

EXPOSURE DRAFT

2019-2020-2021

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021

No. , 2021

(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 *(Participant Service Guarantee and Other Measures) Act 2021*.

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

No. , 2021 *National Disability Insurance Scheme Amendment (Participant Service
Guarantee and Other Measures) Bill 2021* 1

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1 column 2 of the table. Any other statement in column 2 has effect
2 according to its terms.

3

Commencement information

Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The seventh day after this Act receives the Royal Assent.	

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

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

10 3 Schedules

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12 repealed as set out in the applicable items in the Schedule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

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Participant service guarantee **Schedule 1**

1 **Schedule 1—Participant service guarantee**
2

3 *National Disability Insurance Scheme Act 2013*

4 **1 Section 9**

5 Insert:

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

9 *reassessment date* of a participant’s plan means the date specified
10 in the plan under paragraph 33(2)(c).

11 **2 Section 9 (definition of *review date*)**

12 Repeal the definition.

13 **3 Section 20**

14 Before “If”, insert “(1)”.

15 **4 Section 20**

16 Omit “, within 21 days of receiving the access request”.

17 **5 At the end of section 20**

18 Add:

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

22 (a) 21 days, unless paragraph (b) applies;

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

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1 **6 Paragraph 21(3)(a)**

2 Omit “paragraph 20(a) or (b) within the 21-day period referred to in”,
3 substitute “paragraph 20(1)(a) or (b) within the period applicable
4 under”.

5 **7 Subsection 21(3) (note 1)**

6 Repeal the note.

7 **8 Subsection 21(3) (note 2)**

8 Omit “Note 2”, substitute “Note”.

9 **9 Subsection 26(1)**

10 Omit “paragraph 20(b)”, substitute “paragraph 20(1)(b)”.

11 **10 Paragraph 26(2)(b)**

12 Omit “28 days”, substitute “90 days”.

13 **11 Paragraph 26(3)(b)**

14 Omit “28 days”, substitute “90 days”.

15 **12 Section 31**

16 Omit “review”, substitute “variation, reassessment”.

17 **13 Sections 32 and 32A**

18 Repeal the sections, substitute:

19 **32 CEO must facilitate preparation of participant’s plan**

20 If a person becomes a participant, the CEO must facilitate the
21 preparation of the participant’s plan.

22 **14 Paragraph 33(2)(c)**

23 Omit “review”, substitute “reassess”.

24 **15 Subsection 33(4)**

25 Repeal the subsection, substitute:

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

10 **16 Subsection 36(3) (note)**

11 Omit “reviewed”, substitute “varied or can be reassessed”.

12 **17 At the end of subsection 37(1)**

13 Add:

14 Note: Division 4 deals with varying and replacing plans.

15 **18 Subsection 37(2)**

16 Repeal the subsection.

17 **19 Paragraph 41(2)(c)**

18 Omit “request a review of the plan under subsection 48(1)”, substitute
19 “make a request under subsection 47A(2) for a variation of the plan”.

20 **20 Division 4 of Part 2 of Chapter 3 (heading)**

21 Repeal the heading, substitute:

22 **Division 4—Varying and replacing participants’ plans**

23 **21 Subsection 47(1) (note)**

24 Repeal the note, substitute:

25 Note 1: The participant may make a request under subsection 47A(2) for a
26 variation of the plan.

27 Note 2: The CEO may vary the plan under section 47A or may reassess the
28 plan under section 48.

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1 **22 After section 47**

2 Insert:

3 **47A Variation of participant's plan by CEO etc.**

4 (1) The CEO may, in writing, vary a participant's plan (except the
5 participant's statement of goals and aspirations).

6 *Variation on CEO's own initiative or on request*

7 (2) The CEO may do so on the CEO's own initiative or on request of
8 the participant.

9 *Decision on request*

10 (3) If the participant requests a variation of the participant's plan, the
11 CEO must make a decision:

- 12 (a) that the plan needs to be varied; or
13 (b) not to vary the plan and not to reassess the plan under
14 subsection 48(1); or
15 (c) not to vary the plan but to reassess the plan under
16 subsection 48(1) instead.

17 Note: If the CEO decides the plan needs to be varied, see subsection (8) for
18 the period for making the variation.

19 (4) The CEO must make the decision under paragraph (3)(a), (b) or (c)
20 within the following number of days after receiving the request:

- 21 (a) 21 days, unless paragraph (b) applies;
22 (b) if the National Disability Insurance Scheme rules prescribe a
23 lesser number of days for the purposes of this paragraph—
24 that lesser number of days.

25 (5) If the CEO does not make a decision under paragraph (3)(a), (b) or
26 (c) within the period applicable under subsection (4), the CEO is
27 taken to have decided not to vary the plan but to reassess the plan
28 under subsection 48(1) instead.

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1 *Matters to which the CEO must have regard*

- 2 (6) The National Disability Insurance Scheme rules may set out
3 matters to which the CEO must have regard:
4 (a) in deciding whether to vary a participant’s plan on the CEO’s
5 own initiative; or
6 (b) in making a decision under paragraph (3)(a), (b) or (c).

7 *Notification of decision*

- 8 (7) The CEO must notify the participant of the decision under
9 paragraph (3)(a), (b) or (c).

10 *Time for variation on request*

- 11 (8) If the CEO makes a decision under paragraph (3)(a) that a plan
12 needs to be varied, the CEO must then vary the plan under
13 subsection (1):
14 (a) within the period worked out in accordance with the National
15 Disability Insurance Scheme rules prescribed for the
16 purposes of this paragraph (which may take account of
17 section 50 (information and reports)); or
18 (b) if there are no such rules—as soon as reasonably practicable,
19 including what is reasonably practicable having regard to
20 section 50 (information and reports).

21 The variation may be different than the one the participant
22 requested.

23 *When variation takes effect*

- 24 (9) A variation under subsection (1) takes effect on the day specified
25 in the variation (which must not be earlier than the day the
26 variation is made).

27 *Agency to give participant a copy of varied plan*

- 28 (10) The Agency must provide a copy of the varied plan to the
29 participant within 7 days of the variation taking effect.

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1 **23 Sections 48 and 49**

2 Repeal the sections, substitute:

3 **48 Reassessment of participant's plan**

4 *Reassessment on CEO's own initiative*

- 5 (1) The CEO may, on the CEO's own initiative, conduct a
6 reassessment of a participant's plan at any time.
- 7 (2) The National Disability Insurance Scheme rules may set out
8 matters to which the CEO must have regard in deciding whether to
9 conduct a reassessment of a participant's plan.
- 10 (3) If the CEO conducts a reassessment under subsection (1) of a
11 participant's plan, the CEO must:
- 12 (a) complete the reassessment; and
13 (b) either:
- 14 (i) vary, under section 47A, the participant's plan as a
15 result of that reassessment; or
16 (ii) prepare a new plan with the participant in accordance
17 with Division 2 and approve, under subsection 33(2),
18 the statement of participant supports in the new plan.
- 19 (4) The CEO must do the things under paragraphs (3)(a) and (b):
- 20 (a) within the period worked out in accordance with the National
21 Disability Insurance Scheme rules prescribed for the
22 purposes of this paragraph (which may take account of
23 section 50 (information and reports)); or
24 (b) if there are no such rules—as soon as reasonably practicable,
25 including what is reasonably practicable having regard to
26 section 50 (information and reports).

27 *Reassessment of plan before plan's reassessment date*

- 28 (5) The CEO must do the following before the reassessment date of a
29 participant's plan:
- 30 (a) complete a reassessment of the plan;
31 (b) either:

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- 1 (i) vary, under section 47A, the participant’s plan as a
2 result of that reassessment; or
3 (ii) prepare a new plan with the participant in accordance
4 with Division 2 and approve, under subsection 33(2),
5 the statement of participant supports in the new plan.
- 6 (6) The CEO must start the reassessment under subsection (5) before
7 the period (if any) worked out in accordance with the National
8 Disability Insurance Scheme rules prescribed for the purposes of
9 this subsection.

10 *Reassessment of plan in circumstances specified in plan*

- 11 (7) The CEO must conduct a reassessment of a participant’s plan in
12 the circumstances, if any, specified in the plan.

13 **24 Section 50 (heading)**

14 Repeal the heading, substitute:

15 **50 Information and reports for the purposes of varying or** 16 **reassessing a participant’s plan**

17 **25 Subsection 50(1)**

18 Omit “reviewing”, substitute “varying or reassessing”.

19 **26 Paragraph 50(2)(a)**

20 Omit “reviewing”, substitute “varying or reassessing”.

21 **27 Subsection 50(3)**

22 Omit “review”, substitute “vary or reassess”.

23 **28 Subsection 50(3) (note)**

24 Omit “reviewed” (wherever occurring), substitute “varied or
25 reassessed”.

26 **29 Before section 51**

27 Insert:

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1 **50J CEO to comply with requirements in relation to prospective**
2 **participants or participants**

3 The National Disability Insurance Scheme rules may prescribe
4 requirements with which the CEO must comply in relation to the
5 following:

- 6 (a) the preparation of plans for participants;
7 (b) plans that have come into effect for participants;
8 (c) giving effect to decisions of the Administrative Appeals
9 Tribunal in relation to prospective participants or
10 participants.

11 **30 Paragraph 55(2)(d)**

12 Omit “or review”, substitute “, variation or reassessment”.

13 **31 Paragraphs 78(1)(a) and (5)(a)**

14 Omit “review”, substitute “variation, reassessment”.

15 **32 Paragraph 79(1)(a)**

16 Omit “review”, substitute “variation, reassessment”.

17 **33 Subsection 89(1)**

18 Omit “the CEO must, as soon as practicable, cancel the appointment by
19 written instrument.”, substitute:

20 the CEO must cancel the appointment by written instrument:

- 21 (c) within the period worked out in accordance with the National
22 Disability Insurance Scheme rules prescribed for the
23 purposes of this paragraph; or
24 (d) if there are no such rules—as soon as reasonably practicable.

25 **34 Subsection 89(3)**

26 Omit “the CEO must, as soon as practicable, cancel the appointment by
27 written instrument.”, substitute:

28 the CEO must cancel the appointment by written instrument:

- 29 (c) within the period worked out in accordance with the National
30 Disability Insurance Scheme rules prescribed for the
31 purposes of this paragraph; or
-

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1 (d) if there are no such rules—as soon as reasonably practicable.

2 **35 Paragraph 90(3)(a)**

3 Repeal the paragraph, substitute:

4 (a) the CEO must decide whether to cancel the appointment
5 within the following number of days after receiving the
6 request:

7 (i) 14 days, unless subparagraph (ii) applies;

8 (ii) if the National Disability Insurance Scheme rules
9 prescribe a number of days for the purposes of this
10 subparagraph—that number of days; and

11 **36 Paragraph 96(2)(b)**

12 Omit “or review”, substitute “, variation or reassessment”.

13 **37 Subsection 99(1) (table item 1)**

14 Omit “paragraph 20(a)”, substitute “paragraph 20(1)(a)”.

15 **38 Subsection 99(1) (table item 6)**

16 Repeal the item, substitute:

6	a decision to vary a participant’s plan	subsection 47A(1)	CEO
6A	a decision not to vary a participant’s plan and not to reassess the plan	paragraph 47A(3)(b)	CEO

17 **39 Subparagraph 100(1A)(a)(ii)**

18 Omit “or 48(2)”.

19 **40 After subsection 100(1A)**

20 Insert:

21 (1B) If a person receives a notice under subsection (1) in relation to a
22 reviewable decision made by the CEO, the person may request the
23 CEO to give the person the reasons for the decision.

24 (1C) If a person makes a request under subsection (1B), the CEO must
25 give the person the reasons:

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- 1 (a) within the period worked out in accordance with the National
2 Disability Insurance Scheme rules prescribed for the
3 purposes of this paragraph; or
4 (b) if there are no such rules—as soon as reasonably practicable.

5 **41 Paragraph 100(5)(b)**

6 Omit “or 48(2)”.

7 **42 Subsection 100(6)**

8 Omit “, as soon as reasonably practicable,”.

9 **43 After subsection 100(6)**

10 Insert:

11 (6A) The reviewer must make the decision under subsection (6):

- 12 (a) within the period worked out in accordance with the National
13 Disability Insurance Scheme rules prescribed for the
14 purposes of this paragraph; or
15 (b) if there are no such rules—within the period of 90 days
16 beginning on:
17 (i) if paragraph (5)(a) applies—the day the request is
18 received; or
19 (ii) if paragraph (5)(b) applies—the day after the end of the
20 period applicable under paragraph 21(3)(a) or (b) (as
21 appropriate).

22 **44 Section 101 (heading)**

23 Repeal the heading, substitute:

24 **101 Effect of later decisions before review completed**

25 **45 Section 101**

26 Before “If”, insert “(1)”.

27 **46 At the end of section 101**

28 Add:

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- 1 (2) If:
2 (a) a request is made for review of:
3 (i) a decision under subsection 33(2) to approve the
4 statement of participant supports in a participant’s plan;
5 or
6 (ii) a decision under section 47A to vary a participant’s
7 plan, where the variation is a change to the statement of
8 participant supports; and
9 (b) before a decision on the review is made:
10 (i) the CEO varies the plan under section 47A and the
11 variation is a change to the statement of participant
12 supports; or
13 (ii) a new plan for the participant comes into effect under
14 section 37;
15 then:
16 (c) if subparagraph (b)(i) applies—the request is also taken to be
17 a request for review of the decision to make the variation
18 covered by that subparagraph; or
19 (d) if subparagraph (b)(ii) applies—the request is also taken to
20 be a request for review of the decision to approve the
21 statement of participant supports in the new plan.

22 **47 Section 103**

23 Before “Applications”, insert “(1)”.

24 **48 At the end of section 103 (after the note)**

25 Add:

- 26 (2) If:
27 (a) an application is made to the Administrative Appeals
28 Tribunal for review of a decision made by a reviewer under
29 subsection 100(6); and
30 (b) the decision relates to a statement of participant supports in a
31 participant’s plan; and
32 (c) before a decision on the review is made and despite
33 subsection 26(1) of the *Administrative Appeals Tribunal Act*
34 *1975*:

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- 1 (i) the CEO varies the plan under section 47A of this Act
2 and the variation is a change to that statement; or
3 (ii) a new plan for the participant comes into effect under
4 section 37 of this Act;
5 then:
6 (d) if subparagraph (c)(i) applies—the application is also taken
7 to be an application for review of the decision to make the
8 variation covered by that subparagraph; or
9 (e) if subparagraph (c)(ii) applies—the application is also taken
10 to be an application for review of the decision to approve the
11 statement of participant supports in the new plan.

12 **49 Paragraph 174(1)(b)**

13 Omit “1 month”, substitute “42 days”.

14 **50 Subsections 174(3) to (4C)**

15 Repeal the subsections, substitute:

- 16 (3) The report must also include information about matters prescribed
17 by the National Disability Insurance Scheme rules for the purposes
18 of this subsection.

19 **51 Section 204 (heading)**

20 Repeal the heading, substitute:

21 **204 Time frames for decision making by persons other than the** 22 **CEO**

23 **52 Subsection 204(1)**

24 Repeal the subsection.

25 **53 Subsection 204(2)**

26 Omit “(2)”.

27 **54 At the end of Part 2 of Chapter 7**

28 Add:

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204A Report by Commonwealth Ombudsman

- 1
- 2 (1) As soon as practicable after the end of each financial year, the
3 Commonwealth Ombudsman must prepare and give to the Minister
4 a report about some or all of the matters prescribed by the National
5 Disability Insurance Scheme rules for the purposes of this
6 subsection.
- 7 (2) The report must not include personal information (within the
8 meaning of the *Privacy Act 1988*).
- 9 (3) The Minister must cause a copy of the report to be laid before each
10 House of the Parliament within 15 sitting days of that House after
11 the Minister receives it.

Exercise of Commonwealth Ombudsman's powers

- 12
- 13 (4) The Commonwealth Ombudsman's powers under the *Ombudsman*
14 *Act 1976* extend to the preparation of a report by the Ombudsman
15 under this section as if the preparation of the report were an
16 investigation by the Ombudsman under that Act.
- 17 (5) The exercise of those powers in relation to the preparation of a
18 report by the Ombudsman under this section is taken, for all
19 purposes, to be an exercise of powers under the *Ombudsman Act*
20 *1976*.

55 At the end of subsection 209(2A)

21 Add:

- 22 ; and (c) matters relating to how the Agency, the CEO and other
23 specified persons are to engage with participants or
24 prospective participants; and
25 (d) matters relating to how participants or prospective
26 participants are to engage with the Agency, the CEO and
27 other specified persons.
28

56 Subsection 209(8) (table item 1, column headed "Description", paragraph (d))

29 After "section 33", insert " , other than paragraph 33(4)(a)".
30
31

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1 **57 Subsection 209(8) (table item 1, column headed**
2 **“Description”, paragraph (eb))**

3 Repeal the paragraph.

4 **58 Subsection 209(8) (table item 2, column headed**
5 **“Description”, paragraph (ca))**

6 Repeal the paragraph.

7 **59 Subsection 209(8) (table item 3)**

8 Repeal the item, substitute:

- | | | |
|---|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 3 | Category C
National Disability
Insurance Scheme
rules | Rules made for the purposes of any of the following
provisions:
(a) paragraph 20(2)(b);
(b) paragraph 33(4)(a);
(c) paragraphs 47A(4)(b) and (8)(a);
(d) paragraph 48(4)(a);
(e) subsection 48(6);
(f) section 50J;
(g) paragraphs 89(1)(c) and (3)(c);
(h) subparagraph 90(3)(a)(ii);
(i) paragraphs 100(1C)(a) and (6A)(a);
(j) subsection 174(3);
(k) section 204;
(l) subsection 204A(1);
(m) paragraphs (2A)(c) and (d) of this section. |
|---|----------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

9 **60 Subsection 209(8) (table item 4, column headed**
10 **“Description”, after paragraph (c))**

11 Insert:

12 (caa) subsection 47A(6);

13 (cab) subsection 48(2);

14 **61 Application provisions—requests**

- 15 (1) The amendments of sections 20 and 21, subsection 26(1) and item 1 of
16 the table in subsection 99(1) of the *National Disability Insurance*

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1 *Scheme Act 2013* made by this Schedule apply in relation to an access
2 request made on or after the commencement of this item.

3 (2) The amendments of paragraphs 26(2)(b) and (3)(b) of the *National*
4 *Disability Insurance Scheme Act 2013* made by this Schedule apply in
5 relation to a request made under subsection 26(1) of that Act on or after
6 the commencement of this item.

7 **62 Application, saving and transitional provisions—** 8 **prospective participants or participants**

9 (1) The amendments of sections 31, 50, 55, 78, 79 and 96 of the *National*
10 *Disability Insurance Scheme Act 2013* made by this Schedule apply in
11 relation to a variation that is made under section 47A of that Act, or a
12 reassessment that begins to be conducted under section 48 of that Act,
13 on or after the commencement of this item.

14 (2) Sections 31, 50, 55, 78, 79 and 96 of the *National Disability Insurance*
15 *Scheme Act 2013*, as in force immediately before the commencement of
16 this item, continue to apply on and after that commencement in relation
17 to a review that began to be conducted under section 48 of that Act
18 before, on or after that commencement.

19 (3) The repeal of sections 32 and 32A of the *National Disability Insurance*
20 *Scheme Act 2013* and the substitution of section 32 of that Act made by
21 this Schedule apply in relation to a person who becomes a participant
22 on or after the commencement of this item.

23 (4) The amendment of paragraph 33(2)(c) of the *National Disability*
24 *Insurance Scheme Act 2013* made by this Schedule, and
25 paragraph 50J(a) of that Act as inserted by this Schedule, apply in
26 relation to a participant’s plan where the CEO approves the statement of
27 participant supports on or after the commencement of this item.

28 (5) The repeal and substitution of subsection 33(4) of the *National*
29 *Disability Insurance Scheme Act 2013* made by this Schedule applies in
30 relation to a participant’s plan where the CEO commences facilitating
31 the preparation of the plan on or after the commencement of this item.

32 (6) The amendments of section 37 of the *National Disability Insurance*
33 *Scheme Act 2013* made by this Schedule, section 47A of that Act as

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- 1 inserted by this Schedule and paragraph 50J(b) of that Act as inserted
2 by this Schedule apply in relation to the following:
- 3 (a) a participant's plan that is in effect immediately before the
4 commencement of this item;
- 5 (b) a participant's plan that comes into effect on or after that
6 commencement.
- 7 (7) Section 48 of the *National Disability Insurance Scheme Act 2013*, as
8 substituted by this Schedule, applies in relation to a reassessment that
9 begins to be conducted on or after the commencement of this item.
- 10 (8) Subsections 48(1) to (3), section 49 and subsections 99(1) and 100(1A)
11 and (5) of the *National Disability Insurance Scheme Act 2013*, as in
12 force immediately before the commencement of this item, continue to
13 apply on and after that commencement in relation to a request for a
14 review made under subsection 48(1) of that Act before that
15 commencement.
- 16 (9) Subsections 48(4), (5) and (6) and section 49 of the *National Disability*
17 *Insurance Scheme Act 2013*, as in force immediately before the
18 commencement of this item, continue to apply on and after that
19 commencement in relation to a review that began to be conducted
20 before that commencement.
- 21 (10) Paragraph 50J(c) of the *National Disability Insurance Scheme Act 2013*,
22 as inserted by this Schedule, applies in relation to decisions of the
23 Administrative Appeals Tribunal made on or after the commencement
24 of this item.
- 25 (11) A participant's plan that is in effect immediately before the
26 commencement of this item, with a review date that is on or after that
27 commencement, has effect on and after that commencement as if that
28 date were the plan's reassessment date.
- 29 (12) A participant's plan that is in effect immediately before the
30 commencement of this item, that specifies the circumstances in which
31 the plan must be reviewed, has effect on and after that commencement
32 as if those circumstances were circumstances in which the plan must be
33 reassessed.

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63 Application provisions—nominees

- 1
2 (1) The amendment of subsection 89(1) of the *National Disability*
3 *Insurance Scheme Act 2013* made by this Schedule applies in relation to
4 a request referred to in paragraph 89(1)(b) of that Act that is made on or
5 after the commencement of this item.
- 6 (2) The amendment of subsection 89(3) of the *National Disability*
7 *Insurance Scheme Act 2013* made by this Schedule applies in relation to
8 a cancellation under that subsection on or after the commencement of
9 this item, where the CEO was informed under paragraph 89(3)(b) of
10 that Act on or after that commencement.
- 11 (3) The repeal and substitution of paragraph 90(3)(a) of the *National*
12 *Disability Insurance Scheme Act 2013* made by this Schedule applies in
13 relation to a request made on or after the commencement of this item.

64 Application provisions—review of decisions

- 14
15 (1) Subsections 100(1B) and (1C) of the *National Disability Insurance*
16 *Scheme Act 2013*, as inserted by this Schedule, apply in relation to a
17 notice given under subsection 100(1) of that Act on or after the
18 commencement of this item.
- 19 (2) The amendment of subsection 100(6) of the *National Disability*
20 *Insurance Scheme Act 2013* made by this Schedule, and
21 subsection 100(6A) of that Act as inserted by this Schedule, apply in
22 relation to the following:
 - 23 (a) a request for review that is received on or after the
24 commencement of this item;
 - 25 (b) a period applicable under paragraph 21(3)(a) or (b) of that
26 Act that ends on or after that commencement.
- 27 (3) Paragraph 101(2)(a) of the *National Disability Insurance Scheme Act*
28 *2013*, as added by this Schedule, applies in relation to a request for
29 review made on or after the commencement of this item.
- 30 (4) Paragraph 103(2)(a) of the *National Disability Insurance Scheme Act*
31 *2013*, as added by this Schedule, applies in relation to an application for
32 review made on or after the commencement of this item.

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1 **65 Application provisions—reports**

2 (1) The amendments of section 174 of the *National Disability Insurance*
3 *Scheme Act 2013* made by this Schedule apply in relation to a period
4 ending on or after the commencement of this item.

5 (2) Section 204A of the *National Disability Insurance Scheme Act 2013*, as
6 added by this Schedule, applies in relation to a financial year ending on
7 or after the commencement of this item.

8 **66 Transitional provision—time frames for decision making**
9 **by persons other than the CEO**

10 National Disability Insurance Scheme rules made for the purposes of
11 subsection 204(2) of the *National Disability Insurance Scheme Act*
12 *2013* and that are in force immediately before the commencement of
13 this item continue in force on and after that commencement as if they
14 had been made for the purposes of section 204 of that Act.

1 **Schedule 2—Flexibility measures**
2

3 *National Disability Insurance Scheme Act 2013*

4 **1 Subsection 4(2)**

5 Omit “to the extent of their ability”.

6 **2 Subsection 4(8)**

7 Omit “, to the full extent of their capacity”.

8 **3 After subsection 4(9)**

9 Insert:

10 (9A) People with disability are central to the National Disability
11 Insurance Scheme and should be included in a co-design capacity.

12 **4 After subsection 4(12)**

13 Insert:

14 (12A) The relationship between people with disability and their families
15 and carers is to be recognised and respected.

16 **5 Subsection 4(15)**

17 Repeal the subsection, substitute:

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

23 **6 Paragraph 5(d)**

24 Omit “and the gender,”, substitute “and the sex, gender identity, sexual
25 orientation and intersex status,”.

26 **7 Section 9**

27 Insert:

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Schedule 2 Flexibility measures

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

3 **8 After section 9**

4 Insert:

5 **9A Approved forms**

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

8 (2) The CEO must publish each approved form on the Agency's
9 website.

10 **9 Section 14**

11 Before "The", insert "(1)".

12 **10 Paragraph 14(a)**

13 Repeal the paragraph, substitute:

14 (a) for the purposes of enabling those persons or entities to
15 provide information in relation to disability and disability
16 supports and services; or

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

21 (ab) for the purposes of enabling those persons or entities to assist
22 people with disability to realise their potential for physical,
23 social, emotional and intellectual development; or

24 (ac) for the purposes of enabling those persons or entities to assist
25 people with disability, and their families and carers, to
26 participate in social and economic life; or

27 **11 At the end of section 14**

28 Add:

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

EXPOSURE DRAFT

Flexibility measures **Schedule 2**

- 1 (a) to assist one or more participants to receive supports; or
2 (b) to assist a participant who is a child aged under 7 to access
3 supports, before the child's plan comes into effect, in relation
4 to the child's disability needs (whether those needs arise
5 because the child meets the disability requirements or meets
6 the early intervention requirements).
- 7 (3) The National Disability Insurance Scheme rules may set out
8 matters to which the Agency must have regard in deciding whether
9 to provide funding under subsection (2).

12 Before subsection 17A(1)

11 Insert:

- 12 (1A) In performing the CEO's functions and exercising the CEO's
13 powers under this Chapter, the CEO must have regard to the
14 principles in this section.

13 At the end of section 17A

15 Add:

- 16 (4) The principles in this section are in addition to the principles in
17 section 4 to which the CEO is to have regard in performing the
18 CEO's functions and exercising the CEO's powers under this Act.
19

14 Paragraph 24(1)(a)

20 Omit "to one or more impairments attributable to a psychiatric
21 condition", substitute "the person has one or more impairments to
22 which a psychosocial disability is attributable".
23

15 Paragraph 24(1)(c)

24 Omit ", or psychosocial functioning in undertaking,".
25

16 At the end of section 24

26 Add:

- 27 (3) For the purposes of subsection (1), an impairment or impairments
28 to which a psychosocial disability is attributable and that are
29 episodic or fluctuating may be taken to be permanent, and the
30

EXPOSURE DRAFT

Schedule 2 Flexibility measures

1 person may be taken to be likely to require support under the
2 National Disability Insurance Scheme for the person's lifetime,
3 despite the episodic or fluctuating nature of the impairments.

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

5 **17 Subparagraph 25(1)(a)(ii)**

6 Repeal the subparagraph, substitute:

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

10 **18 After subsection 25(1)**

11 Insert:

12 (1A) For the purposes of subparagraph (1)(a)(ii), an impairment or
13 impairments to which a psychosocial disability is attributable and
14 that are episodic or fluctuating may be taken to be permanent
15 despite the episodic or fluctuating nature of the impairments.

16 **19 Section 27**

17 Before "The", insert "(1)".

18 **20 Paragraph 27(a)**

19 Omit "25(a)(i) or (ii)", substitute "25(1)(a)(i) or (ii)".

20 **21 Paragraph 27(b)**

21 Omit ", or psychosocial functioning of a person in undertaking".

22 **22 At the end of section 27**

23 Add:

24 (2) Subject to subsections 24(2) and (3) and 25(1A), National
25 Disability Insurance Scheme rules made for the purposes of
26 paragraph (1)(a) of this section may specify requirements that must
27 be satisfied for an impairment to be considered permanent or likely
28 to be permanent.

EXPOSURE DRAFT

Flexibility measures **Schedule 2**

- 1 (3) National Disability Insurance Scheme rules made for the purposes
2 of paragraph (1)(b) may specify requirements that must be satisfied
3 for one or more impairments to be considered to result in
4 substantially reduced functional capacity referred to in that
5 paragraph.

6 **23 After paragraph 31(c)**

7 Insert:

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

10 **24 Paragraph 31(d)**

11 Omit “where possible,”.

12 **25 Paragraph 42(1)(a)**

13 After “identified in the plan”, insert “or chosen by the participant”.

14 **26 Paragraph 43(1)(c)**

15 Omit “a person specified by”.

16 **27 Subsections 43(2) to (5)**

17 Repeal the subsections, substitute:

- 18 (2) If a participant makes a plan management request, the statement of
19 participant supports in the plan must give effect to the request,
20 except to the extent set out in subsections (3) to (5).

21 (3) If:

22 (a) a participant makes a plan management request covered by
23 paragraph (1)(a) and subsection 44(1) applies in relation to
24 the participant; or

25 (b) a participant makes a plan management request covered by
26 paragraph (1)(b) and subsection 44(2) applies in relation to
27 the registered plan management provider;

28 the statement of participant supports in the plan must provide for
29 the funding for supports under the plan to be managed by the
30 Agency.

EXPOSURE DRAFT

Schedule 2 Flexibility measures

- 1 (4) If:
- 2 (a) the participant has a plan nominee; and
- 3 (b) subsection 44(2A) does not apply in relation to the nominee;
- 4 and
- 5 (c) the terms of the plan nominee's appointment deal with the
- 6 management of certain funding for supports under the plan;
- 7 the statement of participant supports in the plan must provide for
- 8 that funding to be managed in accordance with those terms.
- 9 (5) If:
- 10 (a) the participant has a plan nominee; and
- 11 (b) subsection 44(2A) applies in relation to the nominee; and
- 12 (c) the terms of the plan nominee's appointment deal with the
- 13 management of certain funding for supports under the plan;
- 14 the statement of participant supports in the plan must provide for
- 15 that funding to be managed by the Agency.
- 16 (6) Subsection (3) does not apply to funding to the extent that
- 17 subsection (4) or (5) applies to the funding.
- 18 *No plan management request*
- 19 (7) If a participant does not make a plan management request, the
- 20 statement of participant supports in the plan must provide that the
- 21 funding for supports under the plan is to be managed by the
- 22 Agency.

23 **28 Section 44 (heading)**

24 Repeal the heading, substitute:

25 **44 Circumstances in which persons must not manage funding**

26 **29 Subsections 44(1) to (2A)**

27 Repeal the subsections, substitute:

28 *Participant*

- 29 (1) For the purposes of paragraph 43(3)(a), this subsection applies in
- 30 relation to a participant if:

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Flexibility measures **Schedule 2**

- 1 (a) the participant is an insolvent under administration; or
2 (b) the CEO is satisfied that the participant’s management of the
3 funding for supports under the plan to any extent would:
4 (i) present an unreasonable risk to the participant; or
5 (ii) permit the participant to manage matters that are
6 prescribed by the National Disability Insurance Scheme
7 rules as being matters that must not be managed by a
8 participant.

9 *Registered plan management provider*

- 10 (2) For the purposes of paragraph 43(3)(b), this subsection applies in
11 relation to a registered plan management provider if the CEO is
12 satisfied that the provider’s management of the funding for
13 supports under the plan to any extent would present an
14 unreasonable risk to the participant.

15 *Plan nominee*

- 16 (2A) For the purposes of paragraphs 43(4)(b) and (5)(b), this subsection
17 applies in relation to a plan nominee if:
18 (a) the plan nominee is an insolvent under administration; or
19 (b) the CEO is satisfied that the plan nominee’s management of
20 the funding for supports under the plan to any extent would
21 present an unreasonable risk to the participant.

22 **30 Subsection 44(3)**

23 Omit “either of”, substitute “any of”.

24 **31 After paragraph 44(3)(a)**

25 Insert:

- 26 (aa) a registered plan management provider managing the funding
27 for supports under the plan;

28 **32 Section 45**

29 Repeal the section, substitute:

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Schedule 2 Flexibility measures

45 Payment of amounts payable under the National Disability Insurance Scheme

- (1) An amount payable under the National Disability Insurance Scheme in respect of a participant's plan is to be paid:
- (a) to the person determined by the CEO; and
 - (b) either:
 - (i) in accordance with the National Disability Insurance Scheme rules prescribed for the purposes of this subparagraph; or
 - (ii) if there are no such rules—in the manner determined by the CEO.
- (2) Paragraph (1)(b) extends to dealing with:
- (a) whether amounts are to be paid in instalments or as lump sums; and
 - (b) if amounts are to be paid in instalments—the amounts of those instalments; and
 - (c) the timing of payments of amounts.
- (3) The National Disability Insurance Scheme rules may provide that an amount is not payable to a person until the person nominates a bank account into which the amount is to be paid.

33 Subsection 46(1)

Repeal the subsection, substitute:

- (1) A participant who receives an NDIS amount, or a person who receives an NDIS amount on behalf of a participant, must spend the amount:
- (a) in any case—in accordance with the participant's plan; and
 - (b) for a person who receives an NDIS amount on behalf of a participant—in accordance with the participant's requests.

34 At the end of section 46

Add:

- (3) The National Disability Insurance Scheme rules may make provision for and in relation to the retention of records by NDIS

EXPOSURE DRAFT

Flexibility measures **Schedule 2**

1 providers that receive NDIS amounts on behalf of participants,
2 including requiring that prescribed records be retained for a
3 prescribed period.

4 **35 Section 47 (heading)**

5 Repeal the heading, substitute:

6 **47 Variation of participant’s plan—change of participant’s** 7 **statement of goals and aspirations**

8 **36 Subsection 47(2)**

9 Repeal the subsection, substitute:

10 (2) If a participant gives a changed version of the participant’s
11 statement of goals and aspirations to the CEO, the participant’s
12 plan is taken to have been varied so that it includes that changed
13 version.

14 **37 Subsection 47(3)**

15 Omit “new plan”, substitute “varied plan”.

16 **38 Before paragraph 55(2)(a)**

17 Insert:

18 (aa) whether a person with disability may be eligible for services
19 or supports under the National Disability Insurance Scheme;

20 **39 Subsection 60(1)**

21 Repeal the subsection.

22 **40 Subsection 60(3)**

23 Omit “subsections (1) and (2), the collection, recording”, substitute
24 “subsection (2), the recording”.

25 **41 Section 61**

26 Repeal the section.

EXPOSURE DRAFT

Schedule 2 Flexibility measures

1 **42 After subsection 90(3)**

2 Insert:

3 *Nominee no longer has guardianship etc.*

4 (3A) The CEO may, by written instrument, cancel the appointment of a
5 nominee of a participant if:

6 (a) at the time the appointment was made, the nominee was a
7 person who, under a law of the Commonwealth, a State or a
8 Territory:

9 (i) had guardianship of the participant; or

10 (ii) was appointed by a court, tribunal, board or panel
11 (however described) who had power to make decisions
12 for the participant and whose responsibilities in relation
13 to the participant were relevant to the duties of a
14 nominee; and

15 (b) the nominee no longer has guardianship of the participant or
16 no longer holds the appointment referred to in
17 subparagraph (a)(ii) (as the case requires).

18 **43 At the end of paragraph 104(3)(f)**

19 Add “or carers”.

20 **44 Subsection 127(2)**

21 After “person has”, insert “lived experience with disability or has”.

22 **45 Subsection 127(6)**

23 Omit “in the fields”.

24 **46 Subsection 129(4)**

25 Omit “in at least one of the fields”.

26 **47 After subsection 147(2)**

27 Insert:

1 *Principal member*

2 (3) The Minister must not appoint a person as the Principal Member
3 unless the person is a Board member.

4 **48 At the end of subsection 155(2)**

5 Add:

6 ; or (e) in the case of the Principal Member—the Principal Member
7 is not a Board member.

8 **49 Paragraph 182(2)(c)**

9 Repeal the paragraph, substitute:

10 (c) the payment was made in respect of a service funded under a
11 participant's plan and the participant died before the service
12 was provided.

13 **50 Subsection 209(3)**

14 Repeal the subsection, substitute:

15 (3) When making National Disability Insurance Scheme rules, the
16 Minister must have regard to:

17 (a) the objects and principles of this Act; and

18 (b) the need to ensure the financial sustainability of the National
19 Disability Insurance Scheme.

20 **51 Subsection 209(8) (table item 4, column headed** 21 **"Description", after paragraph (a))**

22 Insert:

23 (aa) subsection 14(3);

24 **52 Application and saving provisions—participants and** 25 **prospective participants**

26 (1) The amendments of sections 24 and 25 of the *National Disability*
27 *Insurance Scheme Act 2013* made by this Schedule apply in relation to
28 the following:

29 (a) an access request made on or after the commencement of this
30 item;

EXPOSURE DRAFT

Schedule 2 Flexibility measures

- 1 (b) an access request that was pending immediately before that
2 commencement;
- 3 (c) a revocation under section 30 of that Act made on or after
4 that commencement.
- 5 (2) The amendments of sections 43 and 44 of the *National Disability*
6 *Insurance Scheme Act 2013* made by this Schedule apply in relation to a
7 plan management request made on or after the commencement of this
8 item.
- 9 (3) Subsection 43(7) of the *National Disability Insurance Scheme Act 2013*,
10 as substituted by this Schedule, applies in relation to a participant's plan
11 where the CEO approves the statement of participant supports on or
12 after the commencement of this item.
- 13 (4) National Disability Insurance Scheme rules made for the purposes of
14 paragraph 44(2)(b) of the *National Disability Insurance Scheme Act*
15 *2013* and that are in force immediately before the commencement of
16 this item continue in force on and after that commencement as if they
17 had been made for the purposes of subparagraph 44(1)(b)(ii) of that Act,
18 as substituted by this Schedule.
- 19 (5) The repeal and substitution of section 45 of the *National Disability*
20 *Insurance Scheme Act 2013* made by this Schedule applies in relation to
21 an amount payable under the National Disability Insurance Scheme on
22 or after the commencement of this item.
- 23 (6) The repeal and substitution of subsection 46(1) of the *National*
24 *Disability Insurance Scheme Act 2013* made by this Schedule applies in
25 relation to the receipt of an NDIS amount on or after the
26 commencement of this item.
- 27 (7) The repeal and substitution of subsection 47(2) of the *National*
28 *Disability Insurance Scheme Act 2013* and the amendment of
29 subsection 47(3) of that Act made by this Schedule apply in relation to a
30 changed version of a participant's statement of goals and aspirations
31 given to the CEO on or after the commencement of this item.

1 **53 Application provision—nominees**

2 Subsection 90(3A) of the *National Disability Insurance Scheme Act*
3 *2013*, as inserted by this Schedule, applies in relation to the cancellation
4 of the appointment of a nominee on or after the commencement of this
5 item (whether the nominee was appointed before, on or after that
6 commencement).

7 **54 Application provisions—appointments**

8 (1) The amendments of sections 127, 129 and 147 of the *National*
9 *Disability Insurance Scheme Act 2013* made by this Schedule apply in
10 relation to an appointment made on or after the commencement of this
11 item.

12 (2) The amendment of section 155 of the *National Disability Insurance*
13 *Scheme Act 2013* made by this Schedule applies in relation to an
14 appointment made before, on or after the commencement of this item.

15 **55 Application provision—debts**

16 The repeal and substitution of paragraph 182(2)(c) of the *National*
17 *Disability Insurance Scheme Act 2013* made by this Schedule applies in
18 relation to payments made on or after the commencement of this item.

EXPOSURE DRAFT

Schedule 3 Full scheme amendments

Part 1 Main amendments

1 **Schedule 3—Full scheme amendments**

2 **Part 1—Main amendments**

3 *National Disability Insurance Scheme Act 2013*

4 **1 Paragraphs 3(1)(d) and (2)(a)**

5 Omit “launch”.

6 **2 Paragraph 3(3)(a)**

7 Repeal the paragraph.

8 **3 Subsection 4(17)**

9 Repeal the subsection, substitute:

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

16 **4 Section 8**

17 Omit:

18 Depending on where a person with disability lives, he or she may
19 receive supports or services from registered providers of supports
20 (Part 3 of Chapter 4) or from registered NDIS providers (Part 3A
21 of Chapter 4). Supports and services may also be received from
22 providers who are not registered.

23 This Act also provides for the establishment of the National
24 Disability Insurance Scheme Launch Transition Agency
25 (Chapter 6).

26 substitute:

EXPOSURE DRAFT

Full scheme amendments **Schedule 3**
Main amendments **Part 1**

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

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

7 **5 Section 8**

8 Omit:

9 (b) review of the Act; and

10 **6 Section 9 (definition of *Agency*)**

11 Repeal the definition, substitute:

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

14 **7 Section 9 (definition of *Board*)**

15 Repeal the definition, substitute:

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

18 **8 Section 9 (definition of *FaHCSIA agreement*)**

19 Repeal the definition.

20 **9 Section 9 (definition of *host jurisdiction*)**

21 Repeal the definition, substitute:

22 *host jurisdiction* means the following:

- 23 (a) each of the States;
24 (b) the Australian Capital Territory;
25 (c) the Northern Territory.

EXPOSURE DRAFT

Schedule 3 Full scheme amendments

Part 1 Main amendments

1 **10 Section 9 (definition of *National Disability Insurance***
2 ***Scheme*)**

3 Repeal the definition, substitute:

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

6 **11 Section 9 (definition of *National Disability Insurance***
7 ***Scheme launch*)**

8 Repeal the definition.

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

10 Omit “launch”.

11 **13 Section 9 (definition of *participating jurisdiction*)**

12 Repeal the definition.

13 **14 Section 9 (definition of *prescribed area*)**

14 Repeal the definition.

15 **15 Section 9 (definition of *registered plan management***
16 ***provider*)**

17 Repeal the definition, substitute:

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

21 **16 Section 9 (definition of *registered provider of supports*)**

22 Repeal the definition.

23 **17 Sections 10 and 10A**

24 Repeal the sections.

25 **18 Section 18**

26 Omit “launch”.

EXPOSURE DRAFT

Full scheme amendments **Schedule 3**
Main amendments **Part 1**

1 **19 Paragraph 21(2)(a)**

2 Repeal the paragraph.

3 **20 At the end of subsection 21(2)**

4 Add:

5 ; (d) the person satisfies any other requirements prescribed by the
6 National Disability Insurance Scheme rules for the purposes
7 of this paragraph.

8 **21 Section 22**

9 Repeal the section, substitute:

10 **22 Age requirements**

11 A person *meets the age requirements* if the person was aged under
12 65 when the access request in relation to the person was made.

13 **22 Subparagraph 23(1)(b)(iii)**

14 Omit “holder; and”, substitute “holder.”.

15 **23 Paragraph 23(1)(c)**

16 Repeal the paragraph.

17 **24 Subsection 23(3)**

18 Repeal the subsection.

19 **25 Subsection 28(1)**

20 Omit “launch”.

21 **26 Subsection 29(1)**

22 Omit “launch”.

23 **27 Subsection 30(1)**

24 Omit “launch”.

25 **28 Subsection 33(6)**

26 Repeal the subsection, substitute:

EXPOSURE DRAFT

Schedule 3 Full scheme amendments

Part 1 Main amendments

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

4 **29 Paragraphs 55(2)(i) and (j)**

5 Repeal the paragraphs.

6 **30 Part 3 of Chapter 4**

7 Repeal the Part.

8 **31 Division 1 of Part 3A of Chapter 4**

9 Repeal the Division.

10 **32 Paragraph 73E(1)(b)**

11 Repeal the paragraph.

12 **33 Subsection 99(1) (table items 7 and 8)**

13 Repeal the items.

14 **34 Chapter 6 (heading)**

15 Repeal the heading, substitute:

16 **Chapter 6—National Disability Insurance** 17 **Agency**

18 **35 Part 1 of Chapter 6 (heading)**

19 Repeal the heading, substitute:

20 **Part 1—National Disability Insurance Agency**

21 **36 Section 117 (heading)**

22 Repeal the heading, substitute:

EXPOSURE DRAFT

Full scheme amendments **Schedule 3**
Main amendments **Part 1**

1 **117 National Disability Insurance Agency**

2 **37 Subsection 117(1)**

3 Repeal the subsection, substitute:

4 (1) The body that was established by this section as previously in force
5 by the name National Disability Insurance Scheme Launch
6 Transition Agency is now to be known as the National Disability
7 Insurance Agency.

8 Note: Subsection 25B(1) of the *Acts Interpretation Act 1901* provides that a
9 body whose name is altered by an Act continues in existence under the
10 new name so that its identity is not affected.

11 **38 Section 123**

12 Repeal the section, substitute:

13 **123 Board of the National Disability Insurance Agency**

14 The body that was established by this section as previously in force
15 and known as the Board of the National Disability Insurance
16 Scheme Launch Transition Agency is now to be known as the
17 Board of the National Disability Insurance Agency.

18 Note: Subsection 25B(1) of the *Acts Interpretation Act 1901* provides that a
19 body whose name is altered by an Act continues in existence under the
20 new name so that its identity is not affected.

21 **39 Paragraph 144(1)(c)**

22 Omit “launch”.

23 **40 Paragraph 144(3)(b)**

24 Repeal the paragraph.

25 **41 Subsections 160(6) to (8)**

26 Repeal the subsections.

27 **42 Section 171A**

28 Repeal the section.

EXPOSURE DRAFT

Schedule 3 Full scheme amendments

Part 1 Main amendments

1 **43 Subsection 174(5)**

2 Repeal the subsection.

3 **44 Subparagraph 176(2)(a)(ii)**

4 Omit “Council; or”, substitute “Council;”.

5 **45 Subparagraph 176(2)(a)(iii)**

6 Repeal the subparagraph.

7 **46 Section 179**

8 Omit “launch”.

9 **47 Subsection 180D(5)**

10 Repeal the subsection.

11 **48 Paragraphs 203(1)(a) and (b)**

12 Repeal the paragraphs.

13 **49 Part 4 of Chapter 7**

14 Repeal the Part.

15 **50 Subsection 209(5)**

16 Repeal the subsection, substitute:

17 (5) The Minister must not make Category B National Disability
18 Insurance Scheme rules relating to an area, law or program of a
19 host jurisdiction unless the host jurisdiction has agreed to the
20 making of the rules.

21 **51 Subsection 209(8) (table item 1, column headed
22 “Description”, paragraph (b))**

23 Repeal the paragraph.

24 **52 Subsection 209(8) (table item 1, column headed
25 “Description”, paragraphs (ga) to (gc))**

26 Repeal the paragraphs.

EXPOSURE DRAFT

Full scheme amendments **Schedule 3**
Main amendments **Part 1**

1 **53 Subsection 209(8) (table item 2, column headed**
2 **“Description”, paragraphs (a) to (c))**

3 Repeal the paragraphs, substitute:

4 (a) paragraphs 21(2)(b) and (d);

5 **54 Schedule 1**

6 Repeal the Schedule.

7 **55 Application provisions**

8 (1) The amendments of sections 18 and 21 of the *National Disability*
9 *Insurance Scheme Act 2013*, the repeal and substitution of section 22 of
10 that Act and the amendments of section 23 of that Act made by this Part
11 apply in relation to an access request made on or after the
12 commencement of this item.

13 (2) The repeal and substitution of subsection 33(6) of the *National*
14 *Disability Insurance Scheme Act 2013* made by this Part applies in
15 relation to a participant’s plan where the CEO approves the statement of
16 participant supports on or after the commencement of this item.

17 (3) The repeal of paragraph 73E(1)(b) of the *National Disability Insurance*
18 *Scheme Act 2013* made by this Part applies in relation to the following:

19 (a) an application made under section 73C of that Act on or after
20 the commencement of this item;

21 (b) an application made under that section that was pending
22 immediately before that commencement.

23 **56 Pending access requests**

24 A request made by a person under section 18 of the *National Disability*
25 *Insurance Scheme Act 2013* that was pending immediately before the
26 commencement of this item has effect on and after that commencement
27 as if it were a request by the person to become a participant in the
28 National Disability Insurance Scheme.

EXPOSURE DRAFT

Schedule 3 Full scheme amendments

Part 1 Main amendments

1 **57 Existing participants in the National Disability Insurance**
2 **Scheme launch**

3 (1) A person who is a participant in the National Disability Insurance
4 Scheme launch immediately before the commencement of this item is
5 taken on and after that commencement to be a participant in the
6 National Disability Insurance Scheme.

7 (2) Subitem (1) does not limit section 29 or 30 of the *National Disability*
8 *Insurance Scheme Act 2013* (about when a person ceases to be a
9 participant).

10 **58 Board members**

11 A person holding office as a member of the Board of the National
12 Disability Insurance Scheme Launch Transition Agency immediately
13 before the commencement of this item continues, on and after that
14 commencement, to hold office as a member of the Board of the
15 National Disability Insurance Agency for the balance of the person's
16 term of appointment that remains immediately before that
17 commencement.

18 **59 Chief Executive Officer**

19 The person holding office as the Chief Executive Officer of the
20 National Disability Insurance Scheme Launch Transition Agency
21 immediately before the commencement of this item continues, on and
22 after that commencement, to hold office as the Chief Executive Officer
23 of the National Disability Insurance Agency for the balance of the
24 person's term of appointment that remains immediately before that
25 commencement.

26 **60 Staff**

27 A person who was a member of the staff of the National Disability
28 Insurance Scheme Launch Transition Agency immediately before the
29 commencement of this item continues, on and after that
30 commencement, as a member of the staff of the National Disability
31 Insurance Agency.

EXPOSURE DRAFT

Full scheme amendments **Schedule 3**
Main amendments **Part 1**

1 **61 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 Part.
- 6 (2) To avoid doubt, the rules may not do the following:
7 (a) create an offence or civil penalty;
8 (b) provide powers of:
9 (i) arrest or detention; or
10 (ii) entry, search or seizure;
11 (c) impose a tax;
12 (d) set an amount to be appropriated from the Consolidated
13 Revenue Fund under an appropriation in this Act;
14 (e) directly amend the text of this Act.
- 15 (3) This Part (other than subitem (2)) does not limit the rules that may be
16 made for the purposes of subitem (1).

EXPOSURE DRAFT

Schedule 3 Full scheme amendments

Part 2 Consequential amendments

1 **Part 2—Consequential amendments**

2 *DisabilityCare Australia Fund Act 2013*

3 **62 Section 4 (definition of *National Disability Insurance***
4 ***Scheme Launch Transition Agency*)**

5 Repeal the definition.

44 *National Disability Insurance Scheme Amendment (Participant Service No. , 2021*
Guarantee and Other Measures) Bill 2021

EXPOSURE DRAFT