

2022-2023-2024

The Parliament of the  
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

*Presented and read a first time*

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

**No. , 2024**

*(National Disability Insurance Scheme)*

**A Bill for an Act to amend the *National Disability  
Insurance Scheme Act 2013*, and for related  
purposes**



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1 **A Bill for an Act to amend the *National Disability***  
2 ***Insurance Scheme Act 2013*, and for related**  
3 **purposes**

4 The Parliament of Australia enacts:

5 **1 Short title**

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

8 **2 Commencement**

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

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**Commencement information**

<b>Column 1</b>	<b>Column 2</b>	<b>Column 3</b>
<b>Provisions</b>	<b>Commencement</b>	<b>Date/Details</b>
1. The whole of this Act	The 28th day after this Act receives the Royal Assent.	

2

Note: This table relates only to the provisions of this Act as originally enacted.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.

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(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.

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**3 Schedules**

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Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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instrument*) amended or inserted by this Act, and any other provisions of the principal instrument, may be amended or repealed by an instrument made under the enabling provision for the principal instrument.

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16

Main amendments **Schedule 1**  
Amendment of the National Disability Insurance Scheme Act 2013 **Part 1**

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1 **Schedule 1—Main amendments**

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

4 *National Disability Insurance Scheme Act 2013*

5 **1 Subparagraph 3(3)(c)(i)**

6 Repeal the subparagraph, substitute:

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

9 **2 At the end of subsection 3(3)**

10 Add:

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

14 **3 Section 8 (paragraph (c) of the paragraph beginning “The**  
15 **National Disability Insurance Scheme comprises”)**

16 Repeal the paragraph, substitute:

- 17 (c) individual plans under which certain supports (called  
18 NDIS supports) will be funded for certain people (called  
19 participants) (Chapter 3).

20 **4 Section 9**

21 Insert:

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

23 *funding component amount* for a reasonable and necessary  
24 support, or class of such supports, funded under an old framework  
25 plan, has the meaning given by paragraph 33(2A)(b).

26 *funding period*:

- 27 (a) for flexible funding provided under a new framework plan—  
28 has the meaning given by paragraph 32F(2)(a); and

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- 1 (b) for funding provided under a new framework plan for a  
2 stated support or class of stated supports—has the meaning  
3 given by paragraph 32G(3)(a); and  
4 (c) for funding provided under an old framework plan for  
5 reasonable and necessary supports generally, a particular  
6 reasonable and necessary support, or a class of such  
7 supports—has the meaning given by paragraph 33(2A)(c).

8 **5 Section 9 (definition of *NDIS amount*)**

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

11 **6 Section 9**

12 Insert:

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

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

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

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

20 **7 Section 9 (definition of *participant*)**

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

22 **8 Section 9 (definition of *participant’s statement of goals and***  
23 ***aspirations*)**

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

25 **9 Section 9**

26 Insert:

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

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1 **10 Section 9 (definition of *reassessment date*)**

2 Repeal the definition, substitute:

3 *reassessment date* of a participant's plan means:

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

9 **11 Section 9**

10 Insert:

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

13 **12 Section 9 (definition of *statement of participant supports*)**

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

15 **13 Section 9**

16 Insert:

17 *total funding amount*:

- 18 (a) for flexible funding provided under a new framework plan—  
19 means the amount specified in the plan under paragraph  
20 32E(2)(a); and  
21 (b) for a stated support or class of stated supports funded under a  
22 new framework plan—means the amount specified in the  
23 plan for the stated support or class of stated supports under  
24 paragraph 32G(2)(a); and  
25 (c) for reasonable and necessary supports specified in an old  
26 framework plan—means an amount specified in the plan  
27 under paragraph 33(2A)(a).

28 **14 After section 9A**

29 Insert:

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10 Definition of *NDIS support*

A support is an *NDIS support* for a person who is a participant or prospective participant if:

(a) the support:

- (i) is necessary to support the person to live and be included in the community, and to prevent isolation or segregation of the person from the community; or
- (ii) will facilitate personal mobility of the person in the manner and at the time of the person's choice; or
- (iii) is a mobility aid or device, or assistive technology, live assistance or intermediaries that will facilitate personal mobility of the person; or
- (iv) is a health service that the person needs because of the person's impairment or because of the interaction of the person's impairment with various barriers; or
- (v) is a habilitation or rehabilitation service; or
- (vi) is a service that will assist the person to access a support covered by subparagraph (iv) or (v); or
- (vii) will minimise the prospects of the person acquiring a further impairment or prevent the person from acquiring a further impairment; or

(viii) is provided by way of sickness benefits; and

(b) the support is declared by National Disability Insurance Scheme rules made for the purposes of this paragraph to be a support that is appropriately funded or provided through the National Disability Insurance Scheme:

- (i) for participants or prospective participants generally; or
- (ii) for a class of participants or prospective participants that includes the person; and

(c) the support is not a support declared by National Disability Insurance Scheme rules made for the purposes of this paragraph to be a support that is not appropriately funded or provided through the National Disability Insurance Scheme:

- (i) for participants or prospective participants generally; or
- (ii) for a class of participants or prospective participants that includes the person.

**Commented [A1]:** Necessary is just needed to live. The 'And included' should be separate. For example if a person needs specific disability accommodation, that is necessary to live ... it does not "include them in a community".

**Commented [A2]:** Specific to physical disability. No provision for intellectual, social, behavioural or social disability.

**Commented [A3]:** Is this a health or disability bill - who decides what is a health service?

**Commented [A4]:** This seems like a health responsibility to me!

**Commented [A5]:** Restricting supports to supports to those declared by the NDIS or the Minister is unacceptable. That is *a massive problem*. Also, a declared support may not be necessary for some participants but essential for others. The legislation does not seem to me to address that issue. Something like this must require agreement with all the affected parts of the disability sector. And it *must* be protected by external monitoring and review processes. This must not be in the hands of the NDIS and/or the Minister.

**Commented [A6]:** This is really the problem with the declared list - aspect. The NDIS must not be able to list supports as disallowed without sector agreement - the list must be agreed with all the affected parts of the disability sector. And listing decisions must be externally reviewable. The law on things not listed in either list is unclear to me.

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- 1 Note 1: For subparagraphs (a)(i) to (vii), see the Convention on the Rights of  
2 Persons with Disabilities done at New York on 13 December 2006.
- 3 Note 2: The Convention is in Australian Treaty Series 2008 No. 12 ([2008]  
4 ATS 12) and could in 2024 be viewed in the Australian Treaties  
5 Library on the AustLII website (<http://www.austlii.edu.au>).
- 6 Note 3: For subparagraph (a)(viii), see paragraph 51(xxiiiA) of the  
7 Constitution.

8 **15 Subsection 10B(1) (note)**

9 Omit “Note”, substitute “Note 1”.

10 **16 At the end of subsection 10B(1)**

11 Add:

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

15 **17 Paragraph 19(2)(b)**

16 Repeal the paragraph, substitute:

17 (b) either of the following apply:

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

**Commented [A7]:** Are these defined in the legislation?

27 **18 Subsection 21(2)**

28 Repeal the subsection, substitute:

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

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1 **19 Paragraph 24(1)(e)**

2 Omit “support”, substitute “NDIS supports”.

3 **20 Subsections 24(2) and (3)**

4 Omit “support”, substitute “NDIS supports”.

5 **21 At the end of subsection 24(4)**

6 Add:

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

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

12 **22 After paragraph 25(1)(c)**

13 Insert:

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

18 **23 Subsection 25(3)**

19 Repeal the subsection, substitute:

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

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

25 **24 Subsection 26(3)**

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

28 **25 Section 27**

29 Repeal the section, substitute:

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1 **27 National Disability Insurance Scheme rules relating to disability**  
2 **requirements and early intervention requirements**

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

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

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

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

15 **26 Subsection 28(2)**

16 Repeal the subsection, substitute:

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

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

20 (b) whichever of the following applies:

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

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

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

28 **27 Paragraph 29(1)(c)**

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

31 **28 Subsection 29(2)**

32 Repeal the subsection, substitute:

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

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

8 **29 Before subsection 30(1)**

9 Insert:

10 *Circumstances in which participant status may be revoked*

11 **30 Subsection 30(2)**

12 Repeal the subsection, substitute:

13 *Requesting information and reports*

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

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

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

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

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

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

33 (4) If:

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- 1 (a) information or one or more reports are requested under  
2 subsection (3); and  
3 (b) the information and each such report are received by the  
4 CEO within 90 days, or such longer period as is specified in  
5 the request, after that information or report is requested;  
6 the CEO must:  
7 (c) decide whether or not to revoke the participant's status as a  
8 participant in the National Disability Insurance Scheme; or  
9 (d) make a further request under subsection (3).

10 (5) If:

- 11 (a) information or one or more reports are requested under  
12 subsection (3); and  
13 (b) the information and each such report are not received by the  
14 CEO within 90 days, or such longer period as is specified in  
15 the request, after that information or report is requested;  
16 the CEO may revoke the participant's status as a participant in the  
17 National Disability Insurance Scheme.

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

24 *Notice of decisions*

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

28 *Section 30A does not limit this section*

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

30 **31 At the end of Part 1 of Chapter 3**

31 Add:

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1       **30A Requirement to consider status of certain participants**

2                       *Circumstances in which CEO must consider participant's status*

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

- 6               (a) decide whether or not the participant meets the early  
7               intervention requirements; and  
8               (b) if the CEO decides under paragraph (a) that the participant  
9               does not meet the early intervention requirements—decide  
10              whether or not the participant meets the disability  
11              requirements; and  
12              (c) if the CEO decides under paragraph (b) that the participant  
13              does not meet the disability requirements—revoke the  
14              participant's status as a participant in the National Disability  
15              Insurance Scheme.

16       (2) The National Disability Insurance Scheme rules may prescribe  
17       requirements with which the CEO must comply, criteria that the  
18       CEO is to apply, or matters to which the CEO may, must or must  
19       not have regard, in making a decision under subsection (1).

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

23                       *Requesting information and reports*

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

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

- 28               (a) that the participant, or another person, provide information  
29               that is reasonably necessary for making the decision;  
30               (b) that the participant do either or both of the following:  
31                      (i) undergo an assessment and provide to the CEO the  
32                      report, in the approved form, of the person who  
33                      conducts the assessment;

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

6 (6) If:

- 7 (a) information or one or more reports are requested under  
8 subsection (5); and  
9 (b) the information and each such report are received by the  
10 CEO within 90 days, or such longer period as is specified in  
11 the request, after that information or report is requested;  
12 the CEO must, within 14 days after the last information or report is  
13 received:  
14 (c) make the decision under subsection (1); or  
15 (d) make a further request under subsection (5).

16 (7) If:

- 17 (a) information or one or more reports are requested under  
18 subsection (5); and  
19 (b) the information and each such report are not received by the  
20 CEO within 90 days, or such longer period as is specified in  
21 the request, after that information or report is requested;  
22 the CEO must revoke the participant's status as a participant in the  
23 National Disability Insurance Scheme, unless the CEO is satisfied  
24 that it was reasonable for the participant, or the other person  
25 mentioned in paragraph (5)(a), not to have complied with the  
26 request made by the CEO within that period.

27 *Notice of decisions*

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

- 29 (a) a decision of the CEO that the circumstance mentioned in  
30 subsection (1) applies in relation to the participant;  
31 (b) a decision under paragraph (1)(a) or (b) in relation to the  
32 participant;  
33 (c) a decision under paragraph (1)(c) or subsection (7) to revoke  
34 the participant's status as a participant in the National  
35 Disability Insurance Scheme.

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- 1 (9) The notice must state:  
2 (a) any details prescribed by the National Disability Insurance  
3 Scheme rules for the purposes of this paragraph; and  
4 (b) if paragraph (8)(c) applies—the date on which the revocation  
5 takes effect.

6 **32 Division 2 of Part 2 of Chapter 3 (after the heading)**

7 Insert:

8 **Subdivision A—Facilitating preparation of participants’ plans**

9 **33 Before subsection 32(1)**

10 Insert:

11 *Initial plan*

12 **34 Subsection 32(2)**

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

14 **35 At the end of section 32**

15 Add:

16 *Subsequent plans*

- 17 (3) The CEO must also facilitate the preparation of a plan for a  
18 participant if:  
19 (a) the CEO decides under subparagraph 48(7)(b)(ii) or  
20 49(1)(b)(ii) to prepare a new plan with the participant; or  
21 (b) the CEO gives the participant notice under subsection 32B(2)  
22 that the participant is to have new framework plans.
- 23 (4) The CEO must commence facilitating the preparation of the  
24 participant’s plan under subsection (3):  
25 (a) unless paragraph (b) applies—as soon as practicable after the  
26 event mentioned in paragraph (3)(a) or (b) occurs; or  
27 (b) if the National Disability Insurance Scheme rules specify a  
28 number of days for the purposes of this paragraph—within  
29 that number of days after the day the event mentioned in  
30 paragraph (3)(a) or (b) occurs.



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- 1 (a) a new framework plan has at any time come into effect for  
2 the participant; or  
3 (b) the participant has been given a notice under subsection  
4 32B(2) that the participant is to have new framework plans;  
5 or  
6 (c) the CEO starts to prepare the plan after the end of the  
7 following period starting on the commencement of this  
8 section:  
9 (i) 5 years (subject to subparagraph (ii));  
10 (ii) such shorter or longer period as is determined under  
11 subsection (2) of this section.

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

- 14 (2) The Minister may, by legislative instrument, determine a shorter or  
15 longer period for the purposes of subparagraph (1)(c)(ii).

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

19 **32D Matters that must be included in a participant's plan**

20 *Participant's statement of goals and aspirations*

- 21 (1) A participant's plan must include a statement (the *participant's*  
22 *statement of goals and aspirations*) prepared by the participant  
23 that specifies:  
24 (a) the goals, objectives and aspirations of the participant; and  
25 (b) the environmental and personal context of the participant's  
26 living, including the participant's:  
27 (i) living arrangements; and  
28 (ii) informal community supports and other community  
29 supports; and  
30 (iii) social and economic participation.

31 *Statement of participant supports*

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

**Commented [A8]:** This will not be the last change - so there will be new new plan types after this. Probably needs a better name than "new".

**Commented [A9]:** Circular referencing?

**Commented [A10]:** This makes them pretty formal ...

**Commented [A11]:** But the goals are to aim to change these. Is the intent that such goals always fail for this statement remains correct?  
Or does this need to be the environment when the plan is being created?

**Commented [A12]:** It will be interesting to see this in operation - provisions like this are not enforced at present. Surely s99 need to be changed to include 32D(2) as a reviewable decision.

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- 1 (a) the participant's reasonable and necessary budget in  
2 accordance with sections 32E to 32K; and  
3 (b) the general supports (if any) that will be provided to, or in  
4 relation to, the participant; and  
5 (c) having regard to the needs assessment report for the plan,  
6 whichever of the following applies:  
7 (i) that the participant meets the disability requirements;  
8 (ii) that the participant meets the early intervention  
9 requirements;  
10 (iii) that the participant meets both the disability  
11 requirements and the early intervention requirements;  
12 and  
13 (d) the plan's maximum period of effect, starting on the day the  
14 plan is approved; and  
15 (e) any circumstances in which the Agency must reassess the  
16 plan under Division 4; and  
17 (f) the management of the funding for supports under the plan  
18 (see also Division 3); and  
19 (g) the management of other aspects of the plan.

20 *How general supports may be specified in plan*

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

25 *Time limits for approving statement of participant supports*

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

**Commented [A13]:** Does this prohibit roll-over of plans?

**Commented [A14]:** The timeframes need to be in the legislation, not conveniently flexible by being in the Rules.

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1 section 36 (information and reports) and subsection 32L(7)  
2 (replacement assessments under section 32L).

3 (5) However, subsection (4) does not apply if the preparation of the  
4 participant's plan is suspended under subparagraph 36(3)(b)(i)  
5 (which deals with failure to provide information or reports for an  
6 assessment under section 32L).

7 *Requirements for CEO in approving statement of participant*  
8 *supports*

9 (6) In deciding whether or not to approve a statement of participant  
10 supports under subsection (2), the CEO must:

- 11 (a) have regard to the participant's statement of goals and  
12 aspirations; and  
13 (b) for any general supports specified under paragraph (2)(b)—  
14 be satisfied:  
15 (i) that the supports will be, or are likely to be, effective  
16 and beneficial for the participant, having regard to  
17 current good practice; and  
18 (ii) of any other matters specified in the National Disability  
19 Insurance Scheme rules for the purposes of this  
20 subparagraph; and  
21 (c) have regard to the principle that a participant should manage  
22 the participant's plan to the extent that the participant wishes  
23 to do so; and  
24 (d) have regard to the operation and effectiveness of any  
25 previous plans of the participant; and  
26 (e) have regard to whether section 46 (acquittal of NDIS  
27 amounts) was complied with in relation to any previous plan  
28 for the participant; and  
29 (f) be satisfied of any matters specified in the National  
30 Disability Insurance Scheme rules for the purposes of this  
31 paragraph.

**Commented [A15]:** No! must address. This weakens the current legislation unacceptably.

**Commented [A16]:** So s34(1) isn't good enough - you want more (indeterminate) excuses for undermining the NDIS

**Commented [A17]:** Wanting to use perceived problems with past plans against participants? Should this have a statute of limitations then?

**Commented [A18]:** And retention of records

**Commented [A19]:** Approving SOPS

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

**Commented [A20]:** This seems premature - we are far from ready for this requirement.

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

6 *Plan may deal with additional matters*

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

**Commented [A21]:** Seems too vague - while this seems to suggest that it is meant to be helpful, the wording does not prohibit all sorts of undesirable restrictions.

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

12 *Statement of goals and aspirations to be recorded in writing*

**Commented [A22]:** Belongs further up - with the requirement for the statement of goals.

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

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

18 **32E Reasonable and necessary budget—entitlement to flexible**  
19 **funding or stated supports**

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

**Commented [A23]:** I find this odd. Surely subsections (2) and (3) do this by their existence.

24 *Flexible funding*

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

**Commented [A24]:** Does this need to be defined in s9?

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

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

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

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

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

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

14 **Stated supports**

15 (3) If:

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

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

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

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

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

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

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

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

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

35 Note 3: A debt may arise if funding is spent on supports that are not NDIS  
36 supports or if it is spent other than in accordance with the plan (see

**Commented [A25]:** Maybe needs a concept of limited range of supports or list of options that people can choose within.  
This model binary on/off flexibility, but it seems government really wants a more graduated model of flexibility.

**Commented [A26]:** There probably needs to be a concept of least restrictive (maximal flexibility) in this section. This model seems to invite abuse by planners of overly restrictive stated supports (some existing practice).

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1 subsections 46(1) to (1B) (acquittal of NDIS amounts) and 182(3)  
2 (debts due to the Agency)).

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

- 6 (a) for participants generally; or  
7 (b) for a class of participants that includes the participant.

8 **32F Reasonable and necessary budget—flexible funding**

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

12 *Funding periods for flexible funding*

13 (2) The reasonable and necessary budget must provide:

- 14 (a) that the flexible funding will be provided under the plan  
15 during specified periods (each of which is a *funding period*);  
16 and  
17 (b) when each funding period for that funding starts and ends;  
18 and  
19 (c) the proportion of the total funding amount for flexible  
20 funding that will be provided under the plan during each of  
21 those funding periods.

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

- 23 (a) a funding period must be no more than 12 months; and  
24 (b) the duration of a particular funding period may be different  
25 from the duration of any other funding period; and  
26 (c) the first funding period for flexible funding must start on the  
27 day the plan comes into effect; and  
28 (d) each other funding period for flexible funding must start  
29 immediately after the end of the immediately preceding  
30 funding period for that funding.

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

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1 *Rolling over unspent funding*

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

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

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

11 *Restriction on how flexible funding is spent*

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

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

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

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

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

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

29 **32G Reasonable and necessary budget—stated supports**

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

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

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

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

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

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

14                    *Funding periods for stated supports*

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

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

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

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

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

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

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

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

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

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

5 *Rolling over unspent funding*

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

- 12 (a) the amount of funding that could have been provided for that  
13 stated support or class of stated supports under the plan  
14 during the immediately preceding funding period; exceeds  
15 (b) the amount of funding that was actually provided for that  
16 stated support or class of stated supports.

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

19 **32H Reasonable and necessary budget—requirements relating to**  
20 **acquisition or provision of supports**

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

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

- 28 (a) a requirement that the supports be provided by a specified  
29 person or persons in a specified class;  
30 (b) a requirement that a specified process be undertaken before  
31 the supports are acquired or provided;  
32 (c) a requirement that specified conditions be satisfied in relation  
33 to the participant before the supports are acquired or  
34 provided;

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

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

6 **32J Reasonable and necessary budget—National Disability**  
7 **Insurance Scheme rules**

8 The National Disability Insurance Scheme rules may make  
9 provision for determining any matter for the purposes of section  
10 32F, 32G or 32H, including but not limited to:

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

15 in making a decision under any of those sections.

16 **32K Reasonable and necessary budget—working out total funding**  
17 **amounts**

18 (1) The following amounts specified in the reasonable and necessary  
19 budget must be worked out by applying the information in the  
20 needs assessment report for the plan relating to the participant's  
21 need for NDIS supports in accordance with the method determined  
22 under subsection (2):

- 23 (a) the total funding amount for flexible funding (see paragraph  
24 32E(2)(a));  
25 (b) the total funding amount for a stated support or class of  
26 stated supports (see paragraph 32G(2)(a)).

27 (2) The Minister may, by legislative instrument, determine methods  
28 for working out an amount mentioned in paragraph (1)(a) or (b).

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

32 (3) In making a determination under subsection (2), the Minister must  
33 have regard to:

- 34 (a) the principles set out in subsections 4(5) and (11); and

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- 1 (b) the need to ensure the financial sustainability of the National  
2 Disability Insurance Scheme.
- 3 (4) Without limiting subsection (2), a determination under that  
4 subsection may relate to how to take into account:
- 5 (a) lump sum compensation payments that specifically include  
6 an amount for the cost of supports; and
- 7 (b) lump sum compensation payments that do not specifically  
8 include an amount for the cost of supports; and
- 9 (c) periodic compensation payments that the CEO is satisfied  
10 include an amount for the cost of supports; and
- 11 (d) amounts that a participant or prospective participant did not  
12 receive by way of a compensation payment because he or she  
13 entered into an agreement to give up his or her right to  
14 compensation; and
- 15 (e) supports in respect of personal injury that may be funded or  
16 provided under a scheme of insurance, or under a  
17 Commonwealth, State or Territory law.
- 18 (5) Without limiting subsection 33(3A) of the *Acts Interpretation Act*  
19 *1901*, a determination under subsection (2) of this section may  
20 make different provision in relation to:
- 21 (a) different classes of participants; and
- 22 (b) for the purposes of paragraph (1)(b) of this section—different  
23 classes of stated supports.
- 24 (6) Despite subsection 14(2) of the *Legislation Act 2003*, a  
25 determination under subsection (2) of this section may make  
26 provision for or in relation to a matter by applying, adopting or  
27 incorporating any matter contained in an instrument or other  
28 writing as in force or existing from time to time.

29 **32L Assessment of participant's need for supports**

30 *CEO to arrange assessment of participant's need for supports*

- 31 (1) The CEO must arrange for an assessment of a participant's need  
32 for supports to be undertaken as soon as practicable after the CEO  
33 commences the preparation of a plan for a participant.

**Commented [A27]:** No specification of who the assessors are. Are they qualified in any way for this role. How is quality ensured?  
Basically - NO WAY

**Commented [A28]:** There is lots of talk about separate assessors - I suggest it would be better (and more efficiently) done by the planner. I can't see how plans are developed without this - and if the planner does it, it will be much simpler and easier in every way (avoiding duplicated effort). Frankly, I don't think this needs legislation - it's just improving how planning is done now; maybe formalising and sharing the needs assessment as part of the existing system would work better.  
Note that the timing aspect would then fall under the constraints/requirements for planning outcome.  
Planner needs to be able to refer to an expert panel for complex and/or expensive items - avoid sending complex technical decisions to the inexpert (pretty random) AAT.

I cannot see where the needs assessment can be externally reviewed.

If the needs assessment is made more formal, then at the very least it needs to be included in the list of reviewable decisions at s99 of the Act.

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1 *What an assessment covers*

2 (2) The assessment must be undertaken using **the assessment tool**, and  
3 in accordance with any other requirements, determined under  
4 subsection (8).

**Commented [A29]:** A singular tool is unachievable.

5 (3) The assessment must assess the participant's need for supports  
6 **only in respect of impairments in respect of which the participant**  
7 **meets the disability requirements or the early intervention**  
8 **requirements.**

**Commented [A30]:** This fails to respect that disability can be compounding. This would mean that a autistic participant's anxiety or trauma is not considered in assessing needs. That is completely unacceptable.

9 (4) The assessment must:

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

12 (b) **may have regard to any other information held in the records**  
13 **of the Agency that relates to the person.**

**Commented [A31]:** Should not be optional. Can people insist on what is in "other information" ... and can they exclude material from "other information"?

14 *Needs assessment reports*

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

**Commented [A32]:** If planners do it, then they can be completed before the plan is finalised. Do participants have a right to see them?

17 (6) The report must include any information, and meet any  
18 requirements, determined under subsection (8).

19 *Replacement assessments*

**Commented [A33]:** Needs to fully align with s48 and s47A

20 (7) If:

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

24 (b) in deciding whether or not to approve a statement of  
25 participant supports for the plan, the CEO is **satisfied in**  
26 **accordance with National Disability Insurance Scheme rules**  
27 **made for the purposes of this paragraph that another**  
28 **assessment (the *replacement assessment*) of the participant's**  
29 **need for supports should be undertaken;**

**Commented [A34]:** This should be law ... not random/arbitrary rules

30 then:

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

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- 1 (d) subsections (2) to (6) apply in relation to the replacement  
2 assessment in the same way as they applied in relation to the  
3 existing assessment; and  
4 (e) the replacement assessment is taken to replace the existing  
5 assessment; and  
6 (f) the needs assessment report prepared for the replacement  
7 assessment is taken to replace the needs assessment report  
8 prepared for the existing assessment.

9 *Ministerial determinations relating to assessments and reports*

- 10 (8) The Minister may, by legislative instrument, determine the  
11 following:  
12 (a) assessment tools to be used in undertaking assessments under  
13 subsection (1);  
14 (b) requirements for undertaking assessments under  
15 subsection (1);  
16 (c) information that must be included in a report prepared under  
17 subsection (5);  
18 (d) requirements that a report prepared under subsection (5) must  
19 meet.

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

- 23 (9) A determination made under subsection (8) may make different  
24 provision for different classes of participants.
- 25 (10) In making a determination under subsection (8), the Minister must  
26 have regard to:  
27 (a) the principles set out in subsections 4(5) and (11); and  
28 (b) the need to ensure the financial sustainability of the National  
29 Disability Insurance Scheme.

- 30 (11) Despite subsection 14(2) of the *Legislation Act 2003*, a  
31 determination under subsection (8) of this section may make  
32 provision for or in relation to a matter by applying, adopting or  
33 incorporating any matter contained in an instrument or other  
34 writing as in force or existing from time to time.

**Commented [A35]:** Further unreviewable decisions ...

**Commented [A36]:** So maybe not a single tool as described in s32L(2) above.

**Commented [A37]:** What is this?

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1 **Subdivision C—Content of old framework plans**

2 **32M Application of this Subdivision**

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

5 Note: For when Subdivision B applies in relation to a plan, see subsection  
6 32C(1).

7 **37 Before subsection 33(1)**

8 Insert:

9 *Participant's statement of goals and aspirations*

10 **38 Before subsection 33(2)**

11 Insert:

12 *Statement of participant supports*

13 **39 After subsection 33(2)**

14 Insert:

15 *Total funding amounts and funding component amounts*

16 (2A) In addition to the matters mentioned in paragraphs (2)(a) to (e), the  
17 statement of participant supports may (and must in the  
18 circumstances determined under paragraph (2E)(a)) specify any  
19 one or more of the following:

20 (a) that funding will be provided under the plan to or in relation  
21 to the participant up to a specified amount (a **total funding**  
22 **amount**) for all reasonable and necessary supports funded  
23 under the plan;

24 (b) for a reasonable and necessary support, or class of such  
25 supports, specified under paragraph (2)(b) that is of a kind  
26 determined under paragraph (2E)(c)—that funding will be  
27 provided under the plan to or in relation to the participant for  
28 the support or class of supports up to a specified amount  
29 (each of which is a **funding component amount**);

**Commented [A38]:** This (SOPS, plan layout/presentation) would best be the subject of sector co-design.

**Commented [A39]:** I'm not sure I have any idea what this means - or why it needs to be here.

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1 (c) in any case—that funding will be provided under the plan to  
2 or in relation to the participant for reasonable and necessary  
3 supports during specified periods (each of which is a *funding*  
4 *period*).

5 (2B) If the statement specifies that funding will be provided under the  
6 plan for reasonable and necessary supports during funding periods,  
7 the statement:

8 (a) ~~may~~ specify funding periods:  
9 (i) for reasonable and necessary supports funded under the  
10 plan generally; or

11 (ii) for a specified reasonable and necessary support, or  
12 class of such supports, funded under the plan; and

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

14 (c) must specify, for each funding period:

15 (i) unless subparagraph (ii) or (iii) applies—the proportion  
16 of the total funding amount that will be provided under  
17 the plan during each funding period for reasonable and  
18 necessary supports generally; or

19 (ii) if the funding period is for a particular support or class  
20 of supports and subparagraph (iii) does not apply—the  
21 proportion of the total funding amount that will be  
22 provided under the plan during the funding period for  
23 the support or class of supports; or

24 (iii) if the funding period is for a particular support or class  
25 of supports for which there is a funding component  
26 amount—the proportion of the funding component  
27 amount that will be provided under the plan during the  
28 funding period for the support or class of supports.

29 (2C) For the purposes of paragraph (2B)(b):

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

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

33 (c) if the funding period is for reasonable and necessary supports  
34 funded under the plan generally:

35 (i) the first funding period must start on a day worked out  
36 in accordance with a determination under  
37 subsection (2E); and

**Commented [A40]:** Will - even if it's the whole period of the plan

**Commented [A41]:** That's the definition of 'funding period'

**Commented [A42]:** Why?

**Commented [A43]:** Implied if there are multiple funding periods

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- 1 (ii) each other funding period must start immediately after  
2 the end of the immediately preceding funding period;  
3 and  
4 (d) if the funding period is for a particular reasonable and  
5 necessary support or class of such supports:  
6 (i) the first funding period for the support or class of  
7 supports must start on a day worked out in accordance  
8 with a determination under subsection (2E); and  
9 (ii) each other funding period for the support or class of  
10 supports must start immediately after the end of the  
11 immediately preceding funding period for that support  
12 or class of supports.
- 13 (2D) A total funding amount or funding component amount specified in  
14 the statement of participant supports must be worked out in  
15 accordance with a determination under subsection (2E).
- 16 (2E) The Minister may, by legislative instrument, determine:  
17 (a) circumstances in which a statement of participant supports  
18 must specify that funding will be provided under the plan as  
19 mentioned in one or more of paragraphs (2A)(a), (b) and (c);  
20 and  
21 (b) how to work out a total funding amount for reasonable and  
22 necessary supports for the purposes of paragraph (2A)(a);  
23 and  
24 (c) kinds of supports for the purposes of paragraph (2A)(b); and  
25 (d) how to work out a funding component amount for a support,  
26 or class of supports, that is of a kind determined under  
27 paragraph (c) of this subsection; and  
28 (e) how to work out when the first funding period for reasonable  
29 and necessary supports generally, or for a particular  
30 reasonable and necessary support or class of such supports, is  
31 to start; and  
32 (f) any one or more of the following:  
33 (i) requirements with which the CEO must comply;  
34 (ii) methods or criteria that the CEO is to apply;  
35 (iii) matters that the CEO may, must or must not take into  
36 account;

**Commented [A44]:** I'm not sure I understand what this means.  
Is the purpose of this to have the Minister create rules that bind the AAT, or is there something else happening here?

**Commented [A45]:** I doubt we need creative accounting by Rule. Proper accounting practice should just be implied by the legislation.

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1 in working out a total funding amount or a funding  
2 component amount, or deciding any matter for the purposes  
3 of subsection (2B) or (2C).

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

7 (2F) Despite subsection 14(2) of the *Legislation Act 2003*, a  
8 determination under subsection (2E) of this section may make  
9 provision for or in relation to a matter by applying, adopting or  
10 incorporating any matter contained in an instrument or other  
11 writing as in force or existing from time to time.

12 *How supports may be specified in plan*

13 **40 Before subsection 33(4)**

14 Insert:

15 *Time limits for approving statement of participant supports*

16 **41 Before subsection 33(5)**

17 Insert:

18 *Requirements for CEO in approving statement of participant*  
19 *supports*

20 **42 At the end of subsection 33(5)**

21 Add:

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

25 **43 Before subsection 33(6)**

26 Insert:

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

29 **44 Before subsection 33(7)**

30 Insert:

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**Commented [A46]:** I don't understand this. I am concerned when a standard provision of something like a bit of the Legislation Act 2003 is waived.

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1 *Plan may deal with additional matters*

2 **45 Before subsection 33(8)**

3 Insert:

4 *Statement of goals and aspirations to be recorded in writing*

5 **46 Before paragraph 34(1)(a)**

6 Insert:

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

11 **47 Paragraph 34(1)(f)**

12 Repeal the paragraph, substitute:

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

14 **48 Subsection 34(2)**

15 Omit “(1)(a)”, substitute “(1)(aa)”.

16 **49 At the end of subsection 35(4)**

17 Add:

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

21 **50 Before section 36**

22 Insert:

23 **Subdivision D—Information and reports**

24 **51 Section 36 (heading)**

25 Repeal the heading, substitute:

**Commented [A47]:** This makes it easy for the NDIS to ignore essential disability related needs. The NDIS can choose a person’s most minimal disability for eligibility (the minimal “disability requirement”), then ignore needs arising from their further severe disability. It seems to me that this clause is designed to deny people proper support for people with complex needs.

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**36 Requesting information and reports**

**52 Subsection 36(1)**

Repeal the subsection, substitute:

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

**53 Paragraph 36(2)(a)**

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

**Commented [A48]:** Leave the a, b or c bit out.

**54 Subsection 36(3)**

Repeal the subsection (including the note), substitute:

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

**Commented [A49]:** So Agency timeframes are set by Rules (at the will of the Agency) but participant timeframes are legislated!

**Commented [A50]:** Suspend the whole plan - that maybe overkill

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

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- 1 (4) If the CEO suspends the preparation of a new framework plan for a  
2 participant under subparagraph (3)(b)(i):  
3 (a) the CEO must give the participant written notice of the  
4 decision; and  
5 (b) the statement of participant supports in any other plan that is  
6 in effect for the participant (whether an old framework plan  
7 or a new framework plan) is suspended from the day  
8 specified in the notice for the purposes of this paragraph until  
9 the day the CEO receives the information or reports  
10 requested; and  
11 (c) the CEO must recommence the preparation of the new  
12 framework plan if the CEO subsequently receives the  
13 information or reports.

Commented [A51]: More overkill

- 14 (5) If a request under subsection (2) is made for a purpose mentioned  
15 in paragraph (1)(b) or (c), the CEO:  
16 (a) may prepare the statement of participant supports, or decide  
17 whether to approve a statement of participant supports,  
18 before all the information and reports requested are received  
19 by the CEO; but  
20 (b) must give the participant or the other person mentioned in  
21 paragraph (2)(a) a reasonable opportunity to provide the  
22 information and reports.

Commented [A52]: Didn't is say planning was suspended above?

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

27 **55 Before section 37**

28 Insert:

29 **Subdivision E—When a plan is in effect etc.**

30 **56 Subsection 37(3)**

31 Repeal the subsection, substitute:

- 32 (3) A participant's plan ceases to be in effect at the earliest of the  
33 following times:  
34 (a) when the plan is replaced by another plan (see  
35 subsection (4));

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

4 (c) in any case—when the participant ceases to be a participant.

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

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

10 **57 Before paragraph 41(1)(a)**

11 Insert:

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

15 **58 Paragraph 41(2)(a)**

16 Repeal the paragraph, substitute:

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

20 **59 At the end of section 41**

21 Add:

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

26 **60 Paragraph 42(1)(a)**

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

28 **61 Subsection 42(2)**

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

30 **62 Subsection 43(2)**

31 Omit “(3)”, substitute “(2A)”.

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1 **63 After subsection 43(2)**

2 Insert:

3 (2A) If the plan is a new framework plan:

- 4 (a) the CEO may, if satisfied that a circumstance mentioned in  
5 subsection (2C) exists, decide that:
- 6 (i) a person mentioned in subsection (2B) is to manage a  
7 particular proportion of flexible funding provided under  
8 the plan; or
  - 9 (ii) a person mentioned in subsection (2B) is to manage  
10 funding provided under the plan for a particular stated  
11 support or class of stated supports; and
- 12 (b) the statement of participant supports in the plan must give  
13 effect to the decision.

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

17 (2B) For the purposes of subparagraphs (2A)(a)(i) and (ii), the persons  
18 are as follows:

- 19 (a) the Agency;
- 20 (b) the participant, if the participant has made a plan  
21 management request covered by paragraph (1)(a) and the  
22 participant does not have a plan nominee;
- 23 (c) if:
- 24 (i) the participant has a plan nominee; and
  - 25 (ii) the participant has made a plan management request  
26 covered by paragraph (1)(a); and
  - 27 (iii) the decision would be consistent with the terms of the  
28 plan nominee's appointment;
- 29 the plan nominee;
- 30 (d) a registered plan management provider, if the participant has  
31 made a plan management request covered by  
32 paragraph (1)(b) that nominates the provider.

33 (2C) For the purposes of paragraph (2A)(a), the circumstances are as  
34 follows:

- 35 (a) the participant would be likely to suffer physical, mental or  
36 financial harm were the CEO to not make the decision;

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- 1 (b) section 46 (acquittal of NDIS amounts) has not been  
2 complied with in relation to the plan or any of the  
3 participant's previous plans;  
4 (c) a circumstance prescribed by the National Disability  
5 Insurance Scheme rules for the purposes of this paragraph.

6 (2D) The National Disability Insurance Scheme rules may make  
7 provision for determining any matter for the purposes of  
8 paragraph (2A)(a), including but not limited to:

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

13 in making any decision under paragraph (2A)(a).

14 **64 Paragraph 43(3)(d)**

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

16 **65 After subsection 43(4)**

17 Insert:

18 (4A) If:

- 19 (a) a participant makes a plan management request covered by  
20 paragraph (1)(b); and  
21 (b) subsection 44(2AA) applies in relation to the registered plan  
22 management provider;  
23 the statement of participant supports in the plan may provide for  
24 the funding for supports under the plan to be managed by the  
25 Agency to the extent covered by that subsection.

26 **66 Paragraph 43(6)(e)**

27 After "44(2A)(b)", insert "or (c)".

28 **67 Subsection 43(7)**

29 Repeal the subsection, substitute:

- 30 (7) The following provisions have effect:  
31 (a) paragraph (2A)(b) does not apply to funding to the extent that  
32 subsection (3), (4) or (6) applies to the funding;

**Commented [A53]:** The NDIS, under the direction of the CEO, set's the rules for the CEO? I don't think that will work well.

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

5 **68 At the end of subsection 44(1)**

6 Add:

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

**Commented [A54]:** That is very vague - so no requirement for evidence?  
In practice, lots of people make these decisions now, and the CEO overturns them if one can bring the specific issue before the CEO (or a high enough official).

11 **69 After subsection 44(2)**

12 Insert:

- 13 (2AA) For the purposes of paragraph 43(4A)(b), this subsection applies in  
14 relation to a registered plan management provider if the CEO is  
15 satisfied that section 46 (acquittal of NDIS amounts) would be  
16 unlikely to be complied with if the provider were to manage the  
17 funding for supports under the plan to a particular extent.

18 **70 At the end of subsection 44(2A)**

19 Add:

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

24 **71 Before subsection 44(3)**

25 Insert:

26 *National Disability Insurance Scheme rules relating to*  
27 *unreasonable risk*

28 **72 Subsection 44(3)**

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

30 **73 At the end of section 44**

31 Add:

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

6 *National Disability Insurance Scheme rules relating to compliance*  
7 *with section 46*

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

17 **74 At the end of section 45**

18 Add:

- 19 (4) The Agency must not pay an NDIS amount to any person if the  
20 payment would result in:  
21 (a) if a participant's new framework plan provides that flexible  
22 funding will be provided under the plan:  
23 (i) the total amount of flexible funding provided under the  
24 plan exceeding the total funding amount specified in the  
25 plan under paragraph 32E(2)(a); or  
26 (ii) the total amount of flexible funding provided under the  
27 plan during a funding period exceeding the amount of  
28 funding that is to be provided under the plan during the  
29 funding period; or  
30 (b) if a participant's new framework plan provides that funding  
31 will be provided under the plan for a stated support or class  
32 of stated supports:  
33 (i) the total amount of funding provided under the plan for  
34 the stated support or class of stated supports exceeding  
35 any total funding amount specified in the plan under  
36 paragraph 32G(2)(a); or

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- 1 (ii) the total amount of funding provided under the plan for  
2 the stated support or class of stated supports during a  
3 funding period for the support or class of supports  
4 exceeding the amount of funding that is to be provided  
5 under the plan during the funding period for the support  
6 or class of supports; or  
7 (c) the total amount of funding provided under an old framework  
8 plan for reasonable and necessary supports for the participant  
9 exceeding any total funding amount for such supports; or  
10 (d) the total amount of funding provided under an old framework  
11 plan for a support or class of supports exceeding any funding  
12 component amount for the support or class of supports; or  
13 (e) the total amount of funding provided under an old framework  
14 plan for a support or class of supports during a funding  
15 period for the support or class of supports exceeding the  
16 amount of funding that is to be provided under the plan  
17 during the funding period for the support or class of supports.
- 18 (5) Subsection (4) does not apply in relation to the payment of an  
19 NDIS amount if:  
20 (a) the CEO is satisfied that there are exceptional circumstances  
21 justifying the making of the payment without:  
22 (i) varying the participant's plan; or  
23 (ii) reassessing the participant's plan and preparing a  
24 replacement plan for the participant; and  
25 (b) National Disability Insurance Scheme rules are in force for  
26 the purposes of subsection (6).
- 27 (6) The National Disability Insurance Scheme rules may prescribe  
28 what constitutes exceptional circumstances for the purposes of  
29 paragraph (5)(a).

30 **75 Subsection 46(1)**

31 Repeal the subsection, substitute:

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

- 34 (1) A participant who receives an NDIS amount, or a person who  
35 receives an NDIS amount on behalf of a participant:

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- 1 (a) may spend the money only on NDIS supports for the  
2 participant; and  
3 (b) must spend the money in accordance with the participant's  
4 plan (subject to paragraph (a)).
- 5 Note 1: A failure to comply with this subsection (including due to the  
6 operation of subsection (1A) or (1B)) may lead to a variation of the  
7 participant's plan under section 47A:  
8 (a) to change the management of the funding for supports under the  
9 plan (see sections 43 and 74); or  
10 (b) for a new framework plan—to specify a proportion of flexible  
11 funding that may be spent only on specified NDIS supports for  
12 the participant (or to change such a proportion); or  
13 (c) for any plan—to reduce the duration of funding periods for  
14 particular funding under the plan and the amount of funding that  
15 will be provided during any particular funding period.
- 16 Note 2: See also subsection 182(3) (debts due to the Agency).
- 17 (1A) If:  
18 (a) a participant acquires a support for themselves or a support is  
19 provided to a participant; and  
20 (b) either:  
21 (i) the support is not an NDIS support for the participant;  
22 or  
23 (ii) the participant's plan is not complied with in connection  
24 with the acquisition or provision of the support; and  
25 (c) a payment is made under the National Disability Insurance  
26 Scheme in relation to the support, whether to the participant  
27 or another person;  
28 then the participant is taken for the purposes of subsection (1):  
29 (d) to have received an NDIS amount equal to the payment; and  
30 (e) if subparagraph (b)(i) of this subsection applies—to have  
31 spent that money other than on NDIS supports for the  
32 participant; and  
33 (f) if subparagraph (b)(ii) of this subsection applies—to have not  
34 spent that money in accordance with the participant's plan.
- 35 (1B) If:  
36 (a) a person (the *first person*) other than a participant acquires a  
37 support for a participant or provides a support to a  
38 participant; and

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- 1 (b) either:  
2 (i) the support is not an NDIS support for the participant;  
3 or  
4 (ii) the participant’s plan is not complied with in connection  
5 with the acquisition or provision of the support; and  
6 (c) a payment is made under the National Disability Insurance  
7 Scheme in relation to the support, whether to the first person  
8 or any other person;  
9 then the first person is taken for the purposes of subsection (1):  
10 (d) to have received an NDIS amount on behalf of the participant  
11 that is equal to the payment; and  
12 (e) if subparagraph (b)(i) of this subsection applies—to have  
13 spent that money other than on NDIS supports for the  
14 participant; and  
15 (f) if subparagraph (b)(ii) of this subsection applies—to have not  
16 spent that money in accordance with the participant’s plan.

17 *Requirements relating to retention of records*

18 **76 Paragraph 46B(2)(b)**

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

21 **77 Subparagraph 47A(1)(a)(i)**

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

24 **78 After subsection 47A(1)**

25 Insert:

26 *Permitted variations—new framework plans*

27 (1AA) For the purposes of subparagraph (1)(a)(i), the following variations  
28 of a new framework plan are covered:

- 29 (a) a variation of the participant’s reasonable and necessary  
30 budget covered by subsection (1AB);  
31 (b) a variation relating to the general supports (if any) that will  
32 be provided to or in relation to the participant under the plan;

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- 1 (c) a variation of the statement of participant supports included  
2 in the plan in relation to the management of:  
3 (i) the funding for supports under the plan; or  
4 (ii) other aspects of the plan;  
5 (d) a variation of the maximum period of effect specified in the  
6 plan under paragraph 32D(2)(d);  
7 (e) a variation of the circumstances in which the Agency must  
8 reassess the plan under this Division.

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

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

15 (1AB) For the purposes of paragraph (1AA)(a), the following variations  
16 of a participant's reasonable and necessary budget are covered:

- 17 (a) a variation of:  
18 (i) the total funding amount for flexible funding; or  
19 (ii) the total funding amount for a stated support or class of  
20 stated supports;  
21 for the purposes of dealing with a variation of the maximum  
22 period of effect specified in the plan under paragraph  
23 32D(2)(d);  
24 (b) a variation to provide for a total funding amount for a stated  
25 support or class of stated supports;  
26 (c) a variation of the number or duration of the funding periods  
27 for flexible funding, or for a stated support or class of stated  
28 supports;  
29 (d) a variation of the proportion of the total funding amount for  
30 flexible funding, or for a stated support or class of stated  
31 supports, that will be provided under the plan during one or  
32 more funding periods;  
33 (e) a variation to provide for:  
34 (i) funding periods for a stated support or class of stated  
35 supports (disregarding paragraph 32G(5)(c) for this  
36 purpose); and

**Commented [A55]:** Is this different from SOPS? If so, how?

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- 1 (ii) the proportion of the total funding amount for the stated  
2 support or class of stated supports that will be provided  
3 under the plan during each funding period;
- 4 (f) a variation of a restriction provided for under subsection  
5 32F(6);
- 6 (g) if the CEO is satisfied that a circumstance mentioned in  
7 subsection 32F(7) exists—a variation to provide for a  
8 restriction under subsection 32F(6);
- 9 (h) if the CEO is satisfied that none of the circumstances  
10 mentioned in subsection 32F(7) exist—a variation to remove  
11 a restriction imposed under subsection 32F(6);
- 12 (i) a variation to provide for, change, add or remove a  
13 requirement under subsection 32H(1) relating to the  
14 acquisition or provision of supports;
- 15 (j) a variation of the participant’s reasonable and necessary  
16 budget if:
- 17 (i) the CEO is satisfied that the participant requires crisis or  
18 emergency funding as a result of a significant change to  
19 the participant’s support needs; or
- 20 (ii) after the participant’s plan comes into effect, the CEO  
21 receives information in response to a request that had  
22 been made under subsection 36(2) or 50(2) in relation to  
23 the plan (other than a request made under  
24 subsection 50(2) for the purposes of varying the plan on  
25 the CEO’s own initiative), and the variation relates to  
26 that information; or
- 27 (iii) the CEO is satisfied that a circumstance prescribed by  
28 the National Disability Insurance Scheme rules for the  
29 purposes of this subparagraph exists in relation to the  
30 participant.

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

33 *Permitted variations—old framework plans*

34 **79 Subsection 47A(1A)**

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

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**80 Paragraph 47A(1A)(a)**

Repeal the paragraph, substitute:

- (a) a variation of the plan’s reassessment date or the circumstances in which the Agency must reassess the plan under this Division;
- (ab) a variation of:
  - (i) a total funding amount for the reasonable and necessary supports specified in the plan; or
  - (ii) a funding component amount for a support or class of supports funded under the plan;for the purposes of dealing with a variation of the plan’s reassessment date;
- (ac) a variation to specify any one or more of the following in accordance with subsections 33(2A) to (2D) and a determination in force for the purposes of subsection 33(2E):
  - (i) a total funding amount for the reasonable and necessary supports specified in the plan;
  - (ii) a funding component amount for a reasonable and necessary support, or a class of such supports, specified in the plan;
  - (iii) funding periods for funding provided under the plan for reasonable and necessary supports generally, a particular reasonable and necessary support, or a class of such supports;
  - (iv) if funding periods are specified under subparagraph (iii) and subparagraphs (v) and (vi) do not apply—the proportion of the total funding amount that will be provided under the plan during each funding period for reasonable and necessary supports generally;
  - (v) if funding periods are specified under subparagraph (iii) for a particular support or class of supports and subparagraph (vi) does not apply—the proportion of the total funding amount that will be provided under the plan during each funding period for the support or class of supports;
  - (vi) if funding periods are specified under subparagraph (iii) for a particular support or class of supports for which there is a funding component amount—the proportion

**Commented [A56]:** Isn't this just a long way of saying "the whole plan"?

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- 1 of the funding component amount that will be provided  
2 under the plan during the funding period for the support  
3 or class of supports;
- 4 (ad) a variation of the number or duration of the funding periods  
5 for funding provided under the plan for reasonable and  
6 necessary supports generally, or for a particular support or  
7 class of supports;
- 8 (ae) a variation of the proportion of the total funding amount that  
9 will be provided under the plan for reasonable and necessary  
10 supports generally, or for a particular support or class of  
11 supports, during one or more funding periods;
- 12 (af) a variation of the proportion of a funding component amount  
13 for a support or class of supports that will be provided under  
14 the plan for the support or class of supports during one or  
15 more funding periods;
- 16 (ag) a variation relating to the general supports (if any) that will  
17 be provided to or in relation to the participant under the plan;

18 **81 Subsection 47A(1A) (note 1)**

19 After “mentioned”, insert “in”.

20 **82 After subsection 47A(1A)**

21 Insert:

22 *Conditions not limited*

- 23 (1B) The fact that a paragraph in subsection (1AA), (1AB) or (1A)  
24 covers only certain kinds of variations does not limit the power  
25 under paragraph (1)(b) for the National Disability Insurance  
26 Scheme rules to prescribe conditions that have the effect of  
27 limiting the kinds of variations that may be made under  
28 subsection (1).

29 **83 After subsection 47A(2)**

30 Insert:

31 *Requirements for CEO—new framework plans*

- 32 (2A) In varying a new framework plan in relation to the statement of  
33 participant supports, the CEO must:

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- 1 (a) have regard to the participant’s statement of goals and  
2 aspirations; and  
3 (b) be satisfied as mentioned in paragraph 32D(6)(b) in relation  
4 to any general supports to be provided; and  
5 (c) have regard to the principle that a participant should manage  
6 the participant’s plan to the extent that the participant wishes  
7 to do so; and  
8 (d) have regard to the operation and effectiveness of the plan and  
9 any previous plans of the participant; and  
10 (e) have regard to whether section 46 (acquittal of NDIS  
11 amounts) was complied with in relation to the plan and any  
12 previous plans of the participant; and  
13 (f) be satisfied of any matters specified in the National  
14 Disability Insurance Scheme rules for the purposes of this  
15 paragraph.

**Commented [A57]:** So, no requirement to address the participant’s goals & aspiration - this allows them to be ignored completely.

**Commented [A58]:** No requirement!  
How would this ever be tested?

16 **84 Subsection 47A(3) (at the end of the heading)**

17 Add “—old framework plans”.

18 **85 Subsection 47A(3)**

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

21 **86 At the end of subsection 47A(3)**

22 Add:

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

26 **87 At the end of subsection 48(1)**

27 Add:

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

30 **88 Subsection 48(3) (note)**

31 Omit “Note”, substitute “Note 1”.

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1 **89 At the end of subsection 48(3)**

2 Add:

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

6 **90 Subparagraphs 48(7)(b)(ii) and 49(1)(b)(ii)**

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

8 **91 At the end of subsection 49(1)**

9 Add:

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

12 **92 At the end of section 49A**

13 Add:

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

16 **93 After section 49A**

17 Insert:

18 **49B No reassessment of old framework plan if participant to have  
19 new framework plans**

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

**Commented [A59]:** What is the purpose of this? Can we not learn from the past ... especially if the participant feels there may be valuable lessons from their experience?

24 **94 Subsection 73B(1) (note)**

25 Omit “subsection 33(6), which provides”, substitute “subsections  
26 32D(7) and 33(6), which provide”.

27 **95 Subsection 74(3)**

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

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1 **96 After subsection 74(3)**

2 Insert:

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

4 (a) the CEO may, if satisfied that a circumstance mentioned in  
5 subsection (3C) exists, decide that:

6 (i) a person mentioned in subsection (3B) is to manage a  
7 particular proportion of flexible funding provided under  
8 the plan; or

9 (ii) a person mentioned in subsection (3B) is to manage  
10 funding provided under the plan for a particular stated  
11 support or class of stated supports; and

12 (b) the statement of participant supports in the plan must give  
13 effect to the decision.

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

17 (3B) For the purposes of subparagraphs (3A)(a)(i) and (ii), the persons  
18 are as follows:

19 (a) the Agency;

20 (b) the person mentioned in subsection (1), if the person has  
21 made a request covered by paragraph (2)(a);

22 (c) a registered plan management provider, if the person  
23 mentioned in subsection (1) has made a request covered by  
24 paragraph (2)(b) that nominates the provider.

25 (3C) For the purposes of paragraph (3A)(a), the circumstances are as  
26 follows:

27 (a) the participant would be likely to suffer physical, mental or  
28 financial harm were the CEO to not make the decision;

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

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

34 (3D) Paragraph (3A)(b) does not apply to funding to the extent that  
35 subsection (4) or (4A) applies to the funding.

Main amendments **Schedule 1**  
Amendment of the National Disability Insurance Scheme Act 2013 **Part 1**

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1 **97 Paragraph 74(4)(b)**

2 Repeal the paragraph, substitute:

- 3 (b) to a particular extent, if the CEO is satisfied:
- 4 (i) that management of the plan to that extent would
  - 5 present an unreasonable risk to the participant; or
  - 6 (ii) that management of the plan to that extent would permit
  - 7 the person to manage matters that are prescribed by the
  - 8 National Disability Insurance Scheme rules as being
  - 9 matters that must not be managed by the person; or
  - 10 (iii) that section 46 (acquittal of NDIS amounts) would be
  - 11 unlikely to be complied with if the person were to
  - 12 manage the funding for supports under the plan to that
  - 13 extent.

14 **98 After subsection 74(4)**

15 Insert:

16 (4A) If:

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

26 **99 Subsection 74(6)**

27 Repeal the subsection, substitute:

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

**Schedule 1** Main amendments

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

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1 in making any decision under this section.

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

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

5 **101 Subsection 99(1) (table item 4, column 2)**

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

7 **102 Subsection 99(1) (after table item 4)**

8 Insert:

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

9 **103 Subparagraph 101(2)(a)(i)**

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

11 **104 At the end of subsection 120(2)**

12 Add:

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

16 **105 At the end of section 125B**

17 Add:

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

21 **106 Paragraph 144(1)(c)**

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

24 **107 At the end of subsection 172(3)**

25 Add:

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Main amendments **Schedule 1**  
Amendment of the National Disability Insurance Scheme Act 2013 **Part 1**

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

4     **108 Section 179**

5                   Omit “reasonable and necessary”.

6     **109 At the end of section 180C**

7                   Add:

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

11    **110 At the end of subsection 181J(2)**

12                  Add:

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

16    **111 At the end of subsection 181N(4)**

17                  Add:

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

21    **112 At the end of subsection 181Y(8)**

22                  Add:

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

26    **113 At the end of subsection 209(1)**

27                  Add:

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

31    **114 Subsection 209(2)**

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

**Schedule 1** Main amendments

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

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

3 Insert:

4 (aaa) paragraphs 10(b) and (c);

5 **116 Subsection 209(8) (table item 1, column headed**  
6 **“Description”, after paragraph (c))**

7 Insert:

8 (ca) subsection 29(3);

9 (cb) subsections 30A(1) and (2) and paragraph (9)(a);

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

11 (cd) subsection 32E(4);

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

13 (cf) subsection 32G(4);

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

15 (ch) section 32J;

16 (ci) paragraph 32L(7)(b);

17 **117 Subsection 209(8) (table item 1, column headed**  
18 **“Description”, paragraph (ea))**

19 Repeal the paragraph, substitute:

20 (ea) subsection 41(3);

21 (eaa) paragraph 43(2C)(c) and subsection 43(2D);

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

23 **118 Subsection 209(8) (table item 1, column headed**  
24 **“Description”, paragraph (eb))**

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

27 **119 Subsection 209(8) (table item 1, column headed**  
28 **“Description”, paragraph (h))**

29 Repeal the paragraph, substitute:

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

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

---

1 **120 Subsection 209(8) (table item 2, column headed**  
2 **“Description”, paragraph (a))**

3 Repeal the paragraph.

4 **121 Subsection 209(8) (table item 3, column headed**  
5 **“Description”, after paragraph (a))**

6 Insert:

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

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

9 **122 Subsection 209(8) (table item 4, column headed**  
10 **“Description”, after paragraph (a))**

11 Insert:

12 (aa) subsection 32B(3);

**Schedule 1** Main amendments

**Part 2** Consequential amendments

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1 **Part 2—Consequential amendments**

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

4 **123 Section 12 (after table item 42AB)**

5 Insert:

42AC Each of the following:

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

Main amendments **Schedule 1**  
Application and transitional provisions **Part 3**

---

1 **Part 3—Application and transitional provisions**

2 **124 NDIS supports**

- 3 (1) This item applies until National Disability Insurance Scheme rules are  
4 first made for the purposes of paragraph 10(b) of the *National Disability*  
5 *Insurance Scheme Act 2013*, as inserted by this Schedule.
- 6 (2) Subject to subitems (3), (4) and (5), a support is taken to be an NDIS  
7 support for a person for the purposes of the *National Disability*  
8 *Insurance Scheme Act 2013* if:  
9 (a) the requirement in paragraph 10(a) of that Act (as inserted by  
10 this Schedule) is met in relation to the support and the  
11 person; and  
12 (b) the support is in a class of supports mentioned in a table in  
13 the Applied Principles and Tables of Support under the  
14 heading “REASONABLE AND NECESSARY NDIS  
15 SUPPORTS FOR ELIGIBLE PEOPLE”; and  
16 (c) if a heading in the table indicates that supports listed under  
17 that heading are only for people in a particular class—the  
18 person is a person in that class.
- 19 (3) A support is taken to not be an NDIS support for a person for the  
20 purposes of the *National Disability Insurance Scheme Act 2013* if the  
21 support is in a class of supports mentioned in a table in the Applied  
22 Principles and Tables of Support under the heading “OTHER  
23 PARTIES”.
- 24 (4) A support is taken to not be an NDIS support for a person for the  
25 purposes of the *National Disability Insurance Scheme Act 2013* if:  
26 (a) National Disability Insurance Scheme rules made for the  
27 purposes of subsection 35(1) of that Act prescribe reasonable  
28 and necessary supports or general supports that will not be  
29 funded or provided under the National Disability Insurance  
30 Scheme; and  
31 (b) the support is a support of the prescribed kind.
- 32 (5) A support is taken to not be an NDIS support for a person for the  
33 purposes of the *National Disability Insurance Scheme Act 2013* if:

**Schedule 1** Main amendments

**Part 3** Application and transitional provisions

---

- 1 (a) National Disability Insurance Scheme rules made for the  
2 purposes of subsection 35(1) of that Act prescribe reasonable  
3 and necessary supports or general supports that will not be  
4 funded or provided under the National Disability Insurance  
5 Scheme for prescribed participants; and  
6 (b) the support is a support of the prescribed kind; and  
7 (c) the person is a participant of the prescribed kind, or would be  
8 such a participant if the person were a participant.

- 9 (6) In this item:  
10 *Applied Principles and Tables of Support* means the document titled  
11 “Principles to determine the responsibilities of the NDIS and other  
12 service systems” that is dated 27 November 2015 and published on the  
13 Department’s website, as existing at the commencement of this item.

14 **125 Access requests**

15 Sections 21, 26 and 28 of the *National Disability Insurance Scheme Act*  
16 *2013*, as in force on and after the commencement of this Schedule,  
17 apply in relation to a person who makes an access request on or after  
18 that commencement.

19 **126 Meeting the disability requirements or the early**  
20 **intervention requirements**

- 21 (1) Sections 24, 25 and 27 of the *National Disability Insurance Scheme Act*  
22 *2013*, as in force on and after the commencement of this Schedule,  
23 apply in relation to:  
24 (a) a person who makes an access request on or after that  
25 commencement, for the purposes of deciding whether the  
26 person meets the access criteria on or after that  
27 commencement; and  
28 (b) any person who is a participant on or after that  
29 commencement, for the purposes of deciding whether the  
30 person meets the disability requirements or the early  
31 intervention requirements on or after that commencement.  
32 (2) Paragraph (1)(b) applies whether the person becomes a participant  
33 before, on or after the commencement of this Schedule.

Main amendments **Schedule 1**  
Application and transitional provisions **Part 3**

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- 1 (3) National Disability Insurance Scheme rules made for the purposes of  
2 section 27 of the *National Disability Insurance Scheme Act 2013* that  
3 were in force immediately before the commencement of this Schedule  
4 continue in force (and may be dealt with) as if made for the purposes of  
5 that section as amended by this Schedule.

6 **127 Status of person as a participant**

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

12 **128 Transition to new framework plans**

13 Subsections 32(3) and (4), 32B(2) and 32C(1) of the *National Disability*  
14 *Insurance Scheme Act 2013*, as in force on and after the commencement  
15 of this Schedule, apply in relation to a person who is a participant on or  
16 after that commencement, whether the person becomes a participant  
17 before, on or after that commencement.

18 **129 Old framework plans—content and approval of statement**  
19 **of participant supports**

- 20 (1) Sections 33, 34 and 35 of the *National Disability Insurance Scheme Act*  
21 *2013*, as in force on and after the commencement of this Schedule,  
22 apply in relation to a statement of participant supports included in an  
23 old framework plan for a participant if the statement is approved or  
24 varied on or after that commencement.

- 25 (2) Subitem (1) applies:

- 26 (a) whether the participant becomes a participant; and  
27 (b) in the case of a variation—whether the plan comes into  
28 effect;

29 before, on or after that commencement.

30 **130 When a plan ceases to be in effect**

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

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**Schedule 1** Main amendments

**Part 3** Application and transitional provisions

---

1 **131 Suspension of plans**

2 Paragraph 41(2)(a) of the *National Disability Insurance Scheme Act*  
3 *2013*, as in force on and after the commencement of this Schedule,  
4 applies in relation to a suspension of a statement of participant supports  
5 in a participant's plan that starts on or after that commencement.

6 **132 Circumstances in which persons must not manage**  
7 **funding**

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

- 12 (a) whether the person became a participant; and  
13 (b) whether the plan came into effect; and  
14 (c) whether any relevant plan management request was made;  
15 and  
16 (d) in the case of subsections 43(4A) and 44(2AA)—whether the  
17 registered plan management provider was registered or  
18 nominated; and  
19 (e) in the case of subsections 43(5) and (6) and 44(2A)—  
20 whether the plan nominee is appointed;

21 before, on or after that commencement.

22 **133 Acquittal of NDIS amounts**

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

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

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

Main amendments **Schedule 1**  
Application and transitional provisions **Part 3**

---

1 **134 Garnishee orders**

2 Paragraph 46B(2)(b) of the *National Disability Insurance Scheme Act*  
3 *2013*, as in force on and after the commencement of this Schedule,  
4 applies in relation to the making of an order in the nature of a garnishee  
5 order on or after that commencement.

6 **135 Varying old framework plans**

7 Subsections 47A(1A) and (3) of the *National Disability Insurance*  
8 *Scheme Act 2013*, as in force on and after the commencement of this  
9 Schedule, apply in relation to the variation of an old framework plan on  
10 or after commencement, whether the plan comes into effect before, on  
11 or after that commencement.

12 **136 No reassessment of certain old framework plans**

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

17 **137 Children**

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

**Schedule 1** Main amendments

**Part 3** Application and transitional provisions

---

1 **138 Transitional rules**

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

Quality and safeguards amendments **Schedule 2**  
Amendments **Part 1**

**Schedule 2—Quality and safeguards  
amendments**

**Part 1—Amendments**

*National Disability Insurance Scheme Act 2013*

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

Insert:

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

**Commented [A60]:** Any quality commission should be independent of the NDIS/NDIA and not subject to arbitrary rules decided/created by the Agency.

**2 After subsection 73U(5)**

Insert:

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

**Commented [A61]:** Or to actually be such a person

**3 Subsection 73U(6)**

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

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

**4 After subsection 73U(9)**

Insert:



Quality and safeguards amendments **Schedule 2**  
 Amendments **Part 1**

**Delegation of regulatory powers**

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

- 1 Note 1: The expressions *SES employee*, *acting SES employee* and *APS*  
 2 *employee* are defined in section 2B of the *Acts Interpretation Act*  
 3 *1901*.
- 4 Note 2: See also sections 34AA and 34AB of the *Acts Interpretation Act 1901*.
- 5 (2) Before delegating a power or function under subsection (1) to an  
 6 APS employee covered by item 2 or 3 of the table in that  
 7 subsection, the Commissioner must have regard to:  
 8 (a) if the power or function is delegated to an APS employee  
 9 holding, occupying, or performing the duties of, a specified  
 10 office or position—whether the office or position is

**Schedule 2** Quality and safeguards amendments

**Part 1** Amendments

---

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

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

6 **8 Subsection 209(8) (table item 4, column headed**  
7 **“Description”, after paragraph (k))**

8 Insert:

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

Quality and safeguards amendments **Schedule 2**  
Application and transitional provisions **Part 2**

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1 **Part 2—Application and transitional provisions**

2 **9 Conditions of approval—approved quality auditors**

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

8 **10 Notification of banning orders**

9 Paragraph 73ZN(9)(d) of the *National Disability Insurance Scheme Act*  
10 *2013*, as in force on and after the commencement of this Schedule,  
11 applies in relation to a banning order made on or after that  
12 commencement.

13 **11 Delegation of regulatory powers**

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