an approval given under subsection (1).

Approval not a legislative instrument

(10) An approval given under subsection (1) is not a legislative instrument.

Publication

(11) The Commissioner may publish, on the Commission's website, a list of approved quality auditors.

Division 4—NDIS Code of Conduct

73V NDIS Code of Conduct

(1) The National Disability Insurance Scheme rules may make provision for or in relation to a code of conduct that applies to either or both of the following:

(a) NDIS providers;

(b) persons employed or otherwise engaged by NDIS providers or members of the key personnel of NDIS providers.

(2) Rules made for the purposes of subsection (1) are to be known as the ***NDIS Code of Conduct***.

(3) A person contravenes this section if the person:

(a) is subject to a requirement under the NDIS Code of Conduct; and

(b) fails to comply with the requirement.

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or

(b) in any other case—250 penalty units.

Division 5—Complaints management and resolution

73W Complaints management and resolution system—registered NDIS providers

A registered NDIS provider must implement and maintain a complaints management and resolution system that:

(a) is appropriate for the size of the provider and for the classes of supports or services provided by the provider; and

(aa) acknowledges the role of advocates (including independent advocates) and other representatives of persons with disability; and

(ab) provides for cooperation with, and facilitates arrangements for, advocates (including independent advocates) and other representatives of persons with disability who are affected by the complaints process and who wish to be independently supported in that process by an advocate or other representative; and

(b) complies with the requirements (if any) prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

Note: Non-compliance with this section constitutes a breach of condition of registration (see paragraph 73F(2)(e) and section 73J).

73X Arrangements relating to the management and resolution of complaints

(1) The National Disability Insurance Scheme rules may prescribe arrangements relating to the management and resolution of complaints arising out of, or in connection with, the provision of supports or services by NDIS providers.

(2) Without limiting subsection (1), the National Disability Insurance Scheme rules may deal with the following matters:

(a) how complaints may be made, managed and resolved, including methods to support the early resolution of complaints;

(b) the roles, rights and responsibilities of people with disability, complainants, NDIS providers, advocates (including independent advocates) and other persons in relation to the management and resolution of complaints;

(c) considerations relevant to making decisions under the National Disability Insurance Scheme rules in relation to complaints;

(ca) requirements relating to procedural fairness in relation to the management and resolution of complaints;

(d) procedures for the review of decisions and processes;

(e) actions that must or may be taken (including making requirements of NDIS providers) to address complaints;

(f) authorising the provision of information relating to complaints to the Minister, the Agency or other specified bodies;

(g) the matters in relation to which the Commissioner may authorise an inquiry, on his or her own initiative.

Division 6—Incident management—registered NDIS providers

73Y Incident management system

A registered NDIS provider must implement and maintain an incident management system that:

(a) is appropriate for the size of the provider and for the classes of supports or services provided by the provider; and

(b) complies with the requirements (if any) prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

Note: Non-compliance with this section constitutes a breach of condition of registration (see paragraph 73F(2)(g) and section 73J).

73Z Reportable incidents

(1) The National Disability Insurance Scheme rules must prescribe arrangements relating to registered NDIS providers notifying and managing reportable incidents that occur, or are alleged to have occurred, in connection with the provision of supports or services by registered NDIS providers or in other circumstances prescribed by the National Disability Insurance Scheme rules.

(2) Without limiting subsection (1), the National Disability Insurance Scheme rules may deal with the following matters:

(a) the manner and period within which reportable incidents must be reported to the Commission;

(b) action that must be taken in relation to reportable incidents;

(c) authorising the provision of information relating to reportable incidents to the Minister, the Agency or other specified bodies;

(d) the matters in which the Commissioner may authorise an inquiry in relation to a reportable incident, on his or her own initiative.

(3) Without limiting paragraph (2)(b), action may include:

(aa) requiring a registered NDIS provider to provide people with disability with information regarding the use of an advocate (including an independent advocate) in relation to an investigation into the reportable incident; and

(a) requiring a registered NDIS provider to arrange for, and cover the cost of, an independent investigation into the reportable incident within a specified period; and

(b) providing a copy of any report of the independent investigation to the Commissioner.

(4) ***Reportable incident*** means:

(a) the death of a person with disability; or

(b) serious injury to a person with disability; or

(c) abuse or neglect of a person with disability; or

(d) unlawful sexual or physical contact with, or assault of, a person with disability; or

(e) sexual misconduct committed against, or in the presence of, a person with disability, including grooming of the person for sexual activity; or

(f) the use of a restrictive practice in relation to a person with disability, other than where the use is in accordance with an authorisation (however described) of a State or Territory in relation to the person.

(5) Despite subsection (4), the National Disability Insurance Scheme rules may provide as follows:

(a) that a specified act, omission or event is a ***reportable incident***;

(b) that a specified act, omission or event is not a ***reportable incident***.

Division 7—Protection of disclosers

73ZA Disclosures qualifying for protection

(1) This section applies to a disclosure of information by a person (the ***discloser***) who is or was, in relation to an NDIS provider, any of the following:

(a) if the NDIS provider is or was a body corporate—an officer or employee of the body corporate, or a person who has or had a contract for the supply of goods or services to, or on behalf of, the body corporate;

(b) if the NDIS provider is or was an unincorporated association—a member of the committee of management or an employee of the association, or a person who has or had a contract for the supply of goods or services to, or on behalf of, the association;

(c) if the NDIS provider is or was a partnership—a partner in or an employee of the partnership, or a person who has or had a contract for the supply of goods or services to, or on behalf of, the partnership;

(d) in any case—a person with disability who is or was receiving a support or service from the NDIS provider, or a nominee, family member, carer, independent advocate or significant other of that person.

(2) The disclosure of the information by the discloser qualifies for protection under this Division if:

(a) the disclosure is made to one of the following:

(i) the Commissioner;

(ii) the Agency;

(iii) if the NDIS provider is a body corporate—a member of the key personnel of the body corporate;

(iv) if the NDIS provider is an unincorporated association—a member of the key personnel of the association;

(v) if the NDIS provider is a partnership—a partner; and

(c) the discloser has reasonable grounds to suspect that the information indicates that an NDIS provider has, or may have, contravened a provision of this Act.

(3) In this section, ***officer*** has the same meaning as it has in the *Corporations Act 2001*.

73ZB Disclosure that qualifies for protection not actionable etc.

(1) If a person makes a disclosure that qualifies for protection under this Division:

(a) the person is not subject to any civil or criminal liability for making the disclosure; and

(b) no contractual or other remedy may be enforced, and no contractual or other right may be exercised, against the person on the basis of the disclosure.

Note: This subsection does not provide that the person is not subject to any civil or criminal liability for conduct of the person that is revealed by the disclosure.

(2) Without limiting subsection (1):

(a) the person has qualified privilege (see subsection (3)) in respect of the disclosure; and

(b) a contract to which the person is a party may not be terminated on the basis that the disclosure constitutes a breach of the contract.

(3) For the purpose of paragraph (2)(a), ***qualified privilege***, in respect of the disclosure, means that the person:

(a) has qualified privilege in proceedings for defamation; and

(b) is not, in the absence of malice on the person's part, liable to an action for defamation at the suit of a person;

in respect of the disclosure.

(4) For the purpose of paragraph (3)(b), ***malice*** includes ill will to the person concerned or any other improper motive.

(5) This section does not limit or affect any right, privilege or immunity that a person has, apart from this section, as a defendant in proceedings, or an action, for defamation.

73ZBA Confidentiality of identity of disclosers

(1) A person (the ***first person***) contravenes this subsection if:

(a) another person (the ***discloser***) makes a disclosure of information (the ***qualifying disclosure***) that qualifies for protection under this Division; and

(b) the first person discloses either of the following (the ***confidential information***):

(i) the identity of the discloser;

(ii) information that is likely to lead to the identification of the discloser; and

(c) the confidential information is information that the first person obtained directly or indirectly because of the qualifying disclosure; and

(d) the disclosure of the confidential information by the first person:

(i) is to a person other than the discloser; and

(ii) is not authorised under subsection (2).

Civil penalty: 30 penalty units.

(2) A disclosure of the confidential information by the first person is authorised under this subsection if:

(a) the disclosure is made to the Commissioner or the Agency; or

(b) the disclosure is made to any of the following:

(i) a member of the Australian Federal Police (within the meaning of the *Australian Federal Police Act 1979*);

(ii) a special member of the Australian Federal Police (within the meaning of that Act);

(iii) a member of the police force or police service of a State or Territory;

(iv) a prosecutor; or

(c) the disclosure is made to a legal practitioner for the purpose of obtaining legal advice or legal representation in relation to the operation of this Division; or

(d) the disclosure is made with the consent of the discloser, or the discloser has acted in a way that is inconsistent with keeping the discloser's identity confidential; or

(e) the disclosure is necessary to lessen or prevent a serious threat to the safety, health or wellbeing of one or more individuals; or

(f) the disclosure is made to a court, tribunal or a Royal Commission (within the meaning of the *Royal Commissions Act 1902*); or

(g) the discloser elects to have the qualifying disclosure managed as a complaint, and the disclosure is for purposes relating to making, managing or resolving the complaint; or

(h) both of the following apply:

(i) the confidential information is in the public domain before the disclosure is made;

(ii) the original disclosure of the confidential information into the public domain (before the disclosure is made) was not in contravention of subsection (1).

Note: For paragraph (g), the National Disability Insurance Scheme rules may deal with how complaints may be made, managed and resolved (see section 73X).

(3) Subsection (1) does not apply if:

(a) the confidential information disclosed by the first person:

(i) is not the identity of the discloser; and

(ii) is reasonably necessary for the purposes of dealing with the contravention that the qualifying disclosure indicates an NDIS provider has, or may have, made; and

(b) the first person takes all reasonable steps to reduce the risk that the discloser will be identified as a result of the disclosure of the confidential information.

(4) In this section, ***prosecutor*** means a person who institutes or is responsible for the conduct of a prosecution of an offence.

73ZC Victimisation prohibited

Actually causing detriment to another person

(1) A person (the ***first person***) contravenes this subsection if:

(a) the first person engages in conduct; and

(b) the first person's conduct causes any detriment to another person (the ***second person***); and

(c) the first person intends that his or her conduct cause detriment to the second person; and

(d) the first person engages in his or her conduct because the second person or a third person made a disclosure that qualifies for protection under this Division.

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or

(b) in any other case—500 penalty units.

Threatening to cause detriment to another person

(2) A person (the ***first person***) contravenes this subsection if:

(a) the first person makes to another person (the ***second person***) a threat to cause any detriment to the second person or to a third person; and

(b) the first person:

(i) intends the second person to fear that the threat will be carried out; or

(ii) is reckless as to causing the second person to fear that the threat will be carried out; and

(c) the first person makes the threat because a person:

(i) makes a disclosure that qualifies for protection under this Part; or

(ii) may make a disclosure that would qualify for protection under this Division.

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or

(b) in any other case—500 penalty units.

Threats

(3) For the purpose of subsection (2), a threat may be:

(a) express or implied; or

(b) conditional or unconditional.

(4) In proceedings for a civil penalty order against a person for a contravention of subsection (2), it is not necessary to prove that the person threatened actually feared that the threat would be carried out.

73ZD Right to compensation

If:

(a) a person contravenes subsection 73ZC(1) or (2); and

(b) another person suffers damage because of the contravention;

the person in contravention is liable to compensate the other person for the damage.

Division 7A—NDIS Provider Register

73ZDA NDIS Provider Register

NDIS Provider Register

(1) The Commissioner must establish and maintain a register for the purposes of this Act, to be known as the NDIS Provider Register.

(2) The NDIS Provider Register may be kept in any form that the Commissioner considers appropriate.

Banning orders

(3) The NDIS Provider Register must include each of the following in relation to a person against whom a banning order is in force:
  (a) the name of the person;
  (b) the person's ABN (if any);
  (c) information about the banning order;
  (d) any other matter prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

(4) The NDIS Provider Register may include each of the following in relation to a person against whom a banning order was in force:
  (a) the name of the person;
  (b) the person's ABN (if any);
  (c) information about the banning order;
  (d) any other matter prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

Registered NDIS providers

(5) The NDIS Provider Register must include each of the following for each person who is a registered NDIS provider:
  (a) the name of the person;
  (b) the person's ABN (if any);

(c) the period for which the registration of the person is in force;
(d) the address of the principal place of business of the person;
(e) the classes of supports or services the person is registered to provide;
(f) if the registration is in respect of a class of persons—the class;
(g) any conditions to which the registration of the person is subject under section 73G;
(h) if the registration of the person is suspended—information about the suspension;
(i) if the person is, or was, subject to a compliance notice under Part 3B or 3C of this Chapter—information about the compliance notice;
(j) if the person has given an enforceable undertaking under Part 3B or 3C of this Chapter—information about the undertaking;
(k) any other matter prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

NDIS providers (other than registered NDIS providers)

(6) The NDIS Provider Register may include any of the following in relation to an NDIS provider (other than a registered NDIS provider):
(a) the name of the person;
(b) the person's ABN (if any);
(c) the address of the principal place of business of the person;
(d) the classes of supports or services the person provides;
(e) if the person is, or was, subject to a compliance notice—information about the compliance notice;
(f) if the person has given an enforceable undertaking—information about the undertaking;
(g) any other matter prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

Former NDIS providers

(7) The NDIS Provider Register may include any of the following in relation to a person who was an NDIS provider:
- (a) the name of the person;
- (b) the person's ABN (if any);
- (c) the address of the person;
- (d) if the person was a registered NDIS provider and the person's registration was revoked—information about the revocation;
- (e) any other matter prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

Other information

(8) The Commissioner may include other information on the NDIS Provider Register if the Commissioner is satisfied that it is relevant to the provision of supports or services to people with disability.

Rules

(9) The National Disability Insurance Scheme rules may make provision for and in relation to the following:
- (a) the correction of entries in the NDIS Provider Register;
- (b) the publication of the NDIS Provider Register in whole or part, or of specified information entered on the NDIS Provider Register;
- (c) any other matter relating to the administration or operation of the NDIS Provider Register.

Part 3B—Compliance and enforcement in relation to Commissioner functions

Division 1—Monitoring and investigation powers

73ZE Monitoring powers

Provisions subject to monitoring

(1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:
- (a) Division 2 of Part 2 (privacy of information held by the Commission) of this Chapter;
- (aa) section 73ZOB (complying with anti-promotion orders);
- (b) Part 3A (NDIS providers) of this Chapter.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with the following provisions is subject to monitoring under Part 2 of the Regulatory Powers Act:
- (a) Division 2 of Part 2 (privacy of information held by the Commission) of this Chapter;
- (b) Part 3A (NDIS providers) of this Chapter.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(3) For the purposes of Part 2 of the Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
- (a) an inspector is an authorised applicant; and
- (b) an inspector is an authorised person; and
- (c) a magistrate is an issuing officer; and
- (d) the Commissioner is the relevant chief executive; and
- (e) each of the following is a relevant court:
  - (i) the Federal Court;
  - (ii) the Federal Circuit and Family Court of Australia (Division 2);
  - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2).

73ZF Investigation powers

Provisions subject to investigation

(1) The following provisions are subject to investigation under Part 3 of the Regulatory Powers Act:
- (a) a civil penalty provision in:
  - (i) section 59A; or
  - (ii) Division 2 of Part 2 of this Chapter; or
  - (iii) Part 3A, or this Part, of this Chapter;
- (b) an offence provision in:
  - (i) section 59A or 59AE; or

(ii) Part 3A, or this Part, of this Chapter; or

(c) an offence provision in the *Crimes Act 1914* or the *Criminal Code* that relates to:

(i) a provision mentioned in paragraph (a) or (b); or

(ii) a function of the Commission.

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(2) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) an investigator is an authorised applicant; and

(b) an investigator is an authorised person; and

(c) a magistrate is an issuing officer; and

(d) the Commissioner is the relevant chief executive; and

(e) each of the following is a relevant court:

(i) the Federal Court;

(ii) the Federal Circuit and Family Court of Australia (Division 2);

(iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

73ZG Use of equipment to examine or process things

(1) This section applies if an authorised person exercises investigation powers under Part 3 of the Regulatory Powers Act in relation to

premises entered under an investigation warrant issued for the purposes of a provision mentioned in subsection 73ZF(1).

Equipment may be brought to premises

(2) The authorised person or a person assisting may bring to the premises any equipment reasonably necessary for the examination or processing of a thing found at the premises in order to determine whether the thing may be seized.

Thing may be moved for examination or processing

(3) A thing found at the premises may be moved to another place for examination or processing in order to determine whether the thing may be seized if:

(a) both of the following apply:

(i) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance;

(ii) the authorised person or a person assisting suspects on reasonable grounds that the thing contains or constitutes evidential material; or

(b) the occupier of the premises consents in writing.

Notification of examination or processing and right to be present

(4) If the thing is moved to another place for the purpose of examination or processing under subsection (3), the authorised person must, if it is practicable to do so:

(a) inform the occupier of the premises of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow the occupier or his or her representative to be present during the examination or processing.

(5) The authorised person need not comply with paragraph (4)(a) or (b) if he or she believes on reasonable grounds that to do so might:

(a) endanger the safety of a person; or
(b) prejudice an investigation or prosecution.

Time limit on moving the thing

(6) The thing may be moved to another place for examination or processing for no longer than 14 days.

(7) An authorised person may apply to an issuing officer for one or more extensions of that time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 14 days or that time as previously extended.

(8) The authorised person must give notice of the application to the occupier of the premises, and that person is entitled to be heard in relation to the application.

(9) A single extension cannot exceed 7 days.

Equipment at premises may be operated

(10) An authorised person or a person assisting may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized if the authorised person or person assisting believes on reasonable grounds that:
(a) the equipment is suitable for the examination or processing; and
(b) the examination or processing can be carried out without damage to the equipment or the thing.

73ZH Use of electronic equipment at other place

(1) This section applies if an authorised person exercises investigation powers under Part 3 of the Regulatory Powers Act in relation to premises for the purposes of a provision mentioned in subsection 73ZF(1).

(2) If electronic equipment is moved from the premises to another place under subsection 73ZG(3), the authorised person or a person assisting may operate the equipment to access data (including data held at another place).

(3) If the authorised person or the person assisting suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes evidential material, he or she may copy any or all of the data accessed by operating the electronic equipment to a disk, tape or other associated device.

(4) If the Commissioner is satisfied that the data is not required (or is no longer required) for the purposes of this Act or for other judicial or administrative review proceedings, the Commissioner must arrange for:

(a) the removal of the data from any device in the control of the Commission; and

(b) the destruction of any other reproduction of the data in the control of the Commission.

(5) If the authorised person or the person assisting, after operating the equipment, finds that evidential material is accessible by doing so, he or she may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can be put in documentary form—put the material in that form and seize the documents so produced.

(6) An authorised person or a person assisting may seize equipment under paragraph (5)(a) only if:

(a) it is not practicable to copy the data as mentioned in subsection (3) or to put the material in documentary form as mentioned in paragraph (5)(b); or

(b) possession of the equipment by the occupier of the premises could constitute an offence.

73ZI Person with knowledge of a computer or a computer system to assist access etc.

(1) This section applies if an authorised person exercises investigation powers under Part 3 of the Regulatory Powers Act in relation to premises for the purposes of a provision mentioned in subsection 73ZF(1).

(2) The authorised person may apply to an issuing officer referred to in paragraph 73ZF(2)(c) for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow an authorised person or person assisting to do one or more of the following:

- (a) access data held in, or accessible from, a computer or data storage device that:
  - (i) is on the premises; or
  - (ii) has been moved under subsection 73ZG(3) and is at a place for examination or processing; or
  - (iii) has been seized under this Part or under the Regulatory Powers Act as it applies in relation to this Act because of this Part;
- (b) copy data held in, or accessible from, a computer, or data storage device, described in paragraph (a) to another data storage device;
- (c) convert into documentary form or another form intelligible to an authorised person or person assisting:
  - (i) data held in, or accessible from, a computer, or data storage device, described in paragraph (a); or
  - (ii) data held in a data storage device to which the data was copied as described in paragraph (b); or
  - (iii) data held in a data storage device removed from premises under the Regulatory Powers Act as it applies in relation to this Act because of this Part.

(3) The issuing officer may grant the order if the issuing officer is satisfied that:

(a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer or data storage device; and

(b) the specified person is:

(i) reasonably suspected of having committed the offence or contravened the civil penalty provision stated in the relevant warrant; or

(ii) the owner or lessee of the computer or device; or

(iii) an employee of the owner or lessee of the computer or device; or

(iv) a person engaged under a contract for services by the owner or lessee of the computer or device; or

(v) a person who uses or has used the computer or device; or

(vi) a person who is or was a system administrator for the system including the computer or device; and

(c) the specified person has relevant knowledge of:

(i) the computer or device or a computer network of which the computer or device forms or formed a part; or

(ii) measures applied to protect data held in, or accessible from, the computer or device.

(4) If:

(a) the computer or data storage device that is the subject of the order is seized under this Part or under the Regulatory Powers Act as it applies in relation to this Act because of this Part; and

(b) the order was granted on the basis of an application made before the seizure;

the order does not have effect on or after the seizure.

Note: An application for another order under this section relating to the computer or data storage device may be made after the seizure.

(5) If the computer or data storage device is not on the premises, the order must:

(a) specify the period within which the person must provide the information or assistance; and
(b) specify the place at which the person must provide the information or assistance; and
(c) specify the conditions (if any) determined by the issuing officer as the conditions to which the requirement on the person to provide the information or assistance is subject.

(6) A person commits an offence if the person fails to comply with the order.

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

73ZJ Compensation for damage to electronic equipment

(1) This section applies if:
(a) as a result of electronic equipment being operated as mentioned in section 73ZG or 73ZH:
(i) damage is caused to the equipment; or
(ii) the data recorded on the equipment is damaged; or
(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and
(b) the damage or corruption occurs because:
(i) insufficient care was exercised in selecting the person who was to operate the equipment; or
(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in:
(a) the Federal Court of Australia; or
(b) the Federal Circuit and Family Court of Australia (Division 2); or

(c) a court of a State or Territory that has jurisdiction in relation to the matter;

for such reasonable amount of compensation as the court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

Division 2—Civil penalty provisions and infringement notices

73ZK Civil penalty provisions

Enforceable civil penalty provisions

(1) The following civil penalty provisions are enforceable under Part 4 of the Regulatory Powers Act:

(a) subsection 45B(3);

(b) subsection 57(1A), so far as the contravention relates to section 55A;

(c) subsection 59A(3);

(d) subsection 67B(2);

(e) subsection 67C(2);

(f) subsection 67D(1A);

(g) subsection 67D(2A);

(h) subsection 73B(6);

(i) section 73D;

(j) section 73J;

(k) subsection 73R(3);

(l) subsection 73V(3);

(la) subsection 73VA(10);

(m) subsection 73ZBA(1);

(n) subsections 73ZC(1) and (2);

(o) subsection 73ZM(3);

(p) subsection 73ZNA(4);

(q) section 73ZOB.

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the Commissioner is an authorised applicant in relation to the civil penalty provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions mentioned in subsection (1):

(a) the Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2);

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Liability of Crown

(4) To avoid doubt, subsection 205(2) does not prevent the Crown from being liable to pay a pecuniary penalty under a civil penalty order under Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions mentioned in subsection (1).

73ZKA Serious contraventions of civil penalty provisions

(1) If an authorised applicant is applying under the Regulatory Powers Act for a civil penalty order in relation to a serious contravention of a civil penalty provision mentioned in subsection 73ZK(1), the application under subsection 82(1) of that Act must specify the relevant serious contravention.

(2) If, in proceedings for a civil penalty order in relation to a serious contravention of a provision mentioned in subsection 73ZK(1), the relevant court:

(a) is not satisfied that the person has committed a serious contravention of that provision; and

(b) is satisfied that the person has contravened that provision;

the relevant court may make a civil penalty order against the person not for the serious contravention but for the contravention of that provision.

73ZL Infringement notices

Provisions subject to an infringement notice

(1) A civil penalty provision specified in subsection 73ZK(1), other than subsection 59A(3) and section 73D, is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

(1A) However, subsection (1B) applies if the civil penalty provision sets out:

(a) a pecuniary penalty for a serious contravention; and

(b) another pecuniary penalty (the ***general penalty amount***) for any other case.

(1B) For the purposes of an infringement notice for an alleged contravention of the civil penalty provision, in working out the amount to be stated in the infringement notice for the purposes of paragraph 104(1)(f) and subsections 104(2) and (3) of the Regulatory Powers Act:

(a) disregard the pecuniary penalty for a serious contravention; and

(b) the general penalty amount is taken to be the maximum penalty that a court could impose on a person for contravention of the civil penalty provision in all cases.

Infringement officer

(2) For the purposes of Part 5 of the Regulatory Powers Act, the Commissioner is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

(3) For the purposes of Part 5 of the Regulatory Powers Act, the Commissioner is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Liability of Crown

(4) To avoid doubt, subsection 205(2) does not prevent the Crown from being liable to be given an infringement notice under Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1).

Division 3—Compliance notices, banning orders and anti-promotion orders

73ZM Compliance notices

(1) The Commissioner may give to an NDIS provider a written notice (a ***compliance notice***) if the Commissioner:

(a) is satisfied that an NDIS provider is not complying with this Act, to the extent the NDIS provider's conduct relates to the Commissioner's functions; or

(b) is aware of information that suggests that an NDIS provider may not be complying with this Act.

(2) The compliance notice must:

(a) set out the name of the provider to which the notice is given; and

(b) set out brief details of the non-compliance or possible non-compliance; and

(c) specify action that the provider must take, or refrain from taking, in order to address the non-compliance or possible non-compliance; and

(d) specify a reasonable period within which the provider must take, or refrain from taking, the specified action; and

(e) if the Commissioner considers it appropriate—specify a reasonable period within which the provider must provide the Commissioner with evidence that the provider has taken, or refrained from taking, the specified action; and

(f) state that a failure to comply with the notice is subject to a civil penalty; and

(g) if the provider is a registered NDIS provider—state that a failure to comply with the notice may lead to the provider's registration being suspended or revoked; and

(h) set out any other matters specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

(3) An NDIS provider contravenes this subsection if the provider fails to comply with a compliance notice.

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or

(b) in any other case—60 penalty units.

(4) The Commissioner may, by written notice given to an NDIS provider, vary or revoke a compliance notice if the Commissioner considers that it is appropriate in all the circumstances to do so.

(5) In deciding whether to vary or revoke a compliance notice, the Commissioner must consider any submissions that are received from the provider before the end of the period mentioned in paragraph (2)(d).

73ZN Banning orders

Banning orders—NDIS providers

(1) The Commissioner may, by written notice, make an order (a ***banning order***) prohibiting or restricting specified activities by an NDIS provider, or by a person who was an NDIS provider, if:

(a) the Commissioner has revoked the registration of the person as a registered NDIS provider; or

(b) the Commissioner reasonably believes that:

(i) the person has contravened, is contravening, or is likely to contravene this Act; or

(ii) the person has been involved in, or is likely to become involved in, a contravention of this Act by another person; or

(iii) the person is not suitable to provide supports or services to people with disability, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph; or

(iv) in the case of an NDIS provider—there is an immediate danger to the health, safety or wellbeing of a person with disability if the person continues to be an NDIS provider; or

(c) the person is convicted of an offence involving fraud or dishonesty; or

(d) the person becomes an insolvent under administration.

Note: A person who is subject to a banning order cannot be registered as an NDIS provider in a way that is inconsistent with the order (see subsection 73E(3)).

Banning orders—persons employed or otherwise engaged by NDIS providers or key personnel of NDIS providers

(2) The Commissioner may, by written notice, make an order (a ***banning order***) prohibiting or restricting a person who is or was employed or otherwise engaged by an NDIS provider, or a person who is or was a member of the key personnel of an NDIS provider, from engaging in specified activities if:

(a) the Commissioner reasonably believes that:

(i) the person has contravened, is contravening, or is likely to contravene this Act; or

(ii) the person has been involved in, or is likely to become involved in, a contravention of this Act by another person; or

(iii) the person is not suitable to be involved in the provision of supports or services to people with disability, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph; or

(iv) there is an immediate danger to the health, safety or wellbeing of a person with disability if the person continues to engage in the specified activities; or

(b) the person is convicted of an offence involving fraud or dishonesty; or

(c) the person becomes an insolvent under administration.

Banning orders—persons not suitable to be involved in provision of supports or services to people with disability

(2A) The Commissioner may, by written notice, make an order (a ***banning order***) prohibiting or restricting a person from being involved in the provision of specified supports or specified services to people with disability if:

(a) the Commissioner reasonably believes that the person is not suitable to be so involved, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph; and

(b) the person has not previously been an NDIS provider; and

(c) the person has not previously been employed or otherwise engaged by an NDIS provider; and

(d) the person has not previously been a member of the key personnel of an NDIS provider.

Banning orders—applicants for registration, approved quality auditors etc.

(2B) The Commissioner may, by written notice, make an order (a ***banning order***) prohibiting or restricting specified activities by a person mentioned in subsection (2C) if:

(a) the Commissioner has revoked the registration of the person as a registered NDIS provider; or

(b) the Commissioner has revoked the approval of the person to be an approved quality auditor; or

(c) the Commissioner reasonably believes:

(i) that the person has contravened, is contravening, or is likely to contravene this Act; or

(ii) that the person has been involved in, or is likely to become involved in, a contravention of this Act by another person; or

(iii) in the case of a person involved in providing a service mentioned in paragraph (2C)(c) or (d)—that the person is not suitable to be involved in the provision of that service, having regard to any matters prescribed by the

National Disability Insurance Scheme rules for the purposes of this subparagraph; or

(d) the person is convicted of an offence involving fraud or dishonesty; or

(e) the person becomes an insolvent under administration.

(2C) The persons are as follows:

(a) a person who has made an application under section 73C, for registration as a registered NDIS provider, that has not been finally determined;

(b) an approved quality auditor;

(c) a person who is employed or otherwise engaged by, or is a member of the key personnel of, a person mentioned in paragraph (a) or (b) of this subsection;

(d) a person involved in providing any of the following kinds of services:

(i) services that enable or facilitate the provision of supports or services for people with disability;

(ii) without limiting subparagraph (i)—services that involve assisting with, or advising on, applications under section 73C for registration as a registered NDIS provider.

Application of banning orders

(3) A banning order may:

(a) apply generally or may be of limited application; and

(b) be permanent or for a specified period; and

(c) be made subject to specified conditions.

(4) However, a banning order cannot prohibit or restrict activities that a registered NDIS provider is registered to provide under 73E.

(5) A banning order takes effect from the day specified in the order.

(5A) If a banning order under subsection (2) is made against a person who is employed or otherwise engaged by an NDIS provider, the continuity of the order is not affected by the employment or engagement ceasing.

(5B) If a banning order under subsection (2) is made against a person who is a member of the key personnel of an NDIS provider, the continuity of the order is not affected by the person ceasing to be such a member.

(6) A banning order is not a legislative instrument.

Process

(7) The Commissioner may only make a banning order against a person after giving the person an opportunity to make submissions to the Commissioner on the matter.

(8) However, subsection (7) does not apply if the Commissioner's grounds for making the banning order are, or include, the following:

- (a) that there is an immediate danger to the health, safety or wellbeing of a person with disability;
- (b) that the Commissioner has revoked the registration of the person as a registered NDIS provider.

(9) The Commissioner must:

- (a) give the banning order to the person against whom the order is made; and
- (b) include in the banning order a statement of reasons for the order; and
- (c) if the banning order is against a person who is employed or otherwise engaged by an NDIS provider or is a member of the key personnel of an NDIS provider—notify the NDIS provider of the order as soon as possible; and
- (d) if the banning order is against a person who is employed or otherwise engaged by an approved quality auditor or is a member of the key personnel of an approved quality auditor—notify the approved quality auditor of the order as soon as possible.

73ZNA Complying with banning orders

(1) A person contravenes this subsection if:

(a) a banning order has been made against the person; and

(b) the person engages in conduct; and

(c) the conduct breaches the banning order (including a condition of the order).

Fault-based offence

(2) A person commits an offence if the person contravenes subsection (1).

Penalty: Imprisonment for 5 years or 300 penalty units, or both.

Strict liability offence

(3) A person commits an offence of strict liability if the person contravenes subsection (1).

Penalty: 150 penalty units.

Civil penalty

(4) A person is liable to a civil penalty if the person contravenes subsection (1).

Civil penalty:

(a) for a serious contravention by an NDIS provider—10,000 penalty units; or

(b) in any other case—1,000 penalty units.

73ZO Variation or revocation of banning orders

Variation or revocation of banning order

(1) The Commissioner may vary or revoke a banning order, by giving written notice to the person against whom the order was made, if the Commissioner is satisfied that it is appropriate to do so.

(2) The Commissioner may do so:

(a) on his or her own initiative; or

(b) on application by the person against whom the order was made.

(2A) Without limiting subsection (1), a variation of a banning order may involve imposing new conditions on the order or varying or removing existing conditions.

Process

(3) An application under paragraph (2)(b) must:

(a) be in writing; and

(b) be in a form (if any) approved in writing by the Commissioner; and

(c) include any information, and be accompanied by any documents, required by the Commissioner.

(5) If the Commissioner proposes not to vary or revoke a banning order in accordance with an application lodged by a person under paragraph (2)(b), the Commissioner must give the person an opportunity to make submissions to the Commissioner on the matter.

(6) The Commissioner must:

(a) include in the written notice a statement of reasons for the variation or revocation of the order; and

(b) if the variation or revocation relates to a person who is employed or otherwise engaged by an NDIS provider or is a member of the key personnel of an NDIS provider—notify the NDIS provider of the variation or revocation as soon as possible.

Application of variation or revocation of banning order

(7) A variation or revocation of an order takes effect from the day specified in the order.

(8) A variation or revocation of an order is not a legislative instrument.

73ZOA Anti-promotion orders

Anti-promotion orders

(1) The Commissioner may, by written notice, make an order (an ***anti-promotion order***) prohibiting or restricting a person from engaging in regulated promotional conduct of a kind specified in the order if the Commissioner is satisfied that the person has engaged in, or is engaging in, conduct of the specified kind.

(2) The National Disability Insurance Scheme rules may prescribe as ***regulated promotional conduct*** conduct that involves promoting, advertising or marketing matter related to:

(a) supports or services for people with disability; or

(b) NDIS providers; or

(c) things purporting (whether expressly or impliedly) to be things mentioned in paragraph (a) or (b).

(3) Before making National Disability Insurance Scheme rules prescribing conduct as regulated promotional conduct, the Minister must be satisfied that the conduct undermines the objects of this Act or the principles in section 4.

Application of anti-promotion orders

(4) An anti-promotion order may:

(a) apply generally or be of limited application; and

(b) be made subject to specified conditions; and

(c) be permanent or for a specified period.

(5) An anti-promotion order made against a person takes effect on the day specified in the order, which must not be earlier than:

(a) unless paragraph (b) applies—7 days after the day the order is given to the person; or

(b) if the Commissioner considers it is necessary for the order to take effect earlier than that 7 day period in order to protect the health, safety or wellbeing of a person with disability—the day after the day the order is given to the person.

(6) An anti-promotion order is not a legislative instrument.

Process

(7) The Commissioner may make an anti-promotion order against a person only if:
  (a) the Commissioner gives the person an opportunity to make submissions to the Commissioner on the matter; and
  (b) the period of 7 days after the opportunity was given has ended.

(8) The Commissioner must:
  (a) give the anti-promotion order to the person against whom the order is made; and
  (b) include in the anti-promotion order a statement of reasons for the order.

73ZOB Complying with anti-promotion orders

A person contravenes this section if:
  (a) an anti-promotion order has been made against the person; and
  (b) the person engages in conduct; and
  (c) the conduct breaches the anti-promotion order (including a condition of the order).

Civil penalty: 250 penalty units.

73ZOC Variation or revocation of anti-promotion orders

Variation or revocation of anti-promotion orders

(1) The Commissioner may vary or revoke an anti-promotion order, by giving written notice to the person against whom the order was made, if the Commissioner is satisfied it is appropriate to do so.

(2) The Commissioner may do so:
  (a) on the Commissioner's own initiative; or

(b) on application by the person against whom the order was made.

(3) Without limiting subsection (1), a variation may involve imposing new conditions or varying or removing existing conditions.

Process

(4) An application under paragraph (2)(b) must:

(a) be in writing; and

(b) be in the form (if any) approved in writing by the Commissioner; and

(c) include any information, and be accompanied by any documents, required by the Commissioner.

(5) If the Commissioner proposes not to vary or revoke an anti-promotion order in accordance with an application lodged by the person under paragraph (2)(b), the Commissioner:

(a) must give the person an opportunity to make submissions to the Commissioner on the matter; and

(b) must not make the proposed decision unless the period of 7 days after the opportunity was given has ended.

(6) The Commissioner must include in the notice under subsection (1) a statement of reasons for the variation or revocation.

Application of variation or revocation of anti-promotion order

(7) A variation of an anti-promotion order takes effect on the day specified in the notice under subsection (1), which must not be earlier than:

(a) unless paragraph (b) applies—7 days after the day the notice is given; or

(b) if the Commissioner considers it is necessary for the variation to take effect earlier than that 7 day period in order to protect the health, safety or wellbeing of a person with disability—the day after the day the notice is given.

(8) A revocation of an anti-promotion order takes effect on the day specified in the notice under subsection (1), which must not be earlier than the day the notice is given.

(9) A variation or revocation of an anti-promotion order is not a legislative instrument.

Division 4—Enforceable undertakings and injunctions

73ZP Enforceable undertakings

Enforceable provisions

(1) The following provisions are enforceable under Part 6 of the Regulatory Powers Act:
- (aa) section 55A (Commissioner's power to obtain information to ensure integrity);
- (a) Division 2 of Part 2 (privacy of information held by the Commission) of this Chapter;
- (b) Part 3A (NDIS providers) of this Chapter.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

Authorised person

(2) For the purposes of Part 6 of the Regulatory Powers Act, the Commissioner is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):
- (a) the Federal Court;
- (b) the Federal Circuit and Family Court of Australia (Division 2);
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Other undertakings

(4) An authorised person may accept any of the following undertakings:

(a) a written undertaking given by a person that the person will, in order to provide compensation for loss or damage suffered as a result of a contravention or alleged contravention by the person of a provision mentioned in subsection (1), pay another person an amount worked out in accordance with the undertaking;

(b) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of a provision mentioned in subsection (1).

(5) An undertaking under subsection (4) must be expressed to be an undertaking under that subsection.

(6) The power in subsection (4) is in addition to the power of an authorised person under subsection 114(1) of the Regulatory Powers Act.

(7) Part 6 of the Regulatory Powers Act, other than subsection 114(1), applies to an undertaking accepted under subsection (4) of this section as if it were an undertaking accepted under subsection 114(1) of the Regulatory Powers Act.

73ZQ Injunctions

Enforceable provisions

(1) The following provisions are enforceable under Part 7 of the Regulatory Powers Act:

(a) Division 2 of Part 2 (privacy of information held by the Commission) of this Chapter;

(b) Part 3A (NDIS providers) of this Chapter.

Note: Part 7 of the Regulatory Powers Act creates a framework for using injunctions to enforce provisions.

Authorised person

(2) For the purposes of Part 7 of the Regulatory Powers Act, the Commissioner is an authorised person.

Relevant court

(3) For the purposes of Part 7 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions of this Act:
- (a) the Federal Court;
- (b) the Federal Circuit and Family Court of Australia (Division 2);
- (c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Consent injunctions

(4) A relevant court may grant an injunction under Part 7 of the Regulatory Powers Act in relation to a provision mentioned in subsection (1) by consent of all the parties to proceedings brought under that Part, whether or not the court is satisfied that section 121 of that Act applies.

Division 5—Inspectors and investigators

73ZR Appointment of inspectors and investigators

(1) The Commissioner may, in writing, appoint a person who is one of the following as an inspector, an investigator, or both, for the purposes of this Part:

(a) a member of the staff of the Commission under section 181U;

(b) a person assisting the Commissioner under section 181W;

(c) a person performing services for the Commonwealth under a contract with the Commonwealth.

(2) The Commissioner must not appoint a person mentioned in subsection (1) unless the Commissioner is satisfied that:

(a) the person has suitable training or experience to properly exercise the powers for which the person will be authorised to use; and

(b) the person is otherwise an appropriate person to be appointed as an inspector, investigator or both (as the case requires).

(3) A person appointed under this section must, in exercising powers as such, comply with any directions of the Commissioner.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

Part 3C—Compliance and enforcement in relation to Agency functions

73ZSA Monitoring powers

Provisions subject to monitoring

(1) The following provisions are subject to monitoring under Part 2 of the Regulatory Powers Act:

(a) Part 1 of Chapter 3;

(b) Part 2 of Chapter 3;

(c) Part 1 of this Chapter (other than sections 55A and 59A);

(d) Division 1 of Part 2 of this Chapter;

(e) Part 4 of this Chapter;

(f) Part 5 of this Chapter;

(g) Chapter 5;

(h) Part 1 of Chapter 7;

(i) an offence provision of the *Crimes Act 1914* or the *Criminal Code*, to the extent that it relates to one or more of the provisions mentioned in paragraphs (a) to (h).

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions mentioned in this subsection have been complied with. It includes powers of entry and inspection.

Information subject to monitoring

(2) Information given in compliance or purported compliance with a provision mentioned in subsection (1) is subject to monitoring under Part 2 of the Regulatory Powers Act.

Note: Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. It includes powers of entry and inspection.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(3) For the purposes of Part 2 of the Regulatory Powers Act as it applies in relation to the provisions mentioned in subsection (1) and the information mentioned in subsection (2):
- (a) the following are authorised applicants:
  - (i) the CEO;
  - (ii) an NDIA inspector; and
- (b) the following are authorised persons:
  - (i) the CEO;
  - (ii) an NDIA inspector; and
- (c) a magistrate is an issuing officer; and
- (d) the CEO is the relevant chief executive; and
- (e) each of the following is a relevant court:
  - (i) the Federal Court;
  - (ii) the Federal Circuit and Family Court of Australia (Division 2);
  - (iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(4) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to this Part.

73ZSB Investigation powers

Provisions subject to investigation

(1) The following provisions are subject to investigation under Part 3 of the Regulatory Powers Act:
- (a) a civil penalty provision in:
  - (i) Division 1 of Part 1 of this Chapter; or
  - (ii) Division 2 of Part 1 of this Chapter; or

(iia) section 59AB;
(iii) Division 1 of Part 2 of this Chapter; or
(iv) Division 1 of Part 5 of this Chapter; or
(v) Part 3 of Chapter 5; or
(vi) Part 1 of Chapter 7;

(b) an offence provision in this Act other than in:
(i) section 59A; or
(ii) Part 3B of this Chapter;

(c) an offence provision in the *Crimes Act 1914* or the *Criminal Code*, that relates to a provision mentioned in paragraph (a) or (b).

Note: Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

(2) For the purposes of Part 3 of the Regulatory Powers Act, as it applies in relation to evidential material that relates to a provision mentioned in subsection (1):

(a) the following are authorised applicants:
(i) the CEO;
(ii) an NDIA investigator; and

(b) the following are authorised persons:
(i) the CEO;
(ii) an NDIA investigator; and

(c) a magistrate is an issuing officer; and

(d) the CEO is the relevant chief executive; and

(e) each of the following is a relevant court:
(i) the Federal Court;
(ii) the Federal Circuit and Family Court of Australia (Division 2);
(iii) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Person assisting

(3) An authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 3 of the Regulatory Powers Act in relation to evidential material that relates to a provision mentioned in subsection (1).

73ZSC Use of equipment to examine or process things

(1) This section applies if an authorised person exercises investigation powers under Part 3 of the Regulatory Powers Act in relation to premises entered under an investigation warrant issued for the purposes of a provision mentioned in subsection 73ZSB(1).

Equipment may be brought to premises

(2) The authorised person or a person assisting may bring to the premises any equipment reasonably necessary for the examination or processing of a thing found at the premises in order to determine whether the thing may be seized.

Thing may be moved for examination or processing

(3) A thing found at the premises may be moved to another place for examination or processing in order to determine whether the thing may be seized if:
   (a) both of the following apply:
      (i) it is significantly more practicable to do so having regard to the timeliness and cost of examining or processing the thing at another place and the availability of expert assistance;
      (ii) the authorised person or a person assisting suspects on reasonable grounds that the thing contains or constitutes evidential material; or
   (b) the occupier of the premises consents in writing.

Notification of examination or processing and right to be present

(4) If the thing is moved to another place for the purpose of examination or processing under subsection (3), the authorised person must, if it is practicable to do so:

(a) inform the occupier of the premises of the address of the place and the time at which the examination or processing will be carried out; and

(b) allow the occupier or the occupier's representative to be present during the examination or processing.

(5) The authorised person need not comply with paragraph (4)(a) or (b) if the authorised person believes on reasonable grounds that to do so might:

(a) endanger the safety of a person; or

(b) prejudice an investigation or prosecution.

Time limit on moving the thing

(6) The thing may be moved to another place for examination or processing for no longer than 14 days.

(7) An authorised person may apply to an issuing officer for one or more extensions of that time if the authorised person believes on reasonable grounds that the thing cannot be examined or processed within 14 days or that time as previously extended.

(8) The authorised person must give notice of the application to the occupier of the premises, and that person is entitled to be heard in relation to the application.

(9) A single extension cannot exceed 7 days.

Equipment at premises may be operated

(10) An authorised person or a person assisting may operate equipment already at the premises to carry out the examination or processing of a thing found at the premises in order to determine whether it is a thing that may be seized if the authorised person or person assisting believes on reasonable grounds that:

(a) the equipment is suitable for the examination or processing; and

(b) the examination or processing can be carried out without damage to the equipment or the thing.

73ZSD Use of electronic equipment at other place

(1) This section applies if an authorised person exercises investigation powers under Part 3 of the Regulatory Powers Act in relation to premises for the purposes of a provision mentioned in subsection 73ZSB(1).

(2) If electronic equipment is moved from the premises to another place under subsection 73ZSC(3), the authorised person or a person assisting may operate the equipment to access data (including data held at another place).

(3) If the authorised person or the person assisting suspects on reasonable grounds that any data accessed by operating the electronic equipment constitutes evidential material, the person may copy any or all of the data accessed by operating the electronic equipment to a disk, tape or other associated device.

(4) If the CEO is satisfied that the data is not required (or is no longer required) for the purposes of this Act or for other judicial or administrative review proceedings, the CEO must arrange for:

(a) the removal of the data from any device in the control of the Agency; and

(b) the destruction of any other reproduction of the data in the control of the Agency.

(5) If the authorised person or the person assisting, after operating the equipment, finds that evidential material is accessible by doing so, the person may:

(a) seize the equipment and any disk, tape or other associated device; or

(b) if the material can be put in documentary form—put the material in that form and seize the documents so produced.

(6) An authorised person or a person assisting may seize equipment under paragraph (5)(a) only if:

(a) it is not practicable to copy the data as mentioned in subsection (3) or to put the material in documentary form as mentioned in paragraph (5)(b); or

(b) possession of the equipment by the occupier of the premises could constitute an offence.

73ZSE Person with knowledge of a computer or a computer system to assist access etc.

(1) This section applies if an authorised person exercises investigation powers under Part 3 of the Regulatory Powers Act in relation to premises for the purposes of a provision mentioned in subsection 73ZSB(1).

(2) The authorised person may apply to an issuing officer referred to in paragraph 73ZSB(2)(c) for an order requiring a specified person to provide any information or assistance that is reasonable and necessary to allow an authorised person or person assisting to do one or more of the following:

(a) access data held in, or accessible from, a computer or data storage device that:

(i) is on the premises; or

(ii) has been moved under subsection 73ZSC(3) and is at a place for examination or processing; or

(iii) has been seized under this Part or under the Regulatory Powers Act as it applies in relation to this Act because of this Part;

(b) copy data held in, or accessible from, a computer, or data storage device, described in paragraph (a) to another data storage device;

(c) convert into documentary form or another form intelligible to an authorised person or person assisting:

(i) data held in, or accessible from, a computer, or data storage device, described in paragraph (a); or

(ii) data held in a data storage device to which the data was copied as described in paragraph (b); or

(iii) data held in a data storage device removed from premises under the Regulatory Powers Act as it applies in relation to this Act because of this Part.

(3) The issuing officer may grant the order if the issuing officer is satisfied that:

(a) there are reasonable grounds for suspecting that evidential material is held in, or is accessible from, the computer or data storage device; and

(b) the specified person is:

(i) reasonably suspected of having committed the offence or contravened the civil penalty provision stated in the relevant warrant; or

(ii) the owner or lessee of the computer or device; or

(iii) an employee of the owner or lessee of the computer or device; or

(iv) a person engaged under a contract for services by the owner or lessee of the computer or device; or

(v) a person who uses or has used the computer or device; or

(vi) a person who is or was a system administrator for the system including the computer or device; and

(c) the specified person has relevant knowledge of:

(i) the computer or device or a computer network of which the computer or device forms or formed a part; or

(ii) measures applied to protect data held in, or accessible from, the computer or device.

(4) If:

(a) the computer or data storage device that is the subject of the order is seized under this Part or under the Regulatory Powers Act as it applies in relation to this Act because of this Part; and

(b) the order was granted on the basis of an application made before the seizure;

the order does not have effect on or after the seizure.

Note: An application for another order under this section relating to the computer or data storage device may be made after the seizure.

(5) If the computer or data storage device is not on the premises, the order must:

(a) specify the period within which the person must provide the information or assistance; and

(b) specify the place at which the person must provide the information or assistance; and

(c) specify the conditions (if any) determined by the issuing officer as the conditions to which the requirement on the person to provide the information or assistance is subject.

(6) A person commits an offence if the person fails to comply with the order.

Penalty:

(a) for a participant—30 penalty units; or

(b) in any other case—imprisonment for 2 years, or 120 penalty units, or both.

73ZSF Compensation for damage to electronic equipment

(1) This section applies if:

(a) as a result of electronic equipment being operated as mentioned in section 73ZSC or 73ZSD:

(i) damage is caused to the equipment; or

(ii) the data recorded on the equipment is damaged; or

(iii) programs associated with the use of the equipment, or with the use of the data, are damaged or corrupted; and

(b) the damage or corruption occurs because:

(i) insufficient care was exercised in selecting the person who was to operate the equipment; or

(ii) insufficient care was exercised by the person operating the equipment.

(2) The Commonwealth must pay the owner of the equipment, or the user of the data or programs, such reasonable compensation for the damage or corruption as the Commonwealth and the owner or user agree on.

(3) However, if the owner or user and the Commonwealth fail to agree, the owner or user may institute proceedings in:
(a) the Federal Court of Australia; or
(b) the Federal Circuit and Family Court of Australia (Division 2); or
(c) a court of a State or Territory that has jurisdiction in relation to the matter;
for such reasonable amount of compensation as the court determines.

(4) In determining the amount of compensation payable, regard is to be had to whether the occupier of the premises, or the occupier's employees or agents, if they were available at the time, provided any appropriate warning or guidance on the operation of the equipment.

73ZSG Civil penalty provisions

Enforceable civil penalty provisions

(1) The following civil penalty provisions are enforceable under Part 4 of the Regulatory Powers Act:
(a) subsection 53(3);
(aa) subsection 59AB(3);
(b) subsection 73ZSI(4);
(c) subsection 80(5);
(d) subsection 83(3D);
(e) subsection 84(8A);
(f) subsections 110(3) and (4);

(g) subsections 114(5) and (7);
(h) subsection 185(5A);
(i) subsection 189(2A).

Note: Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

(2) For the purposes of Part 4 of the Regulatory Powers Act, the CEO is an authorised applicant in relation to the civil penalty provisions mentioned in subsection (1).

Relevant court

(3) For the purposes of Part 4 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the civil penalty provisions mentioned in subsection (1):
(a) the Federal Court;
(b) the Federal Circuit and Family Court of Australia (Division 2);
(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Liability of Crown

(4) To avoid doubt, subsection 205(2) does not prevent the Crown from being liable to pay a pecuniary penalty under a civil penalty order under Part 4 of the Regulatory Powers Act, as that Part applies in relation to the civil penalty provisions mentioned in subsection (1).

73ZSGA Serious contraventions of civil penalty provisions

(1) If an authorised applicant is applying under the Regulatory Powers Act for a civil penalty order in relation to a serious contravention of a civil penalty provision mentioned in subsection 73ZSG(1), the

application under subsection 82(1) of that Act must specify the relevant serious contravention.

(2) If, in proceedings for a civil penalty order in relation to a serious contravention of a provision mentioned in subsection 73ZSG(1), the relevant court:

(a) is not satisfied that the person has committed a serious contravention of that provision; and

(b) is satisfied that the person has contravened that provision;

the relevant court may make a civil penalty order against the person not for the serious contravention but for the contravention of that provision.

73ZSH Infringement notices

Provisions subject to an infringement notice

(1) Subject to subsection (2), a civil penalty provision specified in subsection 73ZSG(1) (other than subsection 59AB(3)) is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

Note: Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions.

(2) A civil penalty provision mentioned in subsection (1) is not subject to such an infringement notice, in relation to a particular contravention, if the person who is believed to have contravened the provision is:

(a) a participant; or

(b) a prospective participant; or

(c) a plan nominee; or

(d) a person doing a thing required or permitted to be done by or in relation to a child in accordance with subsection 74(1).

Infringement officer

(3) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is an infringement officer in relation to the provisions mentioned in subsection (1).

Relevant chief executive

(4) For the purposes of Part 5 of the Regulatory Powers Act, the CEO is the relevant chief executive in relation to the provisions mentioned in subsection (1).

Liability of Crown

(5) To avoid doubt, subsection 205(2) does not prevent the Crown from being liable to be given an infringement notice under Part 5 of the Regulatory Powers Act, as that Part applies in relation to the provisions mentioned in subsection (1).

73ZSI Compliance notices

(1) Subject to subsection (2), the CEO may give to a person a written notice (a ***compliance notice***) if the CEO:
- (a) is satisfied that the person is not complying with this Act, to the extent the person's conduct relates to the Agency's functions; or
- (b) is aware of information that suggests that the person may not be complying with this Act.

Note: Section 118 sets out the functions of the Agency.

(2) The CEO must not give a compliance notice to:
- (a) a participant; or
- (b) a prospective participant; or
- (c) a plan nominee; or
- (d) a person doing a thing required or permitted to be done by or in relation to a child in accordance with subsection 74(1).

(3) The compliance notice must:
- (a) set out the name of the person to which the notice is given; and
- (b) set out brief details of the non-compliance or possible non-compliance; and

(c) specify action that the person must take, or refrain from taking, in order to address the non-compliance or possible non-compliance; and

(d) specify a reasonable period within which the person must take, or refrain from taking, the specified action; and

(e) if the CEO considers it appropriate—specify a reasonable period within which the person must provide the CEO with evidence that the person has taken, or refrained from taking, the specified action; and

(f) state that a failure to comply with the notice is subject to a civil penalty; and

(g) set out any other matters specified in the National Disability Insurance Scheme rules for the purposes of this paragraph.

(4) A person contravenes this subsection if the person fails to comply with a compliance notice.

Civil penalty: 60 penalty units.

(5) The CEO may, by written notice given to a person, vary or revoke a compliance notice if the CEO considers that it is appropriate in all the circumstances to do so.

(6) In deciding whether to vary or revoke a compliance notice, the CEO must consider any submissions that are received from the provider before the end of the period mentioned in paragraph (3)(d).

73ZSJ Enforceable undertakings

Enforceable provisions

(1) Subject to subsection (2), the following provisions are enforceable under Part 6 of the Regulatory Powers Act:

(a) section 46;

(b) section 55;

(c) section 57;

(d) section 110;

(e) section 114;

(f) section 189.

Note: Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions.

(2) However, the CEO must not accept or enforce an undertaking under Part 6 of the Regulatory Powers Act, or under subsection (5) of this section, in relation to a civil penalty provision mentioned in subsection (1), from or against:

(a) a participant; or

(b) a plan nominee; or

(c) a person doing a thing required or permitted to be done by or in relation to a child in accordance with subsection 74(1).

Authorised person

(3) For the purposes of Part 6 of the Regulatory Powers Act, the CEO is an authorised person in relation to the provisions mentioned in subsection (1).

Relevant court

(4) For the purposes of Part 6 of the Regulatory Powers Act, each of the following courts is a relevant court in relation to the provisions mentioned in subsection (1):

(a) the Federal Court;

(b) the Federal Circuit and Family Court of Australia (Division 2);

(c) a court of a State or Territory that has jurisdiction in relation to matters arising under this Act.

Other undertakings

(5) An authorised person may accept any of the following undertakings:

(a) a written undertaking given by a person that the person will, in order to provide compensation for loss or damage suffered as a result of a contravention or alleged contravention by the person of a provision mentioned in subsection (1), pay another person an amount worked out in accordance with the undertaking;

(b) a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention by the person of a provision mentioned in subsection (1).

(6) An undertaking under subsection (5) must be expressed to be an undertaking under that subsection.

(7) The power in subsection (5) is in addition to the power of an authorised person under subsection 114(1) of the Regulatory Powers Act.

(8) Part 6 of the Regulatory Powers Act, other than subsection 114(1), applies to an undertaking accepted under subsection (5) of this section as if it were an undertaking accepted under subsection 114(1) of the Regulatory Powers Act.

73ZSK Appointment of NDIA inspectors and NDIA investigators

(1) The CEO may, in writing, appoint a person who is one of the following as an NDIA inspector, an NDIA investigator, or both, for the purposes of this Chapter:

(a) a member of the staff of the Agency;

(b) a person assisting the CEO;

(c) a person performing services for the Commonwealth under a contract with the Commonwealth.

(2) The CEO must not appoint a person mentioned in subsection (1) unless the CEO is satisfied that:

(a) the person has suitable training or experience to properly exercise the powers for which the person will be authorised to use; and

(b) the person is otherwise an appropriate person to be appointed as an NDIA inspector, NDIA investigator or both (as the case requires).

(3) A person appointed under this section must, in exercising powers as such, comply with any directions of the CEO.

(4) If a direction is given under subsection (3) in writing, the direction is not a legislative instrument.

73ZSL Determination relating to exercise of regulatory powers

(1) The Minister must, by legislative instrument, determine conditions that must be met by an authorised person before and during the exercise of monitoring or investigation powers under Part 2 or 3 of the Regulatory Powers Act, as it applies because of section 73ZSA or 73ZSB of this Act, in relation to a participant or prospective participant.

(2) Without limiting subsection (1), the determination must specify what the authorised person must consider in relation to:

(a) the circumstances of the participant or prospective participant; and

(b) the circumstances and nature of the conduct subject to the regulatory action; and

(c) the exercise of the powers in relation to the participant or prospective participant.

Example 1: Circumstances under paragraph (a) could include the participant or prospective participant's: ability to understand the exercise of the regulatory power; ability to comply with requirements imposed in the exercise of the regulatory power; or personal, social or environmental circumstances.

Example 2: Circumstances and nature of the conduct under paragraph (b) could include: the nature and seriousness of the conduct; whether and to what extent the relevant conduct was beyond the participant's control; or whether there are any less intrusive means to achieve the regulatory objective.

Example 3: Considerations in relation to the exercise of the powers under paragraph (c) could include: whether a participant should be assisted by a nominee; how to ensure that information related to the exercise of regulatory powers is communicated to the participant in accessible forms; or ensuring that a participant's disability, or reliance on supports because of disability, is not taken to mean non-cooperation or evidence of intentional non-compliance.

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

73ZSM Determination relating to when powers must not be exercised

The Minister may, by legislative instrument, determine circumstances in which the authorised person must not exercise monitoring or investigation powers under Part 2 or 3 of the Regulatory Powers Act, as it applies because of section 73ZSA or 73ZSB of this Act, in relation to a participant or prospective participant.

Part 4—Children

74 Children

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

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

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

(1A) If:

(a) a State or Territory Minister; or

(b) the head (however described) of a Department of State of a State or Territory;

has parental responsibility for the child, the CEO must not make a determination under paragraph (1)(b) in relation to the child unless the Minister or the head of the Department, as the case may be, has agreed in writing to the making of the determination.

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

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

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

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

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

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

(a) the CEO may, if satisfied that a circumstance mentioned in subsection (3C) exists, decide that:
    (i) a person mentioned in subsection (3B) is to manage a particular proportion of flexible funding provided under the plan; or
    (ii) a person mentioned in subsection (3B) is to manage funding provided under the plan for a particular stated support or class of stated supports; and
(b) the statement of participant supports in the plan must give effect to the decision.

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

(3B) For the purposes of subparagraphs (3A)(a)(i) and (ii), the persons are as follows:
(a) the Agency;
(b) the person mentioned in subsection (1), if the person has made a request covered by paragraph (2)(a);
(c) a registered plan management provider, if the person mentioned in subsection (1) has made a request covered by paragraph (2)(b) that nominates the provider.

(3C) For the purposes of paragraph (3A)(a), the circumstances are as follows:
(a) the participant would be likely to suffer physical, mental or financial harm were the CEO to not make the decision;
(b) section 46 (acquittal of NDIS amounts) has not been complied with in relation to the plan or any of the participant's previous plans;
(c) a circumstance prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

(3D) Paragraph (3A)(b) does not apply to funding to the extent that subsection (4) or (4A) applies to the funding.

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

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

(b) to a particular extent, if the CEO is satisfied:

(i) that management of the plan to that extent would present an unreasonable risk to the participant; or

(ii) that management of the plan to that extent would permit the person to manage matters that are prescribed by the National Disability Insurance Scheme rules as being matters that must not be managed by the person; or

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

(4A) If:

(a) a person mentioned in subsection (1) has made a request covered by paragraph (2)(b); and

(b) the CEO is satisfied that the management of the funding for supports under the plan to a particular extent by the registered plan management provider nominated by the person would present an unreasonable risk to the participant;

the statement of participant supports in the participant's plan must not provide that the nominated provider is to manage the funding for supports under the plan to that extent.

(5) Subsections (1) and (2) of this section do not have effect in relation to a participant who is a child if:

(a) the CEO is satisfied that the child is capable of making decisions for himself or herself; and

(b) the CEO is satisfied that it is appropriate in the circumstances for those subsections not to apply to the child; and

(c) the CEO makes a determination that those subsections do not apply to the child.

(6) The National Disability Insurance Scheme rules may make provision for determining any matter for the purposes of this section, including but not limited to:

(a) requirements with which the CEO must comply; and

(b) methods or criteria that the CEO is to apply; and

(c) matters that the CEO may, must or must not take into account;

in making any decision under this section.

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

(7) A determination made under paragraph (5)(c) is not a legislative instrument.

75 Definition of *parental responsibility*

(1) For the purposes of this Act, a person has ***parental responsibility*** for a child if:

(a) the person is the child's parent and has not ceased to have parental responsibility for the child because of an order made under the *Family Law Act 1975* or a law of a State or Territory; or

(b) under a parenting order (within the meaning of the *Family Law Act 1975*):

(i) the child is to live with the person; or

(ii) the child is to spend time with the person; or

(iii) the person is responsible for the child's long-term or day-to-day care, welfare and development.

(2) Despite subsection (1), if, under a law of the Commonwealth, a State or a Territory, a person has guardianship of a child, that person has ***parental responsibility*** for the child, unless the CEO determines that one or more of the persons referred to in subsection (1) instead have parental responsibility for the child.

(3) If subsection (1) would result in more than one person having parental responsibility for a child, the CEO may determine that one or more of those persons have parental responsibility for the child for the purposes of this Act.

(3A) If:

(a) a State or Territory Minister; or

(b) the head (however described) of a Department of State of a State or Territory;

has guardianship of the child, the CEO must not make a determination under subsection (2) or (3) in relation to the child unless the Minister or the head of the Department, as the case may be, has agreed in writing to the making of the determination.

(4) The National Disability Insurance Scheme rules may prescribe requirements with which the CEO must comply, criteria that the CEO is to apply or matters to which the CEO is to have regard in deciding whether to make a determination under subsection (2) or (3).

(5) A determination under subsection (2) or (3) must be in writing.

(6) A determination under subsection (2) or (3) is not a legislative instrument.

76 Duty to children

(1) It is the duty of a person who may do a thing because of section 74 to ascertain the wishes of the child concerned and to act in the best interests of the child.

(2) A person does not breach the duty imposed by subsection (1) by doing a thing if, when the thing is done, the person reasonably believes that:

(a) he or she has ascertained the wishes of the child in relation to the thing; and

(b) the doing of the thing is in the best interests of the child.

(3) A person does not breach the duty imposed by subsection (1) by refraining from doing a thing if, at the relevant time, the person reasonably believes that:

(a) he or she has ascertained the wishes of the child in relation to the thing; and

(b) not doing the thing is in the best interests of the child.

(4) The National Disability Insurance Scheme rules may prescribe other duties of a person who may do a thing in relation to a child because of section 74, including duties requiring the person:

(a) to support decision-making by the child personally; or

(b) to have regard to, and give appropriate weight to, the views of the child.

77 Revocation of determinations under section 74

(1) The CEO may, by written instrument, revoke a determination that is in effect under paragraph 74(1)(b) in relation to a person if:

(a) the person requests the CEO in writing to do so; or

(b) the CEO is satisfied that it is no longer appropriate for the determination to remain in effect.

(2) The CEO must give the person a copy of the instrument.

Part 5—Nominees

Division 1—Functions and responsibilities of nominees

78 Actions of plan nominee on behalf of participant

(1) Any act that may be done by a participant under, or for the purposes of, this Act that relates to:

(a) the preparation, variation, reassessment or replacement of the participant's plan; or

(b) the management of the funding for supports under the participant's plan; or

(c) withdrawing as a participant under section 29A;

may be done by the participant's plan nominee, other than to the extent specified in the instrument of appointment of the plan nominee.

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

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

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

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

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

(5) If the participant's plan nominee was appointed on the initiative of the CEO, the plan nominee may only do an act in relation to:

(a) the preparation, variation, reassessment or replacement of the participant's plan; or
(b) the management of the funding for supports under the participant's plan; or
(c) withdrawing as a participant under section 29A;

if the nominee considers that the participant is not capable of doing, or being supported to do, the act.

79 Actions of correspondence nominee on behalf of participant

(1) Any act that may be done by a participant under, or for the purposes of, this Act may be done by the participant's correspondence nominee, other than an act that relates to:
(a) the preparation, variation, reassessment or replacement of the participant's plan; or
(b) the management of the funding for supports under the participant's plan; or
(c) withdrawing as a participant under section 29A.

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

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

(2) Without limiting subsection (1), a request (other than a request under section 29A) that may be made under this Act by a participant may be made by the participant's correspondence nominee on behalf of the participant.

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

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

80 Duties of nominees to participant etc.

Duties of nominees

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

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

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

(b) the doing of the act promotes the personal and social wellbeing of the participant.

(3) A nominee does not breach the duty imposed by subsection (1) by refraining from doing an act if, at the relevant time, the nominee reasonably believes that:

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

(b) not doing the act promotes the personal and social wellbeing of the participant.

(4) The National Disability Insurance Scheme rules may prescribe other duties of a nominee, including duties requiring the nominee:

(a) to support decision-making by the participant personally; or

(b) to have regard to, and give appropriate weight to, the views of the participant; or

(c) to inform the CEO and the participant if the nominee has, acquires, or is likely to acquire, any interest, pecuniary or otherwise, that conflicts or could conflict with the performance of the nominee's duties.

Civil penalty

(5) A person contravenes this subsection if:

(a) the person is a nominee of a participant; and

(b) the person knowingly engages in conduct; and
(c) the conduct breaches the duty imposed by subsection (1).

Civil penalty for contravention of this subsection: 60 penalty units.

81 Giving of notices to correspondence nominee

(1) Any notice that the CEO is authorised or required by this Act to give to a participant must be given by the CEO to the participant's correspondence nominee.

(2) The notice:
(a) must, in every respect, be in the same form, and in the same terms, as if it were being given to the participant; and
(b) may be given to the correspondence nominee personally, by post or by any other means approved by the CEO.

(3) If:
(a) under subsection (1), the CEO gives a notice (the ***nominee notice***) to a participant's correspondence nominee; and
(b) the CEO has already given, or afterwards gives, the participant a notice that:
(i) is expressed to be given under the same provision of this Act as the nominee notice; and
(ii) makes the same requirement of the participant as the nominee notice;

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

82 Compliance by correspondence nominee

(1) If, under section 81, a notice is given to a participant's correspondence nominee, the following paragraphs have effect:
(a) for the purposes of this Act, other than this Part, the notice is taken:
(i) to have been given to the participant; and

(ii) to have been so given on the day the notice was given to the correspondence nominee;

(b) any requirement made of the participant to:

(i) inform the CEO of a matter; or

(ii) give information, or produce a document, to an Agency officer;

may be satisfied by the correspondence nominee;

(c) any act done by the correspondence nominee for the purposes of satisfying such a requirement has effect, for the purposes of this Act, as if it had been done by the participant;

(d) if the correspondence nominee fails to satisfy such a requirement, the participant is taken, for the purposes of this Act, to have failed to comply with the requirement.

(2) To avoid doubt, for the purposes of this Act, the participant is taken to have complied with a requirement if:

(a) the requirement imposes an obligation on the participant to inform the CEO of a matter, or give information or produce a document, within a specified period; and

(b) the correspondence nominee does so within that period.

(3) To avoid doubt, for the purposes of this Act, the participant is taken not to have complied with a requirement if:

(a) the requirement imposes an obligation on the participant to inform the CEO of a matter, or give information or produce a document, within a specified period; and

(b) the correspondence nominee does not do so within that period.

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

CEO may give nominee written notice to inform Agency

(1) The CEO may give a nominee of a participant a written notice that requires the nominee to inform the Agency if:

(a) either:

(i) an event or change of circumstances happens; or

(ii) the nominee becomes aware that an event or change of circumstances is likely to happen; and

(b) the event or change of circumstances is likely to affect:

(i) the ability of the nominee to act as the plan nominee or correspondence nominee of the participant (as the case may be); or

(ii) the ability of the CEO to give notices to the nominee under this Act; or

(iii) the ability of the nominee to comply with notices given to the nominee by the CEO under this Act.

(2) A notice under subsection (1) must specify:

(a) how the nominee is to inform the Agency; and

(b) the period within which the nominee is to inform the Agency, which must be a period of at least 14 days beginning on whichever of the following days is applicable:

(i) the day on which the event or change of circumstances happens;

(ii) the day on which the nominee becomes aware that the event or change of circumstances is likely to happen.

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

Nominee must inform Agency

(3A) A nominee of a participant must inform the Agency, in accordance with subsections (3B) and (3C), if:

(a) either:

(i) an event or change of circumstances happens; or

(ii) the nominee becomes aware that an event or change of circumstances is likely to happen; and

(b) the event or change of circumstances is likely to affect:

(i) the ability of the nominee to act as the plan nominee or correspondence nominee of the participant (as the case may be); or

(ii) the ability of the CEO to give notices to the nominee under this Act; or

(iii) the ability of the nominee to comply with notices given to the nominee by the CEO under this Act.

(3B) For the purposes of subsection (3A), the nominee must inform the Agency as soon as reasonably practicable after:

(a) the event or change of circumstances happens; or

(b) the nominee first becomes aware that the event or change of circumstances is likely to happen.

(3C) For the purposes of subsection (3A), the nominee must inform the Agency of:

(a) the event or change in circumstance; and

(b) how the event or change in circumstance is likely to affect the following:

(i) the ability of the nominee to act as the plan nominee or correspondence nominee of the participant (as the case may be);

(ii) the ability of the CEO to give notices to the nominee under this Act;

(iii) the ability of the nominee to comply with notices given to the nominee by the CEO under this Act;

(iv) any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph.

Civil penalty

(3D) A person contravenes this subsection if:

(a) the person is subject to a requirement under subsection (3A); and

(b) the person refuses or fails to comply with the requirement.

Civil penalty: 30 penalty units.

Extension to various matters etc.

(4) This section extends to:

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

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

84 Statement by plan nominee regarding disposal of money

CEO may require nominee to give statement

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

(2) A notice under subsection (1):

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

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

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

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

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

Offence

(6) A person commits an offence if:

(a) the person is a plan nominee; and

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

Penalty: 30 penalty units.

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

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

(7A) It is a reasonable excuse for an individual to refuse or fail to comply with a notice under subsection (1) on the ground that to do so might tend to incriminate the individual or expose the individual to a penalty.

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

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

Civil penalty

(8A) A person contravenes this subsection if:

(a) the person is a plan nominee; and

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

Civil penalty: 30 penalty units.

(8B) Subsection (8A) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

Extension to various matters etc.

(9) This section extends to:

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

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

85 Right of nominee to attend with participant

(1) If:

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

(b) the request is that the participant undergo an assessment or examination;

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

(c) if the participant so wishes; and

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

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

Division 2—Appointment and cancellation or suspension of appointment

86 Appointment of plan nominee

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

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

(2) An appointment may be made:
   (a) at the request of the participant; or
   (b) on the initiative of the CEO.

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

(4) An appointment may provide that it has effect for a specified term.

(5) Without limiting the manner of specifying a term for the purposes of subsection (4), it may be specified by reference to the expiry of a specified period or the occurrence of a specified event.

(6) To avoid doubt, the CEO may appoint more than one person to be a plan nominee of a participant for the purposes of this Act.

87 Appointment of correspondence nominee

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

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

(2) An appointment may be made:
   (a) at the request of the participant; or
   (b) on the initiative of the CEO.

(3) An appointment may provide that it has effect for a specified term.

(4) Without limiting the manner of specifying a term for the purposes of subsection (3), it may be specified by reference to the expiry of a specified period or the occurrence of a specified event.

88 Provisions relating to appointments

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

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

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

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

(3) In appointing a person as a nominee of a participant under section 86 or 87, the CEO must consider whether the person is able to comply with section 80.

(4) In appointing a nominee of a participant under section 86 or 87, the CEO must have regard to whether there is a person who, under a law of the Commonwealth, a State or a Territory:

(a) has guardianship of the participant; or

(b) is a person appointed by a court, tribunal, board or panel (however described) who has power to make decisions for the participant and whose responsibilities in relation to the participant are relevant to the duties of a nominee.

(5) The CEO must cause a copy of an appointment under section 86 or 87 to be given to:

(a) the nominee; and

(b) the participant.

(6) The National Disability Insurance Scheme rules may prescribe:

(a) persons who must not be appointed as nominees; and

(b) criteria the CEO is to apply or matters to which the CEO is to have regard in considering the appointment of a nominee.

89 Circumstances in which the CEO must cancel appointment of nominees

At the request of a participant

(1) If:

(a) a person is appointed as a nominee of a participant under section 86 or 87 at the request of the participant; and

(b) the participant requests the CEO to cancel the appointment;

the CEO must cancel the appointment by written instrument:

(c) within the period worked out in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this paragraph; or

(d) if there are no such rules—as soon as reasonably practicable.

(2) A request under paragraph (1)(b) need not be made in writing. If the request is not made in writing, the CEO must make a written record of the request.

Nominee no longer wishes to be a nominee

(3) If:

(a) a person is appointed as a nominee of a participant under section 86 or 87; and

(b) the person informs the CEO in writing that the person no longer wishes to be a nominee under that appointment;

the CEO must cancel the appointment by written instrument:

(c) within the period worked out in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this paragraph; or

(d) if there are no such rules—as soon as reasonably practicable.

Copy of instrument of cancellation to be given

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

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

At the request of a participant

(1) If:

(a) a person is appointed as a nominee of a participant under section 86 or 87 on the initiative of the CEO; and

(b) the participant requests the CEO to cancel the appointment;

the CEO may, by written instrument, cancel the appointment.

(2) A request under paragraph (1)(b) need not be made in writing. If the request is not made in writing, the CEO must make a written record of the request.

(3) If a request is made under paragraph (1)(b):

(a) the CEO must decide whether to cancel the appointment within the following number of days after receiving the request:

(i) 14 days, unless subparagraph (ii) applies;

(ii) if the National Disability Insurance Scheme rules prescribe a number of days for the purposes of this subparagraph—that number of days; and

(b) if the CEO decides not to cancel the appointment—the CEO must give the person and participant written notice of the CEO's decision.

Nominee no longer has guardianship etc.

(3A) The CEO may, by written instrument, cancel the appointment of a nominee of a participant if:

(a) at the time the appointment was made, the nominee was a person who, under a law of the Commonwealth, a State or a Territory:

(i) had guardianship of the participant; or

(ii) was appointed by a court, tribunal, board or panel (however described) who had power to make decisions for the participant and whose responsibilities in relation to the participant were relevant to the duties of a nominee; and

(b) the nominee no longer has guardianship of the participant or no longer holds the appointment referred to in subparagraph (a)(ii) (as the case requires).

Ability to act as a nominee affected

(4) The CEO may, by written instrument, suspend or cancel one or more of a nominee's appointments if:

(a) the CEO gives the nominee a notice under subsection 83(1); and

(b) in response to the notice, the nominee informs the Agency that an event or change of circumstances has happened or is likely to happen; and

(c) having regard to that response, the CEO is satisfied that it is appropriate to do so.

(4A) The CEO may, by written instrument, suspend or cancel one or more of a nominee's appointments if:

(a) the nominee informs the Agency under subsection 83(3A) that an event or change of circumstances has happened or is likely to happen; and

(b) having regard to that information, the CEO is satisfied that it is appropriate to do so.

Failure to comply with section 83 or 84

(5) The CEO may, by written instrument, suspend or cancel one or more of a nominee's appointments if:

(a) the CEO gives the nominee a notice under subsection 83(1) or 84(1); and

(b) the nominee does not comply with a requirement specified in the notice.

(5A) The CEO may, by written instrument, suspend or cancel one or more of a nominee's appointments if:

(a) the nominee is required to inform the Agency under subsection 83(3A) that an event or change of circumstances has happened or is likely to happen; and
(b) the nominee does not comply with the requirement.

Copy of instrument of cancellation or suspension to be given

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

91 Suspension etc. of appointment of nominees in cases of physical, mental or financial harm

Suspension of appointment

(1) The CEO may, by written instrument, suspend the appointment of a person as a nominee of a participant if the CEO has reasonable grounds to believe that the person has caused, or is likely to cause, physical, mental or financial harm to the participant.

(2) If the person's appointment is suspended under subsection (1), the CEO must:
(a) give the person and participant a copy of the instrument of suspension; and
(b) by written notice given to the person, request the person to give the CEO, within 28 days after the notice is given, a statement setting out reasons why the person's appointment should not be cancelled by the CEO under this section.

Cancellation of appointment following suspension

(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.

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

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

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

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

(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.

Copy of instrument of cancellation to be given

(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.

92 Other matters relating to cancellation or suspension of appointment

Cancellation of appointment

(1) If:

(a) the National Disability Insurance Scheme rules made for the purposes of subsection 45B(7) apply in relation to a person who is a nominee; and

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

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

Suspension of appointment

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

(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.

93 National Disability Insurance Scheme rules may prescribe requirements etc.

The National Disability Insurance Scheme rules may prescribe:

(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

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

94 CEO's powers of revocation

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

Division 3—Other matters relating to nominees

95 CEO's powers to give notices to participant

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

96 Notification of nominee where notice is given to participant

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

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

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

(b) the notice relates to the preparation, management, variation or reassessment of the participant's plan;

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

97 Protection of participant against liability for actions of nominee

Nothing in this Part renders a participant liable criminally or civilly under this Act, or the *Crimes Act 1914*, the *Criminal Code* or the Regulatory Powers Act as those Acts apply in relation to this Act, in relation to any act or omission of the participant's nominee.

98 Protection of nominee against criminal liability

(1) A nominee of a participant is not criminally liable, or liable to an action, suit or other civil proceeding, under this Act, or the *Crimes Act 1914*, the *Criminal Code* or the Regulatory Powers Act as those Acts apply in relation to this Act, in relation to:

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

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

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

98A Offence for abuse of position as nominee

Offence for current nominee

(1) A person commits an offence if:
- (a) the person is a plan nominee or a correspondence nominee of a participant; and
- (b) the person:
  - (i) exercises any influence that the person has in their capacity as a plan nominee or a correspondence nominee of a participant; or
  - (ii) engages in any conduct when doing a thing under section 78 or 79 in the person's capacity as a plan nominee or a correspondence nominee of a participant; or
  - (iii) uses any information that the person obtained in the person's capacity as a plan nominee or a correspondence nominee of a participant; and
- (c) the person does so with the intention of dishonestly:
  - (i) obtaining a benefit for the person or any other person; or
  - (ii) causing a detriment to another person.

Penalty: 120 penalty units.

Offence for former nominee

(2) A person commits an offence if:
- (a) the person has ceased to be a plan nominee or a correspondence nominee of a participant; and
- (b) the person obtained information in the person's capacity as a plan nominee or a correspondence nominee of a participant; and

(c) the person uses the information with the intention of dishonestly:

(i) obtaining a benefit for the person or any other person; or

(ii) causing a detriment to another person.

Penalty: 120 penalty units.

Dishonesty

(3) In a prosecution for an offence against subsection (1) or (2), the determination of dishonesty is a matter for the trier of fact.

Definitions

(4) In this section:

dishonest means:

(a) dishonest according to the standards of ordinary people; and

(b) known by the defendant to be dishonest according to the standards of ordinary people.

Part 6—Review of decisions

99 Reviewable decisions and decision-makers

(1) The following table sets out:

(a) the ***reviewable decisions*** under this Act; and

(b) the ***decision-maker*** in respect of each of those decisions.

Reviewable decisions and decision-makers

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Decision-maker
1	a decision that a person does not meet the access criteria	paragraph 20(1)(a), subsection 21(3) or paragraph 26(2)(c)	CEO
2	a decision not to specify a period	paragraph 26(2)(b)	CEO
3	a decision to revoke a person's status as a participant	subsection 30(1), (1A) or (5), paragraph 30A(1)(c) or subsection 30A(7)	CEO
3A	a decision to vary, or not to vary, a notice given under subsection 32BA(1)	subsection 32BA(5)	CEO
4	a decision to approve the statement of participant supports in a participant's plan	subsection 32D(2) or 33(2)	CEO
4A	a decision to suspend the preparation of a new framework plan for a participant	subparagraph 36(3)(b)(i)	CEO
5	a decision not to extend a grace period	paragraph 40(2)(b)	CEO

Reviewable decisions and decision-makers

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Decision-maker
5A	a decision to suspend a participant’s plan	subsection 40A(1)	CEO
6	a decision to vary a participant’s plan	subsection 47A(1)	CEO
6A	a decision not to vary a participant’s plan	paragraph 47A(4)(b) or subsection 47A(5)	CEO
6B	a decision not to vary a participant’s plan	subsection 47A(8)	CEO
6BA	a decision whether a participant is a high support needs participant	paragraph 47B(4)(a)	CEO
6BB	a decision to vary a participant’s plan	subparagraph 47B(5)(a)(i)	CEO
6BC	a decision not to vary a participant’s plan	subparagraph 47B(5)(a)(ii) or subsection 47B(6)	CEO
6C	a decision not to conduct a reassessment of a participant’s plan	paragraph 48(3)(c) or subsection 48(4)	CEO
9	a decision to refuse to register a person as a registered NDIS provider	section 73E	Commissioner
10	a decision to impose conditions to which a person’s registration as a registered NDIS provider is subject	section 73G	Commissioner
11	a decision to vary, or refuse to vary, the registration of a registered NDIS	section 73L	Commissioner

Reviewable decisions and decision-makers

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Decision-maker
	provider		
12	a decision to suspend the registration of a registered NDIS provider	section 73N	Commissioner
13	a decision to revoke, or not to revoke, the registration of a person as a registered NDIS provider	section 73P	Commissioner
13A	a decision to refuse to approve a person or body as an approved quality auditor	paragraph 73U(3)(b)	Commissioner
13B	a decision to specify conditions in an approval given under subsection 73U(1)	subsection 73U(5)	Commissioner
13C	a decision to vary an approval given under subsection 73U(1)	subsection 73U(6)	Commissioner
13D	a decision to revoke an approval given under subsection 73U(1)	subsection 73U(8)	Commissioner
14	a decision to give a compliance notice to an NDIS provider	section 73ZM	Commissioner
14A	a decision to vary or revoke a compliance notice	subsection 73ZM(4)	Commissioner
15	a decision to make a banning order	section 73ZN	Commissioner

Reviewable decisions and decision-makers

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Decision-maker
16	a decision to vary, or to refuse to vary or revoke, a banning order	section 73ZO	Commissioner
16A	a decision to make an anti-promotion order	section 73ZOA	Commissioner
16B	a decision to vary, or to refuse to vary or revoke, an anti-promotion order	section 73ZOC	Commissioner
16C	a decision to give a compliance notice to a person	subsection 73ZSI(1)	CEO
16D	a decision to vary or revoke a compliance notice	subsection 73ZSI(5)	CEO
17	a decision to make, or not to make, a determination in relation to a person	paragraph 74(1)(b)	CEO
18	a decision not to make a determination that subsections 74(1) and (2) do not apply to a child	paragraph 74(5)(c)	CEO
19	a decision to make, or not to make, a determination that a person has parental responsibility for a child	subsection 75(2) or (3)	CEO
20	a decision to appoint a plan nominee	section 86	CEO

Reviewable decisions and decision-makers

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Decision-maker
21	a decision to appoint a correspondence nominee	section 87	CEO
22	a decision to cancel or suspend, or not to cancel or suspend, the appointment of a nominee	section 89, 90 or 91	CEO
23	a decision to give a notice to require a person to take reasonable action to claim or obtain compensation	section 104	CEO
24	a decision to refuse to extend a period	subsection 104(5A)	CEO
25	a decision to take action to claim or obtain compensation	paragraph 105(4)(a)	CEO
26	a decision to take over the conduct of a claim	paragraph 105(4)(b)	CEO
27	a decision to give a notice that the CEO proposes to recover an amount	section 111	CEO
28	a decision not to treat the whole or part of a compensation payment as not having been fixed by a judgment or settlement	section 116	CEO
29	a decision not to write off a debt	section 190	CEO

Reviewable decisions and decision-makers

Item	Column 1 Reviewable decision	Column 2 Provision under which the reviewable decision is made	Column 3 Decision-maker
30	a decision that the CEO is not required to waive a debt	section 192	CEO
31	a decision not to waive a debt	section 193	CEO
32	a decision that the CEO is not required to waive a debt	subsection 194(3) or (4)	CEO
33	a decision not to waive a debt	section 195	CEO

(2) The National Disability Insurance Scheme rules may:

(a) provide that a decision made under a specified provision of the rules is a ***reviewable decision***; and

(b) specify the ***decision-maker*** in respect of the reviewable decision.

100 Review of reviewable decisions

(1) The decision-maker of a reviewable decision must give written notice of the reviewable decision, and of the reasons for the reviewable decision, to each person directly affected by the reviewable decision.

(1A) The notice must include a statement:

(a) that:

(i) the person may request a review of the reviewable decision in accordance with this section; or

(ii) if the decision-maker is taken to have made the reviewable decision because of subsection 21(3), 47A(5), 47B(6) or 48(4)—the decision will be reviewed automatically; and

(b) that the person may seek further review under section 103.

(2) A person who is directly affected by a reviewable decision may request the decision-maker to review the reviewable decision. If the person is given a notice under subsection (1) the person must make the request within 3 months after receiving the notice.

(3) A request may be made by:

(a) sending or delivering a written request to the decision-maker; or

(b) making an oral request, in person or by telephone or other means, to the decision-maker.

(4) If a person makes an oral request in accordance with paragraph (3)(b), the person receiving the oral request must:

(a) make a written record of the details of the request; and

(b) note on the record the day the request is made.

(5) If:

(a) the decision-maker receives a request for review of a reviewable decision; or

(b) the decision-maker is taken to have made a reviewable decision because of subsection 21(3), 47A(5), 47B(6) or 48(4);

the decision-maker (the ***reviewer***) must review the reviewable decision.

(5A) The decision-maker cannot review the reviewable decision personally if the decision-maker was involved in making the reviewable decision.

(5B) A delegate of the decision-maker cannot review the reviewable decision if the delegate was involved in making the reviewable decision.

(6) The reviewer must make a decision:

(a) confirming the reviewable decision; or

(b) varying the reviewable decision; or

(c) setting aside the reviewable decision and substituting a new decision.

(6A) The reviewer must make the decision under subsection (6):

(a) within the period worked out in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this paragraph; or

(b) if there are no such rules—within the period of 90 days beginning on:

(i) if paragraph (5)(a) applies—the day the request is received; or

(ii) if paragraph (5)(b) applies—the day after the end of the period applicable under paragraph 21(3)(a) or (b) or subsection 47A(5), 47B(6) or 48(4) (as appropriate).

(7) A request for review of a reviewable decision, or a requirement to review a reviewable decision that the decision-maker is taken to have made, does not affect the operation of the decision or prevent the taking of action to implement the decision.

(8) A failure of the decision-maker to comply with subsection (1) does not affect the validity of the reviewable decision or the right of a person directly affected to request review of the decision.

101 Effect of later decisions before review completed

(1) If:

(a) a request is made for review of a reviewable decision; and

(b) before a decision on the review is made, the reviewable decision is varied;

the request for review is taken to be for review of the reviewable decision as varied.

(2) If:

(a) a request is made for review of:

(i) a decision under subsection 32D(2) or 33(2) to approve the statement of participant supports in a participant's plan; or

(ii) a decision under subsection 47A(1) or 47B(8) to vary a participant's plan, where the variation is a change to the statement of participant supports; and

(b) before a decision on the review is made:

(i) the CEO varies the plan under subsection 47A(1) or 47B(8) and the variation is a change to the statement of participant supports; or

(ii) a new plan for the participant comes into effect under section 37;

then:

(c) if subparagraph (b)(i) applies—the request is also taken to be a request for review of the decision to make the variation covered by that subparagraph; or

(d) if subparagraph (b)(ii) applies—the request is also taken to be a request for review of the decision to approve the statement of participant supports in the new plan.

102 Withdrawal of request for review

(1) A request for review of a reviewable decision may be withdrawn by:

(a) sending or delivering a written notice to the decision-maker; or

(b) contacting the decision-maker and withdrawing the request orally, whether in person, by telephone or by other means.

(2) If a request is withdrawn in accordance with paragraph (1)(b), the person receiving the oral withdrawal must make a written record of the details of the withdrawal and note on the record the day the withdrawal is made.

103 Applications to the Administrative Review Tribunal

(1) Applications may be made to the Administrative Review Tribunal for review of a decision made by a reviewer under subsection 100(6).

(1A) An application under subsection (1) may be made only by, or on behalf of, a person directly affected by the decision.

(1B) Sections 266 (decision-maker to give notice of decision and review rights) and 268 (requesting reasons for reviewable decision from decision-maker) of the *Administrative Review Tribunal Act 2024* apply only in relation to a person directly affected by the decision.

(2) If:

(a) an application is made to the Administrative Review Tribunal for review of a decision made by a reviewer under subsection 100(6); and

(b) the decision relates to a statement of participant supports in a participant's plan; and

(c) before a decision on the review is made and despite subsection 31(1) of the *Administrative Review Tribunal Act 2024*:

(i) the CEO varies the plan under subsection 47A(1) or 47B(8) of this Act and the variation is a change to that statement; or

(ii) a new plan for the participant comes into effect under section 37 of this Act;

then:

(d) if subparagraph (c)(i) applies—the application is also taken to be an application for review of the decision to make the variation covered by that subparagraph; or

(e) if subparagraph (c)(ii) applies—the application is also taken to be an application for review of the decision to approve the statement of participant supports in the new plan.

Chapter 5—Compensation payments

Part 1—Requirement to take action to obtain compensation

104 CEO may require person to take action to obtain compensation

(1) This section applies if:

(a) a participant or a prospective participant is, or in the CEO's opinion may be, entitled to compensation in respect of a personal injury; and

(b) the participant or prospective participant:

(i) has taken no action to claim or obtain the compensation; or

(ii) has taken no reasonable action to claim or obtain the compensation.

(2) The CEO may, by written notice, require the participant or prospective participant to take the action specified in the notice within the period specified in the notice. The action must be action that is reasonable to enable the person to claim or obtain the compensation.

(3) In considering whether it is reasonable to require a participant or prospective participant to take an action, the CEO must have regard to the following:

(a) the disability of the participant or prospective participant;

(b) the circumstances which give rise to the entitlement or possible entitlement to compensation;

(c) any impediments the participant or prospective participant may face in recovering compensation;

(d) any reasons given by the participant or prospective participant as to why he or she has not claimed or obtained compensation;

(e) the financial circumstances of the participant or prospective participant;

(f) the impact of the requirement to take the action on the participant or prospective participant and his or her family or carers.

(4) The CEO must not give a notice under subsection (2) requiring a participant or prospective participant to take action to claim or obtain compensation unless the CEO is satisfied that the participant or prospective participant has reasonable prospects of success in claiming or obtaining the compensation.

(5) The period specified by the CEO must be a period of at least 28 days after the day on which the notice is given.

(5A) The CEO may, on application by the participant or prospective participant, extend the specified period.

(6) Even though a participant or a prospective participant has entered into an agreement to give up his or her right to compensation, the CEO may form the opinion that the participant or prospective participant may be entitled to compensation if the CEO is satisfied that the agreement is void, ineffective or unenforceable.

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

(1) A participant or prospective participant who is given a notice under subsection 104(2) requiring him or her to take action (the ***required action***) to claim or obtain compensation within a specified period must take the required action within the period.

(2) If a participant does not take the required action within the period, and the action is to enable the participant or prospective participant to claim or obtain compensation under a scheme of compensation under a Commonwealth, State or Territory law:

(a) if a plan is in effect for the participant—the plan is suspended from the end of the specified period until the participant takes the required action; or

(b) if a plan is not yet in effect for the participant—the CEO must still comply with section 32 in relation to commencing the facilitation of the preparation of the participant's plan, but the plan does not come into effect until the participant takes the required action.

(3) If a prospective participant does not take the required action within the period, the CEO is not prevented from deciding whether or not the prospective participant meets the access criteria and commencing the facilitation of the preparation of the participant's plan, but the plan does not, despite section 37, come into effect until the participant takes the required action.

(4) If a participant or prospective participant does not take the required action within the period, and the action is to enable the person to claim or obtain compensation otherwise than under a scheme of compensation under a Commonwealth, State or Territory law, the CEO may:

(a) take action to claim or obtain compensation in the name of the participant or prospective participant; or

(b) take over the conduct of any existing claim.

(5) Before taking action to claim or obtain compensation, or taking over the conduct of an existing claim, the CEO must have regard to the following:

(a) the disability of the participant or prospective participant;

(b) the circumstances which give rise to the entitlement or possible entitlement to compensation;

(c) any impediments the CEO may face if the CEO takes the action or takes over the conduct of the claim;

(d) any reasons given by the participant or prospective participant as to why he or she has not claimed or obtained compensation (including in response to a notice under subsection 104(2));

(e) the impact (including any financial impact), of the CEO taking the action or taking over the conduct of the claim, on the participant or prospective participant and his or her family;

(f) any other matter the CEO considers relevant, having regard to the objects and principles set out in Part 2 of Chapter 1 of this Act.

(6) The CEO must not take any action to claim or obtain compensation, or take over the conduct of an existing claim, unless:

(a) the CEO has notified the participant or prospective participant, in writing, that the action is being considered; and

(b) 28 days have passed since the notice was given.

105A Matters relating to claims etc. by CEO

(1) If the CEO takes action to claim or obtain compensation, or takes over the conduct of an existing claim, the Agency becomes liable to pay all costs of and incidental to that claim that would otherwise be payable by the person who originally made the claim, or the person in whose name the claim was made, other than costs unreasonably incurred by that person.

(2) The CEO may:

(a) take whatever steps are appropriate to bring the claim to a conclusion; and

(b) if the claim is before a court—settle the proceedings either with or without obtaining judgement; and

(c) if the claim is before a court and judgement has been obtained in favour of the plaintiff—take such steps as are necessary to enforce the judgement.

(3) The participant or prospective participant must sign any document relevant to a claim made or taken over by the CEO under section 105 (including the settlement of the claim or of any proceedings arising out of the claim), being a document that CEO requires the participant or prospective participant to sign.

(4) If the participant or prospective participant does not sign a document in accordance with a requirement under subsection (3):

(a) if the claim is not before a court or tribunal at the time of the failure—the Federal Court of Australia may, on the application of the CEO, direct that the document be signed on behalf of the participant or prospective participant by a person appointed by CEO; and

(b) otherwise—the court or tribunal in which proceedings relating to the claim are being heard may, on the application of CEO, so direct.

(5) If the CEO proposes to make an application under subsection (4):

(a) the CEO must notify the participant or prospective participant of that fact; and

(b) the participant or prospective participant has a right of representation in the hearing of that application.

105B Recovery of amounts relating to claims etc. by CEO

Any amount obtained as a result of a claim made or taken over by the CEO under section 105 (including amounts payable as a result of the settlement of such a claim) must be paid to the Agency. The Agency must deduct from the amount of those damages:

(a) an amount equal to the total of all NDIS amounts paid to, or for the benefit of, the participant before the amount is paid to the Agency; and

(b) the amount of any costs incidental to the claim paid by the Agency.

The Agency must pay the balance to the participant or prospective participant.

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

106 Recovering past NDIS amounts from certain judgements

(1) This section applies if:

(a) an amount of compensation is fixed under a judgement (other than a consent judgement) given in respect of a personal injury that has caused, to any extent, a participant's impairment (whether or not the participant was a participant at the time of the injury); and

(b) before the day of the judgement, NDIS amounts (the ***past NDIS amounts***) had been paid in respect of supports in relation to the participant's impairment; and

(c) the judgement specifies a portion (the ***past NDIS support component***) of the amount of compensation to be a component for supports of a kind funded or provided under the National Disability Insurance Scheme.

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

(a) unless subsection (4) or (5) applies—the sum of the past NDIS amounts, reduced as mentioned in subsection (3) (if applicable); or

(b) if subsection (4) or (5) applies—the amount worked out in accordance with whichever of those subsections is applicable.

(3) If:

(a) the judgement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the participant and another person; and

(b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned;

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

(4) If the recoverable amount would, apart from this subsection, exceed the past NDIS support component, the recoverable amount is taken to be the lesser of the sum of the past NDIS amounts and the past NDIS support component.

(5) If the recoverable amount would, apart from this subsection, exceed the difference (if any) between:

(a) the amount of compensation fixed by the judgement; and

(b) the sum of the amounts (if any) payable in respect of the amount of compensation under the following:

(i) the *Health and Other Services (Compensation) Act 1995*;

(ii) the *Health and Other Services (Compensation) Care Charges Act 1995*;

(iii) Part 3.14 of the *Social Security Act 1991*;

(iv) a law of the Commonwealth, a State or a Territory, prescribed by the National Disability Insurance Scheme rules;

the recoverable amount is taken to be the amount of the difference.

107 Recovering past NDIS amounts from consent judgements and settlements

(1) This section applies if:

(a) an amount of compensation is fixed under a consent judgement or settlement in respect of a personal injury that has caused, to any extent, a participant's impairment (whether or not the participant was a participant at the time of the injury); and

(b) before the day of the consent judgement or settlement, NDIS amounts (the ***past NDIS amounts***) had been paid in respect of supports in relation to the participant's impairment.

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

(a) unless subsection (4) applies—the sum of the past NDIS amounts, reduced as mentioned in subsection (3) (if applicable); or

(b) if subsection (4) applies—the amount worked out in accordance with that subsection.

(3) If:

(a) the consent judgement or settlement fixes the amount of compensation on the basis that liability for the injury should be apportioned between the participant and another person; and

(b) as a result, the amount of compensation is less than it would have been if liability had not been so apportioned;

the sum of the past NDIS amounts is to be reduced by the proportion corresponding to the proportion of liability that is apportioned to the participant by the consent judgement or settlement.

(4) If the recoverable amount would, apart from this subsection, exceed the difference (if any) between:

(a) the amount of compensation fixed under the consent judgement or settlement; and

(b) the sum of the amounts (if any) payable in respect of the amount of compensation under the following:

(i) the *Health and Other Services (Compensation) Act 1995*;

(ii) the *Health and Other Services (Compensation) Care Charges Act 1995*;

(iii) Part 3.14 of the *Social Security Act 1991*;

(iv) a law of the Commonwealth, a State or a Territory, prescribed by the National Disability Insurance Scheme rules;

the recoverable amount is taken to be the amount of the difference.

108 Debts resulting from section 106 or 107

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

Part 3—Recovery from compensation payers and insurers

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

(1) If:

(a) a participant or prospective participant makes a claim against another person (the ***potential compensation payer***) for compensation; and

(b) the claim relates to the participant's or prospective participant's impairment;

the CEO may give written notice to the potential compensation payer, stating that the CEO may wish to recover an amount from the potential compensation payer.

(2) If:

(a) a participant or prospective participant makes a claim against another person (the ***potential compensation payer***) for compensation; and

(b) the claim relates to the participant's or prospective participant's impairment; and

(c) an insurer may be liable, under a contract of insurance, to indemnify the potential compensation payer against any liability arising from the claim for compensation;

the CEO may give written notice to the insurer, stating that the CEO may wish to recover an amount from the insurer.

(3) A notice under subsection (1) or (2) must contain:

(a) a statement of the potential compensation payer's or insurer's obligation under subsection 110(1), (2), (3) or (4), as the case requires; and

(b) a statement of the effect of section 111 (recovery) so far as it relates to the notice.

110 Potential compensation payer or insurer

Offences

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

(a) the potential compensation payer is given a notice under subsection 109(1) in relation to a participant or prospective participant; and

(b) before or after receiving the notice, the potential compensation payer becomes liable to pay compensation to the participant or prospective participant; and

(c) the potential compensation payer does not give written notice to the CEO of the liability within 7 days after becoming liable or receiving the notice, whichever is later.

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

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

(2) An insurer commits an offence if:

(a) the insurer is given a notice under subsection 109(2) in relation to a claim by a participant or prospective participant; and

(b) before or after receiving the notice, the insurer becomes liable to indemnify the potential compensation payer, either wholly or partly, in relation to the claim; and

(c) the insurer does not give written notice to the CEO of the liability within 7 days of becoming liable or receiving the notice, whichever is later.

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

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

Civil penalties

(3) A person (the ***potential compensation payer***) contravenes this subsection if:

(a) the potential compensation payer is given a notice under subsection 109(1) in relation to a participant or prospective participant; and

(b) before or after receiving the notice, the potential compensation payer becomes liable to pay compensation to the participant or prospective participant; and

(c) the potential compensation payer does not give written notice to the CEO of the liability within 7 days after becoming liable or receiving the notice, whichever is later.

Civil penalty: 60 penalty units.

(4) An insurer contravenes this subsection if:

(a) the insurer is given a notice under subsection 109(2) in relation to a claim by a participant or prospective participant; and

(b) before or after receiving the notice, the insurer becomes liable to indemnify the potential compensation payer, either wholly or partly, in relation to the claim; and

(c) the insurer does not give written notice to the CEO of the liability within 7 days of becoming liable or receiving the notice, whichever is later.

Civil penalty for contravention of this subsection: 60 penalty units.

111 CEO may send recovery notice to compensation payer or insurer

(1) If:

(a) one or more NDIS amounts have been paid to a person in respect of a participant's impairment; and

(b) a person (the ***compensation payer***):

(i) is liable to pay compensation to the participant in relation to the impairment; or

(ii) if the compensation payer is an authority of a State or Territory—has determined that a payment by way of compensation is to be made to the participant in relation to the impairment;

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

(2) If:

(a) one or more NDIS amounts have been paid to a person in respect of a participant's impairment; and

(b) an insurer is liable, under a contract of insurance, to indemnify the compensation payer against any liability arising from a claim of the participant for compensation;

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

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

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

(a) an amount equal to the sum of the NDIS amounts referred to in paragraph (1)(a) or (2)(a);

(b) an amount equal to the recoverable amount in relation to the judgement, consent judgement or settlement to which the liability relates.

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

(6) This section applies to an amount payable by way of compensation in spite of any law of the Commonwealth, a State or Territory (however expressed) under which the compensation is inalienable.

(7) If the CEO gives a person a notice under this section that the CEO proposes to recover a specified amount from the person, the specified amount is a debt due by the person to the Agency.

112 Preliminary notice or recovery notice suspends liability to pay compensation

(1) If a person (the ***compensation payer***) has been given a notice under subsection 109(1) or 111(1) in relation to the compensation payer's liability, or possible liability, to pay compensation, the compensation payer is not liable to pay that compensation while the notice has effect.

(2) If an insurer has been given a notice under subsection 109(2) or 111(2) in relation to the insurer's liability, or possible liability, to indemnify a compensation payer against a liability arising from a claim for compensation:

(a) the insurer is not liable to so indemnify the compensation payer; and

(b) the compensation payer is not liable to pay that compensation;

while the notice has effect.

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

(1) Payment to the Agency of an amount that a compensation payer is liable to pay under section 111 in relation to a participant operates, to the extent of the payment, as a discharge of:

(a) the compensation payer's liability to pay compensation to the participant; and

(b) the participant's liability to pay the Agency.

(2) Payment to the Agency of an amount that an insurer is liable to pay under section 111 in relation to a participant operates, to the extent of the payment, as a discharge of:
   (a) the insurer's liability to the compensation payer; and
   (b) the compensation payer's liability to pay compensation to the participant; and
   (c) the participant's liability to pay the Agency.

114 Making compensation payment after receiving preliminary notice or recovery notice

Offences

(1) A person (the ***potential compensation payer***) commits an offence if:
   (a) the potential compensation payer has been given a notice under subsection 109(1) or 111(1) in relation to the payment of compensation to a participant or prospective participant; and
   (b) the potential compensation payer makes the compensation payment to the participant or prospective participant.

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

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

(2) Subsection (1) does not apply if:
   (a) in the case of a notice under section 109—the CEO has given the potential compensation payer written notice that the notice is revoked; or
   (b) in the case of a notice under section 111—the potential compensation payer has paid to the Agency the amount specified in the notice; or
   (c) the CEO has given the potential compensation payer written permission to pay the amount.

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

(3) An insurer commits an offence if:

(a) the insurer has been given a notice under subsection 109(2) or 111(2) in relation to a liability to indemnify a person; and

(b) the insurer makes a payment in relation to that liability.

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

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

(4) Subsection (3) does not apply if:

(a) in the case of a notice under section 109—the CEO has given the insurer written notice that the notice is revoked; or

(b) in the case of a notice under section 111—the insurer has paid to the Agency the amount specified in the notice; or

(c) the CEO has given the insurer written permission to pay the amount.

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

Civil penalties

(5) A person (the ***potential compensation payer***) contravenes this subsection if:

(a) the potential compensation payer has been given a notice under subsection 109(1) or 111(1) in relation to the payment of compensation to a participant or prospective participant; and

(b) the potential compensation payer makes the compensation payment to the participant or prospective participant.

Civil penalty: 60 penalty units.

(6) Subsection (5) does not apply if:

(a) in the case of a notice under section 109—the CEO has given the potential compensation payer written notice that the notice is revoked; or

(b) in the case of a notice under section 111—the potential compensation payer has paid to the Agency the amount specified in the notice; or

(c) the CEO has given the potential compensation payer written permission to pay the amount.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

(7) An insurer contravenes this subsection if:

(a) the insurer has been given a notice under subsection 109(2) or 111(2) in relation to a liability to indemnify a person; and

(b) the insurer makes a payment in relation to that liability.

Civil penalty: 60 penalty units.

(8) Subsection (7) does not apply if:

(a) in the case of a notice under section 109—the CEO has given the insurer written notice that the notice is revoked; or

(b) in the case of a notice under section 111—the insurer has paid to the Agency the amount specified in the notice; or

(c) the CEO has given the insurer written permission to pay the amount.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

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

(1) A potential compensation payer or insurer who contravenes section 114 is, in addition to being liable under that section, liable to pay to the Agency:

(a) if the contravention relates to a notice under section 109—an amount determined by the CEO; or

(b) if the contravention relates to a notice under section 111—the amount specified in the notice.

(2) The amount determined by the CEO under paragraph (1)(a) must not be more than the amount that would have been specified in a notice under section 111 if one had been given.

(3) This section applies in relation to a payment by way of compensation in spite of any law of the Commonwealth, a State or Territory (however expressed) under which the compensation is inalienable.

(4) The amount determined by the CEO under paragraph (1)(a) or specified in the notice under section 111 is a debt due by the compensation payer or the insurer to the Agency.

Part 4—CEO may disregard certain payments

116 CEO may disregard certain payments

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

Chapter 6—National Disability Insurance Agency

Part 1—National Disability Insurance Agency

117 National Disability Insurance Agency

(1) The body that was established by this section as previously in force by the name National Disability Insurance Scheme Launch Transition Agency is now to be known as the National Disability Insurance Agency.

Note: Subsection 25B(1) of the *Acts Interpretation Act 1901* provides that a body whose name is altered by an Act continues in existence under the new name so that its identity is not affected.

(2) The Agency:

(a) is a body corporate; and

(b) must have a seal; and

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

(d) may sue and be sued.

Note: The *Public Governance, Performance and Accountability Act 2013* applies to the Agency. That Act deals with matters relating to corporate Commonwealth entities, including reporting and the use and management of public resources.

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

118 Functions of the Agency

(1) The Agency has the following functions:

(a) to deliver the National Disability Insurance Scheme so as to:

(i) support the independence, and social and economic participation, of people with disability; and

(ii) enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports; and

(iii) ensure that the decisions and preferences of people with disability are respected and given appropriate priority; and

(iv) promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and inclusion in the community; and

(v) ensure that a reasonable balance is achieved between safety and the right of people with disability to choose to participate in activities involving risk;

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

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

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

(iii) considering actuarial advice, including advice from the scheme actuary and the reviewing actuary;

(baa) to provide advice about pricing of supports;

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

(i) claims for payment under the National Disability Insurance Scheme, the payment of NDIS amounts or the use of funding provided under the National Disability Insurance Scheme; or

(ii) information provided to the Agency by or in relation to a participant or prospective participant, including in connection with access requests, a person's continued status as a participant, the preparation, variation, reassessment or replacement of a participant's plan or the management of the funding for supports under a participant's plan; or

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

(bb) to secure compliance with, and enforce, the provisions in relation to which Part 3C of Chapter 4 applies by exercising the powers conferred by that Part;

(c) to develop and enhance the disability sector, including by facilitating innovation, research and contemporary best practice in the sector;

(d) to build community awareness of disabilities and the social contributors to disabilities;

(e) to collect, analyse and exchange data about disabilities and the supports (including early intervention supports) for people with disability;

(f) to undertake research relating to disabilities, the supports (including early intervention supports) for people with disability and the social contributors to disabilities;

(g) any other functions conferred on the Agency by or under this Act, the regulations or an instrument made under this Act;

(h) to do anything incidental or conducive to the performance of the above functions.

(2) In performing its functions, the Agency must use its best endeavours to:

(a) act in accordance with any relevant intergovernmental agreements; and

(b) act in a proper, efficient and effective manner; and

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

119 Powers of the Agency

(1) The Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(2) The Agency's powers include, but are not limited to, the following powers:

(a) the power to enter into contracts;

(b) the power to accept gifts, devises, bequests and assignments.

120 Charging of fees

(1) The Agency may charge fees in accordance with an instrument made under subsection (2).

(2) The Minister may, by legislative instrument, prescribe:

(a) the things that the Agency does in the performance of its functions for which it may charge fees; and

(b) the amount, or a method of working out the amount, of those fees.

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

(3) An instrument made under subsection (2) must not allow:

(a) a fee to be charged in relation to an access request; or

(b) a participant to be charged a fee.

(4) The Minister must not make an instrument under subsection (2) unless the Commonwealth and each host jurisdiction agree to the making of the instrument.

Process for seeking agreement

(4A) The Minister must:

(a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the making of the instrument and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and

(b) provide a copy of the proposed instrument to that host jurisdiction Minister.

(4B) If, immediately before the end of that 28-day period:

(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the instrument; and

(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (4C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the making of the instrument.

(4C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the making of the instrument:

(a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the instrument, then, at the end of that period, that host jurisdiction is taken to have so agreed.

Fee must not amount to taxation

(5) A fee must not be such as to amount to taxation.

121 Minister may give directions to the Agency

(1) The Minister may, by legislative instrument, give directions to the Agency about the performance of its functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

(2) A direction given under subsection (1):

(a) must not relate to a particular individual; and

(b) must not be inconsistent with:

(i) this Act, the regulations or an instrument made under this Act; or

(ii) the *Public Governance, Performance and Accountability Act 2013*, or any instrument made under that Act.

(3) The Minister must not give a direction under subsection (1) unless the Commonwealth and each host jurisdiction agree to the giving of the direction.

(3AA) However, subsection (3) does not apply to a direction about the performance of the function mentioned in paragraph 118(1)(baa) (advice about pricing of supports).

Process for seeking agreement

(3A) The Minister must:

(a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the giving of the direction and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and

(b) provide a copy of the proposed direction to that host jurisdiction Minister.

(3B) If, immediately before the end of that 28-day period:

(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the giving of the direction; and

(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (3C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the giving of the direction.

(3C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the giving of the direction:

(a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the giving of the direction, then, at the end of that period, that host jurisdiction is taken to have so agreed.

Agency must comply with direction

(4) The Agency must comply with a direction given under subsection (1).

122 Agency does not have privileges and immunities of the Crown

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

Part 2—Board of the Agency

Division 1—Establishment and functions

123 Board of the National Disability Insurance Agency

The body that was established by this section as previously in force and known as the Board of the National Disability Insurance Scheme Launch Transition Agency is now to be known as the Board of the National Disability Insurance Agency.

Note: Subsection 25B(1) of the *Acts Interpretation Act 1901* provides that a body whose name is altered by an Act continues in existence under the new name so that its identity is not affected.

124 Functions of the Board

(1) The Board has the following functions:

(a) to ensure the proper, efficient and effective performance of the Agency's functions;

(b) to determine objectives, strategies and policies to be followed by the Agency;

(c) any other functions conferred on the Board by or under:

(i) this Act, the regulations or an instrument made under this Act; or

(ii) any other law of the Commonwealth.

(2) The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions.

(3) Anything done in the name of, or on behalf of, the Agency by the Board, or with the authority of the Board, is taken to have been done by the Agency.

125 Minister may give the Board a statement setting out strategic guidance for the Agency

(1) The Minister may give the Board a written statement setting out strategic guidance for the Agency.

(2) A statement given under subsection (1):

(a) must be of a general nature only; and

(b) must not relate to a particular individual; and

(c) must not be inconsistent with:

(i) this Act, the regulations or an instrument made under this Act; or

(ii) the *Public Governance, Performance and Accountability Act 2013*, or any instrument made under that Act.

(3) The Minister must not give a statement under subsection (1) unless the Commonwealth and each host jurisdiction agree to the giving of the statement.

Process for seeking agreement

(3A) The Minister must:

(a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the giving of the statement and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and

(b) provide a copy of the proposed statement to that host jurisdiction Minister.

(3B) If, immediately before the end of that 28-day period:

(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the giving of the statement; and

(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (3C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the giving of the statement.

(3C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the giving of the statement:

(a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the giving of the statement, then, at the end of that period, that host jurisdiction is taken to have so agreed.

Board must have regard to statement

(4) In performing its functions, the Board must have regard to a statement given under subsection (1).

Statement not a legislative instrument

(5) A statement given under subsection (1) is not a legislative instrument.

125A Matters to be considered in performing functions

In performing its functions, the Board must have regard to:

(a) relevant actuarial analysis and advice; and

(b) relevant advice and reports provided by the audit committee for the Agency.

Note: See section 45 of the *Public Governance, Performance and Accountability Act 2013* (which deals with audit committees for Commonwealth entities).

125B Rules about management of risk and performance of Board's functions

The Minister administering the *Insurance Act 1973* may, by legislative instrument, determine rules that:

(a) relate to the management of risks, whether financial or not, that are likely to be faced by the Agency; and

(b) must be complied with by the Board in performing its functions.

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

Division 2—Members of the Board

126 Membership

The Board consists of the Chair and up to 11 other members.

127 Appointment of Board members

(1) The Board members are to be appointed by the Minister, by written instrument, on a part-time basis.

(2) A person is eligible for appointment as a Board member only if the Minister is satisfied that the person is a person with disability, is a person that has lived experience with disability or is a person that has skills, experience or knowledge in at least one of the following fields:

(a) the provision or use of disability services;

(b) the operation of insurance schemes, compensation schemes or schemes with long-term liabilities;

(c) financial management;

(d) corporate governance.

Procedures relating to appointment

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

(4) Before the Minister appoints a Board member other than the Chair, the Minister must:

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

(b) be satisfied that the appointment is supported by:

(i) the Commonwealth; and

(ii) a majority of the group consisting of the Commonwealth and the host jurisdictions.

(4A) The Minister must give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the appointment covered by subsection (4) and requesting the agreement be given before the end of 28 days beginning on the day the notice is given.

(4B) If, immediately before the end of that 28-day period:

(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the appointment; and

(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (4C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the appointment.

(4C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the appointment:

(a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the appointment, then, at the end of that period, that host jurisdiction is taken to have so agreed.

(4D) Despite subsection (4), the Minister may appoint a person as a Board member other than the Chair if:

(a) the appointment is not supported by a majority of the group consisting of the Commonwealth and the host jurisdictions; and

(b) the period of 90 days beginning on the day the first notice was given under subsection (4A) in relation to that appointment has ended.

Persons ineligible for appointment

(5) Despite subsection (2), a person is not eligible for appointment as a Board member if the person is:
   (a) a member (however described) of:
      (i) the Parliament of the Commonwealth or a State; or
      (ii) the legislature of a Territory; or
      (iii) a local government authority; or
   (b) an employee of the Commonwealth, a State, a Territory or a local government authority; or
   (c) the holder of a full-time office under a law of the Commonwealth, a State or a Territory.

Board members to have appropriate balance of characteristics

(6) In appointing the Board members, the Minister must ensure that the Board members collectively possess an appropriate balance of characteristics mentioned in subsection (2).

Appointment of Board members other than Chair—Indigenous Persons

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

128 Term of appointment

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

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

129 Acting appointments

Appointment to act during vacancy

(1) The Minister may, by written instrument, appoint a person to act as the Chair, for a specified period of not more than 12 months, during a vacancy in the office of the Chair, whether or not an appointment has previously been made to the office.

(2) The Minister may, by written instrument, appoint a person to act as a Board member other than the Chair, for a specified period of not more than 150 days, during a vacancy in the office of a Board member other than the Chair, whether or not an appointment has previously been made to the office.

(2A) The Minister must consult the States and Territories about an appointment under subsection (2).

Appointment to act during absence etc.

(3) The Minister may, by written instrument, appoint a person to act as a Board member during any period, or during all periods, when a Board member:

(a) is absent from duty or from Australia; or

(b) is, for any reason, unable to perform the duties of the office.

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

Eligibility for appointment

(4) A person is eligible for appointment under subsection (1), (2) or (3) only if the Minister is satisfied that the person is a person with disability, is a person that has lived experience with disability or is a person that has skills, experience or knowledge in at least one of the fields mentioned in subsection 127(2).

(5) Despite subsection (4), a person is not eligible for appointment under subsection (1), (2) or (3) if the person is:

(a) a member (however described) of:
  (i) the Parliament of the Commonwealth or a State; or
  (ii) the legislature of a Territory; or
  (iii) a local government authority; or
(b) the holder of a full-time office under a law of the Commonwealth, a State or a Territory.

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

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

130 Remuneration and allowances

(1) A Board member is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

(2) A Board member is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

131 Leave of absence

Chair

(1) The Minister may grant leave of absence to the Chair on the terms and conditions that the Minister determines.

(2) Before the Minister grants leave of absence to the Chair under subsection (1), the Minister must consult the host jurisdictions about the grant.

Other Board members

(3) The Chair may grant leave of absence to another Board member on the terms and conditions that the Chair determines.

(4) The Chair must notify the Minister if the Chair grants another Board member leave of absence for a period that exceeds 3 months.

132 Outside employment

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

133 Resignation of Board members

(1) A Board member may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

(3) The later day specified in the resignation must not be more than 90 days after the day the resignation is received by the Minister.

134 Termination of appointment of Board members

(1) The Minister may terminate the appointment of a Board member:
- (a) for misbehaviour; or
- (b) if the member is incapable of performing the duties of his or her office; or
- (c) if the Minister does not have confidence in the member.

(2) The Minister may terminate the appointment of a Board member if:
- (a) the member:
  - (i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Board; or

(c) the member engages in paid employment that, in the Minister's opinion, conflicts or may conflict with the proper performance of the member's duties (see section 132); or

(e) the Minister is satisfied that the performance of the member has been unsatisfactory for a significant period.

Note: The appointment of a board member may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

Procedures relating to termination

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

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

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

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

(i) the Commonwealth; and

(ii) a majority of the group consisting of the Commonwealth and the host jurisdictions.

(4A) The Minister must give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the termination covered by subsection (4) and requesting the agreement be given before the end of 28 days beginning on the day the notice is given.

(4B) If, immediately before the end of that 28-day period:

(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the termination; and

(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (4C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the termination.

(4C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the termination:

(a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the termination, then, at the end of that period, that host jurisdiction is taken to have so agreed.

Termination under the Public Governance, Performance and Accountability Act 2013

(5) Subsections (3) to (4C) are taken to apply in relation to the termination of the appointment of a Board member under section 30 of the *Public Governance, Performance and Accountability Act 2013* in the same way as those subsections apply to a termination under this section.

135 Other terms and conditions of Board members

(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.

(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.

Process for seeking agreement

(3) The Minister must:

(a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the terms and conditions and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and

(b) provide a copy of the proposed terms and conditions to that host jurisdiction Minister.

(4) If, immediately before the end of that 28-day period:

(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the terms and conditions; and

(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (5);

then, at the end of that period, that host jurisdiction is taken to have agreed to the terms and conditions.

(5) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the terms and conditions:

(a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the terms and conditions, then, at the end of that period, that host jurisdiction is taken to have so agreed.

Division 3—Meetings of the Board

136 Convening meetings

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

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

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

(3) The Chair:

(a) may convene a meeting; and

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

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

137 Presiding at meetings

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

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

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

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

138 Quorum

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

(2) However, if:

(a) a Board member is required by rules made for the purposes of section 29 of the *Public Governance, Performance and Accountability Act 2013* not to be present during the deliberations, or to take part in any decision, of the Board with respect to a particular matter; and

(b) when the member leaves the meeting concerned there is no longer a quorum present;

the remaining members at the meeting constitute a quorum for the purpose of any deliberation or decision at that meeting with respect to that matter.

139 Voting at meetings

(1) A question arising at a meeting is to be determined by a majority of the votes of the Board members present and voting.

(2) The person presiding at a meeting has a deliberative vote and, if the votes are equal, a casting vote.

140 Conduct of meetings

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

141 Minutes

The Board must keep minutes of its meetings.

142 Decisions without meetings

(1) The Board is taken to have made a decision at a meeting if:

(a) without meeting, a majority of the Board members entitled to vote on the proposed decision indicate agreement with the decision; and

(b) that agreement is indicated in accordance with the method determined by the Board under subsection (2); and

(c) all the Board members were informed of the proposed decision, or reasonable efforts were made to inform all the members of the proposed decision.

(2) Subsection (1) applies only if the Board:

(a) has determined that it may make decisions of that kind without meeting; and

(b) has determined the method by which Board members are to indicate agreement with proposed decisions.

(3) For the purposes of paragraph (1)(a), a Board member is not entitled to vote on a proposed decision if the member would not have been entitled to vote on that proposal if the matter had been considered at a meeting of the Board.

(4) The Board must keep a record of decisions made in accordance with this section.

Part 3—Independent Advisory Council

Division 1—Establishment and function

143 Establishment

The Independent Advisory Council is established by this section.

144 Function of the Advisory Council

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

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

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

(c) funds or provides supports, including early intervention supports, for participants in the National Disability Insurance Scheme; and

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

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

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

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

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

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

(a) a particular individual; or

(ba) the registration of a person or entity as a registered NDIS provider, or the variation, suspension or revocation of that registration; or

(c) the corporate governance of the Agency or the Commission; or

(d) the money paid to, or received by, the Agency.

(4) The Advisory Council has power to do all things necessary or convenient to be done for or in connection with the performance of its function.

145 Advice of the Advisory Council

If the Advisory Council provides advice to the Board under subsection 144(1), the Board must:

(a) have regard to the advice in performing its functions; and

(b) give the Ministerial Council a copy of the advice and a statement setting out what has been done, or is to be done, in response to the advice.

Division 2—Members of the Advisory Council

146 Membership

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

147 Appointment of members of the Advisory Council

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

Consultation

(2) The Minister must consult the host jurisdictions about the appointment of each member of the Advisory Council.

Principal member

(3) The Minister must not appoint a person as the Principal Member unless the person is a Board member.

Persons ineligible for appointment

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

Membership requirements

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

(a) have regard to the desirability of the membership of the Advisory Council reflecting the diversity of people with disability; and

(b) ensure that all members are persons with skills, experience or knowledge that will help the Advisory Council perform its function; and

(c) ensure that:

(i) a majority of the members are people with disability; and

(ii) at least 2 of the members are carers of people with disability; and

(iii) at least one of the members is a person who has skills, experience or knowledge in relation to disability in rural or regional areas; and

(iv) at least one of the members is a person who has skills, experience or knowledge in the supply of equipment, or the provision of services, to people with disability.

Note: A particular member may meet one or more of the conditions in subparagraphs (5)(c)(ii), (iii) and (iv).

148 Term of appointment

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

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

149 Acting appointments

Appointment to act during vacancy

(1) The Minister may, by written instrument, appoint a person to act as the Principal Member, for a specified period of not more than 12 months, during a vacancy in the office of the Principal Member, whether or not an appointment has previously been made to the office.

(2) The Minister may, by written instrument, appoint a person to act as a member of the Advisory Council other than the Principal Member, for a specified period of not more than 150 days, during a vacancy in the office of a member of the Advisory Council other than the Principal Member, whether or not an appointment has previously been made to the office.

(2A) The Minister must consult the States and Territories about an appointment under subsection (2).

Appointment to act during absence etc.

(3) The Minister may, by written instrument, appoint a person to act as a member of the Advisory Council during any period, or during all periods, when a member of the Advisory Council:

(a) is absent from duty or from Australia; or

(b) is, for any reason, unable to perform the duties of the office.

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

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

150 Remuneration and allowances

(1) A member of the Advisory Council is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the member is to be paid the remuneration that is prescribed by the regulations.

(2) A member of the Advisory Council is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

151 Leave of absence

Principal Member

(1) The Minister may grant leave of absence to the Principal Member on the terms and conditions that the Minister determines.

(2) Before the Minister grants leave of absence to the Principal Member under subsection (1), the Minister must consult the host jurisdictions about the grant.

Other members

(3) The Principal Member may grant leave of absence to another member of the Advisory Council on the terms and conditions that the Principal Member determines.

(4) The Principal Member must notify the Minister if the Principal Member grants another member of the Advisory Council leave of absence for a period that exceeds 3 months.

152 Disclosure of interests to the Minister

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

153 Disclosure of interests to the Advisory Council

(1) A member of the Advisory Council who has an interest, pecuniary or otherwise, in a matter being considered or about to be considered by the Council must disclose the nature of the interest to a meeting of the Council.

(2) The disclosure must be made as soon as possible after the relevant facts have come to the member's knowledge.

(3) The disclosure must be recorded in the minutes of the meeting.

(4) Unless the Advisory Council otherwise determines, the member:
- (a) must not be present during any deliberation by the Council on the matter; and
- (b) must not take part in any decision of the Council with respect to the matter.

(5) For the purposes of making a determination under subsection (4), the member:
- (a) must not be present during any deliberation of the Council for the purpose of making the determination; and
- (b) must not take part in making the determination.

(6) A determination under subsection (4) must be recorded in the minutes of the meeting of the Council.

154 Resignation of members of the Advisory Council

(1) A member of the Advisory Council may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

(3) The later day specified in the resignation must not be more than 90 days after the day the resignation is received by the Minister.

155 Termination of appointment of members of the Advisory Council

(1) The Minister may terminate the appointment of a member of the Advisory Council:
- (a) for misbehaviour; or
- (b) if the member is incapable of performing the duties of his or her office.

(2) The Minister may terminate the appointment of a member of the Advisory Council if:

(a) the member:
  (i) becomes bankrupt; or
  (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
  (iii) compounds with his or her creditors; or
  (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
(b) the member is absent, except on leave of absence, from 3 consecutive meetings of the Council; or
(c) the member fails, without reasonable excuse, to comply with section 152 or 153 (which deal with the disclosure of interests); or
(d) the Minister is satisfied that the performance of the member has been unsatisfactory for a significant period; or
(e) in the case of the Principal Member—the Principal Member is not a Board member.

Consultation

(3) The Minister must consult the host jurisdictions about the termination of the appointment of a member of the Advisory Council.

156 Other terms and conditions of members of the Advisory Council

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

Consultation

(2) Before the Minister determines terms and conditions on which a member of the Advisory Council holds office, the Minister must consult the host jurisdictions about the terms and conditions.

Division 3—Procedures of the Advisory Council

157 Procedures of the Advisory Council

The Advisory Council may determine its own procedures.

Part 4—Chief Executive Officer and staff etc.

Division 1—Chief Executive Officer

158 Establishment

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

159 Functions of the CEO

(1) The CEO is responsible for the day-to-day administration of the Agency.

(2) The CEO has power to do all things necessary or convenient to be done for or in connection with the performance of his or her duties.

(3) The CEO is to act in accordance with the objectives, strategies and policies determined by the Board under paragraph 124(1)(b).

(4) The Board may give written directions to the CEO about the performance of the CEO's duties.

(5) The CEO must comply with a direction under subsection (4).

(6) A direction under subsection (4) is not a legislative instrument.

(7) The CEO must give the Board a copy of any significant actuarial report or advice he or she receives, as soon as reasonably practicable after receiving it.

160 Appointment of the CEO

(1) The CEO is to be appointed by the Board.

(2) The appointment is to be made by written instrument.

(3) The CEO holds office on a full-time basis.

(4) The CEO holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

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

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

161 Acting appointments

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

(a) during a vacancy in the office of the CEO, whether or not an appointment has previously been made to the office; or

(b) during any period, or during all periods, when the CEO:

(i) is absent from duty or from Australia; or

(ii) is, for any reason, unable to perform the duties of the office.

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

162 Remuneration and allowances

(1) The CEO is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the CEO is to be paid the remuneration that is prescribed by the regulations.

(2) The CEO is to be paid the allowances that are prescribed by the regulations.

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

163 Leave of absence

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

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

164 Outside employment

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

165 Disclosure of interests

(1) A disclosure by the CEO under section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) must be made to the Board.

(2) Subsection (1) applies in addition to any rules made for the purposes of that section.

(3) For the purposes of this Act and the *Public Governance, Performance and Accountability Act 2013*, the CEO is taken not to have complied with section 29 of that Act if the CEO does not comply with subsection (1) of this section.

166 Resignation of the CEO

(1) The CEO may resign his or her appointment by giving the Board a written resignation.

(2) The resignation takes effect on the day it is received by the Board or, if a later day is specified in the resignation, on that later day.

(3) The later day specified in the resignation must not be more than 90 days after the day the resignation is received by the Board.

167 Termination of appointment of the CEO

(1) The Board may terminate the appointment of the CEO:

(a) for misbehaviour; or

(b) if the CEO is incapable of performing the duties of his or her office.

(2) The Board may terminate the appointment of the CEO if:

(a) the CEO:

(i) becomes bankrupt; or

(ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or

(iii) compounds with his or her creditors; or

(iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or

(b) the CEO is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or

(c) the CEO engages, except with the Board's approval, in paid employment outside the duties of his or her office (see section 164); or

(d) the CEO fails, without reasonable excuse, to comply with section 29 of the *Public Governance, Performance and Accountability Act 2013* (which deals with the duty to disclose interests) or rules made for the purposes of that section; or

(e) the Board is satisfied that the performance of the CEO has been unsatisfactory for a significant period.

(3) If the Board terminates the appointment of the CEO, the Board must notify the Minister of the termination.

168 Other terms and conditions of the CEO

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

Division 2—Staff etc.

169 Staff

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

(2) For the purposes of that Act:

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

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

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

(1) The Agency may arrange with:

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

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

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

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

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

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

171 Consultants

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

Part 5—Reporting and planning

Division 1—Reporting

Subdivision A—Reporting by Board members

172 Annual report

(1) The annual report prepared by the Board members and given to the Minister under section 46 of the *Public Governance, Performance and Accountability Act 2013* must include the things described in subsections (2) and (4).

(2) The annual report must include the following for the period to which the report relates:

(a) details of any directions given under section 121 in the period;

(b) details of any statements given under section 125 in the period;

(c) information (including statistics) and analysis that relates to either or both of the following in the period:

(i) participants;

(ii) funding or provision of supports by the Agency.

(3) The Minister may, by legislative instrument, prescribe particular information, or analysis, described in paragraph (2)(c) that must be included in the annual report.

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

(4) The annual report must include:

(a) the summary, that was prepared under section 180B when the annual report was being prepared, of the annual financial sustainability report prepared then; and

(b) the report of the reviewing actuary's review under subsection 180E(2) of the summary mentioned in paragraph (a).

Prerequisite to making instrument under subsection (3)

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

(7) The Minister must:

(a) give a notice (the ***original notice***) in writing to each member of the Ministerial Council who is a Minister of a State or Territory seeking the agreement of that member to the making of the instrument and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and

(b) provide a copy of the proposed instrument to that member.

(8) If, immediately before the end of that 28-day period, that member:

(a) has not informed the Minister whether that member agrees to the making of the instrument; and

(b) has not made a request under subsection (9);

then, at the end of that period, that member is taken to have agreed to the making of the instrument.

(9) If, before the end of that 28-day period, that member gives a notice in writing to the Minister requesting a longer period within which that member may agree to the making of the instrument:

(a) that member may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, that member has not informed the Minister whether that member agrees to the making of the instrument, then, at the end of that period, that member is taken to have so agreed.

173 Giving certain information to the Ministerial Council

(1) The Board members must give the Ministerial Council a copy of each of the following when, or as soon as practicable after, the Board members give the copy to the Minister or the Finance Minister:

(a) information, a report or a document given to the Minister or the Finance Minister under paragraph 19(1)(b) of the *Public Governance, Performance and Accountability Act 2013*;

(b) particulars of a decision or issue notified to the Minister under paragraph 19(1)(c), (d) or (e) of that Act;

(c) an annual report given to the Minister under section 46 of that Act.

(1A) If the Board members inform the Minister of activities under paragraph 19(1)(a) of that Act, the Board members must also inform the Ministerial Council of the activities.

(2) The Board members must cause a copy of information the Agency gives the Minister or a host jurisdiction Minister under section 175 to be given to the Ministerial Council as soon as practicable after the Agency gives the information to that Minister.

(3) As soon as practicable after any of the following events happens to a person, the Board members must tell the Ministerial Council that the event has happened to the person:

(a) appointment of the person as the CEO by the Board;

(b) resignation of the person as the CEO;

(c) termination of the person's appointment as the CEO.

174 Quarterly report to the Ministerial Council

(1) The Board members must:

(a) prepare a report on the operations of the Agency for each period of 3 months starting on 1 July, 1 October, 1 January or 1 April; and

(b) give the report to the Ministerial Council within 42 days after the end of the period to which the report relates; and

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

(2) The report must include information (including statistics) that relates to either or both of the following in the period to which the report relates:

(a) participants in each host jurisdiction;

(b) funding or provision of supports by the Agency in relation to each host jurisdiction.

(3) The report must also include information about matters prescribed by the National Disability Insurance Scheme rules for the purposes of this subsection.

Subdivision B—Reporting by the Agency

175 Giving information requested by Commonwealth, State or Territory Ministers

(1) The Agency must give the Minister information requested by the Minister about:

(a) expenditure, relating to a particular host jurisdiction, of money received by the Agency from the Commonwealth or that host jurisdiction; or

(b) activities of the Agency relating to a particular host jurisdiction.

(2) The Agency must give a Minister of a host jurisdiction who is a member of the Ministerial Council information requested by that Minister about:

(a) expenditure of money received by the Agency from that jurisdiction; or

(b) expenditure, relating to that jurisdiction, of money received by the Agency from the Commonwealth; or

(c) activities of the Agency relating to that jurisdiction.

175A Monthly summary of statistics

(1) The Agency must, before the end of the 15th day after the end of a calendar month of a year, prepare and publish a statement of:

(a) the following statistics for the calendar month of the year:

(i) the total amount of paid supports for participants in the calendar month;

(ii) the total number of participants in the National Disability Insurance Scheme as at the last day of the calendar month;

(iii) the average annualised payment per participant for the period of 12 months ending at the end of the calendar month, including any participants who had an initial plan approved during that 12-month period;

(iv) the average annualised payment per participant for the period of 12 months ending at the end of the calendar month, excluding any participants who had an initial plan approved during that 12-month period; and

(b) the following statistics for the same calendar month (the ***relevant month***) of the previous year:

(i) the total amount of paid supports for participants in the relevant month;

(ii) the total number of participants in the National Disability Insurance Scheme as at the last day of the relevant month;

(iii) the average annualised payment per participant for the period of 12 months ending at the end of the relevant month, including any participants who had an initial plan approved during that 12-month period.

(2) The statement must be published on a website maintained by the Agency.

(3) If the 15th day after the end of a calendar month is not a business day, the statement may be published on the next business day.

(4) The total amount of paid supports for participants in a calendar month includes cash payments, in-kind payments and an allowance for supports provided but not yet paid.

(5) This section applies in relation to calendar months starting on or after the commencement of this section.

Subdivision C—Reporting by the Minister

176 Giving certain information to the Ministerial Council

(1) As soon as practicable after giving a direction to the Agency under section 121 or a statement to the Board under section 125, the Minister must give a copy of the direction or statement to the Ministerial Council.

(2) As soon as practicable after any of the following events happens to a person, the Minister must tell the Ministerial Council that the event has happened to the person:

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

Division 2—Planning

177 Corporate plan

(1) In preparing a corporate plan under section 35 of the *Public Governance, Performance and Accountability Act 2013*, the Board must have regard to a statement given under section 125 of this Act.

(2) The corporate plan must include details of the following:

(a) the financial sustainability of the National Disability Insurance Scheme (including estimates of the current and future expenditure of the National Disability Insurance Scheme);

(b) the risks and issues relevant to the financial sustainability of the National Disability Insurance Scheme and the management of those risks and issues.

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

(4) If the Board varies the plan, the Board must notify the Ministerial Council of the variation.

(5) Subsection 35(3) of the *Public Governance, Performance and Accountability Act 2013* (which deals with the Australian Government's key priorities and objectives) does not apply to a corporate plan prepared by the Board.

Part 6—Finance

178 Payments to the Agency by the Commonwealth

(1) There is payable to the Agency such money as is appropriated by the Parliament for the purposes of the Agency.

(2) The Finance Minister may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to the Agency.

(3) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.

179 Payments to the Agency by the host jurisdictions

The Agency may receive money paid to it by a host jurisdiction for the purpose of funding supports for participants in the National Disability Insurance Scheme who are in the host jurisdiction.

180 Application of money by the Agency

(1) The money of the Agency consists of:

(a) money paid to the Agency under section 178; and

(b) money received by the Agency under section 179; and

(c) any other money paid to, or received by, the Agency.

(2) Subject to subsection (3), the money of the Agency is to be applied only:

(a) in payment or discharge of any expenses, charges and obligations incurred or undertaken by the Agency in the performance of its functions and the exercise of its powers; and

(b) in payment of remuneration and allowances payable under this Act.

(3) The money of the Agency that was received by the Agency under section 179 is to be applied only for the purpose mentioned in that section.

(4) Subsections (2) and (3) do not prevent investment, under section 59 of the *Public Governance, Performance and Accountability Act 2013*, of money that is not immediately required for the purposes of the Agency.

Part 6A—Actuarial assessment of financial sustainability

Division 1—Scheme actuary and annual financial sustainability report

180A Nomination of scheme actuary

(1) The Board must, in writing, nominate as scheme actuary an actuary:
   (a) who is a Fellow of The Institute of Actuaries of Australia; and
   (b) who the Board considers is a fit and proper person, and has appropriate skills, experience or knowledge, to be the scheme actuary; and
   (c) who is not the reviewing actuary.

(2) The Board must, in writing, revoke the nomination if the nominee ceases to be a Fellow of The Institute of Actuaries of Australia.

(3) Subsection (2) does not limit subsection 33(3) of the *Acts Interpretation Act 1901* (which deals with revocation and variation of instruments).

180B Duties of scheme actuary

Duties relating to annual financial sustainability report

(1) The scheme actuary must do all of the following each time an annual report is being prepared by the Board members under section 46 of the *Public Governance, Performance and Accountability Act 2013*:
   (a) assess:
      (i) the financial sustainability of the National Disability Insurance Scheme; and

(ii) risks to that sustainability; and

(iii) on the basis of information held by the Agency, any trends in provision of supports to people with disability;

(b) consider the causes of those risks and trends;

(c) make estimates of future expenditure of the National Disability Insurance Scheme;

(d) prepare a report of that assessment, consideration and estimation;

(e) prepare a summary of that report that includes the estimates described in paragraph (c).

Duty to make quarterly estimates of future expenditure

(2) At least once each quarter, the scheme actuary must make estimates of the future expenditure of the National Disability Insurance Scheme and advise the CEO of the estimates. For this purpose, ***quarter*** means a period of 3 months starting on 1 July, 1 October, 1 January or 1 April.

Note: The CEO must give the Board a copy of the advice under subsection 159(7).

Duty to provide information and advice on request

(3) The scheme actuary must, on request from the Board or the CEO, provide actuarial information or advice.

Duty to report concerns to Board

(4) If the scheme actuary has significant concerns about the financial sustainability of the National Disability Insurance Scheme, or the risk management processes of the Agency, he or she must report those concerns to the Board as soon as reasonably practicable.

180C Rules for performance of scheme actuary's duties

The Minister administering the *Insurance Act 1973* may, by legislative instrument, determine rules that the scheme actuary must comply with in performing his or her duties under section 180B.

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

Division 2—Reviewing actuary

180D Nomination of reviewing actuary

(1) The Board must, in writing, nominate as reviewing actuary an actuary:

(a) who is a Fellow of The Institute of Actuaries of Australia; and

(b) who the Board considers is a fit and proper person, and has appropriate skills, experience or knowledge, to be the reviewing actuary; and

(c) who is not the scheme actuary; and

(d) who is not a member of the staff of the Agency under section 169.

(2) The nomination has effect for 3 years or a shorter period specified in the nomination.

(3) The Board must, in writing, revoke the nomination if the nominee:

(a) ceases to be a Fellow of The Institute of Actuaries of Australia; or

(b) becomes a member of the staff of the Agency under section 169.

(4) Subsections (2) and (3) do not limit subsection 33(3) of the *Acts Interpretation Act 1901* (which deals with revocation and variation of instruments).

Nominations and revocations are not legislative instruments

(6) Neither a nomination made under subsection (1) nor a revocation made under subsection (3) is a legislative instrument.

180E Duties of reviewing actuary

(1) The reviewing actuary must, on request by the Board, review and report to the Board on actuarial reports and advice received by the Board.

(2) The reviewing actuary must review and report to the Board on each annual financial sustainability report and summary prepared under section 180B.

(3) The reviewing actuary must include in each of his or her reports under subsection (2) a statement whether he or she is satisfied that the Agency made all arrangements necessary for him or her to conduct the review to which the report relates.

(4) If the reviewing actuary has significant concerns about the financial sustainability of the National Disability Insurance Scheme, or the risk management processes of the Agency, he or she must report those concerns to the Board as soon as reasonably practicable.

Division 3—Assistance of scheme actuary and reviewing actuary

180F Agency to assist scheme actuary and reviewing actuary

The Agency must make arrangements to enable:

(a) the scheme actuary to perform his or her duties under section 180B; and

(b) the reviewing actuary to perform his or her duties under section 180E.

Part 7—Miscellaneous

181 Taxation

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

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

Chapter 6A—NDIS Quality and Safeguards Commission

Part 1—Commission establishment and functions

181A Establishment of the Commission

(1) The NDIS Quality and Safeguards Commission is established by this section.

Note: The Commission does not have a legal identity separate from the Commonwealth.

(2) The Commission consists of:

(a) the Commissioner; and

(b) the staff of the Commission.

(3) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):

(a) the Commission is a listed entity; and

(b) the Commissioner is the accountable authority of the Commission; and

(c) the following persons are officials of the Commission:

(i) the Commissioner;

(ii) the staff referred to in section 181U;

(iii) persons assisting the Commissioner referred to in section 181W;

(iv) consultants engaged under section 181V; and

(d) the purposes of the Commission include:

(i) the functions of the Commission referred to in section 181B; and

(ii) the functions of the Commissioner referred to in section 181D.

181B Commission's functions

The Commission's function is to assist the Commissioner in the performance of the Commissioner's functions.

Part 2—NDIS Quality and Safeguards Commissioner

181C Commissioner

There is to be a Commissioner of the NDIS Quality and Safeguards Commission.

181D Commissioner's functions and powers

(1) The Commissioner has the following functions:
 (a) the core functions;
 (b) the registration and reportable incident functions;
 (c) the complaints functions;
 (d) the behaviour support function;
 (e) such other functions that are conferred on the Commissioner by or under this Act or any other law of the Commonwealth;
 (f) to do anything incidental or conducive to the performance of any of the above functions.

(2) The Commissioner may, by notifiable instrument, make guidelines relating to the performance of any of the functions mentioned in subsection (1).

(3) In performing his or her functions, the Commissioner may:
 (a) consult and cooperate with other persons, organisations and governments on matters relating to those functions; and
 (b) consult and cooperate with other persons, organisations and governments on matters relating to the determination of the rights and interests of people receiving, or eligible to receive, supports or services under the National Disability Insurance Scheme; and
 (c) consult persons and groups with an interest in the supports or services provided under the National Disability Insurance Scheme; and

(d) have regard to the interests and needs of persons receiving, or eligible to receive, supports or services under the National Disability Insurance Scheme.

(3A) In performing his or her functions, the Commissioner must acknowledge, recognise and respect the role of advocates (including independent advocates) in representing the interests of people with disability.

(3B) In performing his or her functions, the Commissioner must have due regard to procedural fairness.

(4) In performing his or her functions, the Commissioner must use his or her best endeavours to:

(a) provide opportunities for people with disability to participate in matters that relate to them and to take into consideration the wishes and views of people with disability in relation to those matters; and

(b) conduct compliance and enforcement activities in a risk responsive and proportionate manner; and

(c) support and maintain a diverse and sustainable NDIS market.

(5) The Commissioner has power to do all things necessary or convenient to be done for or in connection with the performance of his or her functions.

181E Commissioner's core functions

The Commissioner's ***core functions*** are as follows:

(a) to uphold the rights of, and promote the health, safety and wellbeing of, people with disability receiving supports or services, including those received under the National Disability Insurance Scheme;

(b) to develop a nationally consistent approach to managing quality and safeguards for people with disability receiving supports or services, including those received under the National Disability Insurance Scheme;

(c) to promote the provision of advice, information, education and training to NDIS providers and people with disability;

(d) to secure compliance with this Act (other than in relation to matters within the Agency's functions) through effective compliance and enforcement arrangements, including through the monitoring and investigation functions conferred on the Commissioner by Part 3B of Chapter 4;

(e) to promote continuous improvement amongst NDIS providers and the delivery of progressively higher standards of supports and services to people with disability;

(f) to develop and oversee the broad policy design for a nationally consistent framework relating to the screening of workers involved in the provision of supports and services to people with disability;

(g) to provide advice or recommendations to the Agency or the Board in relation to the performance of the Agency's functions;

(h) to engage in, promote and coordinate the sharing of information to achieve the objects of this Act;

(i) to provide NDIS market oversight, including:

(i) by monitoring changes in the NDIS market which may indicate emerging risk; and

(ii) by monitoring and mitigating the risks of unplanned service withdrawal.

181F Commissioner's registration and reportable incident functions

The Commissioner's ***registration and reportable incident functions*** are as follows:

(a) the functions conferred on the Commissioner by Division 2 of Part 3A of Chapter 4 (about registered NDIS providers);

(b) the functions conferred on the Commissioner by section 73U (about approved quality auditors);

(c) to monitor registered NDIS provider compliance with their conditions of registration, including in relation to the screening of workers in accordance with the NDIS Practice Standards;

(d) to provide education, guidance and best practice information to NDIS providers in relation to compliance matters;

(e) the functions relating to the notification and management of reportable incidents conferred on the Commissioner by the National Disability Insurance Scheme rules made for the purposes of section 73Z;

(f) to support registered NDIS providers to develop and implement effective incident management systems and to build provider capability to prevent and manage incidents;

(g) to collect, correlate, analyse and disseminate information relating to incidents, including reportable incidents, to identify trends or systemic issues.

181G Commissioner's complaints functions

The Commissioner's ***complaints functions*** are as follows:

(a) the functions relating to the investigation, management, conciliation and resolution of complaints conferred on the Commissioner by the National Disability Insurance Scheme rules made for the purposes of section 73X;

(b) to educate people about, and develop resources relating to, best practice in the handling of:

  (i) complaints arising out of, or in connection with, the provision of supports or services by NDIS providers; and

  (ii) matters arising from such complaints;

(c) to build the capability of people with disability to pursue complaints in relation to the provision of supports or services by NDIS providers;

(d) to build NDIS provider capability to develop a culture of learning and innovation to deliver high quality supports and services, prevent incidents and respond to complaints;

(e) to collect, correlate, analyse and disseminate information relating to complaints arising out of, or in connection with, the provision of supports or services by NDIS providers.

181H Commissioner's behaviour support function

The Commissioner's ***behaviour support function*** is to provide leadership in relation to behaviour support, and in the reduction and elimination of the use of restrictive practices, by NDIS providers, including by:

(a) building capability in the development of behaviour support through:

(i) developing and implementing a competency framework for registered NDIS providers whose registration includes the provision of behaviour support assessments and developing behaviour support plans; and

(ii) assessing the skills and experience of such providers against the competency framework; and

(b) developing policy and guidance materials in relation to behaviour supports and the reduction and elimination of the use of restrictive practices by NDIS providers; and

(c) providing education, training and advice on the use of behaviour supports and the reduction and elimination of the use of restrictive practices; and

(d) overseeing the use of behaviour support and restrictive practices, including by:

(i) monitoring registered NDIS provider compliance with the conditions of registration relating to behaviour support plans; and

(ii) collecting, analysing and disseminating data and other information relating to the use of behaviour supports and restrictive practices by NDIS providers; and

(e) undertaking and publishing research to inform the development and evaluation of the use of behaviour supports and to develop strategies to encourage the reduction and elimination of restrictive practices by NDIS providers; and

(f) assisting the States and Territories to develop a regulatory framework, including nationally consistent minimum standards, in relation to restrictive practices:
   (i) in line with the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector; and
   (ii) consistent with the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006.

Note: The Convention on the Rights of Persons with Disabilities is in Australian Treaty Series 2008 No. 12 ([2008] ATS 12) and could in 2017 be viewed in the Australian Treaties Library on the AustLII website (http://www.austlii.edu.au).

181J Charging of fees by Commissioner

(1) The Commissioner may charge fees in accordance with an instrument made under subsection (2).

(2) The Minister may, by legislative instrument, determine:
   (a) the things that the Commissioner does in the performance of his or her functions for which he or she may charge fees; and
   (b) the amount, or a method of working out the amount, of those fees.

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

(3) A fee must not be such as to amount to taxation.

181K Minister may give directions to the Commissioner

(1) The Minister may, by legislative instrument, give directions to the Commissioner about the performance of his or her functions and the exercise of his or her powers.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (sunsetting) of the *Legislation Act 2003* do not apply to the directions (see regulations made for the purposes of paragraphs 44(2)(b) and 54(2)(b) of that Act).

(2) A direction given under subsection (1):
 (a) must not relate to a particular individual or provider; and
 (b) must not be inconsistent with this Act, the regulations or an instrument made under this Act.

(3) The Commissioner must comply with a direction given under subsection (1).

(4) Subsection (3) does not apply to the extent that the direction relates to the Commissioner's performance of functions or exercise of powers under the following Acts in relation to the Commission:
 (a) the *Public Service Act 1999*;
 (b) the *Public Governance, Performance and Accountability Act 2013*.

181L Appointment of the Commissioner

(1) The Commissioner is to be appointed by the Minister, by written instrument, on a full-time basis.

(2) The Commissioner holds office for the period specified in the instrument of appointment. The period must not exceed 3 years.

Note: The Commissioner may be reappointed (see section 33AA of the *Acts Interpretation Act 1901*).

181M Acting appointments

The Minister may, by written instrument, appoint a person to act as the Commissioner:
 (a) during a vacancy in the office of Commissioner (whether or not an appointment has previously been made to the office); or
 (b) during any period, or during all periods, when the Commissioner:
  (i) is absent from duty or from Australia; or
  (ii) is, for any reason, unable to perform the duties of the office.

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

181N Remuneration and allowances

(1) The Commissioner is to be paid the remuneration that is determined by the Remuneration Tribunal. If no determination of that remuneration by the Tribunal is in operation, the Commissioner is to be paid the remuneration that is determined under paragraph (4)(a).

(2) The Commissioner is to be paid the allowances that are determined under paragraph (4)(b).

(3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

(4) The Minister may, by legislative instrument, determine:

(a) remuneration for the purposes of subsection (1); and

(b) allowances for the purposes of subsection (2).

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

181P Leave of absence

(1) The Commissioner has the recreation leave entitlements that are determined by the Remuneration Tribunal.

(2) The Minister may grant to the Commissioner leave of absence, other than recreation leave, on the terms and conditions as to remuneration or otherwise that the Minister determines in writing.

181Q Outside employment

The Commissioner must not engage in paid work outside the duties of his or her office without the Minister's approval.

181R Other terms and conditions

The Commissioner holds office on the terms and conditions (if any) in relation to matters not covered by this Act that are determined, in writing, by the Minister.

181S Resignation

(1) The Commissioner may resign his or her appointment by giving the Minister a written resignation.

(2) The resignation takes effect on the day it is received by the Minister or, if a later day is specified in the resignation, on that later day.

181T Termination of appointment

(1) The Minister may terminate the appointment of the Commissioner:
   (a) for misbehaviour; or
   (b) if the Commissioner is unable to perform the duties of his or her office because of physical or mental incapacity.

(2) The Minister may terminate the appointment of the Commissioner if:
   (a) the Commissioner:
      (i) becomes bankrupt; or
      (ii) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors; or
      (iii) compounds with his or her creditors; or
      (iv) makes an assignment of his or her remuneration for the benefit of his or her creditors; or
   (b) the Commissioner is absent, except on leave of absence, for 14 consecutive days or for 28 days in any 12 months; or
   (c) the Commissioner engages, without the Minister's approval, in paid work outside the duties of his or her office (see section 181Q).

Note: The appointment of the Commissioner may also be terminated under section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials).

Part 3—Staff etc. of the Commission

181U Staff of the Commission

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

(2) For the purposes of that Act:

(a) the Commissioner and the staff of the Commission together constitute a Statutory Agency; and

(b) the Commissioner is the Head of that Statutory Agency.

181V Consultants

(1) The Commissioner may, on behalf of the Commonwealth, engage consultants to assist in the performance of the Commissioner's functions.

(2) The consultants are to be engaged on the terms and conditions that the Commissioner determines in writing.

181W Persons assisting the Commissioner

The Commissioner may be assisted:

(a) by employees of Agencies (within the meaning of the *Public Service Act 1999*); or

(b) by officers or employees of a State or Territory; or

(c) by officers or employees of authorities of the Commonwealth, a State or a Territory;

whose services are made available to the Commissioner in connection with the performance of the Commissioner's functions.

Chapter 6B—NDIS worker screening database

181X Simplified outline of this Chapter

- The Commissioner must establish, operate and maintain the NDIS worker screening database.
- The database will keep a record of decisions made in relation to persons who have made an application for an assessment of whether they, in working, or seeking to work, with people with disability pose a risk to such people.
- One of the purposes of the database is to share information in the database with persons or bodies (including employers and potential employers) for the purposes of the National Disability Insurance Scheme.

181Y NDIS worker screening database

(1) The Commissioner must establish, operate and maintain a database for the purposes of this Act, to be known as the NDIS worker screening database.

Note: As subsection (1) confers a function on the Commissioner, section 55A allows the Commissioner to gather information for inclusion in the database.

(2) The NDIS worker screening database must be kept in electronic form.

Purposes of the database

(3) The purposes of the NDIS worker screening database are the following:

(a) to maintain, for the purposes of the National Disability Insurance Scheme, an up-to-date record of persons who, under decisions made under NDIS worker screening laws, have been found, in working, or seeking to work, with people with disability not to pose a risk, or to pose a risk, to such people;

(b) in relation to persons covered by paragraph (a)—to maintain an up-to-date record of other decisions that relate to the decisions covered by that paragraph;

(c) to share information in the database:

(i) with persons or bodies (including employers and potential employers) for the purposes of the National Disability Insurance Scheme; or

(ii) with the Commissioner of the Aged Care Quality and Safety Commission for the purposes of assisting the Commissioner to perform the Commissioner's functions or exercise the Commissioner's powers; or

(iii) with registered aged care providers that are employers, or potential employers, of persons; or

(iv) with persons or bodies (whether the persons or bodies are registered aged care providers or not) for the purposes of the *Aged Care Act 2024* or for the purposes of those persons or bodies facilitating the employment, engagement or training of other persons to work with individuals accessing funded aged care services;

(d) any other purpose determined in an instrument under subsection (8).

(4) Paragraphs (3)(a) to (c) do not limit paragraph (3)(d).

Information in the database

(5) The NDIS worker screening database may include the following information for the purposes of subsection (3):

(a) information relating to persons (each of whom is a ***screening applicant***) who have made applications (each of which is a

screening application) for an NDIS worker screening check and information relating to those applications;

(b) information relating to each screening applicant in respect of whom a screening application is no longer being considered and the reasons for this;

(c) information relating to each screening applicant in respect of whom a decision (a ***clearance decision***) (however described) is in force, under an NDIS worker screening law, to the effect that the person, in working, or seeking to work, with people with disability does not pose a risk to such people and information relating to the decision;

(d) information relating to any decisions made under an NDIS worker screening law, in relation to each screening applicant, while the screening applicant's application is pending;

(e) information relating to each screening applicant in respect of whom a decision (an ***exclusion decision***) (however described) is in force, under an NDIS worker screening law, to the effect that the person, in working, or seeking to work, with people with disability does pose a risk to such people and information relating to the decision;

(f) if a clearance decision or an exclusion decision specifies the period for which the decision is in force—information setting out that period;

(g) information relating to each person in respect of whom a decision (however described), under an NDIS worker screening law, suspending a clearance decision has been made and information relating to the suspension;

(h) information relating to each person in respect of whom a decision (however described), under an NDIS worker screening law, revoking a clearance decision or an exclusion decision has been made and information relating to the revocation;

(i) information relating to employers or potential employers of persons who have made screening applications;

(j) any other information determined in an instrument under subsection (8).

(6) Paragraphs (5)(a) to (i) do not limit paragraph (5)(j).

(6A) The NDIS worker screening database may also include the following information:

(a) information relating to persons (each of whom is a ***screening applicant***) who:

(i) have made applications (each of which is a ***screening application***) for an aged care worker screening check; and

(ii) are identified (in screening applications or otherwise) as seeking to work with people with disability;

and information relating to those applications;

(b) information relating to each screening applicant in respect of whom a screening application is no longer being considered and the reasons for this;

(c) information relating to each screening applicant in respect of whom a decision (a ***clearance decision***) (however described) is in force, under an aged care worker screening law, to the effect that the person, in working, or seeking to work, with individuals accessing funded aged care services does not pose a risk to such individuals and information relating to the decision;

(d) information relating to any decisions made under an aged care worker screening law, in relation to each screening applicant, while the screening applicant's application is pending;

(e) information relating to each screening applicant in respect of whom a decision (an ***exclusion decision***) (however described) is in force, under an aged care worker screening law, to the effect that the person, in working, or seeking to work, with individuals accessing funded aged care services does pose a risk to such individuals and information relating to the decision;

(f) if a clearance decision or an exclusion decision specifies the period for which the decision is in force—information setting out that period;

(g) information relating to each person in respect of whom a decision (however described), under an aged care worker screening law, suspending a clearance decision has been made and information relating to the suspension;

(h) information relating to each person in respect of whom a decision (however described), under an aged care worker screening law, revoking a clearance decision or an exclusion decision has been made and information relating to the revocation;

(i) information relating to employers or potential employers of persons who have made screening applications.

Database may include personal information

(7) The information included under paragraphs (5)(a) to (j) and (6A)(a) to (i) may include personal information (within the meaning of the *Privacy Act 1988*).

Legislative instrument

(8) The Minister may, by legislative instrument, do either or both of the following:

(a) determine a purpose for the purposes of paragraph (3)(d);

(b) determine information for the purposes of paragraph (5)(j).

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

Database not a legislative instrument

(9) The NDIS worker screening database is not a legislative instrument.

181Z Aged care clearance decision taken to be NDIS clearance decision

(1) This section applies if an aged care clearance decision is in force, under an aged care worker screening law, in respect of a person in

working, or seeking to work, with individuals accessing funded aged care services.

(2) The aged care clearance decision in respect of the person is taken, for the purposes of this Act (other than this Chapter), to be an NDIS clearance decision in force, under an NDIS worker screening law, in respect of the person in working, or seeking to work, with people with disability.

181ZA Aged care exclusion decision taken to be NDIS exclusion decision

(1) This section applies if an aged care exclusion decision is in force, under an aged care worker screening law, in respect of a person in working, or seeking to work, with individuals accessing funded aged care services.

(2) The aged care exclusion decision in respect of the person is taken, for the purposes of this Act (other than this Chapter), to be an NDIS exclusion decision in force, under an NDIS worker screening law, in respect of the person in working, or seeking to work, with people with disability.

Chapter 7—Other matters

Part 1—Debt recovery

Division 1—Debts

182 Debts due to the Agency

(1) If:

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

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

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

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

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

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

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

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

(c) the payment was made in respect of a service funded under a participant's plan and the participant died before the service was provided.

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

(4) An amount that is equal to an NDIS amount is a debt due to the Agency by a person if:

(a) the person makes a claim for the payment of the NDIS amount; and

(b) the person receives the NDIS amount; and

(c) the person is required under section 45B to keep and retain a record that relates to the claim, or the provision of an NDIS support to which the claim relates, for a period; and

(d) the person does not comply with the requirement; and

(e) the person cannot otherwise demonstrate an entitlement to receive the NDIS amount.

Division 2—Methods of recovery

183 Legal proceedings

(1) A debt under this Act is recoverable by the Agency by means of legal proceedings brought by the CEO on behalf of the Agency in a court of competent jurisdiction.

(2) Subject to subsections (3), (4) and (5), legal proceedings for the recovery of the debt are not to be commenced after the end of the period (the ***recovery period***) of 6 years starting on the first day an Agency officer becomes aware, or could reasonably be expected to have become aware, of the circumstances that gave rise to the debt.

(3) If, within the recovery period, part of the debt is paid, legal proceedings for the recovery of the balance of the debt may be commenced within the period of 6 years starting on the day of payment.

(4) If, within the recovery period, the person who owes the debt acknowledges that he or she owes it, legal proceedings for the recovery of the debt may be commenced within the period of 6 years starting on the day of acknowledgement.

(5) If, within the recovery period, any of the following activities occurs:

(a) a review of a file relating to action for the recovery of the debt;

(b) other internal Agency activity relating to action for the recovery of the debt;

action under this section for the recovery of the debt may be commenced within the period of 6 years after the end of the activity.

184 Arrangement for payment of debt

(1) The CEO may enter into an arrangement with a person under which the person is to pay a debt, owed by the person to the

Agency under this Act, or the outstanding amount of such a debt, in a way set out in the arrangement.

(2) An arrangement entered into under subsection (1) has effect, or is taken to have had effect, on and after the day specified in the arrangement as the day the arrangement commences (whether that day is the day the arrangement is entered into or an earlier or later day).

(3) If an arrangement entered into under subsection (1) does not specify a day as mentioned in subsection (2), it has effect on and after the day on which it is entered into.

(4) The CEO may terminate or alter an arrangement entered into under subsection (1):

(a) at the debtor's request; or

(b) after giving 28 days' notice to the debtor of the proposed termination or alteration; or

(c) without notice, if the CEO is satisfied that the person has failed to disclose material information about his or her true capacity to repay the debt.

185 Recovery of amounts from financial institutions

CEO may give notice

(1) If:

(a) an NDIS amount or NDIS amounts are paid to a financial institution for the credit of an account kept with the institution; and

(b) the CEO is satisfied that the payment or payments were intended to be made to someone who was not the person or one of the persons in whose name or names the account was kept;

the CEO may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Agency, within a reasonable period stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice, being an amount equal to the NDIS amount or the sum of the NDIS amounts;

(d) the amount standing to the credit of the account when the notice is received by the institution.

(2) If:

(a) an NDIS amount or NDIS amounts that are intended to be made to or in respect of a person (the ***first person***) are made to a financial institution for the credit of an account that was kept with the institution by the first person or by the first person and one or more other persons; and

(b) the first person died before the payment or payments were made;

the CEO may give a written notice to the institution setting out the matters mentioned in paragraphs (a) and (b) and requiring the institution to pay to the Agency, within a reasonable period stated in the notice, the lesser of the following amounts:

(c) an amount specified in the notice that is equal to the NDIS amount or the sum of the NDIS amounts;

(d) the amount standing to the credit of the account when the notice is received by the institution.

(3) As soon as possible after issuing a notice under subsection (2), the CEO must inform the deceased estate in writing of:

(a) the amount sought to be recovered from the deceased person's account; and

(b) the reasons for the recovery action.

Offence

(4) A financial institution must comply with a notice given to it under subsection (1) or (2).

Penalty: 300 penalty units.

(5) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the

financial institution proves that it was incapable of complying with the notice.

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

Civil penalty

(5A) A financial institution contravenes this subsection if the financial institution does not comply with a notice given to it under subsection (1) or (2).

Civil penalty: 300 penalty units.

(5B) Subsection (5A) does not apply to a financial institution if the financial institution is incapable of complying with the notice.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

Offset of debts

(6) If a notice is given to a financial institution under subsection (1) (payment made to wrong account) or under subsection (2) (death of person in whose name the account was kept) in respect of an NDIS amount or NDIS amounts, any amount recovered by the Agency from the institution in respect of the debt reduces any debt owed to the Agency by any other person in respect of the NDIS amount or NDIS amounts.

Division 3—Information relating to debts

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

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

(a) give to the Agency information that is relevant to the person's financial situation;

(b) produce to the Agency a document that the CEO has reasonable grounds to believe is in the person's custody, or under the person's control, and is relevant to the person's financial situation;

(c) if the person's address changes—inform the Agency of the new address within 14 days after the change.

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

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

(a) that would help the Agency locate another person (the ***debtor***) who owes a debt to the Agency under this Act; or

(b) that is relevant to the debtor's financial situation;

the CEO may require the person to give the information, or produce the document, to the Agency.

188 Written notice of requirement

(1) A requirement under this Division must be made by written notice given to the person of whom the requirement is made.

(2) The notice must specify:

(a) the nature of the information or document that is required to be given or produced; and

(b) how the person is to give the information or produce the document; and

(c) the period within which the person is to give the information or produce the document to the Agency; and

(d) the Agency officer to whom the information is to be given or the document is to be produced; and

(e) that the notice is given under this section.

(3) The period specified under paragraph (2)(c) must be a period of at least 14 days beginning on the day on which the notice is given.

(4) The notice may require the person to give the information by appearing before a specified Agency officer to answer questions.

(5) If the notice requires the person to appear before an Agency officer, the notice must specify a time and place at which the person is to appear. The time must be at least 14 days after the notice is given.

189 Refusal or failure to comply with requirement

Offence

(1) A person must not refuse or fail to comply with a requirement under this Division to give information or produce a document.

Penalty: 30 penalty units.

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

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

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

Civil penalty

(2A) A person contravenes this subsection if the person refuses or fails to comply with a requirement under this Division to give information or produce a document.

Civil penalty: 30 penalty units.

(2B) Subsection (2A) does not apply if the person has a reasonable excuse.

Note: A defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

Reasonable excuse

(3) It is a reasonable excuse for an individual to refuse or fail to give information or produce a document on the ground that to do so might tend to incriminate the individual or expose the individual to a penalty.

Division 4—Non-recovery of debts

190 CEO may write off debt

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

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

(a) the debt is irrecoverable at law; or

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

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

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

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

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

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

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

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

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

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

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

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

191 Power to waive Agency's right to recover debt

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

(2) A waiver takes effect:

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

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

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

192 Waiver of debt arising from error

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

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

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

whichever is the later.

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

193 Waiver of small debt

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

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

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

194 Waiver in relation to settlements

(1) If the Agency has agreed to settle a civil action against a debtor for recovery of a debt for less than the full amount of the debt, the CEO must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

(2) If the CEO has agreed to settle proceedings before the Administrative Review Tribunal relating to recovery of a debt on the basis that the debtor will pay less than the full amount of the debt, the CEO must waive the right to recover the difference between the debt and the amount that is the subject of the settlement.

(3) If:

(a) the Agency has recovered at least 80% of the original value of a debt from a debtor; and

(b) the Agency and the debtor agree that the recovery is in full satisfaction for the whole of the debt; and

(c) the debtor cannot repay a greater proportion of the debt;

the CEO must waive the remaining 20% or less of the value of the original debt.

(4) If the CEO and a debtor agree that the debtor's debt will be fully satisfied if the debtor pays the Agency an agreed amount that is less than the amount of the debt outstanding at the time of the agreement (the ***unpaid amount***), the CEO must waive the right to recover the difference between the unpaid amount and the agreed amount.

(5) The CEO must not make an agreement described in subsection (4) unless the CEO is satisfied that the agreed amount is at least the present value of the unpaid amount if it is repaid in instalments of amounts, and at times, determined by the CEO.

(6) For the purposes of subsection (5), the present value of the unpaid amount is the amount worked out in accordance with the method prescribed by the National Disability Insurance Scheme rules.

195 Waiver in special circumstances

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

(a) the debt did not result wholly or partly from the debtor or another person knowingly:

(i) making a false or misleading statement or representation; or

(ii) failing or omitting to comply with this Act, the regulations or the National Disability Insurance Scheme rules; and

(b) there are special circumstances (other than financial hardship alone) that the CEO is satisfied make waiver appropriate; and

(c) the CEO is satisfied that waiver is more appropriate than writing off the debt.

Part 2—General matters

196 Method of notification by CEO

If this Act, the regulations or the National Disability Insurance Scheme rules require or permit the CEO to notify a person, the CEO may notify the person:

(a) by sending the notice by prepaid post addressed to the person at his or her postal address last known to the CEO; or

(b) by giving the notice to the person personally; or

(c) in any other way the CEO considers appropriate.

197 CEO not required to make a decision

(1) If this Act, the regulations or the National Disability Insurance Scheme rules require a request or application to be in a form approved by the CEO, the CEO is not required to make a decision on the request or application if it is not in that form.

(2) If this Act, the regulations or the National Disability Insurance Scheme rules permit the CEO to require information or documents for the purposes of, or for purposes relating to, making a decision or doing a thing, the CEO is not required to make the decision or do the thing until the information or documents are provided.

197A Method of notification by Commissioner

If this Act, the regulations or the National Disability Insurance Scheme rules require or permit the Commissioner to notify a person, the Commissioner may notify the person:

(a) by sending the notice by prepaid post addressed to the person at his or her postal address last known to the Commissioner; or

(b) by giving the notice to the person personally; or

(c) in any other way the Commissioner considers appropriate.

197B Commissioner not required to make a decision

(1) If this Act, the regulations or the National Disability Insurance Scheme rules require a request or application to be in a form approved by the Commissioner, the Commissioner is not required to make a decision on the request or application if it is not in that form.

(2) If this Act, the regulations or the National Disability Insurance Scheme rules permit the Commissioner to require information or documents for the purposes of, or for purposes relating to, making a decision or doing a thing, the Commissioner is not required to make the decision or do the thing until the information or documents are provided.

198 Protection of participant against liability for actions of persons

Nothing in this Part renders a participant guilty of an offence against this Act in relation to any act or omission of a person who does a thing because of section 74.

199 Protection against criminal liability

A person who does a thing because of section 74 is not subject to any criminal liability under this Act in relation to:

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

(b) anything done, or omitted to be done, in good faith, because of section 74.

199A Physical elements of offences

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct rule provision***) commits an offence.

(2) For the purposes of applying Chapter 2 of the *Criminal Code* to the offence, the physical elements of the offence are set out in the conduct rule provision.

Note: Chapter 2 of the *Criminal Code* sets out general principles of criminal responsibility.

199B Contravening offence and civil penalty provisions

(1) This section applies if a provision of this Act provides that a person contravening another provision of this Act (the ***conduct provision***) commits an offence or is liable to a civil penalty.

(2) For the purposes of this Act, a reference to a contravention of an offence provision or a civil penalty provision includes a reference to a contravention of the conduct provision.

Note: This also affects references in the Regulatory Powers Act to a contravention of an offence provision or a civil penalty provision: see the definition of ***this Act*** in section 7.

199C Evidentiary certificates—proceedings generally

(1) In any of the following proceedings, a certificate signed by the Commissioner is prima facie evidence of the matters specified in it:

(a) proceedings for an offence against this Act;

(b) proceedings for an offence against Part 7.3 (fraudulent conduct) or 7.4 (false or misleading statements) of the *Criminal Code* that relates to the Commission;

(c) proceedings for a contravention of a civil penalty provision.

(2) The certificate may specify any one or more of the following:

(a) the date on which the Commissioner received a person's application under section 73C to be a registered NDIS provider;

(b) the date on which the Commissioner registered a person under section 73E as a registered NDIS provider;

(c) the date on which a person or entity transitioned from a registered provider of supports to a registered NDIS provider under rules made for the purposes of paragraph 81(2)(b) of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*;

(d) the date on which a person's registration as a registered NDIS provider will (subject to section 73K) cease to be in force;

(e) the date on which a person's registration as a registered NDIS provider ceased to be in force or was revoked (if applicable);

(f) the classes of supports or services that a registered NDIS provider is registered to provide;

(g) the date on which a variation of a person's registration as a registered NDIS provider takes effect;

(h) the date on which the Commissioner decided to vary or revoke a person's registration as a registered NDIS provider;

(i) any other matter prescribed in the National Disability Insurance Scheme rules for the purposes of this paragraph.

200 Evidentiary certificates—reparation orders

(1) For the purposes of paragraph 21B(1)(c) of the *Crimes Act 1914*, as it applies in relation to an offence against Division 4 of Part 1 of Chapter 4 (other than subsection 59A(2)) or Part 7.3 or 7.4 of the *Criminal Code* relating to the Agency or this Act, a certificate signed by the CEO is prima facie evidence of the matters specified in the certificate.

(2) The certificate may specify:

(a) the person to whom, or in relation to whom, an NDIS amount has been paid because of an act or omission for which the person or another person has been convicted of an offence against Part 7.3 or 7.4 of the *Criminal Code* relating to the Agency or this Act; and

(b) the amount paid; and

(c) the act or omission.

Note: Parts 7.3 and 7.4 of the *Criminal Code* deal with certain fraudulent conduct and false or misleading statements.

200A Legal assistance for review not funded

Nothing in this Act permits or requires the Agency to fund legal assistance for prospective participants or participants in relation to review of decisions made under this Act.

201 Delegation by the Minister to the CEO

(1) The Minister may, in writing, delegate to the CEO his or her powers under section 209.

(2) The Minister must not delegate to the CEO his or her powers under section 209 unless each host jurisdiction has agreed to the delegation.

Process for seeking agreement

(2A) The Minister must:

(a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the delegation and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and

(b) provide a copy of the proposed instrument of delegation to that host jurisdiction Minister.

(2B) If, immediately before the end of that 28-day period:

(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the delegation; and

(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (2C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the delegation.

(2C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the delegation:

(a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the delegation, then, at the end of that period, that host jurisdiction is taken to have so agreed.

CEO must comply with Ministerial directions

(3) When exercising powers under a delegation, the CEO must comply with any directions of the Minister.

Limit on delegation

(4) Despite subsection (1), the power to make National Disability Insurance Scheme rules for the purposes of the provisions listed in subsection 201A(1) may not be delegated to the CEO.

201A Delegation by the Minister to the Commissioner

(1) The Minister may, in writing, delegate to the Commissioner his or her powers under section 209 to make National Disability Insurance Scheme rules for the purposes of the following provisions:

(a) subparagraph 10C(1)(b)(ii);

(aa) paragraph 67A(1)(db) (recording, disclosing and using protected Commission information);

(b) section 67F (NDIS rules for exercise of Commissioner's disclosure powers);

(c) subsection 73B(1) (requirement to be a registered NDIS provider);

(d) paragraphs 73E(1)(d), (e) and (f) (registration as a registered NDIS provider);

(e) section 73H (conditions determined by NDIS rules);

(f) paragraphs 73N(1)(d), (e) and (f) (suspension of registration);

(g) paragraphs 73P(1)(d), (e) and (f) (revocation of registration);
(h) section 73Q (record keeping by registered NDIS providers);
(i) subsection 73T(1) (NDIS Practice Standards);
(ia) subsections 73U(4A) and (9A) (approved quality auditors);
(j) subsection 73V(1) (NDIS Code of Conduct);
(k) paragraph 73W(b) (complaints management and resolution system);
(l) subsection 73X(1) (complaints management and resolution);
(m) paragraph 73Y(b) (incident management system);
(n) subsections 73Z(1) and (5) (reportable incidents);
(na) paragraphs 73ZDA(3)(d), (4)(d), (5)(k), (6)(g) and (7)(e) and subsection 73ZDA(9) (NDIS Provider Register);
(o) paragraph 73ZM(2)(h) (compliance notices);
(oa) subparagraphs 73ZN(1)(b)(iii) and (2)(a)(iii), paragraph 73ZN(2A)(a) and subparagraph 73ZN(2B)(c)(iii) (banning orders);
(ob) subsection 73ZOA(2) (anti-promotion orders);
(q) subsection 99(2) (reviewable decisions);
(r) paragraph 199C(2)(i) (evidentiary certificates).

(1A) The Minister may, in writing, delegate to the Commissioner the Minister's power under subsection 181Y(8).

(2) When exercising powers under a delegation, the Commissioner must comply with any directions of the Minister.

202 Delegation by the CEO

(1) The CEO may, in writing, delegate to an Agency officer any or all of his or her powers or functions under this Act, the regulations or the National Disability Insurance Scheme rules.

(2) Despite subsection (1), the CEO may delegate the CEO's powers under Part 2 of Chapter 4 (privacy) only to an Agency officer who is a member of staff of the Agency under section 169.

(2A) Despite subsection (1), the CEO must not delegate any of the CEO's powers under Division 5 of Part 1 of Chapter 4 (automation of administrative actions).

(3) A person exercising powers or functions under a delegation under this section must comply with any directions of the CEO.

202AA Delegation of compliance and enforcement powers by the CEO

(1) The CEO may, in writing, delegate the CEO's powers and functions under Part 3C of Chapter 4 (compliance and enforcement in relation to Agency responsibilities) to APS employees of the Agency in accordance with the following table:

Delegation of compliance and enforcement powers by CEO		
Item	**The CEO may delegate the following powers and functions …**	**to the following APS employees in the Agency …**
1	any of the powers and functions under that Part, including: (a) powers under the Regulatory Powers Act in relation to the provisions of this Act; and (b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a)	an SES employee, or an acting SES employee, in the Agency
2	a power or function under subsection 73ZSH(3) or (4) (infringement notices), including: (a) powers under Part 5 of the Regulatory Powers Act in relation to the provisions of this Act; and (b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a)	an APS employee in the Agency who holds, or performs the duties of, an Executive Level 2, or equivalent, position

Delegation of compliance and enforcement powers by CEO		
Item	**The CEO may delegate the following powers and functions …**	**to the following APS employees in the Agency …**
3	a power or function under section 73ZSI (compliance notices)	an APS employee in the Agency who holds, or performs the duties of, an Executive Level 1 or 2, or equivalent, position

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

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

(2) Before delegating a power or function under subsection (1) to an APS employee covered by item 2 or 3 of the table in that subsection, the CEO must have regard to:

(a) if the power or function is delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the employee to exercise the power or perform the function; or

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

(3) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any directions of the CEO.

202A Delegation by the Commissioner

(1) Subject to subsection (2) and section 202B, the Commissioner may, in writing, delegate to a Commission officer any or all of his or her powers or functions under this Act, the regulations or the National Disability Insurance Scheme rules.

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

(2) Despite subsection (1), the Commissioner may delegate the Commissioner's powers and functions under Part 2 of Chapter 4 (privacy) only to a member of staff of the Commission (see section 181U).

(3) A person exercising powers or functions under a delegation under this section must comply with any directions of the Commissioner.

202B Delegation of compliance and enforcement powers by the Commissioner

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

Delegation of compliance and enforcement powers by Commissioner

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

Delegation of compliance and enforcement powers by Commissioner		
Item	**The Commissioner may delegate the following powers and functions …**	**to the following APS employees in the Commission …**
	(b) powers and functions under the Regulatory Powers Act that are incidental to a power mentioned in paragraph (a)	
3	a power or function under section 73ZM (compliance notices)	an APS employee in the Commission who holds, or performs the duties of, an Executive Level 1 or 2, or equivalent, position
4	a power or function under section 73ZN (banning orders), 73ZO (variation or revocation of banning orders), 73ZOA (anti-promotion orders) or 73ZOC (variation or revocation of anti-promotion orders)	an APS employee in the Commission who holds, or performs the duties of, an Executive Level 2, or equivalent, position

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

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

(2) Before delegating a power or function under subsection (1) to an APS employee covered by item 2, 3 or 4 of the table in that subsection, the Commissioner must have regard to:

(a) if the power or function is delegated to an APS employee holding, occupying, or performing the duties of, a specified office or position—whether the office or position is sufficiently senior for the employee to exercise the power or perform the function; or

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

(3) A person exercising powers or performing functions under a delegation under subsection (1) must comply with any directions of the Commissioner.

203 Application of Act to unincorporated bodies

(1) This Act applies to an entity that:
   (c) is a registered NDIS provider; or
   (d) wishes to apply for registration as a registered NDIS provider; or
   (e) is an NDIS provider;

as if the entity were a person, but with the changes mentioned in subsections (3), (4) and (5).

(2) In addition:
   (a) Division 2 of Part 1 of Chapter 4; and
   (b) Part 2 of Chapter 4;

apply to an entity as if the entity were a person, but with the changes mentioned in subsections (3), (4) and (5).

(3) An obligation that would be imposed on the entity is imposed instead on:
   (a) if the entity is a partnership—each partner; or
   (b) in any other case—each member of the committee of management of the entity;

but may be discharged by any of the partners or any of those members.

(4) A thing that the entity would be permitted to do may instead be done by:
   (a) if the entity is a partnership—any partner; or
   (b) in any other case—any member of the committee of management of the entity.

(5) An offence against this Act that would otherwise be committed by the entity is taken instead to have been committed by:
   (a) if the entity is a partnership—any partner:

(i) who was knowingly concerned in, or party to, the act or omission constituting the offence; or

(ii) who aided, abetted, counselled or procured that act or omission; or

(b) in any other case—any member of the committee of management of the entity:

(i) who was knowingly concerned in, or party to, the act or omission constituting the offence; or

(ii) who aided, abetted, counselled or procured that act or omission.

(6) This section applies to a contravention of a civil penalty provision in a corresponding way to the way in which it applies to an offence.

(7) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

204 Time frames for decision making by persons other than the CEO

If this Act requires or provides for a person other than the CEO to do a thing within a specified period, the National Disability Insurance Scheme rules may prescribe that the thing is to be done within a longer period.

204A Report by Commonwealth Ombudsman

(1) As soon as practicable after the end of each financial year, the Commonwealth Ombudsman must prepare and give to the Minister a report about some or all of the matters prescribed by the National Disability Insurance Scheme rules for the purposes of this subsection.

(2) The report must not include personal information (within the meaning of the *Privacy Act 1988*).

(3) The Minister must cause a copy of the report to be laid before each House of the Parliament within 15 sitting days of that House after the Minister receives it.

Exercise of Commonwealth Ombudsman's powers

(4) The Commonwealth Ombudsman's powers under the *Ombudsman Act 1976* extend to the preparation of a report by the Ombudsman under this section as if the preparation of the report were an investigation by the Ombudsman under that Act.

(5) The exercise of those powers in relation to the preparation of a report by the Ombudsman under this section is taken, for all purposes, to be an exercise of powers under the *Ombudsman Act 1976*.

Part 3—Constitutional matters

205 Act binds Crown

(1) This Act binds the Crown in each of its capacities.

(2) However, this Act does not make the Crown liable to be prosecuted for an offence.

(3) To avoid doubt, subsection (2) does not prevent the Crown from being liable to pay a pecuniary penalty under section 73ZK, 73ZL, 73ZSG or 73ZSH.

Note: Sections 73ZK and 73ZSG deal with civil penalty orders and sections 73ZL and 73ZSH deal with infringement notices.

206 Alternative constitutional basis

(1) Without limiting its effect apart from this subsection, this Act also has the effect it would have if its operation were expressly confined to:

(a) the provision of pharmaceutical, sickness or hospital benefits; or

(b) the provision of medical services or dental services (without any form of civil conscription).

(2) Without limiting its effect apart from this subsection, this Act also has the effect it would have if its operation were expressly confined to acts, matters or things occurring in, or in relation to, a Territory or a place acquired by the Commonwealth for a public purpose.

(4) Without limiting its effect apart from this subsection, this Act also has the effect it would have if its operation were expressly confined to acts, matters or things in relation to communication by means of a postal, telegraphic, telephonic or other like service (within the meaning of paragraph 51(v) of the Constitution).

(5) Without limiting its effect apart from this subsection, this Act also has the effect it would have if its operation were expressly confined to acts, matters or things in relation to census and statistics (within the meaning of paragraph 51(xi) of the Constitution).

(7) Without limiting its effect apart from this subsection, this Act also has the effect it would have if its operation were expressly confined to acts, matters or things in relation to:

(a) the Commonwealth; or

(b) an authority of the Commonwealth.

207 Concurrent operation of State laws

(1) It is the intention of the Parliament that this Act is not to apply to the exclusion of a law of a State or Territory to the extent that that law is capable of operating concurrently with this Act.

(2) The regulations may prescribe kinds of laws of States and Territories as examples of laws to which subsection (1) applies.

Note: Before the regulations can be made, the Minister must be satisfied that the Commonwealth and all the host jurisdictions agree: see paragraph 210(2)(b).

207A State or Territory agreement required in relation to certain delegations under this Act

(1) The CEO may not delegate a power or function under this Act to an officer or employee of a State or Territory, or an officer or employee of a body established for a public purpose by or under a law of the State or Territory, without the written agreement of the relevant Minister of the State or Territory.

(2) The Commissioner may not delegate a power or function under this Act to an officer or employee of a State or Territory, or an officer or employee of an authority of a State or a Territory, without the written agreement of the relevant Minister of the State or Territory.

Part 5—Legislative instruments

209 The National Disability Insurance Scheme rules

(1) The Minister may, by legislative instrument, make rules called the National Disability Insurance Scheme rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the National Disability Insurance Scheme rules; or

(b) necessary or convenient to be prescribed in order to carry out or give effect to this Act.

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

(1A) Without limiting subsection 33(3A) of the *Acts Interpretation Act 1901*, rules made for the purposes of subsection (1) of this section:

(a) may be of general application or may be limited as provided in the rules; and

(b) may make different provision in relation to different kinds of providers, supports, services, circumstances or any other matter.

(2) Despite subsection 14(2) of the *Legislation Act 2003*, National Disability Insurance Scheme rules may make provision for or in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

(2AA) Without limiting subsection (2), that subsection applies even if the instrument or other writing is created for the purpose of being applied, adopted or incorporated by the National Disability Insurance Scheme rules. If the National Disability Insurance Scheme rules make provision as mentioned in subsection (2) in relation to a matter contained in an instrument or other writing created for that purpose:

(a) the Minister must ensure that the instrument or other writing is published on the Agency's website; and

(b) the instrument or other writing is not a legislative instrument.

(2AB) To the extent that regulations making provision as mentioned in subsection (2) constitutes a subdelegation of the Minister's power to make the National Disability Insurance Scheme rules under this Act, that subdelegation is authorised.

(2A) The National Disability Insurance Scheme rules may provide for:

(a) the CEO to specify assessment tools; and

(b) the circumstances in which the CEO is to use the tools; and

(c) matters relating to how the Agency, the CEO and other specified persons are to engage with participants or prospective participants; and

(d) matters relating to how participants or prospective participants are to engage with the Agency, the CEO and other specified persons.

(3) When making National Disability Insurance Scheme rules, the Minister must have regard to:

(a) the objects and principles of this Act; and

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

(4) The Minister must not make Category A National Disability Insurance Scheme rules unless the Commonwealth and each host jurisdiction have agreed to the making of the rules.

(5) The Minister must not make Category B National Disability Insurance Scheme rules relating to an area, law or program of a host jurisdiction unless the host jurisdiction has agreed to the making of the rules.

(6) The Minister must not make Category C National Disability Insurance Scheme rules unless the Commonwealth and a majority of host jurisdictions have agreed to the making of the rules.

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

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

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

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

(b) for Category B National Disability Insurance Scheme rules relating to an area, law or program of a host jurisdiction:

(i) that section 209D was complied with in relation to the making of the rules; and

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

(c) for Category C National Disability Insurance Scheme rules:

(i) that section 209D was complied with in relation to the making of the rules; and

(ii) that the Commonwealth and a majority of host jurisdictions had agreed to the making of the rules.

(7) The Minister must not make Category D National Disability Insurance Scheme rules unless each host jurisdiction has been consulted in relation to the making of the rules.

(8) The following table sets out the categories of National Disability Insurance Scheme rules for the purposes of this section.

Categories of National Disability Insurance Scheme rules

Item	Category of rules	Description
1	Category A National Disability Insurance Scheme rules	Rules made for the purposes of any of the following provisions: (aaaa) subsection 9B(2); (aaa) subsections 10(1) and (4), paragraph 10(6)(a), subparagraph 10(6)(d)(iv), paragraph 10(7)(c) and subsection 10(8); (aa) subsection 14(3); (a) section 17;

Categories of National Disability Insurance Scheme rules		
Item	**Category of rules**	**Description**
		(ba) section 25; (c) section 27; (ca) subsection 29(3); (caa) paragraph 30(6A)(f); (cb) subsections 30A(1) and (2) and paragraphs 30A(7A)(f) and (9)(a); (cba) subsection 32B(1); (cbb) subparagraph 32C(c)(ii); (cc) subparagraph 32D(6)(b)(ii), paragraph 32D(6)(f) and subsection 32D(8); (cd) subsection 32E(4); (ce) paragraph 32F(7)(c); (cf) subsection 32G(4); (cg) paragraphs 32H(2)(d) and (e); (ch) section 32J; (cha) subsection 32K(1); (ci) subsection 32L(2), paragraphs 32L(4)(b) and (c) and subsections 32L(6) and (7A); (d) section 33, other than paragraph 33(4)(a); (e) section 35; (ea) paragraph 36(3A)(f); (eaa) subsection 41(3); (eab) paragraph 43(2C)(c) and subsection 43(2D); (eac) subparagraph 44(1)(b)(ii) and subsections 44(3), (4) and (5); (ead) paragraph 45A(5)(b); (eb) paragraph 47A(1)(b), subparagraph 47A(1AB)(j)(iii), paragraph 47A(2A)(f) and subsection 47A(6); (f) subsection 48(5); (h) paragraph 74(3C)(c), subparagraph 74(4)(b)(ii) and subsection 74(6);

Categories of National Disability Insurance Scheme rules		
Item	**Category of rules**	**Description**
		(i) section 75; (j) section 76; (k) section 80; (l) section 88; (m) section 93. 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
2	Category B National Disability Insurance Scheme rules	Rules made for the purposes of any of the following provisions: (d) section 58; (e) section 73H, to the extent that the rules deal with conditions on classes of registration relating to behaviour support; (f) subsection 73T(1), to the extent that the NDIS Practice Standards deal with the screening of workers involved in the provision of supports or services to people with disability under the National Disability Insurance Scheme.
3	Category C National Disability Insurance Scheme rules	Rules made for the purposes of any of the following provisions: (a) paragraph 20(2)(b); (ab) paragraph 32(4)(b); (ac) paragraph 32D(4)(a); (b) paragraph 33(4)(a); (c) paragraph 47A(8)(a); (d) paragraph 48(8)(a); (e) subsection 49(2); (f) section 50J; (g) paragraphs 89(1)(c) and (3)(c); (h) subparagraph 90(3)(a)(ii); (i) paragraph 100(6A)(a);

Categories of National Disability Insurance Scheme rules		
Item	**Category of rules**	**Description**
		(j) subsection 174(3); (k) section 204; (l) subsection 204A(1); (m) paragraphs (2A)(c) and (d) of this section.
4	Category D National Disability Insurance Scheme rules	Rules made for the purposes of any of the following provisions: (a) subparagraph 10C(1)(b)(ii) and subsection 10C(2); (aa) subsection 32B(3); (ab) paragraph 32BA(1)(b), subparagraph 32BA(5)(a)(ii) and paragraphs 32BA(5)(c) and (6)(c); (ac) paragraph 32L(4A)(c); (b) section 40; (ba) section 45; (c) section 45B; (ca) section 67; (cb) paragraph 67A(1)(db); (d) section 67F; (e) subsection 73B(1); (f) paragraphs 73E(1)(d), (e) and (f); (g) section 73H, other than to the extent covered by table item 2; (h) paragraphs 73N(1)(d), (e) and (f); (i) paragraphs 73P(1)(d), (e) and (f); (j) section 73Q; (k) subsection 73T(1), other than to the extent covered by table item 2; (ka) subsections 73U(4A) and (9A); (l) subsection 73V(1); (m) paragraph 73W(b); (n) subsection 73X(1);

Categories of National Disability Insurance Scheme rules

Item	Category of rules	Description
		(o) paragraph 73Y(b); (p) subsections 73Z(1) and (5); (pa) paragraphs 73ZDA(3)(d), (4)(d), (5)(k), (6)(g) and (7)(e) and subsection 73ZDA(9); (q) paragraph 73ZM(2)(h); (qa) subparagraphs 73ZN(1)(b)(iii) and (2)(a)(iii), paragraph 73ZN(2A)(a) and subparagraph 73ZN(2B)(c)(iii); (qb) subsection 73ZOA(2); (t) subsection 99(2); (ta) paragraph 73ZSI(3)(g); (u) section 106; (v) section 107; (w) section 182; (x) section 194; (y) paragraph 199C(2)(i).

(9) To avoid doubt, the National Disability Insurance Scheme rules may not do the following:

(a) create an offence or civil penalty;

(b) provide powers of:

(i) arrest or detention; or

(ii) entry, search or seizure;

(c) impose a tax;

(d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

(10) National Disability Insurance Scheme rules that are inconsistent with the regulations have no effect to the extent of the inconsistency, but National Disability Insurance Scheme rules are taken to be consistent with the regulations to the extent that the

National Disability Insurance Scheme rules are capable of operating concurrently with the regulations.

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

(1) In seeking the agreement of a host jurisdiction for the purposes of section 209 to the making of Category A National Disability Insurance Scheme rules, the Minister must (subject to subsection 209B(2)):

(a) give a notice in writing to the Disability Minister for that host jurisdiction seeking the agreement of that host jurisdiction to the making of the rules and requesting the agreement be given before the end of 14 days beginning on the day the notice is given; and

(b) provide a copy of the proposed rules to that Disability Minister.

(2) The Disability Minister for a host jurisdiction may, before the end of the 14-day period, give the Minister and each other Disability Minister for a host jurisdiction:

(a) a notice in writing that that host jurisdiction agrees to the making of the rules; or

(b) a notice in writing that that host jurisdiction does not agree to the making of the rules.

(3) A notice under paragraph (2)(b) must set out reasons why the host jurisdiction does not agree to the making of the rules.

(4) Those reasons must be given having regard to the objects of this Act and the principles in section 4.

(5) A notice under paragraph (2)(b) is taken:

(a) never to have been given if it does not comply with subsection (3); and

(b) not to have been invalidly given only because it does not comply with subsection (4).

(6) If the Disability Minister for a host jurisdiction does not, before the end of the 14-day period, inform the Minister whether the host jurisdiction agrees to the making of the rules, then the host jurisdiction is taken to have agreed to the making of the rules.

(7) If the Disability Minister for a host jurisdiction gives the Minister a notice under paragraph (2)(b) before the end of the 14-day period, the Minister may before the end of 7 days after the end of that period either:

(a) do both of the following:

(i) give a notice in writing to the Disability Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the making of a different version of the rules and requesting the agreement be given before the end of 14 days beginning on the day the notice under this subparagraph is given;

(ii) provide a copy of that different version to each of those Disability Ministers; or

(b) if the Minister is of the opinion that the dispute resolution process set out in section 209C should apply in relation to the rules—give a notice in writing stating that opinion to the Prime Minister and to each Disability Minister for a host jurisdiction.

(8) If the Minister gives notice, and provides a copy, of rules under paragraph (7)(a), then subsections (2) to (7) apply in relation to those rules as if:

(a) notice of those rules had been given under paragraph (1)(a) and a copy of those rules had been provided under paragraph (1)(b); and

(b) the 14-day period for the purposes of those subsections were the 14-day period mentioned in subparagraph (7)(a)(i).

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

(1) This section applies if the Minister:

(a) is proposing to make National Disability Insurance Scheme rules for the purposes of section 32K or 32L; and
(b) considers that the rules do not have any substantial financial or policy implications for the National Disability Insurance Scheme.

(2) The Minister may, instead of complying with subsection 209A(1):
(a) give a notice in writing to the Disability Minister for each host jurisdiction that the Minister:
(i) is proposing to make the rules; and
(ii) considers that the rules do not have any substantial financial or policy implications for the National Disability Insurance Scheme; and
(b) provide a copy of the proposed rules to that Disability Minister.

(3) The Disability Minister for a host jurisdiction may, before the end of 7 days after the day the notice is given, give the Minister and each other Disability Minister for a host jurisdiction a notice in writing that that host jurisdiction does not agree to the making of the rules.

(4) A notice under subsection (3) must set out reasons why the host jurisdiction does not agree to the making of the rules.

(5) Those reasons must be given having regard to:
(a) the objects of this Act and the principles in section 4; and
(b) whether the rules have any substantial financial or policy implications for the National Disability Insurance Scheme.

(6) A notice under subsection (3) is taken:
(a) never to have been given if it does not comply with subsection (4); and
(b) not to have been invalidly given only because it does not comply with subsection (5).

(7) If no Disability Minister for a host jurisdiction gives a notice under subsection (3) in relation to the rules, then each host jurisdiction is taken to have agreed to the making of the rules.

(8) If the Disability Minister for a host jurisdiction gives the Minister a notice under subsection (3) before the end of the 7-day period, the Minister may before the end of 7 days after the end of that period either:

(a) do both of the following:

(i) give a notice in writing to the Disability Minister for each host jurisdiction that the Minister is proposing to make a different version of the rules, if the Minister considers that the different version does not have any substantial financial or policy implications for the National Disability Insurance Scheme;

(ii) provide a copy of that different version to each of those Disability Ministers; or

(b) if the Minister is of the opinion that the dispute resolution process set out in section 209C should apply in relation to the rules—give a notice in writing stating that opinion to the Prime Minister and to each Disability Minister for a host jurisdiction.

(9) If the Minister gives notice, and provides a copy, of rules under paragraph (8)(a), then subsections (3) to (8) apply in relation to those rules as if notice of those rules had been given under paragraph (2)(a) and a copy of those rules had been provided under paragraph (2)(b).

209C Dispute resolution process for Category A rules

(1) This section sets out a dispute resolution process for the making of Category A National Disability Insurance Scheme rules.

(2) The Prime Minister may, within 14 days after the day on which the Prime Minister is given a notice under paragraph 209A(7)(b) or 209B(8)(b) in relation to proposed Category A National Disability Insurance Scheme rules:

(a) give a notice in writing to the First Minister of each host jurisdiction seeking the agreement of that host jurisdiction to the making of the rules and requesting the agreement be given before the end of 14 days beginning on the day the notice under this paragraph is given; and

(b) provide a copy of the proposed rules to each First Minister.

(3) The First Minister for a host jurisdiction may, before the end of the 14-day period, give the Prime Minister and each other First Minister for a host jurisdiction:

(a) a notice in writing that that host jurisdiction agrees to the making of the rules; or

(b) a notice in writing that that host jurisdiction does not agree to the making of the rules.

(4) A notice under paragraph (3)(b) must set out reasons why the host jurisdiction does not agree to the making of the rules.

(5) Those reasons must be given having regard to:

(a) the objects of this Act and the principles in section 4; and

(b) if notice was given under paragraph 209B(2)(a) or subparagraph 209B(8)(a)(i) in relation to the rules—whether the rules have any substantial financial or policy implications for the National Disability Insurance Scheme.

(6) A notice under paragraph (3)(b) is taken:

(a) never to have been given if it does not comply with subsection (4); and

(b) not to have been invalidly given only because it does not comply with subsection (5).

(7) If the First Minister for a host jurisdiction does not, before the end of the 14-day period, give the Prime Minister a notice under paragraph (3)(a) or (b), then the First Minister is taken for the purposes of subsections (8) and (9) to have given the Prime Minister a notice under paragraph (3)(a) that the host jurisdiction agrees to the making of the rules.

(8) Each host jurisdiction is taken to have agreed to the making of the rules if a majority of the First Ministers of the host jurisdictions give the Prime Minister a notice under paragraph (3)(a) in relation to the rules before the end of the 14-day period.

(9) If a majority of the First Ministers of the host jurisdictions do not give the Prime Minister notices under paragraph (3)(a) in relation to the rules before the end of the 14-day period, the Prime Minister may, before the end of 7 days after the end of the 14-day period:

(a) give a notice in writing to the First Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the making of a different version of the rules and requesting the agreement be given before the end of 14 days beginning on the day the notice under this paragraph is given; and

(b) provide a copy of that different version to each of those First Ministers.

(10) If the Prime Minister gives notice, and provides a copy, of rules under paragraphs (9)(a) and (b), then subsections (3) to (9) apply in relation to those rules as if:

(a) notice of those rules had been given under paragraph (2)(a) and a copy of those rules had been provided under paragraph (2)(b); and

(b) the 14-day period for the purposes of those subsections were the 14-day period mentioned in paragraph (9)(a).

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

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

(a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for that host jurisdiction seeking the agreement of that host jurisdiction to the making of the rules and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and

(b) provide a copy of the proposed rules to that host jurisdiction Minister.

(2) If, immediately before the end of that 28-day period:
(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the rules; and
(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (3);
then, at the end of that period, that host jurisdiction is taken to have agreed to the making of the rules.

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

210 Regulations

(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.

Process for seeking agreement of host jurisdiction

(3) In seeking the agreement of a host jurisdiction to the making of regulations under this section, the Minister must:

(a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for that host jurisdiction seeking the agreement of that host jurisdiction to the making of the regulations and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and

(b) provide a copy of the proposed regulations to that host jurisdiction Minister.

(4) If, immediately before the end of that 28-day period:

(a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the regulations; and

(b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (5);

then, at the end of that period, that host jurisdiction is taken to have agreed to the making of the regulations.

(5) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the making of the regulations:

(a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and

(b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the regulations, then, at the end of that period, that host jurisdiction is taken to have so agreed.

211 Information about consultation to be included in explanatory statements

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

(a) describe the nature of the consultation; and

(b) describe in general terms the persons, bodies or organisations who were consulted; and

(c) contain a summary of the views expressed by those persons, bodies or organisations.

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

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

Endnotes

Endnote 1—About the endnotes

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

The following endnotes are included in every compilation:

Endnote 1—About the endnotes
Endnote 2—Abbreviation key
Endnote 3—Legislation history
Endnote 4—Amendment history

Abbreviation key—Endnote 2
The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4
Amending laws are annotated in the legislation history and amendment history.

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

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

Editorial changes
The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments
A misdescribed amendment is an amendment that does not accurately describe how an amendment is to be made. If, despite the misdescription, the amendment

can be given effect as intended, then the misdescribed amendment can be incorporated through an editorial change made under section 15V of the *Legislation Act 2003*.

If a misdescribed amendment cannot be given effect as intended, the amendment is not incorporated and "(md not incorp)" is added to the amendment history.

Endnote 2—Abbreviation key

ad = added or inserted
am = amended
amdt = amendment
C[x] = Compilation No. x
ch = Chapter(s)
cl = clause(s)
cont. = continued
def = definition(s)
Dict = Dictionary
disallowed = disallowed by Parliament
div = Division(s)
ed = editorial change
exp = expires/expired or ceases/ceased to have effect
gaz = gazette
LA = *Legislation Act 2003*
LIA = *Legislative Instruments Act 2003*
(md) = misdescribed amendment can be given effect
(md not incorp) = misdescribed amendment cannot be given effect
mod = modified/modification
No. = Number(s)
Ord = Ordinance
orig = original
p = page(s)
para = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
pres = present
prev = previous
(prev…) = previously
pt = Part(s)
r = regulation(s)/Court rule(s)
reloc = relocated
renum = renumbered
rep = repealed
rs = repealed and substituted
s = section(s)/subsection(s) /rule(s)/subrule(s)/order(s)/suborder(s)
sch = Schedule(s)
SLI = Select Legislative Instrument
SR = Statutory Rules
sub ch = Sub-Chapter(s)
sub div = Subdivision(s)
sub pt = Subpart(s)
<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Disability Insurance Scheme Act 2013	20, 2013	28 Mar 2013	s 3–12, 55–73 and 117–210: 29 Mar 2013 (s 2(1) items 2, 5, 6, 9) s 13–54 and 74–116: 1 July 2013 (s 2(1) items 3, 4, 7, 8) Remainder: 28 Mar 2013 (s 2(1) item 1)	
National Disability Insurance Scheme Legislation Amendment Act 2013	44, 2013	28 May 2013	Sch 1 (items 1–19, 21–26, 33–43, 46, 56–58): 1 July 2013 (s 2(1) items 2, 4, 6, 7, 9, 11) Sch 1 (items 20, 27–32, 44, 45, 47–55): 29 May 2013 (s 2(1) items 3, 5, 8, 10)	Sch 1 (items 28, 46, 55)
Aged Care (Living Longer Living Better) Act 2013	76, 2013	28 June 2013	Sch 4 (items 5A–5D): 1 Aug 2013 (s 2(1) item 5)	—
Social Services and Other Legislation Amendment Act 2014	14, 2014	31 Mar 2014	Sch 12 (items 27, 28): 1 Apr 2014 (s 2(1) item 8)	Sch 12 (item 28)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (items 36–53) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)	Sch 14

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 395–397): 5 Mar 2016 (s 2(1) item 2)	—
National Disability Insurance Scheme Amendment Act 2016	51, 2016	5 May 2016	Sch 1: 1 July 2016 (s 2(1) item 2)	—
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 3 (item 31): 21 Oct 2016 (s 2(1) item 1)	—

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017	131, 2017	13 Dec 2017	Sch 1: 1 July 2018 (s 2(1) item 2)	Sch 1 (item 81)
National Disability Insurance Scheme Amendment (Worker Screening Database) Act 2019	82, 2019	2 Oct 2019	3 Oct 2019 (s 2(1) item 1)	—
National Disability Insurance Scheme Amendment (Streamlined Governance) Act 2019	113, 2019	9 Dec 2019	10 Dec 2019 (s 2(1) item 1)	Sch 1 (item 26) and Sch 2 (item 4)
National Disability Insurance Scheme Amendment (Strengthening Banning Orders) Act 2020	103, 2020	20 Nov 2020	21 Nov 2020 (s 2(1) item 1)	Sch 1 (items 7, 8)
Social Services and Other Legislation Amendment (Omnibus) Act 2020	107, 2020	26 Nov 2020	Sch 3 (item 10): 27 Nov 2020 (s 2(1) item 3)	—
Federal Circuit and Family Court of Australia (Consequential Amendments and Transitional Provisions) Act 2021	13, 2021	1 Mar 2021	Sch 2 (items 612–614): 1 Sept 2021 (s 2(1) item 5)	—

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Act 2021	116, 2021	28 Oct 2021	29 Oct 2021 (s 2(1) item 1)	Sch 1 (items 46–51)
National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Act 2022	27, 2022	1 Apr 2022	Sch 1 (items 1, 4–12, 14, 16, 30, 34–36, 38, 40, 42, 43, 52–57, 59, 60, 63, 64, 66, 67, 70, 71) and Sch 3 (items 1–61): 8 Apr 2022 (s 2(1) items 2, 4, 6, 8, 10, 12, 14, 16, 18, 20, 22, 24, 26, 28, 30) Sch 1 (items 2, 3, 13, 15, 17–29, 31–33, 37, 39, 41, 44–51, 58, 61, 65, 68, 69) and Sch 2: 1 July 2022 (s 2(1) items 3, 5, 7, 9, 11, 13, 15, 17, 19, 21, 23, 25, 27, 29)	Sch 1 (items 63–71), Sch 2 (items 54–57) and Sch 3 (items 55–61)

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Statute Law Amendment (Prescribed Forms and Other Updates) Act 2023 (C2023A00074)	74, 2023	20 Sept 2023	sch 4 (item 55): 18 Oct 2023 (s 2(1) item 3)	—

Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Administrative Review Tribunal (Consequential and Transitional Provisions No. 1) Act 2024 (C2024A00038)	38, 2024	31 May 2024	sch 3 (items 102-104, 215): 14 Oct 2024 (s 2(1) item 2)	—
COAG Legislation Amendment Act 2024 (C2024A00054)	54, 2024	5 July 2024	sch 2 (items 20-24, 94-98): 6 July 2024 (s 2(1) items 3, 6)	sch 2 (items 94-98)
National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024 (C2024A00081)	81, 2024	5 Sept 2024	sch 1 (items 1-122D, 124-139), sch 2: 3 Oct 2024 (s 2(1) item 1)	sch 1 (items 124-139), sch 2 (items 9-11)
as amended by				
National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Act 2026 (C2026A00066)	66, 2026	20 Aug 2026	sch 4 (items 15-20): 27 Aug 2026 (s 2(1) item 10C)	—
Aged Care (Consequential and Transitional Provisions) Act 2024 (C2024A00109)	109, 2024	10 Dec 2024	sch 1 (items 3-10), sch 2 (items 63, 64): 1 Nov 2025 (s 2(1) item 2)	sch 2 (items 63, 64)
Administrative Review Tribunal (Miscellaneous Measures) Act 2025 (C2025A00014)	14, 2025	20 Feb 2025	sch 3 (item 18): 21 Feb 2025 (s 2(1) item 7)	—

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
Aged Care and Other Legislation Amendment Act 2025 (C2025A00045)	45, 2025	19 Sept 2025	sch 3 (items 238-244): 1 Nov 2025 (s 2(1) item 6)	—
National Disability Insurance Scheme Amendment (Integrity and Safeguarding) Act 2026 (C2026A00041)	41, 2026	8 Apr 2026	sch 2: 6 May 2026 (s 2(1) item 3) Remainder: 9 Apr 2026 (s 2(1) items 1, 2, 4)	sch 1 (items 72-74, 92), sch 2 (item 8), sch 3 (item 7)
National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Act 2026 (C2026A00066)	66, 2026	20 Aug 2026	sch 1 (items 1-10, 12-22, 28-32), sch 2 (items 2-6, 8-73, 76-81, 83-87, 102, 106-118), sch 3 (items 1A-8, 10-12, 14-16, 18), sch 4 (items 1-14): 27 Aug 2026 (s 2(1) items 2, 7, 9A, 9C, 10, 10C) sch 1 (items 34-34G, 77-86): 1 Oct 2026 (s 2(1) items 3, 5) sch 1 (items 35-74): 1 Feb 2027 (s 2(1) item 4) sch 1 (items 88-93, 95-99): 1 Jan 2028 (s 2(1) item 6) sch 2 (item 89): 1 Dec 2026 (s 2(1) item 8) sch 2 (items 90-100): awaiting	sch 1 (items 11, 27, 33, 87), sch 1 (items 56-59, 75, 76, 94, 100, 101), sch 2 (items 7, 74, 82, 88, 119), sch 2 (item 101), sch 3 (items 9, 13, 17, 19), sch 3 (items 27, 31)

Endnote 3—Legislation history

Act (Register ID)	Number and year	Assent	Commencement	Application, saving and transitional provisions
			commencement (s 2(1) item 9) sch 2 (items 103-105): 20 Nov 2026 (s 2(1): item 9B) sch 3 (items 20-26): 1 July 2027 (s 2(1) item 10A) sch 3 (items 28-30): 20 Feb 2027 (s 2(1) item 10B)	

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 2	
s 3	am No 44, 2013; No 131, 2017; No 27, 2022; No 54, 2024; No 81, 2024; No 66, 2026
s 4	am No 44, 2013; No 131, 2017; No 27, 2022; No 66, 2026
s 5	am No 27, 2022
Part 3	
s 8	am No 131, 2017; No 82, 2019; No 27, 2022; No 81, 2024
Part 4	
s 9	am No 44, 2013; No 76, 2013; No 62, 2014; No 131, 2017; No 82, 2019; No 113, 2019; No 116, 2021; No 27, 2022; No 54, 2024; No 81, 2024; No 109, 2024; No 45, 2025; No 41, 2026; No 66, 2026 (sch 1 (items 35-37, 88, 95); sch 2 (items 90, 91, 103))
s 9A	ad No 27, 2022
	am No 41, 2026
s 9B..	ad No 66, 2026
s 10	am No 126, 2015
	rep No 27, 2022
	ad No 81, 2024
s 10A	ad No 131, 2017
	rep No 27, 2022
s 10B..	ad No 82, 2019
	am No 81, 2024
s 10C..	ad No 66, 2026
s 11A	ad No 131, 2017
s 11B..	ad No 41, 2026
Part 5	
s 12	am No 54, 2024
Chapter 2	

Endnote 4—Amendment history

Provision affected	How affected
s 14	am No 27, 2022
Chapter 3	
Part 1A	
s 17A	am No 27, 2022; No 66, 2026
s 17B	ad No 66, 2026
Part 1	
s 18	am No 27, 2022
s 19	am No 81, 2024; No 66, 2026
s 20	am No 27, 2022; No 66, 2026
s 21	am No 27, 2022; No 81, 2024; No 66, 2026
s 22	am No 44, 2013
	rs No 27, 2022
s 23	am No 44, 2013; No 27, 2022
s 24	am No 44, 2013; No 27, 2022; No 81, 2024; No 66, 2026 (sch 1 (item 89))
s 25	am No 27, 2022; No 81, 2024; No 66, 2026 (sch 1 (items 90, 91))
s 25A	ad No 66, 2026
s 25B	ad No 66, 2026
s 26	am No 27, 2022; No 81, 2024
s 27	am No 44, 2013; No 27, 2022
	rs No 81, 2024
s 28	am No 27, 2022; No 81, 2024
s 29	am No 76, 2013; No 27, 2022; No 81, 2024; No 45, 2025; No 41, 2026; No 66, 2026
s 29A	ad No 41, 2026
s 30	am No 27, 2022; No 81, 2024; No 66, 2026
s 30A	ad No 81, 2024
Part 2	
Division 1	rep No 66, 2026
s 31	am No 27, 2022
	rep No 66, 2026

Provision affected	How affected
Division 2	
Subdivision A	
Subdivision A heading	ad No 81, 2024
s 32	rs No 27, 2022
	am No 81, 2024; No 66, 2026
s 32A	rep No 27, 2022
	ad No 81, 2024
	am No 66, 2026
s 32B	ad No 81, 2024
	am No 66, 2026
s 32BA	ad No 81, 2024
Subdivision B	
Subdivision B	ad No 81, 2024
s 32C	ad No 81, 2024
	am No 66, 2026
s 32D	ad No 81, 2024
	am No 66, 2026 (sch 1 (item 82))
s 32E	ad No 81, 2024
s 32F	ad No 81, 2024
s 32G	ad No 81, 2024
s 32H	ad No 81, 2024
	am No 66, 2026
s 32J	ad No 81, 2024
s 32K	ad No 81, 2024
	am No 66, 2026 (sch 1 (item 67))
s 32KA	ad No 66, 2026
	ed C26
s 32KB	ad No 66, 2026
	ed C26
s 32L	ad No 81, 2024
	am No 14, 2025; No 66, 2026

Provision affected	How affected
Subdivision C	
Subdivision C	ad No 81, 2024
s 32M..	ad No 81, 2024
s 33	am No 44, 2013; No 131, 2017; No 27, 2022; No 81, 2024; No 66, 2026 (sch 1 (items 39, 40, 68))
s 34	am No 44, 2013; No 81, 2024; No 66, 2026 (sch 1 (items 69-73))
s 34A	ad No 66, 2026
s 34B...	ad No 66, 2026
s 35	am No 44, 2013; No 81, 2024
Subdivision D	
Subdivision D heading...................	ad No 81, 2024
s 36	am No 27, 2022; No 81, 2024
Subdivision E	
Subdivision E heading	ad No 81, 2024
s 37	am No 27, 2022; No 81, 2024; No 66, 2026
s 38	am No 66, 2026
s 40	am No 44, 2013
s 40A	ad No 66, 2026
s 41	am No 27, 2022; No 81, 2024; No 66, 2026
Division 3	
s 42	am No 27, 2022; No 81, 2024
s 43	am No 27, 2022; No 81, 2024
s 44	am No 44, 2013; No 27, 2022; No 81, 2024; No 66, 2026
s 45	rs No 27, 2022
	am No 81, 2024; No 41, 2026; No 66, 2026
s 45A	ad No 81, 2024
	am No 41, 2026; No 66, 2026
s 45B...	ad No 66, 2026
s 45C...	ad No 66, 2026
s 46	am No 27, 2022; No 81, 2024; No 66, 2026
s 46A	ad No 14, 2014

Provision affected	How affected
s 46B	ad No 14, 2014
	am No 81, 2024
Division 4	
Division 4 heading	am No 27, 2022
s 47	am No 27, 2022; No 66, 2026
s 47A	ad No 27, 2022; No 66, 2026
	am No 81, 2024; No 41, 2026; No 66, 2026
s 47B	ad No 66, 2026
s 48	rs No 27, 2022
	am No 81, 2024; No 66, 2026
s 48A	ad No 66, 2026
s 49	am No 131, 2017
	rs No 27, 2022
	am No 81, 2024; No 66, 2026
s 49A	ad No 27, 2022
	am No 81, 2024
s 49B	ad No 81, 2024
	am No 66, 2026
s 50	am No 27, 2022
s 50A	ad No 66, 2026
Chapter 4	
Part 1	
Division 1	
s 50J	ad No 27, 2022
	am No 38, 2024
s 53	am No 66, 2026
s 54	am No 131, 2017; No 66, 2026
Division 2	
s 55	am No 131, 2017; No 27, 2022
s 55A	ad No 131, 2017
	am No 103, 2020; No 116, 2021; No 41, 2026

Endnote 4—Amendment history

Provision affected	How affected
s 56	am No 131, 2017; No 41, 2026; No 66, 2026
s 57	am No 131, 2017; No 41, 2026
Division 3	
s 58	am No 131, 2017
Division 4	
Division 4	ad No 41, 2026
	rs No 66, 2026
s 59A	ad No 41, 2026
	rs No 66, 2026
s 59AB..	ad No 66, 2026
s 59AC..	ad No 66, 2026
s 59AD..	ad No 66, 2026
s 59AE..	ad No 66, 2026
s 59AF	ad No 66, 2026
Division 5	
Division 5	ad No 66, 2026
s 59B...	ad No 66, 2026
s 59C...	ad No 66, 2026
s 59D	ad No 66, 2026
s 59E...	ad No 66, 2026
Part 2	
Division 1	
Division 1 heading.........................	ad No 131, 2017
s 60	am No 44, 2013; No 131, 2017; No 116, 2021; No 27, 2022
s 61	am No 44, 2013
	rep No 27, 2022
s 62	am No 131, 2017; No 41, 2026
s 63	am No 131, 2017; No 41, 2026
s 64	am No 131, 2017; No 41, 2026; No 66, 2026
s 65	rep No 131, 2017
s 66	am No 44, 2013; No 131, 2017; No 113, 2019

Provision affected	How affected
s 67	rs No 131, 2017
Division 2	
Division 2	ad No 131, 2017
s 67A	ad No 131, 2017
	am No 116, 2021; No 109, 2024
s 67B	ad No 131, 2017
	am No 41, 2026
s 67C	ad No 131, 2017
	am No 41, 2026
s 67D	ad No 131, 2017
	am No 41, 2026
s 67E	ad No 131, 2017
	am No 113, 2019
s 67F	ad No 131, 2017
Division 3	
Division 3	ad No 131, 2017
s 67G	ad No 131, 2017
	am No 113, 2019
	rs No 66, 2026
s 67H	ad No 131, 2017
s 68	rep No 131, 2017
Part 3	am No 131, 2017
	rep No 27, 2022
s 69	rep No 27, 2022
s 70	am No 44, 2013; No 131, 2017
	rep No 27, 2022
s 71	rep No 27, 2022
s 72	rep No 27, 2022
s 73	rep No 27, 2022
Part 3A	
Part 3A	ad No 131, 2017

Provision affected	How affected
Division 1	rep No 27, 2022
s 73A	ad No 131, 2017
	rep No 27, 2022
Division 2	
s 73B...	ad No 131, 2017
	am No 116, 2021; No 81, 2024; No 41, 2026
s 73C...	ad No 131, 2017
	am No 116, 2021; No 66, 2026 (sch 2 (items 92, 93))
s 73D	ad No 131, 2017
	am No 41, 2026
s 73E...	ad No 131, 2017
	am No 27, 2022; No 66, 2026
s 73EA	ad No 66, 2026
s 73EB	ad No 66, 2026
s 73F	ad No 131, 2017
	am No 41, 2026; No 66, 2026
s 73G	ad No 131, 2017
s 73H	ad No 131, 2017
s 73J..	ad No 131, 2017
	am No 41, 2026
s 73K	ad No 131, 2017
s 73L...	ad No 131, 2017
s 73M..	ad No 131, 2017
s 73N	ad No 131, 2017
s 73P	ad No 131, 2017
	am No 116, 2021
s 73Q	ad No 131, 2017
s 73R...	ad No 131, 2017
s 73S	ad No 131, 2017
Division 3	
s 73T...	ad No 131, 2017

Provision affected	How affected
	am No 116, 2021
s 73U	ad No 131, 2017
	am No 116, 2021; No 81, 2024
Division 4	
s 73V	ad No 131, 2017
	am No 116, 2021; No 41, 2026
Division 4A	
Division 4A	ad No 66, 2026
s 73VA	ad No 66, 2026
Division 5	
s 73W	ad No 131, 2017
s 73X	ad No 131, 2017
Division 6	
s 73Y	ad No 131, 2017
s 73Z	ad No 131, 2017
	am No 116, 2021
Division 7	
Division 7 heading	rs No 66, 2026
s 73ZA	ad No 131, 2017
	am No 41, 2026; No 66, 2026
s 73ZB	ad No 131, 2017
s 73ZBAA	ad No 66, 2026
s 73ZBA	ad No 41, 2026
s 73ZC	ad No 131, 2017
	am No 41, 2026; No 66, 2026
s 73ZD	ad No 131, 2017
	rs No 66, 2026
s 73ZDAA	ad No 66, 2026
Division 7A	
Division 7A	ad No 41, 2026
s 73ZDA	ad No 41, 2026

Endnote 4—Amendment history

Provision affected	How affected
	am No 66, 2026
	ed C26
Division 8 heading	rep No 41, 2026
Part 3B	
Part 3B heading	ad No 41, 2026
	rs No 66, 2026
Division 1	
Division 1 heading	ad No 41, 2026
s 73ZE	ad No 131, 2017
	am No 13, 2021; No 41, 2026; No 66, 2026
s 73ZF	ad No 131, 2017
	am No 13, 2021; No 41, 2026; No 66, 2026
s 73ZG	ad No 131, 2017
	am No 66, 2026
s 73ZH	ad No 131, 2017
	am No 66, 2026
s 73ZI	ad No 131, 2017
	am No 41, 2026; No 66, 2026
s 73ZJ	ad No 131, 2017
	am No 13, 2021
Division 2	
Division 2 heading	ad No 41, 2026
s 73ZK	ad No 131, 2017
	am No 13, 2021; No 41, 2026; No 66, 2026 (sch 2 (item 99))
s 73ZKA	ad No 41, 2026
	am No 66, 2026
s 73ZL	ad No 131, 2017
	am No 41, 2026; No 66, 2026
Division 3	
Division 3 heading	ad No 41, 2026
s 73ZM	ad No 131, 2017

Provision affected	How affected
	am No 41, 2026; No 66, 2026
s 73ZN	ad No 131, 2017
	am No 103, 2020; No 116, 2021; No 81, 2024; No 41, 2026
s 73ZNA	ad No 41, 2026
s 73ZO	ad No 131, 2017
	am No 116, 2021; No 41, 2026
s 73ZOA	ad No 41, 2026
s 73ZOB	ad No 41, 2026
s 73ZOC	ad No 41, 2026
Division 4	
Division 4 heading	ad No 41, 2026
s 73ZP	ad No 131, 2017
	am No 13, 2021; No 41, 2026; No 66, 2026
s 73ZQ	ad No 131, 2017
	am No 13, 2021; No 41, 2026
Division 5	
Division 5 heading	ad No 41, 2026
s 73ZR	ad No 131, 2017
Division 9	rep No 41, 2026
s 73ZS	ad No 131, 2017
	am No 103, 2020; No 116, 2021
	rep No 41, 2026
Part 3C	
Part 3C	ad No 66, 2026
s 73ZSA	ad No 66, 2026
	am No 66, 2026
s 73ZSB	ad No 66, 2026
	am No 66, 2026
s 73ZSC	ad No 66, 2026
s 73ZSD	ad No 66, 2026
s 73ZSE	ad No 66, 2026

Provision affected	How affected
s 73ZSF	ad No 66, 2026
s 73ZSG	ad No 66, 2026
	am No 66, 2026
s 73ZSGA	ad No 66, 2026
s 73ZSH	ad No 66, 2026
	am No 66, 2026
s 73ZSI	ad No 66, 2026
s 73ZSJ	ad No 66, 2026
s 73ZSK	ad No 66, 2026
s 73ZSL	ad No 66, 2026
s 73ZSM	ad No 66, 2026
Part 4	
s 74	am No 44, 2013; No 81, 2024
s 75	am No 44, 2013
Part 5	
Division 1	
s 78	am No 44, 2013; No 27, 2022; No 41, 2026
s 79	am No 27, 2022; No 41, 2026
s 80	am No 44, 2013; No 66, 2026
s 82	am No 131, 2017
s 83	am No 66, 2026
s 84	am No 66, 2026
Division 2	
s 86	am No 44, 2013
s 88	am No 44, 2013
s 89	am No 27, 2022
s 90	am No 44, 2013; No 27, 2022; No 66, 2026
s 92	am No 66, 2026
s 93	am No 44, 2013
Division 3	
s 96	am No 27, 2022

Provision affected	How affected
s 97	am No 66, 2026
s 98	am No 66, 2026
s 98A	ad No 66, 2026
Part 6	
s 99	am No 44, 2013
	rs No 131, 2017
	am No 116, 2021; No 27, 2022; No 81, 2024; No 41, 2026;No 66, 2026 (sch 1 (items 34B, 85, 86))
s 100	am No 131, 2017; No 116, 2021; No 27, 2022; No 66, 2026
s 101	am No 27, 2022; No 81, 2024; No 66, 2026
s 102	am No 131, 2017
s 103	am No 27, 2022; No 38, 2024; No 66, 2026
s 103A	ad No 66, 2026
Chapter 5	
Part 1	
s 104	am No 44, 2013; No 27, 2022
s 105	am No 44, 2013
Part 3	
s 109	am No 66, 2026
s 110	am No 66, 2026
s 111	am No 66, 2026
s 114	am No 66, 2026
Chapter 6	
Chapter 6 heading	rs No 27, 2022
Part 1	
Part 1 heading	rs No 27, 2022
s 117	am No 62, 2014; No 27, 2022
s 118	am No 44, 2013; No 81, 2024; No 66, 2026
s 120	am No 113, 2019; No 81, 2024
s 121	am No 62, 2014; No 126, 2015; No 113, 2019; No 66, 2026

Endnote 4—Amendment history

Provision affected	How affected
Part 2	
Division 1	
s 123	rs No 27, 2022
s 125	am No 62, 2014; No 113, 2019
s 125A	rs No 44, 2013
	am No 62, 2014
s 125B	ad No 44, 2013
	am No 81, 2024
Division 2	
s 126	am No 51, 2016
s 127	am No 113, 2019; No 27, 2022; No 81, 2024
s 129	am No 27, 2022; No 81, 2024
s 134	am No 62, 2014; No 113, 2019
s 135	am No 113, 2019
Division 3	
s 138	am No 62, 2014; No 51, 2016
Part 3	
Division 1	
s 144	am No 131, 2017; No 27, 2022; No 81, 2024
Division 2	
s 147	am No 113, 2019; No 27, 2022
s 155	am No 113, 2019; No 27, 2022
s 156	am No 113, 2019
Part 4	
Division 1	
s 160	am No 27, 2022
s 165	rs No 62, 2014
s 167	am No 62, 2014
Division 2	
s 171A	rep No 27, 2022

Provision affected	How affected
Part 5	
Division 1	
Subdivision A	
s 172	am No 62, 2014; No 113, 2019; No 81, 2024
s 173	am No 62, 2014; No 113, 2019
s 174	am No 113, 2019; No 27, 2022; No 81, 2024
Subdivision B	
s 175A	ad No 81, 2024
Subdivision C	
s 176	am No 27, 2022
Division 2	
s 177	rs No 62, 2014
Part 6	
s 179	am No 27, 2022; No 81, 2024
s 180	am No 62, 2014
Part 6A	
Division 1	
s 180B..	am No 44, 2013; No 62, 2014
s 180C..	am No 81, 2024
Division 2	
s 180D	am No 27, 2022
Chapter 6A	
Chapter 6A.....................................	ad No 131, 2017
Part 1	
s 181A	ad No 131, 2017
s 181B..	ad No 131, 2017
Part 2	
s 181C..	ad No 131, 2017
s 181D	ad No 131, 2017
s 181E..	ad No 131, 2017
	am No 66, 2026

Provision affected	How affected
s 181F	ad No 131, 2017
s 181G	ad No 131, 2017
s 181H	ad No 131, 2017
s 181J	ad No 131, 2017
	am No 81, 2024
s 181K	ad No 131, 2017
s 181L	ad No 131, 2017
s 181M	ad No 131, 2017
s 181N	ad No 131, 2017
	am No 81, 2024
s 181P	ad No 131, 2017
s 181Q	ad No 131, 2017
s 181R	ad No 131, 2017
s 181S	ad No 131, 2017
s 181T	ad No 131, 2017
Part 3	
s 181U	ad No 131, 2017
s 181V	ad No 131, 2017
s 181W	ad No 131, 2017
Chapter 6B	
Chapter 6B	ad No 82, 2019
s 181X	ad No 82, 2019
s 181Y	ad No 82, 2019
	am No 81, 2024; No 109, 2024
s 181Z	ad No 109, 2024
s 181ZA	ad No 109, 2024
Chapter 7	
Part 1	
Division 1	
s 182	am No 27, 2022; No 66, 2026

Provision affected	How affected
Division 1A	
Division 1A	ad No 66, 2026
s 182A	ad No 66, 2026
Division 2	
s 183	am No 131, 2017
s 185	am No 66, 2026
Division 3	
s 188	am No 131, 2017
s 189	am No 66, 2026
Division 4	
s 193	am No 44, 2013; No 66, 2026
s 194	am No 38, 2024
s 195	am No 81, 2024
Part 2	
s 197A	ad No 131, 2017
s 197B...	ad No 131, 2017
s 199A	ad No 41, 2026
s 199B...	ad No 41, 2026
s 199C...	ad No 41, 2026
s 200	am No 61, 2016; No 41, 2026; No 66, 2026
s 201	am No 131, 2017; No 113, 2019
s 201A	ad No 131, 2017
	am No 82, 2019; No 103, 2020; No 107, 2020; No 116, 2021; No 81, 2024; No 41, 2026; No 66, 2026
s 202	am No 131, 2017; No 66, 2026
s 202AA..	ad No 66, 2026
s 202A	ad No 131, 2017
s 202B...	ad No 131, 2017
	am No 81, 2024; No 41, 2026; No 66, 2026
s 203	am No 131, 2017; No 27, 2022
s 204	am No 131, 2017; No 27, 2022

Endnote 4—Amendment history

Provision affected	How affected
s 204A	ad No 27, 2022
Part 3	
s 205	am No 131, 2017; No 66, 2026
s 207A	ad No 131, 2017
Part 4	rep No 27, 2022
s 208	rep No 27, 2022
Part 5	
s 209	am No 44, 2013; No 126, 2015; No 131, 2017; No 113, 2019; No 103, 2020; No 116, 2021; No 27, 2022; No 74, 2023; No 81, 2024; No 41, 2026; No 66, 2026 (sch 1 (items 93, 99); sch 2 (items 100, 105); sch 3 (item 30))
s 209A	ad No 81, 2024
s 209B..	ad No 81, 2024
s 209C..	ad No 81, 2024
s 209D	ad No 81, 2024
s 210	am No 113, 2019
s 211	ad No 81, 2024
Schedule 1	rep No 27, 2022