

National Disability Insurance Scheme Act 2013



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In force

-

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National Disability Insurance Sch

No. 20, 2013

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About this compilation

This compilation

This is a compilation of the *National Disability Insurance Scheme Act 2013* as amended and in force on 21 October 2016 (the *compiled law*).

The notes at the end of this compilation (the *endnotes*) include in the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Details of uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to the compilation date are underlined in the endnotes. For more information on uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions

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

Editorial changes

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

Modifications

If the compiled law is modified by another law, the compiled law does not amend the text of the law. Accordingly, this compilation shows the text of the compiled law as modified. For more information on amendments, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, the details are included in the endnotes.

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An Act to establish the National Disability and for related purposes

Part 1—Introduction

Section 1—Preliminary

Title

This Act may be cited as the *National Disability Insu*

Commencement

- (1) Each provision of this Act specified in column 1 of t have commenced, in accordance with column 2 of t column 2 has effect according to its terms.

Commencement information	
Column 1	Column 2
Provision(s)	Commencement

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

Note: This table relates only to the provisions of this Act and does not deal with any later amendments of this Act.

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

–Objects and principles

Objects of Act

- (1) The objects of this Act are to:
 - (a) in conjunction with other laws, give effect to Australia's obligations under the United Nations Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006 ([2008] ATS 12); and
 - (b) provide for the National Disability Insurance Scheme;
 - (c) support the independence and social and economic participation of people with disability; and
 - (d) provide reasonable and necessary supports, including financial supports, for participants in the National Disability Insurance Scheme;
 - (e) enable people with disability to exercise choice and control over their lives, including the planning and delivery of their supports;
 - (f) facilitate the development of a nationally consistent system for the planning and funding of, supports for people with disability;
 - (g) promote the provision of high quality and innovative supports for people with disability to maximise independent lifestyle and participation in the community; and
 - (h) raise community awareness of the issues that affect people with disability, and facilitate the participation of people with disability in the community; and
 - (i) in conjunction with other laws, give effect to Australia's obligations as a party to:
 - (i) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23); and
 - (ii) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 8); and
 - (iii) the Convention on the Rights of the Child done at Geneva on 20 November 1989 ([1991] ATS 4); and
 - (iv) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1985] ATS 14); and
 - (v) the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 6).

Note: In 2013, the text of a Convention or Covenant in the list above was made available through the Australian Treaties Library on the Australian Government website.

- (2) These objects are to be achieved by:
 - (a) providing the foundation for governments to work together to implement the National Disability Insurance Scheme;
 - (b) adopting an insurance-based approach, informed by the needs of people with disability, for the provision and funding of supports for people with disability;
- (3) In giving effect to the objects of the Act, regard is to be had to:
 - (a) the progressive implementation of the National Disability Insurance Scheme;
 - (b) the need to ensure the financial sustainability of the National Disability Insurance Scheme; and
 - (c) the broad context of disability reform provided for in:
 - (i) the National Disability Strategy 2010-2020 done at Canberra on 13 February 2011; and
 - (ii) the *Carer Recognition Act 2010*; and
 - (d) the provision of services by other agencies, Department of Social Services, and the need for interaction between the provision of services and the provision of supports under the National Disability Insurance Scheme.

11 principles guiding actions under this Act

- (1) People with disability have the same right as other people to realise their potential for physical, social, emotional and mental well-being.
- (2) People with disability should be supported to participate in economic life to the extent of their ability.
- (3) People with disability and their families and carers should be supported so that people with disability will receive the care and support they need.
- (4) People with disability should be supported to exercise choice and control, taking reasonable risks, in the pursuit of their goals and interests, with their supports.
- (5) People with disability should be supported to receive services, including early intervention supports.
- (6) People with disability have the same right as other people to respect for their worth and dignity and to live free from discrimination.
- (7) People with disability have the same right as other people to pursue any grievance.
- (8) People with disability have the same right as other people to be able to determine their own best interests, including choice and control, and to engage as equal partners in decisions to the full extent of their capacity.
- (9) People with disability should be supported in all their interactions with the Agency so that their capacity to exercise choice and control, that is appropriate to their circumstances and cultural background, is supported.
- (10) People with disability should have their privacy and autonomy respected.
- (11) Reasonable and necessary supports for people with disability should:
 - (a) support people with disability to pursue their goals and interests and independence; and
 - (b) support people with disability to live independently in the community as fully participating citizens; and
 - (c) develop and support the capacity of people with disability so that they can enable them to participate in the community.
- (12) The role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected.
- (13) The role of advocacy in representing the interests of people with disability is to be acknowledged and respected, recognising that advocacy should be supported by:
 - (a) promoting their independence and social and economic participation; and
 - (b) promoting choice and control in the pursuit of the delivery of their supports; and
 - (c) maximising independent lifestyles of people with disability in the community.
- (14) People with disability should be supported to receive services under the Disability Insurance Scheme, and be assisted to coordinate their supports provided under the National Disability Insurance Scheme.
- (15) Innovation, quality, continuous improvement, content and effectiveness in the provision of supports to people with disability should be promoted.
- (16) Positive personal and social development of people with disability and young people, is to be promoted.

- (17) It is the intention of the Parliament that the Minister, the CEO and any other person or body is to perform under this Act in accordance with these principles, but
- (a) the progressive implementation of the National Disability Insurance Scheme;
 - (b) the need to ensure the financial sustainability of the Scheme.

Principles guiding actions of people who may do acts or other things for or on behalf of others

It is the intention of the Parliament that, if this Act requires a person to do an act or other thing for or on behalf of a person with disability, the act or other thing is to be done, so far as practicable, in accordance with section 4 and the following principles:

- (a) people with disability should be involved in decisions that affect them, and where possible make decisions for themselves;
- (b) people with disability should be encouraged to exercise choice and control;
- (c) the judgements and decisions that people with disability make for themselves should be taken into account;
- (d) the cultural and linguistic circumstances, and the needs and wishes of the person with disability should be taken into account;
- (e) the supportive relationships, friendships and connections of people with disability should be recognised;
- (f) if the person with disability is a child—the best interests of the child and full consideration should be given to the need to
 - (i) protect the child from harm; and
 - (ii) promote the child's development; and
 - (iii) strengthen, preserve and promote positive relationships with the child's parents, family members and carers to support the life of the child.

Agency may provide support and assistance

To support people with disability to exercise choice and control to achieve their goals, the Agency may provide support and assistance to prospective participants and participants in relation to their obligations under, or for the purposes of, this Act.

Note: For example, the Agency might assist a participant to achieve their goals and aspirations by assisting the participant to access services and resources.

Explanation of notice, approved form or information under this Act

- (1) The contents of any notice, approved form or information under regulations or the National Disability Insurance Scheme Act must be explained by the giver of the notice, approved form or information to the maximum extent possible to the person in the language and terms which that person is most likely to understand.
- (2) An explanation given under subsection (1) must be given in a way that is reasonably practicable.

–Simplified outline

Simplified outline

The following is a simplified outline of this Act:

This Act provides for the National Disability Insurance Scheme.

The National Disability Insurance Scheme comprises:

- (a) the provision of services or activities (including coordination, strategic or referral services and 3); and
- (b) funding for persons or entities to enable persons with disability to participate in economic and social activities;
- (c) individual plans under which reasonable adjustments may be funded for certain people, called individualised support plans.

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

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

This Act also provides for the establishment of the Scheme Launch Transition Agency (Chapter 6).

The functions of the Agency include delivering the Scheme.

The Agency also has more general functions, such as:

- (a) developing and enhancing the disability sector, including facilitating innovation, research and development in the sector; and
- (b) building community awareness of disability and the contributions of people with disabilities.

Chapter 6 also:

- (a) establishes the Board of the Agency;
- (b) establishes an Independent Advisory Board;
- (c) provides for the Chief Executive Officer of the Agency;
- (d) provides for reporting and financial management.

Chapter 7 includes provisions relating to general m

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

–Definitions

ions

In this Act:

access request has the meaning given by section 18.

Advisory Council means the Independent Advisory

Agency means the National Disability Insurance Scheme established by section 117.

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

Board means the Board of the Agency established by

Board member means a member of the Board (and includes

carer means an individual who:

- (a) provides personal care, support and assistance to another individual because that other individual is a person with a disability;
- (b) does not provide the care, support and assistance:
 - (i) under a contract of service or a contract for services;
 - (ii) in the course of doing voluntary work for a charitable organisation; or
 - (iii) as part of the requirements of a course of education.

centrelink program has the same meaning as in the *Centrelink Act 1997*.

CEO means the Chief Executive Officer of the Agency.

Chair means the Chair of the Board.

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

COAG means the Council of Australian Governments.

compensation has the meaning given by section 11.

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

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

developmental delay means a delay in the development of a person that:

- (a) is attributable to a mental or physical impairment or physical impairments; and
- (b) results in substantial reduction in functional capacity in the following areas of major life activity:
 - (i) self-care;
 - (ii) receptive and expressive language;
 - (iii) cognitive development;
 - (iv) motor development; and
- (c) results in the need for a combination and sequence of generic care, treatment or other services that are individually planned and coordinated.

enterprise agreement has the same meaning as in th

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

- (a) enters into an agreement to waive his or her right
- (b) enters into an agreement to withdraw his or her

entity means a partnership or an unincorporated assoc

entry, in relation to a person and a residential care se
the *Aged Care Act 1997*.

FaHCSIA agreement means the enterprise agreeme
Families, Housing, Community Services and Indige
2012-2014 approved on 24 April 2012 in decision [2

Finance Minister means the Minister administering
Performance and Accountability Act 2013.

financial institution means a corporation that is an
Act 1959.

general supports has the meaning given by subsecti

grace period has the meaning given by subsection 4

holder, in relation to a visa, has the same meaning a

home care has the same meaning as in the *Aged Car*

host jurisdiction has the meaning given by section 1

managing the funding for supports under a particip
section 42.

medicare program has the same meaning as in the *F*
1973.

meets the access criteria has the meaning given by s

meets the age requirements has the meaning given l

meets the disability requirements has the meaning g

meets the early intervention requirements has the n

meets the residence requirements has the meaning g

Ministerial Council means a body:

- (a) that consists of Ministers of the Commonwealth
- (b) that has been designated by COAG as having re
National Disability Insurance Scheme.

National Disability Insurance Scheme means:

- (a) the arrangements set out in Chapter 2; and
- (b) the arrangements set out in Chapter 3 in relatio
requirements because of their residence in a pr
requirements (if any) in relation to a prescribe
- (c) the arrangements referred to in paragraph (b) as
arrangements are not limited on the basis of re

National Disability Insurance Scheme launch mea

- (a) the arrangements set out in Chapter 2; and
- (b) the arrangements set out in Chapter 3 in relatio
requirements because of their residence in a pr

requirements (if any) in relation to the prescrib

National Disability Insurance Scheme rules means

NDIS amount means an amount paid under the Nati
in respect of reasonable and necessary supports func

nominee means the correspondence nominee of a pe
participant.

officer means:

- (a) a member of the staff of the Agency under secti
- (b) a person assisting the Agency under section 17C

parent: without limiting who is a parent of anyone f
is the ***parent*** of another person if the other person is
meaning of the *Family Law Act 1975*.

parental responsibility has the meaning given by se

participant means a person who is a participant in th
Scheme launch (see sections 28, 29 and 30).

participant's impairment means an impairment in re
meets the disability requirements, or the early interv

participant's statement of goals and aspirations has
subsection 33(1).

permanent visa has the same meaning as in the *Mig.*

plan, for a participant, means the participant's plan t

plan management request has the meaning given by

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

prescribed area means an area prescribed by the Na
rules for the purposes of paragraph 22(2)(a) or subse

Principal Member means the Principal Member of t

prospective participant means a person in relation to
made but not yet decided.

prospective participant's impairment means an imp
prospective participant claims to meet the disability
intervention requirements, to any extent.

protected information means:

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

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

- (a) the person was in Australia on 26 February 200
holder on that day; or
- (b) the person had been in Australia for a period of,
during the 2 years immediately before 26 Febr
after that day.

recoverable amount has the meaning given by secti

registered plan management provider means a regi
approved in relation to managing the funding for sup

paragraph 70(1)(a).

registered provider of supports means a person or entity registered as a registered provider of supports.

residential care service has the same meaning as in

reviewable decision has the meaning given by section

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

reviewer has the meaning given by subsection 100(5)

reviewing actuary means the actuary who is nominated

scheme actuary means the actuary who is nominated

special category visa has the same meaning as in the

statement of participant supports has the meaning given

supports includes general supports.

jurisdiction of host jurisdiction

The Minister may, by legislative instrument, specify the **jurisdiction**, with the agreement of that State or Territory,

Note: Section 42 (disallowance) of the *Legislation Act 2006* subsection 44(1) of that Act).

definitions relating to compensation

(1) In this Act:

compensation means a payment (with or without interest)

- (a) compensation or damages in respect of personal injury;
- (b) personal injury, under a scheme of insurance or compensation under Commonwealth, State or Territory law, including a scheme entered into under such a scheme; or
- (c) personal injury, in settlement of a claim for damages under an insurance scheme;

that is wholly or partly in respect of the cost of support for a participant (whether or not specifically identified as the person to whom the payment is made directly to the person who sustains the injury or another person in respect of that person).

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

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

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

- (a) that is liable to indemnify a compensation payer against such a liability, whether under a contract;
- (b) that determines to make a payment to indemnify a potential compensation payer against such a liability and is liable to do so.

–**Ministerial Council**

Ministerial Council functions etc.

- (1) The Ministerial Council is to:
 - (a) consider policy matters that relate to the National Disability Insurance Scheme or arise under this Act; and
 - (b) advise the Minister about such matters; and
 - (c) make recommendations to COAG about such matters.
- (2) The advice and recommendations must not relate to a matter that is not a policy matter.
- (3) The Minister must consult the Ministerial Council about a matter that relates to the National Disability Insurance Scheme or arises under this Act.

er 2—Assistance for people with disability and others

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

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

Note: Chapter 3 deals with the provision of general supports.

- (2) In this Act:

general support means:

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

Agency may provide funding to persons or entities

The Agency may provide assistance in the form of funding to:

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

Agency may provide information

- (1) The Agency may provide information about the following:
- (a) matters relevant to the National Disability Insurance Scheme;
 - (b) the functions of the Agency.
- (2) The Agency must use its best endeavours to provide information to people with disability and other people in order to assist them in making decisions about matters relevant to the National Disability Insurance Scheme.

Agency may assist in relation to doing things under Chapter 3

The Agency may provide support and assistance to people with disability under, or for the purposes of, this Chapter.

National Disability Insurance Scheme rules

The National Disability Insurance Scheme rules may apply to this Chapter.

er 3—Participants and their plans

1—Principles

Principles relating to the participation of people with disability

- (1) People with disability are assumed, so far as is reasonable, to have the capacity to determine their own best interests and manage their lives.
- (2) People with disability will be supported in their dealings with the Agency so that their capacity to exercise choice and control is maximised.
- (3) The National Disability Insurance Scheme is to:
 - (a) respect the interests of people with disability in matters that affect them; and
 - (b) enable people with disability to make decisions to the extent of their capacity; and
 - (c) support people with disability to participate in, and contribute to, economic life, to the extent of their ability.

–Becoming a participant

Who may make a request to become a participant

A person may make a request (an *access request*) to participate in the National Disability Insurance Scheme launch.

Note: Once a person becomes a participant, the CEO must determine their plan (see section 32).

Criteria relating to access requests

- (1) An access request must:
 - (a) be in the form (if any) approved by the CEO; and
 - (b) include any information, and be accompanied by a letter from the CEO; and
 - (c) certify that it includes all the information, and is in the form required as mentioned in paragraph (b) that are required for the person.

Note: The CEO is not required to make a decision on the request until a review with (see section 197).

- (2) If:
 - (a) a person has made an access request; and
 - (b) the CEO decides that the person does not meet the criteria, and has so decided because of subsection 21(3);
 the person may make another access request at any time after the following has been commenced, but not finally determined:
 - (c) a review (the *initial review*) under subsection 100(1);
 - (d) a review under section 103 of a decision on the person's eligibility.

Who must consider and decide access requests

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

- (a) decide whether or not the prospective participant meets the criteria; and
- (b) make one or more requests under subsection 26(1) for the person to provide further information.

When a person meets the access criteria

- (1) A person *meets the access criteria* if:
 - (a) the CEO is satisfied that the person meets the age requirements; and
 - (b) the CEO is satisfied that, at the time of considering the request, the person meets the residence requirements (see section 23); and
 - (c) the CEO is satisfied that, at the time of considering the request, the person:
 - (i) meets the disability requirements; and
 - (ii) meets the early intervention requirements.
- (2) If the CEO is not satisfied as mentioned in subsection (1), the person *meets the access criteria* if the CEO is satisfied of the following:
 - (a) at the time of considering the request, the person meets the residence requirements prescribed as mentioned in subsection (1)(b) and the person also satisfies the requirements mentioned in subsection (1)(c); and
 - (b) the person:
 - (i) was receiving supports at the time of considering the request, and the time is prescribed by the National Disability Insurance Scheme for the purposes of this subparagraph, at that other time; and

- (ii) received the supports throughout the period the Disability Insurance Scheme rules for the purposes of that paragraph;
 - (iii) received the supports under a program prescribed by the Disability Insurance Scheme rules for the purposes of that paragraph;
 - (c) if the person becomes a participant, the person was not receiving the supports referred to in paragraph (b), or equivalent supports.
- (3) The CEO is taken to have decided that the prospective access criteria if:
- (a) the CEO does not do a thing referred to in paragraph (b) during the period referred to in section 20; or
 - (b) if subsection 26(2) applies—the CEO does not do a thing referred to in that subsection within the 14-day period referred to in subsection 26(2).

Note 1: The periods may be extended under National Disability Insurance Scheme section 204.

Note 2: Notice of a decision that the CEO is taken to have made under subsection 100(1) and will be automatically reviewed under section 100.

Age requirements

- (1) A person *meets the age requirements* if:
- (a) the person was aged under 65 when the access request was made; and
 - (b) the person satisfies any other requirements in relation to the National Disability Insurance Scheme rule.
- (2) Without limiting paragraph (1)(b), National Disability Insurance Scheme rules for the purposes of that paragraph:
- (a) may prescribe that a person must be a prescribed age in a prescribed period only if the person resides in Australia; and
 - (b) may prescribe different ages and different dates in Australia.

Residence requirements

- (1) A person *meets the residence requirements* if the person:
- (a) resides in Australia; and
 - (b) is one of the following:
 - (i) an Australian citizen;
 - (ii) the holder of a permanent visa;
 - (iii) a special category visa holder who is a prospective participant;
 - (c) satisfies the other requirements that are prescribed by the Disability Insurance Scheme rules.
- (2) In deciding whether or not a person resides in Australia, the CEO is taken to have considered:
- (a) the nature of the accommodation used by the person;
 - (b) the nature and extent of the family relationships of the person;
 - (c) the nature and extent of the person's employment in Australia; and
 - (d) the nature and extent of the person's assets located in Australia;
 - (e) the frequency and duration of the person's travel to and from Australia; and
 - (f) any other matter relevant to determining whether the person resides permanently in Australia.
- (3) Without limiting paragraph (1)(c), National Disability Insurance Scheme rules for the purposes of that paragraph:
- (a) may require that a person reside in a prescribed area or a date or a date in a prescribed period in order to be taken to reside in Australia;

and

- (b) may require that a person has resided in a prescribed order to meet the residence requirements; and
- (c) may require that a person continue to reside in a prescribed order to meet the residence requirements; and
- (d) may require that a person satisfy a prescribed requirement of the following:
 - (i) the purpose for which the person resides in a prescribed order; and
 - (ii) exceptional circumstances applying in relation to the person.

Disability requirements

- (1) A person *meets the disability requirements* if:
 - (a) the person has a disability that is attributable to neurological, sensory or physical impairments attributable to a psychiatric condition; and
 - (b) the impairment or impairments are, or are likely to be, permanent; and
 - (c) the impairment or impairments result in substantial difficulty in undertaking, or psychosocial functioning in undertaking, the following activities:
 - (i) communication;
 - (ii) social interaction;
 - (iii) learning;
 - (iv) mobility;
 - (v) self-care;
 - (vi) self-management; and
 - (d) the impairment or impairments affect the person's participation in the community; and
 - (e) the person is likely to require support under the Scheme for the person's lifetime.
- (2) For the purposes of subsection (1), an impairment or impairment is permanent if the person is likely to require Disability Insurance Scheme for the person's lifetime.

Intervention requirements

- (1) A person *meets the early intervention requirements* if:
 - (a) the person:
 - (i) has one or more identified intellectual, cognitive or physical impairments that are, or are likely to be, permanent; and
 - (ii) has one or more identified impairments that are, or are likely to be, permanent; and
 - (iii) is a child who has developmental delay; and
 - (b) the CEO is satisfied that provision of early intervention is likely to benefit the person by reducing the person's participation in the community; and
 - (c) the CEO is satisfied that provision of early intervention is likely to benefit the person by:
 - (i) mitigating or alleviating the impact of the impairment on the functional capacity of the person to undertake social interaction, learning, mobility, self-care or self-management; or
 - (ii) preventing the deterioration of such functional capacity; or
 - (iii) improving such functional capacity; or
 - (iv) strengthening the sustainability of information, including through building the capacity of the person to undertake social interaction, learning, mobility, self-care or self-management.

- (c) one or more impairments affect a person's capacity to participate for the purposes of paragraph 24(1)(a);
- (d) the provision of early intervention supports is likely to meet the person's future needs for supports in relation to paragraph 25(1)(b); or
- (e) the provision of early intervention supports is likely to mitigate, alleviate or prevent the deterioration of the person's capacity to undertake one or more of the activities listed in subparagraph 25(1)(c)(i) or (ii), or improve the person's capacity for the purposes of subparagraph 25(1)(c)(iii); or
- (f) the provision of early intervention supports is likely to strengthen the sustainability of the informal supports available to the person, including through building the capacity of the person, for the purposes of subparagraph 25(1)(c)(iv).

a person becomes a participant

- (1) A person becomes a participant in the National Disability Insurance Scheme on the day the CEO decides that the person meets the criteria in section 23.
- (2) The CEO must give written notice of the decision to the person in which the person became a participant.

a person ceases to be a participant

- (1) A person ceases to be a participant in the National Disability Insurance Scheme when:
 - (a) the person dies; or
 - (b) the person enters a residential care service on a permanent basis or is provided with home care on a permanent basis and the person turns 65 years of age; or
 - (c) the person's status as a participant is revoked under section 26; or
 - (d) the person notifies the CEO in writing that he or she ceases to be a participant.

Note: *Residential care service* and *home care* have the same meaning as in the *Residential Care Act 1997*.

- (2) A person is not entitled to be paid NDIS amounts for reasonable and necessary supports that would otherwise be payable to the person for a period after he or she ceased to be a participant.

revocation of participant status

- (1) The CEO may revoke a person's status as a participant in the National Disability Insurance Scheme if:
 - (a) the CEO is satisfied that the person does not meet the criteria in section 23; or
 - (b) the CEO is satisfied that the person does not meet the criteria in section 23:
 - (i) the disability requirements (see section 24); or
 - (ii) the early intervention requirements (see section 25).
- (2) The CEO must give written notice of the decision to the person in which the revocation takes effect.

–Participants’ plans

1—Principles relating to plans

Principles relating to plans

The preparation, review and replacement of a participant’s plan, and the funding for supports under a participant’s plan, shall, so far as practicable:

- (a) be individualised; and
- (b) be directed by the participant; and
- (c) where relevant, consider and respect the role of participants who are significant in the life of the participant; and
- (d) where possible, strengthen and build capacity of participants who are children; and
- (da) if the participant and the participant’s carers agree, build the capacity of families and carers to support the participant; and
- (e) consider the availability to the participant of information and services generally available to any person in the community; and
- (f) support communities to respond to the individual needs of participants; and
- (g) be underpinned by the right of the participant to determine his or her own life; and
- (h) advance the inclusion and participation in the community, with the aim of achieving his or her individual aspirations; and
- (i) maximise the choice and independence of the participant; and
- (j) facilitate tailored and flexible responses to the individual needs of the participant; and
- (k) provide the context for the provision of disability services, where appropriate, coordinate the delivery of disability services, and ensure that more than one disability service provider is not unnecessarily involved in the provision of disability services.

2—Preparing participants' plans

must facilitate preparation of participant's plan

- (1) If a person becomes a participant, the CEO must facilitate the preparation of the participant's plan.
- (2) The CEO must commence facilitating the preparation of the plan in accordance with the National Disability Insurance Scheme rules made for the purposes of that subsection.
- (3) If National Disability Insurance Scheme rules made for the purposes of that subsection do not require the CEO to commence facilitating the preparation of the plan within a prescribed period or in prescribed circumstances, the CEO must commence facilitating the preparation of the plan as soon as reasonable, having regard to the obligations of the CEO under the rules to commence facilitating the preparation of other participants' plans.

classes about preparation of plans

- (1) Without limiting subsection 32(2), National Disability Insurance Scheme rules made for the purposes of that subsection may require the CEO to commence facilitating the preparation of the plan of a participant included in a class prescribed by the rules:
 - (a) within a period prescribed by the rules; or
 - (b) in circumstances prescribed by the rules.
- (2) Without limiting the classes that may be prescribed by the rules, a class may be prescribed by reference to one or more of the following:
 - (a) whether the participant's name is included on a list prescribed by the rules;
 - (b) whether the participant is receiving support from a prescribed program under a prescribed program;
 - (c) whether, when the participant first made an access request, the participant was receiving supports other than informal support;
 - (d) the place of residence of the participant on a prescribed date or during a prescribed period;
 - (e) whether, when the participant first made an access request, the participant was reasonably likely to leave, school at a prescribed date or during a prescribed period;
 - (f) the participant's age;
 - (g) other matters.
- (3) Despite subsection 32(2) and subsection (1) of this section, the CEO may commence facilitating the preparation of a participant's plan at a particular time if:
 - (a) the CEO may do so; and
 - (b) if doing so means that it is necessary not to commence facilitating the preparation of the plans of one or more other participants—such facilitation, so far as is reasonably necessary.
- (4) The National Disability Insurance Scheme rules made for the purposes of that subsection may require the CEO to have regard in deciding for the purposes of that subsection whether or she is satisfied that, because of the urgency of the circumstances, the CEO should commence facilitating the preparation of a participant's plan.
- (5) If the CEO commences or delays facilitating the preparation of the plan in accordance with subsection (3), the CEO does not breach subsection (1) if the National Disability Insurance Scheme rules made for the purposes of that subsection require the CEO to do so to the participants concerned.
- (6) Without limiting subsection 32(2) of this section, National Disability Insurance Scheme rules made for the purposes of that subsection (including

of this section) may do one or more of the following

- (a) prescribe a class by reference to a decision of the rules;
 - (b) prescribe a period or circumstances by reference to a decision of the rules;
 - (c) prescribe matters by reference to a decision of the rules.
- (7) The CEO does not have a duty to consider whether to approve a plan upon the CEO by:
- (a) subsection (3); or
 - (b) National Disability Insurance Scheme rules made under subsection 32(2) (including as mentioned in subsection 32(2)).

Plans that must be included in a participant's plan

- (1) A participant's plan must include a statement (the *participant's aspirations*) prepared by the participant that specifies:
 - (a) the goals, objectives and aspirations of the participant;
 - (b) the environmental and personal context of the participant's:
 - (i) living arrangements; and
 - (ii) informal community supports and other community supports;
 - (iii) social and economic participation.
- (2) A participant's plan must include a statement (the *statement of supports*) prepared with the participant and approved by the CEO that specifies:
 - (a) the general supports (if any) that will be provided to the participant; and
 - (b) the reasonable and necessary supports (if any) that will be provided under the National Disability Insurance Scheme; and
 - (c) the date by which, or the circumstances in which, the supports will be provided under Division 4; and
 - (d) the management of the funding for supports under the plan; and
 - (e) the management of other aspects of the plan.
- (3) The supports that will be funded or provided under the plan or the National Disability Insurance Scheme may be specifically identified in the plan or referred to by reference to a specified purpose or otherwise.
- (4) The CEO must endeavour to decide whether or not to approve a participant's plan as soon as reasonably practicable having regard to section 36 (information to be provided to the CEO).
- (5) In deciding whether or not to approve a statement of supports under subsection (2), the CEO must:
 - (a) have regard to the participant's statement of goals and aspirations;
 - (b) have regard to relevant assessments conducted in relation to the participant;
 - (c) be satisfied as mentioned in section 34 in relation to the participant's statement of goals and aspirations, the statement of supports that will be funded and the general supports that will be provided to the participant;
 - (d) apply the National Disability Insurance Scheme rules made under section 35; and
 - (e) have regard to the principle that a participant should be able to participate to the extent that he or she wishes to do so; and
 - (f) have regard to the operation and effectiveness of the plan for the participant.
- (6) To the extent that the funding for supports under a participant's plan is provided by a service provider or a provider of supports, the plan must provide that the supports are provided by the service provider or provider of supports.

- (7) A participant's plan may include additional matters, if they are prescribed by the National Disability Insurance Scheme rules.

Note: For example, a participant's plan may include arrangements for support from a support Agency.

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

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

Reasonable and necessary supports

- (1) For the purposes of specifying, in a statement of participant goals, the reasonable and necessary supports that will be provided, and the reasonable and necessary supports that will not be funded, the CEO must be satisfied of all of the following in relation to the provision of each such support:
- the support will assist the participant to pursue the goals included in the participant's statement of goals;
 - the support will assist the participant to undertake the participant's social and economic participation;
 - the support represents value for money in that it is reasonable, relative to both the benefits achievable and the cost of the support;
 - the support will be, or is likely to be, effective and efficient, having regard to current good practice;
 - the funding or provision of the support takes account of the needs of the participant, the participant's family, carers, informal networks and other supports;
 - the support is most appropriately funded or provided under the National Disability Insurance Scheme, and is not more appropriately funded or provided through other general systems of service delivery, including through other person, agency or body, or systems of service delivery, including:
 - as part of a universal service obligation; or
 - in accordance with reasonable adjustments to avoid discrimination on the basis of disability.
- (2) The National Disability Insurance Scheme rules may specify the manner in which supports are to be funded or provided, or matters to which the CEO is to have regard in determining whether she is satisfied as mentioned in any of paragraphs (1) to (6).

Reasonable and necessary supports for statement of participant goals

- (1) The National Disability Insurance Scheme rules may specify the manner in which the funding or provision of reasonable and necessary supports are to be funded or provided, including but not limited to prescribing:
- methods or criteria to be applied, or matters to be taken into account in deciding, the reasonable and necessary supports that will be funded or provided under the National Disability Insurance Scheme;
 - reasonable and necessary supports or general supports that will be funded or provided under the National Disability Insurance Scheme;
 - reasonable and necessary supports or general supports that will be funded or provided under the National Disability Insurance Scheme for participants.
- (2) The National Disability Insurance Scheme rules may specify the manner in which supports are to be funded or provided, or matters to which the CEO is to have regard in determining whether she is satisfied as mentioned in any of paragraphs (1) to (6).
- (4) The National Disability Insurance Scheme rules may specify the manner in which supports are to be funded or provided, or matters to which the CEO is to have regard in determining whether she is satisfied as mentioned in any of paragraphs (1) to (6).

The Agency must comply with the statement of participant plan.

of temporary absence on plans

- (1) A participant for whom a plan is in effect may be taken into account for the grace period for the absence without affecting the plan.
- (2) The *grace period* for a temporary absence of a participant is:
 - (a) 6 weeks beginning when the participant leaves Australia;
 - (b) if the CEO is satisfied that it is appropriate for a longer period, such longer period as the CEO decides, applying any criteria prescribed by the National Disability Insurance Agency for the purposes of this paragraph.
- (3) If a participant for whom a plan is in effect is temporarily absent from Australia at the end of the grace period for the absence, the participant's plan remains in effect until the participant returns to Australia.
- (4) For the purposes of this section, a person's absence from Australia throughout the absence, the person does not cease to be a participant for the purposes of paragraph 23(1)(a)).

suspension of plans

- (1) A statement of participant supports in a participant's plan is suspended if:
 - (a) as mentioned in subsection 40(3) (which deals with suspension of plans for participants who are not in Australia); and
 - (b) as mentioned in subsection 105(2) (which deals with suspension of plans for participants who are in Australia).
- (2) The effect of suspension of a statement of participant supports is that:
 - (a) the person is not entitled to be paid NDIS amount for reasonable and necessary supports that would be provided in respect of that period; and
 - (b) the Agency is not required to provide or fund those supports, but is not prevented from doing so if the CEO considers it appropriate; and
 - (c) the participant is not entitled to request a review of the suspension.

3—Managing the funding for supports under pa

ing of *managing the funding for supports* under a participa

- (1) For the purposes of this Act, *managing the funding* plan means:
 - (a) purchasing the supports identified in the plan (ir indirect costs, such as taxes, associated with th
 - (b) receiving and managing any funding provided b
 - (c) acquitting any funding provided by the Agency.
- (2) For the purposes of the statement of participant supp specifying the management of the funding for suppo paragraph 33(2)(d), the plan must specify that such 1 to a specified extent, by:
 - (a) the participant; or
 - (b) a registered plan management provider; or
 - (c) the Agency; or
 - (d) the plan nominee.

e for the participant in relation to plan management

- (1) A participant for whom a plan is in effect or is being *plan management request*:
 - (a) that he or she manage the funding for supports t extent specified in the request; or
 - (b) that the funding for supports under the plan be r specified in the request, by a registered plan m nominates; or
 - (c) that the funding for supports under the plan be r specified in the request, by a person specified |
- (2) A statement of participant supports in a participant's management request other than as follows:
 - (a) if the participant is prevented from managing th plan to any extent by section 44—the stater accordance with subsection (3) of this section;
 - (b) if the participant has a plan nominee—the stater for supports under the plan is to be managed ir plan nominee's appointment.
- (3) If the participant is prevented from managing the fun wholly, or to a specified extent, by section 44, the st the plan must provide that:
 - (a) the funding for supports under the plan is to be 1 plan management request, to the extent that th managing it; and
 - (b) the remainder of the funding for supports under
 - (i) a registered plan management provider spe
 - (ii) the Agency.
- (4) If a participant does not make a plan management re supports in the plan must provide that the funding fc managed by:
 - (a) a registered plan management provider specifiec
 - (b) the Agency.
- (5) If the funding for supports under a participant's plan registered plan management provider specified by th

CEO must, so far as reasonably practicable, have regard in specifying who is to manage the funding for supports

Instances in which participant must not manage plan to support

- (1) The statement of participant supports in a participant plan is to manage the funding for supports under the plan if the participant is an insolvent under administration.
- (1A) The statement of participant supports in a participant plan nominee is to manage the funding for supports under the plan if the plan nominee is an insolvent under administration.
- (2) The statement of participant supports in a participant plan is to manage the funding for supports under the plan to a particular extent if the CEO is satisfied that management of the plan to that extent would
 - (a) present an unreasonable risk to the participant; or
 - (b) permit the participant to manage matters that are prohibited by the Disability Insurance Scheme rules as being managed by the participant.
- (2A) The statement of participant supports in a participant plan nominee is to manage the funding for supports under the plan to a particular extent if the CEO is satisfied that management of the plan to that extent would present an unreasonable risk to the participant.
- (3) The National Disability Insurance Scheme rules may apply and matters to which the CEO is to have regard in specifying who is to manage the funding for supports under the plan to a particular extent if the CEO is satisfied that management of the plan to that extent would present an unreasonable risk to the participant.
 - (a) a participant managing the funding for supports under the plan;
 - (b) a plan nominee managing the funding for supports under the plan.

Retention of NDIS amounts

- (1) An NDIS amount that is payable to a participant, or to a person on behalf of a participant, for funding for supports under a participant's plan, is to be paid
 - (a) at the time or times determined by the CEO in a participant plan under the Disability Insurance Scheme rules; and
 - (b) in the manner (if any) prescribed by the National Disability Insurance Scheme rules.
- (2) Without limiting paragraph (1)(b), the National Disability Insurance Scheme rules provide that:
 - (a) an NDIS amount is to be paid to the credit of a bank account maintained by the person to whom it is to be paid;
 - (b) an NDIS amount is not payable to the person unless it is paid to the credit of a bank account.

Retention of NDIS amounts

- (1) A participant who receives an NDIS amount, or a person on behalf of a participant, must spend the money in accordance with the participant plan.
- (2) The National Disability Insurance Scheme rules may apply and matters to which the CEO is to have regard in specifying who is to manage the funding for supports under the plan to a particular extent if the CEO is satisfied that management of the plan to that extent would present an unreasonable risk to the participant.
 - (a) a participant managing the funding for supports under the plan;
 - (b) a plan nominee managing the funding for supports under the plan.

Retention of NDIS amounts

- (1) An NDIS amount is absolutely inalienable, whether by way of sale, assignment, charge, execution, bankruptcy or otherwise.

(2) This section is subject to Part 1 of Chapter 7.

nishee orders

General rule

- (1) A court must not make an order in the nature of a garnishee order in relation to an account with a financial institution if:
- (a) one or more NDIS amounts for a particular participant are in the account; and
 - (b) the account has been kept solely for the purpose of providing supports under the participant's plan.

Exception

- (2) However, a court may make an order in the nature of a garnishee order in relation to an account if:
- (a) the order is made in favour of a person in relation to whom the account is maintained by a person providing goods or services in relation to the participant's plan; and
 - (b) the goods or services are reasonable and necessary for the participant's plan.

4—Reviewing and changing participants' plans

Participant may change participant's statement of goals and aspirations

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

Note: The participant may also request a review of his or her plan and the CEO may review a participant's plan at any time.

- (2) If a participant gives a changed version of the participant's statement of goals and aspirations to the CEO, the plan is taken to be replaced by
 - (a) the changed version of the participant's statement of goals and aspirations
 - (b) the statement of participant supports in the existing plan
- (3) The Agency must provide a copy of the new plan to the participant receiving the changed version of the participant's statement of goals and aspirations.

Request for review of participant's plan

- (1) A participant may request that the CEO conduct a review of the participant's plan at any time.
- (2) The CEO must decide whether or not to conduct the review within 14 days after receiving the request. If the CEO does not make a decision within that period, it is taken to have decided not to conduct the review.

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

Note 2: Notice of a decision that the CEO makes, or is taken to make, under subsection 100(1), and a decision the CEO is taken to make under subsection 100(5) is reviewable because of subsection 100(5).

- (3) If the CEO decides to conduct a review under subsection 100(2), the CEO must facilitate the review within 14 days after so deciding, or as soon as reasonably practicable.
- (4) The CEO may, on the CEO's initiative, conduct a review of a participant's plan at any time.
- (5) The CEO must conduct a review of a participant's plan if the participant requests it in the circumstances, if any, specified in the plan.
- (6) The CEO must conduct a review of a participant's plan if the participant requests it as prescribed by the National Disability Insurance Scheme Act.

Facilitation of review

If the CEO conducts a review of a participant's plan under subsection 100(2), the CEO must facilitate the preparation of a new plan with the participant under Division 2.

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

Note 2: Because the new plan is prepared in accordance with subsection 100(2), the statement of participant supports in the plan would be reviewable under paragraph 99(d).

Requests for review and reports for the purposes of reviewing a participant's plan

- (1) For the purposes of reviewing a participant's plan, the CEO must respond to requests under subsection (2).
- (2) The requests the CEO may make are as follows:

- (a) that the participant, or another person, provide information necessary for the purposes of reviewing the participant's plan;
 - (b) that the participant do either or both of the following:
 - (i) undergo an assessment and provide to the CEO the report, of the person who conducts the assessment;
 - (ii) undergo, whether or not at a particular place, a psychological or other examination, conducted by a person, and provide to the CEO the report of that person who conducts the examination.
- (3) The CEO may review a participant's plan before all the information requested under subsection (2) are received by the CEO if the participant is given a reasonable opportunity to provide them.

Note: If information or reports are provided after the plan is reviewed, the information and reports may be replaced.

Part 4—Administration

—General matters

1—Participants and prospective participants

Requirement to notify change of circumstances

- (1) A participant or a prospective participant must notify
 - (a) an event or change of circumstances happens that affects the participant's access request, status as a participant or plan; or
 - (b) the participant or prospective participant becomes aware that a change of circumstances is likely to happen.
- (2) The participant or prospective participant must notify
 - (a) in the manner set out in a written notice given to the CEO; and
 - (b) as soon as reasonably practicable after he or she becomes aware that a change of circumstances has happened or is likely to happen.

Requirements relating to notices

- (1) The CEO must approve a manner of notification that a participant is to use when notifying the CEO in relation to a change of circumstances under section 51.
- (2) The CEO must, by written notice, notify the participant of the approved manner of notification.

Requirements to obtain information from participants and prospective participants to ensure the integrity of the National Disability Insurance Scheme

- (1) If the CEO has reasonable grounds to believe that a participant has information, or has custody or control of a document, relevant to one or more of the matters mentioned in section 51, the participant or prospective participant must, on request, provide the information or document, to the Agency.
- (2) The matters are as follows:
 - (a) the monitoring of supports funded for, or provided to, the participant or prospective participant;
 - (b) whether NDIS amounts paid to the participant or prospective participant are in accordance with the participant's plan;
 - (c) determining whether the participant was not entitled to the supports because of the misleading statements or fraud;
 - (d) whether the participant or other person has committed an offence under section 133;
 - (e) whether the participant or prospective participant has received supports or funding through a statutory care or support scheme; or
 - (f) any other disability or early intervention supports.

Written notice of requirement

- (1) A requirement under section 53 must be made by written notice to the person to whom the requirement is made.
- (2) The notice must specify:
 - (a) the nature of the information or document that is required; and
 - (b) how the person is to give the information or provide the document.

- (c) the period within which the person is to give the document to the Agency; and
 - (d) the officer to whom the information is to be given produced; and
 - (e) that the notice is given under this section.
- (3) The period specified under paragraph (2)(c) must be day on which the notice is given.

2—Other persons

to obtain information from other persons to ensure the in National Disability Insurance Scheme

- (1) If the CEO has reasonable grounds to believe that a prospective participant has information, or has custody of information, that may be relevant to one or more of the matters mentioned in subsection (2), the CEO may require the person to give the information, or produce the information, or provide access to the information.
- (2) The matters are as follows:
 - (a) whether a prospective participant meets the access requirements of the Scheme;
 - (b) whether a participant continues to meet the access requirements of the Scheme;
 - (c) whether a person purporting to act on a person's behalf has the authority to do so;
 - (d) the preparation or review of a participant's plan;
 - (e) the monitoring of supports funded for, or provided to, a participant;
 - (f) whether NDIS amounts paid to the participant are in accordance with the participant's plan;
 - (g) whether a participant or other person has complied with the requirements of the Scheme;
 - (h) whether a participant receives:
 - (i) supports or funding through a statutory care or support scheme; or
 - (ii) any other disability support;
 - (i) whether an applicant for approval as a registered provider meets the criteria for approval;
 - (j) whether a registered provider of supports continues to meet the criteria for approval;
 - (k) the functions of the Agency.

in notice of requirement

- (1) A requirement under section 55 must be made by written notice to the person to whom the requirement is made.
- (2) The notice must specify:
 - (a) the nature of the information or document that is required;
 - (b) how the person is to give the information or produce the document;
 - (c) the period within which the person is to give the information or produce the document to the Agency; and
 - (d) the officer to whom the information is to be given or the document is to be produced; and
 - (e) that the notice is given under this section.
- (3) The period specified under paragraph (2)(c) must be a period of not more than 14 days on which the notice is given.
- (4) The notice may require the person to give the information or produce the document to a specified officer to answer questions.
- (5) If the notice requires the person to appear before an officer, the notice must specify the time and place at which the person is to appear. The notice is given at the time and place specified in the notice.

consequence—refusal or failure to comply with requirement

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

Penalty: 30 penalty units.

Note: If a body corporate is convicted of an offence against the *Crimes Act 1914* allows a court to impose a fine of 1

(2) Subsection (1) does not apply if the person has a reason

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

(3) It is a reasonable excuse for an individual to refuse to produce a document on the ground that to do so might tend to expose the individual to a penalty.

3—Interaction with other laws

Actions not affected by State or Territory laws

- (1) Subject to subsection (2), nothing in a law of a State or Territory requires a person to:
 - (a) giving information; or
 - (b) producing a document; or
 - (c) giving evidence;that the person is required to give or produce to the purposes of this Act.
- (2) Despite subsection (1), a person is not required to give or give evidence to the Agency or an officer for the purposes of this Act if:
 - (a) the person would, apart from subsection (1), be required to do so by a law of a State or Territory; and
 - (b) the law of the State or Territory is prescribed by the Scheme rules for the purposes of this paragraph.

Interaction with Commonwealth laws

This Part does not require a person to give information or give evidence to the extent that in doing so the person would contravene a law of the Commonwealth.

–Privacy

Collection of information held by the Agency etc.

- (1) A person may collect protected information for the purposes of:
- (2) A person may:
 - (a) make a record of protected information; or
 - (b) disclose such information to any person; or
 - (c) otherwise use such information;
 if:
 - (d) the making of the record, or the disclosure or use of the information, is made:
 - (i) for the purposes of this Act; or
 - (ii) for the purpose for which the information is collected under section 66; or
 - (iii) with the express or implied consent of the person to whom the information relates; or
 - (e) the person believes on reasonable grounds that the disclosure or use of the information, by the person, will not lessen a serious threat to an individual's life, health or safety.
- (3) Without limiting subsections (1) and (2), the collection of protected information by a person is taken to be for the purposes of:
 - (a) research into matters relevant to the National Disability Insurance Scheme; or
 - (b) actuarial analysis of matters relevant to the National Disability Insurance Scheme; or
 - (c) policy development.

Offence—unauthorised access to protected information

A person commits an offence if:

- (a) the person collects information; and
- (b) the person is not authorised or required by or under the Act to collect the information; and
- (c) the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units.

Note: If a body corporate is convicted of an offence against this section, the *Crimes Act 1914* allows a court to impose a fine of up to 120 penalty units in addition to or instead of the penalty above.

Offence—unauthorised use or disclosure of protected information

A person commits an offence if:

- (a) the person:
 - (i) makes a record of information; or
 - (ii) discloses information to any other person; or
 - (iii) otherwise makes use of information; and
- (b) the person is not authorised or required by or under the Act to make the record, disclose the information or use the information; and
- (c) the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units.

Note: If a body corporate is convicted of an offence against this section, the *Crimes Act 1914* allows a court to impose a fine of up to 120 penalty units in addition to or instead of the penalty above.

above.

ce—soliciting disclosure of protected information

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

- (a) the first person solicits the disclosure of information from a particular person, whether or not any protected information is disclosed;
- (b) the disclosure would be in contravention of this section;
- (c) the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units.

Note: If a body corporate is convicted of an offence against this section, *Crimes Act 1914* allows a court to impose a fine of up to 120 penalty units in addition to or instead of the penalty provided in this section.

ce—offering to supply protected information

(1) A person commits an offence if:

- (a) the person offers to supply (whether to a particular person or otherwise) information about another person; and
- (b) the person knows the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units.

Note: If a body corporate is convicted of an offence against this section, *Crimes Act 1914* allows a court to impose a fine of up to 120 penalty units in addition to or instead of the penalty provided in this section.

(2) A person commits an offence if:

- (a) the person holds himself or herself out as being a particular person or otherwise) information about another person; and
- (b) the person knows the information is protected information.

Penalty: Imprisonment for 2 years or 120 penalty units.

Note: If a body corporate is convicted of an offence against this section, *Crimes Act 1914* allows a court to impose a fine of up to 120 penalty units in addition to or instead of the penalty provided in this section.

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

Section 64—Production of certain documents etc. from production to court etc.

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

- (a) to produce any document in his or her possession or control in the course of the exercise of his or her duties, functions or powers under this Act;
- (b) to disclose any matter or thing of which he or she is aware in the course of the performance or exercise of such duties, functions or powers to a court, tribunal, authority or person that has power to require the production of documents or the answering of questions.

Section 65—Disclosure of information by CEO

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

- (a) if the CEO certifies that it is necessary in the public interest to disclose information for the performance of his or her functions or duties or powers under this Act to such persons and for such purposes as the CEO determines; or
- (b) disclose any such information:
 - (i) to the Secretary of a Department of State or an authority of the Commonwealth, for the purposes of the functions or duties or powers of that Secretary or authority;

authority; or

- (ii) to a person who has the express or implied information relates to collect it; or
 - (iii) to the Chief Executive Centrelink for the p
 - (iv) to the Chief Executive Medicare for the pu
 - (v) to the chief executive (however described) or Territory, or to the head of an authority purposes of that Department or authority.
- (2) In certifying for the purposes of paragraph (1)(a) or c purposes of subparagraph (1)(b)(i) or (v), the CEO r National Disability Insurance Scheme rules made fo
- (3) Despite any other provision of this Part, the CEO ma a participant's nominee if the protected information:
- (a) relates to the participant; and
 - (b) is or was held in the records of the Agency.

1al Disability Insurance Scheme rules for exercise of CEO

The National Disability Insurance Scheme rules may to the exercise of either or both of the following:

- (a) the CEO's power to certify for the purposes of p
- (b) the CEO's power under subparagraph 66(1)(b)(i) person.

does not affect the operation of the *Freedom of Information*

The provisions of this Part that relate to the disclosure operation of the *Freedom of Information Act 1982*.

—Registered providers of supports

Application to be a registered provider of supports

- (1) A person or entity may apply in writing to the CEO to be a registered provider of supports in relation to either or both of the following:
- managing the funding for supports under plans;
 - the provision of supports.

Note 1: If the funding for supports under a plan is managed only by a registered provider of supports (see subsection 42(1)).

Note 2: A registered plan management provider of supports (see subsection 42(1)) may apply for funding for supports under a plan (see subsection 42(1)).

- (2) The application must:
- be in the form (if any) approved by the CEO; and
 - include any information, and be accompanied by a fee, as determined by the CEO.

Note: The CEO is not required to make a decision on the application within 14 days (see section 197).

Criteria for registered providers of supports

- (1) The CEO must approve a person or entity as a registered provider of supports in relation to either or both of the following:
- managing the funding for supports under plans;
 - the provision of supports;
- if:
- the person or entity (the *applicant*) makes an application;
 - the CEO is satisfied that the applicant meets the Disability Insurance Scheme rules; and
 - the CEO is satisfied that the applicant is suitable to manage the funding for supports under plans or provide supports under plans, a class of supports, or a class of person, on the basis of the criteria and having regard to any matters prescribed in the Disability Insurance Scheme rules for the purposes of this section.
- (2) An approval of a person or entity as a registered provider of supports is a registered instrument.
- (3) The instrument may specify that the person or entity is approved in respect of:
- a class of supports specified in the instrument; or
 - a class of person specified in the instrument.
- (4) The instrument may specify that it ceases to be in effect on a date or event.

When a person or entity ceases to be a registered provider of supports

A person or entity ceases to be a registered provider of supports on the following days:

- if the instrument approving the person or entity is revoked under section 72—the day on which the revocation takes effect;
- if the instrument specifies that it ceases to be in effect on a date or event.

Revocation of approval as a registered provider of supports

- (1) The CEO may revoke an instrument approving a person or entity as a registered provider of supports if the CEO is satisfied that:

- (a) the person or entity no longer meets the criteria Disability Insurance Scheme rules for the purpose of paragraph (a);
 - (b) the application by the person or entity for approval is false or misleading in a material particular; or
 - (c) a circumstance exists that:
 - (i) is a circumstance prescribed by National Disability Insurance Scheme rules for the purposes of this paragraph; and
 - (ii) presents an unreasonable risk to one or more persons.
- (1A) Without limiting the circumstances that may be prescribed by National Disability Insurance Scheme rules made for the purposes of paragraph (a), the circumstances may relate to:
- (a) a contravention by a person or entity that is a registered provider, an employee or contractor of such a person or entity or
 - (b) a complaint made, or action taken, in relation to an employee or contractor of such a person or entity;
 - (c) such a person or entity being an insolvent under administration.
- (2) Before deciding to revoke the instrument, the CEO must give notice in writing to the person or entity that revocation is being considered. The notice must be given in writing and
- (a) include the CEO's reasons for considering the revocation;
 - (b) invite the person or entity to make submissions, within a period of 14 days after receiving the notice; and
 - (c) inform the person or entity that if no submissions are made, the revocation may take effect as early as 7 days after the end of the period in paragraph (b).
- (3) In deciding whether to revoke the instrument, the CEO must have regard to the period given to the CEO within the period referred to in paragraph (2).
- (4) The CEO must notify the person or entity, in writing, of the decision to revoke the instrument.
- (5) The notice under subsection (4) must be given within the period for making submissions. If the notice is not given within the period, the CEO is taken to have decided not to revoke the instrument.

National Disability Insurance Scheme rules for registered providers

- (1) The National Disability Insurance Scheme rules may prescribe the approval of persons or entities as registered providers and may prescribe criteria relating to:
 - (a) compliance with prescribed safeguards; and
 - (b) compliance with prescribed quality assurance standards;
 - (c) qualifications of persons or entities or employees;
 - (d) processes to deal with conflicts of interest, or potential conflicts of interest.
- (2) The National Disability Insurance Scheme rules may prescribe the approval of registered providers of supports, including by prescribing:
 - (a) the consequences of registered providers of supports not complying with the Act, the regulations or the National Disability Insurance Scheme rules;
 - (b) requirements with which registered providers of supports must comply in relation to the following:
 - (i) governance;
 - (ii) business practice;
 - (iii) accounting practice; and
 - (c) the obligations of registered providers of supports to comply with the Act, the regulations or the National Disability Insurance Scheme rules;
 - (d) the process for handling complaints involving registered providers of supports.

- (da) obligations relating to dealing with conflicts of interest; and
- (e) auditing requirements in relation to registered pr

–Children

ren

- (1) If this Act requires or permits a thing to be done by c to be done by or in relation to:
 - (a) the person who has, or the persons who jointly l child; or
 - (b) if the CEO is satisfied that this is not appropriat by the CEO.
- (1A) If:
 - (a) a State or Territory Minister; or
 - (b) the head (however described) of a Department c has parental responsibility for the child, the CEO m paragraph (1)(b) in relation to the child unless the M Department, as the case may be, has agreed in writir determination.
- (2) If a person mentioned in subsection (1) makes a plan participant who is a child, the person may request:
 - (a) that the person manage the plan wholly or to the
 - (b) that the plan be managed wholly, or to the exten registered plan management provider nominat plan; or
 - (c) that the plan be managed wholly, or to the exten Agency or a person specified by the Agency.
- (3) The statement of participant supports in the plan mus management request, except as mentioned in subsec
- (4) The statement of participant supports in a participant person referred to in paragraph (2)(a) is to manage tl participant's plan:
 - (a) to any extent, if the person is an insolvent under
 - (b) to a particular extent, if the CEO is satisfied tha extent would:
 - (i) present an unreasonable risk to the particip
 - (ii) permit the person to manage matters that a Disability Insurance Scheme rules as beir by the person.
- (5) Subsections (1) and (2) of this section do not have ef is a child if:
 - (a) the CEO is satisfied that the child is capable of l herself; and
 - (b) the CEO is satisfied that it is appropriate in the o not to apply to the child; and
 - (c) the CEO makes a determination that those subse
- (6) The National Disability Insurance Scheme rules may the CEO must comply, criteria that the CEO is to ap to have regard in deciding the following:
 - (a) whether to make a determination under paragra
 - (b) whether a person managing the funding for supp would present an unreasonable risk to the parti paragraph (4)(b);

(c) whether a child is capable of making decisions in paragraph (5)(a);

(d) whether it is appropriate for subsections (1) and mentioned in paragraph (5)(b).

(7) A determination made under paragraph (5)(c) is not a

Definition of parental responsibility

(1) For the purposes of this Act, a person has **parental responsibility** for a child if:

(a) the person is the child's parent and has not ceased to be the parent of the child because of an order made under the law of the State or Territory; or

(b) under a parenting order (within the meaning of the law of the State or Territory):

(i) the child is to live with the person; or

(ii) the child is to spend time with the person; or

(iii) the person is responsible for the child's care, protection and development.

(2) Despite subsection (1), if, under a law of the Commonwealth, a person has guardianship of a child, that person has **parental responsibility** for the child unless the CEO determines that one or more of the persons mentioned in subsection (1) instead have parental responsibility for the child.

(3) If subsection (1) would result in more than one person having parental responsibility for a child, the CEO may determine that one or more of those persons have parental responsibility for the child for the purposes of this Act.

(3A) If:

(a) a State or Territory Minister; or

(b) the head (however described) of a Department of the Commonwealth has guardianship of the child, the CEO must not make a determination under subsection (2) or (3) in relation to the child unless the head of that Department, as the case may be, has agreed in writing to that determination.

(4) The National Disability Insurance Scheme rules may specify criteria that the CEO is to apply in deciding whether to make a determination under subsection (2) or (3) and the CEO must have regard to those criteria.

(5) A determination under subsection (2) or (3) must be made in writing.

(6) A determination under subsection (2) or (3) is not a determination for the purposes of section 117.

Duty of care to children

(1) It is the duty of a person who may do a thing because of the wishes of the child concerned and to act in the best interests of the child to do that thing:

(2) A person does not breach the duty imposed by subsection (1) if, at the time the thing is done, the person reasonably believes that:

(a) he or she has ascertained the wishes of the child; and

(b) the doing of the thing is in the best interests of the child.

(3) A person does not breach the duty imposed by subsection (1) if, at the relevant time, the person reasonably believes that:

(a) he or she has ascertained the wishes of the child; and

(b) not doing the thing is in the best interests of the child.

(4) The National Disability Insurance Scheme rules may specify criteria that a person who may do a thing in relation to a child because of the wishes of the child must have regard to in deciding whether to do that thing:

- (a) to support decision-making by the child persona
- (b) to have regard to, and give appropriate weight to

ation of determinations under section 74

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

—Nominees

1—Functions and responsibilities of nominees

is of plan nominee on behalf of participant

- (1) Any act that may be done by a participant under, or f relates to:
 - (a) the preparation, review or replacement of the pa
 - (b) the management of the funding for supports unc may be done by the participant’s plan nominee, othe instrument of appointment of the plan nominee.

Note 1: For the appointment of plan nominees, see section 8

Note 2: This subsection is subject to section 85 (which deals with a participant) and subsection (4) of this section

- (2) Without limiting subsection (1), a request that may b participant may be made by the participant’s plan nc
- (3) An act done by a participant’s plan nominee because purposes of this Act (other than this Part), as if it ha
- (4) If, under this Act, the CEO gives a notice to a partici subsection (1) does not extend to an act that is requi participant personally.
- (5) If the participant’s plan nominee was appointed on th nominee may only do an act in relation to:
 - (a) the preparation, review or replacement of the pa
 - (b) the management of the funding for supports unc if the nominee considers that the participant is not ca to do, the act.

is of correspondence nominee on behalf of participant

- (1) Any act that may be done by a participant under, or f done by the participant’s correspondence nominee, c
 - (a) the preparation, review or replacement of the pa
 - (b) the management of the funding for supports unc

Note 1: For the appointment of correspondence nominees, s

Note 2: This subsection is subject to section 85 (which deals with a participant) and subsection (4) of this section

- (2) Without limiting subsection (1), a request that may b participant may be made by the participant’s corresp participant.
- (3) An act done by a participant’s correspondence nomir effect, for the purposes of this Act (other than this P: participant.
- (4) If, under this Act, the CEO gives a notice to a partici nominee, subsection (1) does not extend to an act th: done by the participant personally.

is of nominees to participant etc.

- (1) It is the duty of a nominee of a participant to ascertain to act in a manner that promotes the personal and so

- (2) A nominee does not breach the duty imposed by subsection (1) if, at the time the act is done, the nominee reasonably believes that:
 - (a) he or she has ascertained the wishes of the participant;
 - (b) the doing of the act promotes the personal and social interests of the participant.
- (3) A nominee does not breach the duty imposed by subsection (1) if, at the relevant time, the nominee reasonably believes that:
 - (a) he or she has ascertained the wishes of the participant;
 - (b) not doing the act promotes the personal and social interests of the participant.
- (4) The National Disability Insurance Scheme rules may require a nominee, including duties requiring the nominee:
 - (a) to support decision-making by the participant; and
 - (b) to have regard to, and give appropriate weight to, the interests of the participant; and
 - (c) to inform the CEO and the participant if the nominee acquires, or is about to acquire, any interest, pecuniary or otherwise, that may affect the performance of the nominee's duties.

Form of notices to correspondence nominee

- (1) Any notice that the CEO is authorised or required by subsection (1) to give to a participant must be given by the CEO to the participant's correspondence nominee.
- (2) The notice:
 - (a) must, in every respect, be in the same form, and be given to the participant; and
 - (b) may be given to the correspondence nominee by any means approved by the CEO.
- (3) If:
 - (a) under subsection (1), the CEO gives a notice to a participant's correspondence nominee; and
 - (b) the CEO has already given, or afterwards gives, a notice to a participant's correspondence nominee:
 - (i) is expressed to be given under the same provisions; and
 - (ii) makes the same requirement of the participant as the notice given under section 82 ceases to have effect, or does not come into effect in relation to the nominee notice.

Effect of notice by correspondence nominee

- (1) If, under section 81, a notice is given to a participant's correspondence nominee, the following paragraphs have effect:
 - (a) for the purposes of this Act, other than this Part, the notice:
 - (i) to have been given to the participant; and
 - (ii) to have been so given on the day the notice is given to the correspondence nominee;
 - (b) any requirement made of the participant to:
 - (i) inform the CEO of a matter; or
 - (ii) give information, or produce a document, that is required to be given or produced, may be satisfied by the correspondence nominee;
 - (c) any act done by the correspondence nominee for which a requirement has effect, for the purposes of this Act, is taken to have been done by the participant;
 - (d) if the correspondence nominee fails to satisfy a requirement, for the purposes of this Act, the participant is taken to have failed to satisfy that requirement.
- (2) To avoid doubt, for the purposes of this Act, the participant is taken to have failed to satisfy a requirement if:

- (a) the requirement imposes an obligation on the participant to give information or produce a document;
 - (b) the correspondence nominee does so within that period.
- (3) To avoid doubt, for the purposes of this Act, the participant is taken to have complied with a requirement if:
- (a) the requirement imposes an obligation on the participant to give information or produce a document;
 - (b) the correspondence nominee does not do so within that period.

Notice to inform Agency of matters affecting ability to act as

- (1) The CEO may give a nominee of a participant a written notice to inform the Agency if:
- (a) either:
 - (i) an event or change of circumstances happens;
 - (ii) the nominee becomes aware that an event or change of circumstances is likely to happen; and
 - (b) the event or change of circumstances is likely to happen, if:
 - (i) the ability of the nominee to act as the plan nominee of the participant (as the case may be) is likely to be affected;
 - (ii) the ability of the CEO to give notices to the participant is likely to be affected;
 - (iii) the ability of the nominee to comply with the requirements of this Act as a CEO under this Act.
- (2) A notice under subsection (1) must specify:
- (a) how the nominee is to inform the Agency; and
 - (b) the period within which the nominee is to inform the Agency, which must be a period of at least 14 days beginning on whichever day is applicable:
 - (i) the day on which the event or change of circumstances happens;
 - (ii) the day on which the nominee becomes aware that an event or change of circumstances is likely to happen.
- (3) A notice under subsection (1) is not ineffective only if it complies with paragraph (2)(a).
- (4) This section extends to:
- (a) acts, omissions, matters and things outside Australia;
 - (b) all persons, irrespective of their nationality or citizenship.

Notice to inform Agency of matters affecting ability to act as plan nominee regarding disposal of money

- (1) The CEO may give the plan nominee of a participant a written notice to give the Agency a statement about a matter relating to the disposal of an NDIS amount paid to the nominee on behalf of the participant.
- (2) A notice under subsection (1):
- (a) must specify how the plan nominee is to give the statement;
 - (b) must specify the period within which the plan nominee is to give the statement to the Agency.
- (3) A notice under subsection (1) is not ineffective only if it complies with paragraph (2)(a).
- (4) The period specified under paragraph (2)(b) must not be less than 14 days after the day the notice is given.
- (5) A statement given in response to a notice under subsection (1) must be given with a form approved by the CEO.

- (6) A person commits an offence if:
- (a) the person is a plan nominee; and
 - (b) the person refuses or fails to comply with a noti

Penalty: 30 penalty units.

- (7) Subsection (6) does not apply if the person has a rea

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

- (7A) It is a reasonable excuse for an individual to refuse o subsection (1) on the ground that to do so might tenc expose the individual to a penalty.

- (8) An offence against subsection (6) is an offence of str

Note: For strict liability, see section 6.1 of the *Criminal C*

- (9) This section extends to:

- (a) acts, omissions, matters and things outside Aust country; and
- (b) all persons, irrespective of their nationality or ci

of nominee to attend with participant

- (1) If:

- (a) under this Act, the CEO makes a request of a pa
- (b) the request is that the participant undergo an ass the nominee may accompany the participant while tl being conducted;
- (c) if the participant so wishes; and
- (d) to the extent that the person conducting the asse

- (2) If a participant's nominee is a body corporate, the las nominee is to be read as a reference to an officer or

2—Appointment and cancellation or suspension

Appointment of plan nominee

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

Note: The CEO must make the appointment in accordance with the regulations.

- (2) An appointment may be made:
 - (a) at the request of the participant; or
 - (b) on the initiative of the CEO.
- (3) An appointment may limit the matters in relation to which the person is a nominee of the participant.
- (4) An appointment may provide that it has effect for a specified period.
- (5) Without limiting the manner of specifying a term for which an appointment may be specified by reference to the expiry of a specified event.
- (6) To avoid doubt, the CEO may appoint more than one person as a nominee of a participant for the purposes of this Act.

Appointment of correspondence nominee

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

Note: The CEO must make the appointment in accordance with the regulations.

- (2) An appointment may be made:
 - (a) at the request of the participant; or
 - (b) on the initiative of the CEO.
- (3) An appointment may provide that it has effect for a specified period.
- (4) Without limiting the manner of specifying a term for which an appointment may be specified by reference to the expiry of a specified event.

Restrictions relating to appointments

- (1) A person may be appointed as the plan nominee and the correspondence nominee of the same participant.
- (2) The CEO must not appoint a person as a nominee of a participant unless:
 - (a) with the written consent of the person to be appointed; and
 - (b) after taking into consideration the wishes (if any) of the person in relation to the making of the appointment.
- (3) In appointing a person as a nominee of a participant, the CEO must consider whether the person is able to comply with the requirements of the regulations.
- (4) In appointing a nominee of a participant under section 10, the CEO must regard to whether there is a person who, under a law of a State or Territory:
 - (a) has guardianship of the participant; or
 - (b) is a person appointed by a court, tribunal, board or other authority that has power to make decisions for the participant and the making of those decisions in relation to the participant are relevant to the duties of the participant.

- (5) The CEO must cause a copy of an appointment under
 - (a) the nominee; and
 - (b) the participant.
- (6) The National Disability Insurance Scheme rules may
 - (a) persons who must not be appointed as nominees
 - (b) criteria the CEO is to apply or matters to which considering the appointment of a nominee.

Instances in which the CEO must cancel appointment of a nominee

At the request of a participant

- (1) If:
 - (a) a person is appointed as a nominee of a participant on the request of the participant; and
 - (b) the participant requests the CEO to cancel the appointment, the CEO must, as soon as practicable, cancel the appointment.
- (2) A request under paragraph (1)(b) need not be made in writing, the CEO must make a written record of the request.

Nominee no longer wishes to be a nominee

- (3) If:
 - (a) a person is appointed as a nominee of a participant;
 - (b) the person informs the CEO in writing that the person no longer wishes to be a nominee under that appointment;
 the CEO must, as soon as practicable, cancel the appointment.

Copy of instrument of cancellation to be given

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

Instances in which CEO may cancel or suspend appointment of nominees

At the request of a participant

- (1) If:
 - (a) a person is appointed as a nominee of a participant on the initiative of the CEO; and
 - (b) the participant requests the CEO to cancel the appointment, the CEO may, by written instrument, cancel the appointment.
- (2) A request under paragraph (1)(b) need not be made in writing, the CEO must make a written record of the request.
- (3) If a request is made under paragraph (1)(b):
 - (a) the CEO must decide whether to cancel the appointment on receiving the request; and
 - (b) if the CEO decides not to cancel the appointment, the CEO must give the person and participant written notice of the CEO's decision.

Ability to act as a nominee affected

- (4) The CEO may, by written instrument, suspend or cancel appointments if:
 - (a) the CEO gives the nominee a notice under section 105(1)(b);

- (b) in response to the notice, the nominee informs the CEO of the circumstances that have happened or are likely to happen;
- (c) having regard to that response, the CEO is satisfied that the nominee is fit to perform the duties of the position.

Failure to comply with a notice under section 83 or 84

- (5) The CEO may, by written instrument, suspend or cancel the appointment of a nominee if:
 - (a) the CEO gives the nominee a notice under section 83 or 84;
 - (b) the nominee does not comply with a requirement of that notice.
- Copy of instrument of cancellation or suspension to be given*
- (6) If the appointment of a person as a nominee of a part of a participant under this section, the CEO must give the person and the participant a copy of the instrument of cancellation or suspension.

85. Suspension etc. of appointment of nominees in cases of physical or mental harm

Suspension of appointment

- (1) The CEO may, by written instrument, suspend the appointment of a participant if the CEO has reasonable grounds to believe that the participant is or is likely to cause, physical, mental or financial harm to another person.
- (2) If the person's appointment is suspended under subsection (1), the CEO must:
 - (a) give the person and participant a copy of the instrument of suspension;
 - (b) by written notice given to the person, request that the person, within 14 days after the notice is given, a statement setting out why the person's appointment should not be cancelled by the CEO.

Cancellation of appointment following suspension

- (3) If the person gives the CEO the statement within the period specified in the written instrument, cancel the person's appointment.
- (4) The CEO must decide whether to cancel the person's appointment as soon as practicable after receiving the statement.
- (5) If the CEO decides not to cancel the person's appointment, the suspension of the person's appointment ends:
 - (a) the suspension of the person's appointment ends;
 - (b) the CEO must give the person and participant a copy of the instrument of suspension.
- (6) If the person does not give the CEO the statement within the period specified in the written instrument, the CEO must, by written instrument, cancel the person's appointment after that period ends.

Copy of instrument of cancellation to be given

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

86. Matters relating to cancellation or suspension of appointment of nominees

Cancellation of appointment

- (1) If:
 - (a) the National Disability Insurance Scheme rules in section 46(2) apply in relation to a person's appointment;
 - (b) the appointment of the person as a nominee is cancelled;

those rules continue to apply in relation to the person cancelled.

Suspension of appointment

- (2) While a person's appointment as a nominee is suspended for the purposes of this Act.
- (3) If a person's appointment as a nominee of a participant under section 91, the CEO may appoint another person under section 91 for the participant for a period specified in the instrument.

National Disability Insurance Scheme rules may prescribe requirements

The National Disability Insurance Scheme rules may

- (a) requirements with which the CEO must comply in relation to the appointment of nominees or the cancellation or suspension of appointments;
- (b) criteria the CEO is to apply or matters to which the CEO is to refer in appointing nominees or cancelling or suspending appointments.

Nothing in this Part is an expression of a contrary intention

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

3—Other matters relating to nominees

s powers to give notices to participant

Nothing in this Part is intended in any way to affect the provisions of this Act to give notices to, or make records of, a nominee.

Notification of nominee where notice is given to participant

- (1) If, under this Act (other than this Part), the CEO gives a notice to a correspondence nominee, the CEO may inform the participant of the giving of the notice and of the terms of the notice.
- (2) If, under this Act (other than this Part):
 - (a) the CEO gives a notice to a participant who has a plan;
 - (b) the notice relates to the preparation, management or implementation of the plan;
 the CEO must inform the plan nominee of the giving of the notice.

Protection of participant against liability for actions of nominee

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

Protection of nominee against criminal liability

- (1) A nominee of a participant is not subject to any criminal liability in relation to:
 - (a) any act or omission of the participant; or
 - (b) anything done, in good faith, by the nominee in connection with the participant's plan.
- (2) This section has effect subject to section 84 (which deals with the disposal of money).

–Review of decisions

Reviewable decisions

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

- (a) a decision under paragraph 20(a), subsection 21(3) that a person does not meet the access criteria;
- (b) a decision under paragraph 26(2)(b) not to specify a person as a participant in a plan;
- (c) a decision under section 30 to revoke a person's membership of a plan;
- (d) a decision under subsection 33(2) to approve the terms of a plan in a participant's plan;
- (e) a decision under paragraph 40(2)(b) not to extend a plan to a person;
- (f) a decision under subsection 48(2) not to review a plan;
- (g) a decision under section 70 to refuse to approve a person as a provider of supports;
- (h) a decision under section 72 to revoke an instrument appointing a registered provider of supports;
- (i) a decision under paragraph 74(1)(b) to make, or vary, an instrument in relation to a person;
- (j) a decision under paragraph 74(5)(c) not to make an instrument if subsections 74(1) and (2) do not apply to a child;
- (k) a decision under subsection 75(2) or (3) to make an instrument that a person has parental responsibility for a child;
- (l) a decision under section 86 to appoint a plan nominee;
- (m) a decision under section 87 to appoint a corresponding plan nominee;
- (n) a decision under section 89, 90 or 91 to cancel or suspend, the appointment of a nominee;
- (o) a decision under section 104 to give a notice to a person to take action to claim or obtain compensation;
- (oa) a decision under subsection 104(5A) to refuse to give a notice to a person to take action to claim or obtain compensation;
- (ob) a decision under paragraph 105(4)(a) to take over a plan to claim compensation;
- (oc) a decision under paragraph 105(4)(b) to take over a plan to claim compensation;
- (p) a decision under section 111 to give a notice that a person is liable for an amount;
- (q) a decision under section 116 not to treat the whole or part of a payment as not having been fixed by a judgment;
- (r) a decision under section 190 not to write off a debt;
- (s) a decision under section 192 that the CEO is not liable for a debt;
- (t) a decision under section 193 not to waive a debt;
- (u) a decision under subsection 194(3) or (4) that the CEO is not liable for a debt;
- (v) a decision under section 195 not to waive a debt.

Review of reviewable decisions

- (1) The CEO must give written notice of a reviewable decision to a person affected by the reviewable decision. The notice must:
 - (a) that:
 - (i) the person may request the CEO to review the decision;
 - (ii) if the CEO is taken to have made the reviewable decision under subsection 21(3) or 48(2)—the decision is reviewable;
 - (b) that the person may seek further review under section 104.

- (2) A person who is directly affected by a reviewable decision may request the reviewer to review the reviewable decision. If the person is give person must make the request within 3 months after
- (3) A request may be made by:
 - (a) sending or delivering a written request to the CEO
 - (b) making an oral request, in person or by telephone
- (4) If a person makes an oral request in accordance with subsection (3), the reviewer receiving the oral request must:
 - (a) make a written record of the details of the request
 - (b) note on the record the day the request is made.
- (5) If:
 - (a) the CEO receives a request for review of a reviewable decision
 - (b) the CEO is taken to have made a reviewable decision under subsection 100(2) or 48(2);
 the CEO must cause the reviewable decision to be reviewed by:
 - (c) to whom the CEO's powers and functions under subsection (3) are delegated
 - (d) who was not involved in making the reviewable decision
- (6) The reviewer must, as soon as reasonably practicable after receiving the request,
 - (a) confirm the reviewable decision; or
 - (b) vary the reviewable decision; or
 - (c) set aside the reviewable decision and substitute a different decision
- (7) A request for review of a reviewable decision, or a request for review of a decision that the CEO is taken to have made, does not prevent the taking of action to implement the reviewable decision or prevent the taking of action to implement the decision.
- (8) A failure of the CEO to comply with subsection (1) does not affect the validity of a reviewable decision or the right of a person directly affected by a reviewable decision.
- (9) To the extent that this provision relates to a decision that is taken to have been made, a reference in this section to a person includes a

Effect of withdrawal of request for review of reviewable decision before review completed

If:

- (a) a request is made for review of a reviewable decision
 - (b) before a decision on the review is made, the request for review is withdrawn
- the request for review is taken to be for review of the reviewable decision.

Effect of withdrawal of request for review

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

Applications to the Administrative Appeals Tribunal

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

Note: Under the *Administrative Appeals Tribunal Act 1975*, the interests of persons who are directly affected by a decision of the reviewer.

er 5—Compensation payments

—Requirement to take action to obtain compensation

CEO may require person to take action to obtain compensation

- (1) This section applies if:
 - (a) a participant or a prospective participant is, or is entitled to compensation in respect of a person
 - (b) the participant or prospective participant:
 - (i) has taken no action to claim or obtain the compensation
 - (ii) has taken no reasonable action to claim or obtain the compensation
- (2) The CEO may, by written notice, require the participant to take the action specified in the notice within the period specified in the notice. The action must be action that is reasonable to enable the participant to obtain the compensation.
- (3) In considering whether it is reasonable to require a participant to take an action, the CEO must have regard to the following:
 - (a) the disability of the participant or prospective participant
 - (b) the circumstances which give rise to the entitlement to compensation;
 - (c) any impediments the participant or prospective participant has to claiming or obtaining compensation;
 - (d) any reasons given by the participant or prospective participant why the participant has not claimed or obtained compensation;
 - (e) the financial circumstances of the participant or prospective participant;
 - (f) the impact of the requirement to take the action on the participant and his or her family.
- (4) The CEO must not give a notice under subsection (2) to a participant or prospective participant unless the CEO is satisfied that the participant or prospective participant has a reasonable chance of success in claiming or obtaining the compensation.
- (5) The period specified by the CEO must be a period of 30 days or less, beginning on the day on which the notice is given.
- (5A) The CEO may, on application by the participant or prospective participant, extend the period specified in the notice for a further specified period.
- (6) Even though a participant or a prospective participant gives up his or her right to compensation, the CEO may require the participant or prospective participant to take the action specified in the notice if the CEO is satisfied that the agreement is void, ineffective or unenforceable.

Consequences of failure to comply with a requirement to take action to obtain compensation

- (1) A participant or prospective participant who is given a notice requiring him or her to take action (the *required action*) to obtain compensation within a specified period must take the action within the period.
- (2) If a participant does not take the required action within the period, the participant is not entitled to compensation under a Commonwealth, State or Territory scheme of compensation under a Commonwealth, State or Territory scheme of compensation:
 - (a) if a plan is in effect for the participant—the participant is not entitled to compensation until the participant takes the action specified in the notice within the period;

- (b) if a plan is not yet in effect for the participant—section 32 in relation to commencing the facilitation of the participant's plan, but the plan does not come into effect until the required action.
- (3) If a prospective participant does not take the required action, the participant is not prevented from deciding whether or not the participant will take the required action, but the plan does not, despite section 37, come into effect until the required action.
- (4) If a participant or prospective participant does not take the required action within the period, and the action is to enable the person to claim or obtain compensation under a Commr than under a scheme of compensation under a Commr, the CEO may:
 - (a) take action to claim or obtain compensation in the name of the participant or prospective participant; or
 - (b) take over the conduct of any existing claim.
- (5) Before taking action to claim or obtain compensation or to take over the conduct of an existing claim, the CEO must have regard to the following:
 - (a) the disability of the participant or prospective participant;
 - (b) the circumstances which give rise to the entitlement to claim or obtain compensation;
 - (c) any impediments the CEO may face if the CEO takes action to claim or obtain compensation or to take over the conduct of the claim;
 - (d) any reasons given by the participant or prospective participant for not claiming or obtaining compensation (including any reasons given under subsection 104(2));
 - (e) the impact (including any financial impact), of taking action to claim or obtain compensation or to take over the conduct of the claim, on the participant or her family;
 - (f) any other matter the CEO considers relevant, having regard to the principles set out in Part 2 of Chapter 1 of this Act.
- (6) The CEO must not take any action to claim or obtain compensation or to take over the conduct of an existing claim, unless:
 - (a) the CEO has notified the participant or prospective participant that the action is being considered; and
 - (b) 28 days have passed since the notice was given.

Matters relating to claims etc. by CEO

- (1) If the CEO takes action to claim or obtain compensation or to take over the conduct of an existing claim, the Agency becomes liable to pay all that would otherwise be payable by the person who made the claim, or the person in whose name the claim was made, other than the amount payable by that person.
- (2) The CEO may:
 - (a) take whatever steps are appropriate to bring the claim to a conclusion;
 - (b) if the claim is before a court—settle the proceedings or to take steps to obtain a favourable judgement; and
 - (c) if the claim is before a court and judgement has been given in favour of the plaintiff—take such steps as are necessary to enforce the judgement.
- (3) The participant or prospective participant must sign a written agreement, or a document made or taken over by the CEO under section 105 (including any document made or taken over in or of any proceedings arising out of the claim), being a document that the participant or prospective participant to sign.

- (4) If the participant or prospective participant does not :
a requirement under subsection (3):
 - (a) if the claim is not before a court or tribunal at th
Court of Australia may, on the application of t
signed on behalf of the participant or prospecti
appointed by CEO; and
 - (b) otherwise—the court or tribunal in which proce
being heard may, on the application of CEO, s
- (5) If the CEO proposes to make an application under su
 - (a) the CEO must notify the participant or prospecti
 - (b) the participant or prospective participant has a r
of that application.

Recovery of amounts relating to claims etc. by CEO

Any amount obtained as a result of a claim made or t
section 105 (including amounts payable as a result o
must be paid to the Agency. The Agency must dedu
damages:

- (a) an amount equal to the total of all NDIS amount
participant before the amount is paid to the Ag
- (b) the amount of any costs incidental to the claim p
The Agency must pay the balance to the participant

–Agency may recover compensation fixed at certain amounts if certain amounts have been paid

Recovering past NDIS amounts from certain judgements

- (1) This section applies if:
 - (a) an amount of compensation is fixed under a judgement (a judgement) given in respect of a personal injury to a participant's impairment (whether or not the participant was injured at the time of the injury); and
 - (b) before the day of the judgement, NDIS amounts have been paid in respect of supports in relation to the participant's impairment; and
 - (c) the judgement specifies a portion (the *past NDIS amount*) of compensation to be a component of the total amount of compensation provided under the National Disability Insurance Scheme.
- (2) An amount (the *recoverable amount*) is payable by the agency if the recoverable amount is an amount equal to:
 - (a) unless subsection (4) or (5) applies—the sum of the amounts mentioned in subsection (3) (if applicable); or
 - (b) if subsection (4) or (5) applies—the amount would be the amount of whichever of those subsections is applicable.
- (3) If:
 - (a) the judgement fixes the amount of compensation payable in respect of the injury should be apportioned between the parties to the injury;
 - (b) as a result, the amount of compensation is less than the amount that would have been had not been so apportioned;
 the sum of the past NDIS amounts is to be reduced to the amount of the proportion of liability that is apportioned to the participant.
- (4) If the recoverable amount would, apart from this subsection, be taken to be the sum of the past NDIS amounts and the past NDIS support component, the recoverable amount is taken to be the sum of the past NDIS amounts and the past NDIS support component.
- (5) If the recoverable amount would, apart from this subsection, be taken to be the sum of the past NDIS amounts and the past NDIS support component, the recoverable amount is taken to be the amount of the sum of the past NDIS amounts and the past NDIS support component, reduced by the amount of any of the following:
 - (a) the amount of compensation fixed by the judgement;
 - (b) the sum of the amounts (if any) payable in respect of the injury under the following:
 - (i) the *Health and Other Services (Compensation) Act 1991*;
 - (ii) the *Health and Other Services (Compensation) Act 1991*;
 - (iii) Part 3.14 of the *Social Security Act 1991*;
 - (iv) a law of the Commonwealth, a State or a Territory, or the Disability Insurance Scheme rules;

Recovering past NDIS amounts from consent judgements and settlements

- (1) This section applies if:
 - (a) an amount of compensation is fixed under a consent judgement or settlement (a consent judgement or settlement) in respect of a personal injury that has caused, or is likely to cause, a participant's impairment (whether or not the participant was injured at the time of the injury); and
 - (b) before the day of the consent judgement or settlement, NDIS amounts (the *past NDIS amounts*) had been paid in respect of supports in relation to the participant's impairment.

- (2) An amount (the **recoverable amount**) is payable by the person if the recoverable amount is an amount equal to:
- (a) unless subsection (4) applies—the sum of the past NDIS amounts mentioned in subsection (3) (if applicable); or
 - (b) if subsection (4) applies—the amount worked out under subsection (3).
- (3) If:
- (a) the consent judgement or settlement fixes the amount of liability that liability for the injury should be apportioned to another person; and
 - (b) as a result, the amount of compensation is less than the amount that had not been so apportioned;
- the sum of the past NDIS amounts is to be reduced to the amount of the proportion of liability that is apportioned to the person under the consent judgement or settlement.
- (4) If the recoverable amount would, apart from this subsection, be the sum of the amounts (if any) payable in respect of the injury (or any) between:
- (a) the amount of compensation fixed under the consent judgement or settlement;
 - (b) the sum of the amounts (if any) payable in respect of the injury (or any) under the following:
 - (i) the *Health and Other Services (Compensation) Act 1991*;
 - (ii) the *Health and Other Services (Compensation) Act 1991*;
 - (iii) Part 3.14 of the *Social Security Act 1991*;
 - (iv) a law of the Commonwealth, a State or a Territory that provides for Disability Insurance Scheme rules;
- the recoverable amount is taken to be the amount of

s resulting from section 106 or 107

An amount payable by a person under section 106 or 107 is taken to be the amount payable by the person to the Agency.

—Recovery from compensation payers and insurers

110—may send preliminary notice to potential compensation payer or insurer

- (1) If:
- (a) a participant or prospective participant makes a claim for compensation (the *potential compensation payer*) for compensation;
 - (b) the claim relates to the participant's or prospective participant's or the CEO may give written notice to the potential compensation payer or the CEO may wish to recover an amount from the potential compensation payer;
- (2) If:
- (a) a participant or prospective participant makes a claim for compensation (the *potential compensation payer*) for compensation;
 - (b) the claim relates to the participant's or prospective participant's or the CEO may give written notice to the potential compensation payer or the CEO may wish to recover an amount from the potential compensation payer;
 - (c) an insurer may be liable, under a contract of insurance, to pay compensation to the potential compensation payer against any liability arising from the claim; the CEO may give written notice to the insurer, stating that the CEO may wish to recover an amount from the insurer.
- (3) A notice under subsection (1) or (2) must contain:
- (a) a statement of the potential compensation payer or insurer under subsection 110(1) or (2), as the case requires; and
 - (b) a statement of the effect of section 111 (recovery of amounts).

111—offence—potential compensation payer or insurer

- (1) A person (the *potential compensation payer*) commits an offence if:
- (a) the potential compensation payer is given a notice under subsection 110(1) or (2) in relation to a participant or prospective participant;
 - (b) before or after receiving the notice, the potential compensation payer is liable to pay compensation to the participant or prospective participant;
 - (c) the potential compensation payer does not give written notice to the participant or prospective participant of the potential compensation payer's liability within 7 days after becoming liable or later.

Penalty: Imprisonment for 12 months or 60 penalty units.

Note: If a body corporate is convicted of an offence against this section, the *Crimes Act 1914* allows a court to impose a fine of up to 60 penalty units in addition to the penalty above.

- (2) An insurer commits an offence if:
- (a) the insurer is given a notice under subsection 110(1) or (2) in relation to a participant or prospective participant; and
 - (b) before or after receiving the notice, the insurer is liable to pay compensation to the potential compensation payer, either wholly or partly;
 - (c) the insurer does not give written notice to the potential compensation payer of the insurer's liability within 7 days after becoming liable or receiving the notice, which notice is given to the potential compensation payer.

Penalty: Imprisonment for 12 months or 60 penalty units.

Note: If a body corporate is convicted of an offence against this section, the *Crimes Act 1914* allows a court to impose a fine of up to 60 penalty units in addition to the penalty above.

112—may send recovery notice to compensation payer or insurer

- (1) If:

- (a) one or more NDIS amounts have been paid to a participant in relation to the impairment; and
 - (b) a person (the *compensation payer*):
 - (i) is liable to pay compensation to the participant in relation to the impairment; or
 - (ii) if the compensation payer is an authority or person determined that a payment by way of compensation is payable to the participant in relation to the impairment; the CEO may give written notice to the compensation payer to recover from the compensation payer the amount specified in the notice.
- (2) If:
- (a) one or more NDIS amounts have been paid to a participant in relation to the impairment; and
 - (b) an insurer is liable, under a contract of insurance, to pay compensation to the compensation payer against any liability arising from a claim for compensation;
- the CEO may give written notice to the insurer that the insurer is liable to pay to the participant the amount specified in the notice.
- (3) If a compensation payer or insurer is given notice under this section that the compensation payer or insurer is liable to pay to the participant the amount specified in the notice:
- (a) an amount equal to the sum of the NDIS amounts specified in the notice; and
 - (b) an amount equal to the recoverable amount in relation to the claim for compensation, as determined by a court or a judge or arbitrator or settlement to which the liability is subject.
- (4) The amount to be specified in the notice is the lesser of:
- (a) an amount equal to the sum of the NDIS amounts specified in the notice; and
 - (b) an amount equal to the recoverable amount in relation to the claim for compensation, as determined by a court or a judge or arbitrator or settlement to which the liability is subject.
- (5) A notice under this section must contain a statement of the amount specified in the notice (if any) so far as it relates to such a notice.
- (6) This section applies to an amount payable by way of compensation to a participant in relation to the impairment (however the compensation is payable) if the compensation is inalienable.
- (7) If the CEO gives a person a notice under this section that the person is liable to pay to the participant the specified amount from the person, the specified amount is not payable by the person to the participant if the person has given the notice to the participant.

Primary notice or recovery notice suspends liability to pay

- (1) If a person (the *compensation payer*) has been given notice under subsection 111(1) in relation to the compensation payer's liability to pay compensation to the participant, the compensation payer is not liable to pay compensation to the participant if the notice has effect.
- (2) If an insurer has been given a notice under subsection 111(1) in relation to the insurer's liability, or possible liability, to indemnify the compensation payer for liability arising from a claim for compensation:
 - (a) the insurer is not liable to so indemnify the compensation payer; and
 - (b) the compensation payer is not liable to pay that amount to the participant while the notice has effect.

Compensation payer's or insurer's payment to Agency discharges liability to participant

- (1) Payment to the Agency of an amount that a compensation payer or insurer is liable to pay to the participant under section 111 in relation to a participant operates, to the extent of the payment, as a discharge of:

- (a) the compensation payer's liability to pay compensation;
 - (b) the participant's liability to pay the Agency.
- (2) Payment to the Agency of an amount that an insurer in relation to a participant operates, to the extent of the
- (a) the insurer's liability to the compensation payer;
 - (b) the compensation payer's liability to pay compensation;
 - (c) the participant's liability to pay the Agency.

109—making compensation payment after receiving preliminary recovery notice

- (1) A person (the *potential compensation payer*) commits an offence if:
- (a) the potential compensation payer has been given a notice under section 109 or 111(1) in relation to the payment of compensation to a prospective participant; and
 - (b) the potential compensation payer makes the compensation payment to the prospective participant.

Penalty: Imprisonment for 12 months or 60 penalty units.

Note: If a body corporate is convicted of an offence against section 109, the *Crimes Act 1914* allows a court to impose a fine of up to 100 penalty units in addition to the penalty above.

- (2) Subsection (1) does not apply if:
- (a) in the case of a notice under section 109—the compensation payer has given written notice that the notice is revoked; or
 - (b) in the case of a notice under section 111—the potential compensation payer has paid to the Agency the amount specified in the notice; or
 - (c) the CEO has given the potential compensation payer written permission to pay that amount.

- (3) An insurer commits an offence if:
- (a) the insurer has been given a notice under subsection (1) in relation to its liability to indemnify a person; and
 - (b) the insurer makes a payment in relation to that liability.

Penalty: Imprisonment for 12 months or 60 penalty units.

Note: If a body corporate is convicted of an offence against section 111, the *Crimes Act 1914* allows a court to impose a fine of up to 100 penalty units in addition to the penalty above.

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

110—making compensation payment if there is a contravention of section 109

- (1) A potential compensation payer or insurer who contravenes section 109, being liable under that section, is liable to pay to the Agency the amount determined by the CEO under paragraph (2):
- (a) if the contravention relates to a notice under section 109—the amount specified in the notice; or
 - (b) if the contravention relates to a notice under section 111—the amount specified in the notice.

- (2) The amount determined by the CEO under paragraph (1) is the amount that would have been specified in a notice under section 109 or 111, as the case may be, if given.

- (3) This section applies in relation to a payment by way of the Commonwealth, a State or Territory (however compensation is inalienable).
- (4) The amount determined by the CEO under paragraph under section 111 is a debt due by the compensation

–CEO may disregard certain payments

may disregard certain payments

For the purposes of this Chapter, the CEO may treat a payment as not having been fixed by a judgement (in a settlement, if the CEO thinks it is appropriate to do so) in the case.

er 6—National Disability Insurance Sc Launch Transition Agency

—National Disability Insurance Scheme Lau Transition Agency

olishment

- (1) The National Disability Insurance Scheme Launch T
this section.
- (2) The Agency:
 - (a) is a body corporate; and
 - (b) must have a seal; and
 - (c) may acquire, hold and dispose of real and perso
 - (d) may sue and be sued.

Note: The *Public Governance, Performance and Account*
Act deals with matters relating to corporate Commo
use and management of public resources.
- (3) The seal of the Agency is to be kept in such custody
used except as authorised by the Board.

tions of the Agency

- (1) The Agency has the following functions:
 - (a) to deliver the National Disability Insurance Sch
 - (i) support the independence, and social and e
with disability; and
 - (ii) enable people with disability to exercise of
their goals and the planning and delivery
 - (iii) ensure that the decisions and preferences o
respected and given appropriate priority;
 - (iv) promote the provision of high quality and i
people with disability to maximise indepe
community; and
 - (v) ensure that a reasonable balance is achieve
people with disability to choose to partici
 - (b) to manage, and to advise and report on, the fina
Disability Insurance Scheme including by:
 - (i) regularly making and assessing estimates c
of the National Disability Insurance Sche
 - (ii) identifying and managing risks and issues
sustainability of the National Disability I
 - (iii) considering actuarial advice, including adv
the reviewing actuary;
 - (c) to develop and enhance the disability sector, inc
research and contemporary best practice in the
 - (d) to build community awareness of disabilities an
disabilities;
 - (e) to collect, analyse and exchange data about disa
early intervention supports) for people with di
 - (f) to undertake research relating to disabilities, the
intervention supports) for people with disabilit
disabilities;

- (g) any other functions conferred on the Agency by an instrument made under this Act;
 - (h) to do anything incidental or conducive to the pe
- (2) In performing its functions, the Agency must use its
- (a) act in accordance with any relevant intergovernmental arrangements;
 - (b) act in a proper, efficient and effective manner.

Powers of the Agency

- (1) The Agency has power to do all things necessary or convenient in connection with the performance of its functions.
- (2) The Agency's powers include, but are not limited to,
- (a) the power to enter into contracts;
 - (b) the power to accept gifts, devises, bequests and

Charging of fees

- (1) The Agency may charge fees in accordance with an instrument made under subsection (2).
- (2) The Minister may, by legislative instrument, prescribe
- (a) the things that the Agency does in the performance of its functions charge fees; and
 - (b) the amount, or a method of working out the amount of the fee.
- (3) An instrument made under subsection (2) must not allow
- (a) a fee to be charged in relation to an access request;
 - (b) a participant to be charged a fee.
- (4) The Minister must not make an instrument under subsection (2) unless the Commonwealth and each host jurisdiction agree to the instrument.
- (5) A fee must not be such as to amount to taxation.

Directions that the Minister may give to the Agency

- (1) The Minister may, by legislative instrument, give directions to the Agency in relation to the performance of its functions.

Note: Section 42 (disallowance) and Part 4 of Chapter 3 (disallowance) do not apply to the directions (see regulations made for the purposes of section 54(2)(b) of that Act).

- (2) A direction given under subsection (1):
- (a) must not relate to a particular individual; and
 - (b) must not be inconsistent with:
 - (i) this Act, the regulations or an instrument made under this Act;
 - (ii) the *Public Governance, Performance and Accountability Act 2013* or an instrument made under that Act.
- (3) The Minister must not give a direction under subsection (1) unless the Commonwealth and each host jurisdiction agree to the giving of the direction.
- (4) The Agency must comply with a direction given under subsection (1).

The Agency does not have privileges and immunities of the Crown

The Agency does not have privileges and immunities of the Crown in the Commonwealth.

–Board of the Agency

1—Establishment and functions

Establishment

The Board of the Agency is established by this section.

Functions of the Board

- (1) The Board has the following functions:
 - (a) to ensure the proper, efficient and effective performance of the Agency;
 - (b) to determine objectives, strategies and policies to be pursued by the Agency;
 - (c) any other functions conferred on the Board by or under
 - (i) this Act, the regulations or an instrument made under this Act;
 - (ii) any other law of the Commonwealth.
- (2) The Board has the power to do all things necessary or convenient in connection with the performance of its functions.
- (3) Anything done in the name of, or on behalf of, the Agency by an officer or member of the Board, is taken to have been done by the Agency.

Minister may give the Board a statement setting out strategic directions for the Agency

- (1) The Minister may give the Board a written statement setting out the strategic directions for the Agency.
- (2) A statement given under subsection (1):
 - (a) must be of a general nature only; and
 - (b) must not relate to a particular individual; and
 - (c) must not be inconsistent with:
 - (i) this Act, the regulations or an instrument made under this Act;
 - (ii) the *Public Governance, Performance and Accountability Act 2013*, or an instrument made under that Act.
- (3) The Minister must not give a statement under subsection (1) unless each host jurisdiction agree to the giving of the statement.
- (4) In performing its functions, the Board must have regard to the statement given under subsection (1).
- (5) A statement given under subsection (1) is not a legislative instrument.

Matters to be considered in performing functions

In performing its functions, the Board must have regard to:

- (a) relevant actuarial analysis and advice; and
- (b) relevant advice and reports provided by the audit committee.

Note: See section 45 of the *Public Governance, Performance and Accountability Act 2013* which deals with audit committees for Commonwealth entities.

Rules about management of risk and performance of Board's functions

The Minister administering the *Insurance Act 1973* may determine rules that:

- (a) relate to the management of risks, whether financial or otherwise, faced by the Agency; and

(b) must be complied with by the Board in perform

2—Members of the Board

Membership

The Board consists of the Chair and up to 11 other members.

Appointment of Board members

- (1) The Board members are to be appointed by the Minister on a part-time basis.
- (2) A person is eligible for appointment as a Board member if that the person has skills, experience or knowledge in the following fields:
 - (a) the provision or use of disability services;
 - (b) the operation of insurance schemes, compensation or long-term liabilities;
 - (c) financial management;
 - (d) corporate governance.

Procedures relating to appointment

- (3) The Minister must consult the States and Territories before appointing a Board member.
- (4) Before the Minister appoints a Board member other than the Chair, the Minister must:
 - (a) seek the support of all the States and Territories;
 - (b) be satisfied that the appointment is supported by all the States and Territories.
- (4A) Despite subsection (4), the Minister may appoint a person as the Chair if:
 - (a) the Minister sought under that subsection the support of all the States and Territories for an appointment (the *proposed appointment*); and
 - (b) 90 days have passed since the Minister sought the support of all the States and Territories;
 - (c) the Minister is satisfied that it is not possible to obtain the support of all the States and Territories in accordance with that subsection or it is not known whether the proposed appointment can be made in accordance with that subsection.

Persons ineligible for appointment

- (5) Despite subsection (2), a person is not eligible for appointment as a Board member if the person is:
 - (a) a member (however described) of:
 - (i) the Parliament of the Commonwealth or a Territory;
 - (ii) the legislature of a Territory; or
 - (iii) a local government authority; or
 - (b) an employee of the Commonwealth, a State, a Territory or a local government authority; or
 - (c) the holder of a full-time office under a law of the Commonwealth, a State or Territory.

Balance of skills etc.

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

Procedure of appointment

A Board member holds office for the period specified
The period must not be more than 3 years.

Note: For reappointment, see section 33AA of the *Acts In*

ing appointments

Appointment to act during vacancy

- (1) The Minister may, by written instrument, appoint a p
specified period of not more than 12 months, during
whether or not an appointment has previously been 1
- (2) The Minister may, by written instrument, appoint a p
other than the Chair, for a specified period of not mc
in the office of a Board member other than the Chair
previously been made to the office.
- (2A) The Minister must consult the States and Territories :
subsection (2).

Appointment to act during absence etc.

- (3) The Minister may, by written instrument, appoint a p
during any period, or during all periods, when a Boa
(a) is absent from duty or from Australia; or
(b) is, for any reason, unable to perform the duties c

Note: The Minister must tell the Ministerial Council as so
a person to act as the Chair or another Board memb

Eligibility for appointment

- (4) A person is eligible for appointment under subsection
is satisfied that the person has skills, experience or k
fields mentioned in subsection 127(2).
- (5) Despite subsection (4), a person is not eligible for ap
or (3) if the person is:
 - (a) a member (however described) of:
 - (i) the Parliament of the Commonwealth or a
 - (ii) the legislature of a Territory; or
 - (iii) a local government authority; or
 - (b) the holder of a full-time office under a law of th
Territory.

Note: For rules that apply to acting appointments, see sect
Interpretation Act 1901.

uneration and allowances

- (1) A Board member is to be paid the remuneration that
Tribunal. If no determination of that remuneration b
member is to be paid the remuneration that is prescr
- (2) A Board member is to be paid the allowances that ar
- (3) This section has effect subject to the *Remuneration 1*

e of absence

Chair

- (1) The Minister may grant leave of absence to the Chair
the Minister determines.

- (2) Before the Minister grants leave of absence to the Chair, the Minister must consult the host jurisdictions about the proposed leave.

Other Board members

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

Outside employment

A Board member must not engage in any paid employment that creates a conflict of interest, an opinion, conflicts or may conflict with the proper performance of the member's duties.

Resignation of Board members

- (1) A Board member may resign his or her appointment by giving written notice of resignation.
- (2) The resignation takes effect on the day it is received or the later day specified in the resignation, on that later day.
- (3) The later day specified in the resignation must not be later than the day the resignation is received by the Minister.

Termination of appointment of Board members

- (1) The Minister may terminate the appointment of a Board member if:
 - (a) for misbehaviour; or
 - (b) if the member is incapable of performing the duties of the member; or
 - (c) if the Minister does not have confidence in the member.
- (2) The Minister may terminate the appointment of a Board member if:
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of insolvent debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration to his or her creditors; or
 - (b) the member is absent, except on leave of absence granted by the Board; or
 - (c) the member engages in paid employment that, in the Minister's opinion, may conflict with the proper performance of the member's duties (section 132); or
 - (e) the Minister is satisfied that the performance of the member has been unsatisfactory for a significant period.

Note: The appointment of a board member may also be terminated under section 132 of the *Governance, Performance and Accountability Act 2013* (the *GPA Act*) if the member is appointed to an appointment of an accountable authority, or a member of a public entity, and is contravening general duties of officials).

Procedures relating to termination

- (3) The Minister must consult the host jurisdictions about the proposed termination of the appointment of the Chair.
- (4) Before the Minister terminates the appointment of a Board member, the Minister must:
 - (a) seek the support of all the host jurisdictions for the proposed termination;

- (b) be satisfied that the termination is supported by:
 - (i) the Commonwealth; and
 - (ii) a majority of the group consisting of the C jurisdictions.

Termination under the Public Governance, Performance

- (5) Subsections (3) and (4) are taken to apply in relation to the appointment of the Chair under section 30 of the *Public Governance, Performance and Accountability Act 2013* in the same way as those subsections apply under this section.

r terms and conditions of Board members

- (1) A Board member holds office on the terms and conditions not covered by this Act that are determined by the Minister.
- (2) Before the Minister determines terms and conditions of office, the Minister must be satisfied that the Commonwealth and the C jurisdictions agree to the terms and conditions.

3—Meetings of the Board

Convening meetings

- (1) The Board must hold the meetings that are necessary for the Board to perform its functions.
- (2) Meetings are to be held at the times and places that the Board determines.

Note: Section 33B of the *Acts Interpretation Act 1901* contains provisions that determine which Board members may participate in meetings.
- (3) The Chair:
 - (a) may convene a meeting; and
 - (b) must convene at least 4 meetings each calendar year; and
 - (c) must convene a meeting within 30 days of receiving a request from another Board member.

Presiding at meetings

- (1) The Chair must preside at all meetings at which he or she is present.
- (2) If the Chair is not present at a meeting:
 - (a) a Board member nominated by the Chair presides; and
 - (b) if a Board member has not been nominated by the Chair, the Board members present must appoint one of them to preside.

Quorum

- (1) At a meeting of the Board, a quorum is constituted by a majority of the Board members present.
- (2) However, if:
 - (a) a Board member is required by rules made for the purposes of the *Public Governance, Performance and Accountability Act 2013* to abstain from voting during the deliberations, or to take part in any deliberation only in relation to a particular matter; and
 - (b) when the member leaves the meeting concerned, the remaining members at the meeting constitute a quorum, then the remaining members constitute a quorum for the purposes of a deliberation or decision at that meeting with respect to that matter.

Decisions at meetings

- (1) A question arising at a meeting is to be determined by a majority of the Board members present and voting.
- (2) The person presiding at a meeting has a deliberative and casting vote.

Regulation of meetings

The Board may, subject to this Division, regulate the conduct of its meetings as it considers appropriate.

Minutes

The Board must keep minutes of its meetings.

Decisions without meetings

- (1) The Board is taken to have made a decision at a meeting if:

- (a) without meeting, a majority of the Board members indicate agreement with the decision;
 - (b) that agreement is indicated in accordance with the requirements under subsection (2); and
 - (c) all the Board members were informed of the process and the efforts were made to inform all the members of the Board.
- (2) Subsection (1) applies only if the Board:
- (a) has determined that it may make decisions of the kind mentioned in subsection (1)(a);
 - (b) has determined the method by which Board members are to be consulted with proposed decisions.
- (3) For the purposes of paragraph (1)(a), a Board member is taken to have agreed to a proposed decision if the member would not have been in opposition to the decision if the matter had been considered at a meeting of the Board.
- (4) The Board must keep a record of decisions made in accordance with subsection (1).

–Independent Advisory Council

1—Establishment and function

Establishment

The Independent Advisory Council is established by

Function of the Advisory Council

- (1) The Advisory Council's function is to provide, on its request of the Board, advice to the Board about the
 - (a) performs its functions relating to the National D
 - (b) supports the independence and social and economic disability; and
 - (c) provides reasonable and necessary supports, including for participants in the National Disability Insu
 - (d) enables people with disability to exercise choice goals and the planning and delivery of their su
 - (e) facilitates the development of a nationally consi the planning and funding of, supports for peop
 - (f) promotes the provision of high quality and inno disability; and
 - (g) raises community awareness of the issues that a participation of people with disability, and faci of people with disability.
- (2) In providing advice, the Advisory Council must have carers and other significant persons in the lives of pe
- (3) Advice provided by the Advisory Council must not r
 - (a) a particular individual; or
 - (b) the approval of a person or entity as a registered revocation of that approval; or
 - (c) the corporate governance of the Agency; or
 - (d) the money paid to, or received by, the Agency.
- (4) The Advisory Council has power to do all things nec or in connection with the performance of its function

Advice of the Advisory Council

If the Advisory Council provides advice to the Board must:

- (a) have regard to the advice in performing its function
- (b) give the Ministerial Council a copy of the advice has been done, or is to be done, in response to

2—Members of the Advisory Council

Membership

The Advisory Council is to consist of the following members:

- (a) the Principal Member of the Council;
- (b) not more than 12 other members.

Appointment of members of the Advisory Council

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

Procedures relating to appointment

- (2) The Minister must consult the States and Territories and the Principal Member.
- (3) Before the Minister appoints a member of the Advisory Council, the Minister must:
 - (a) seek the support of all the States and Territories;
 - (b) be satisfied that the appointment is supported by all the States and Territories.
- (3A) Despite subsection (3), the Minister may appoint a member of the Advisory Council other than the Principal Member if:
 - (a) the Minister sought under that subsection the support of all the States and Territories for an appointment (the *proposed appointment*) of a member of the Advisory Council; and
 - (b) 90 days have passed since the Minister sought the support of all the States and Territories; and
 - (c) the Minister is satisfied that it is not possible to obtain the support of all the States and Territories in accordance with that subsection or it is not known whether such an appointment can be made in accordance with that subsection.

Persons ineligible for appointment

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

Membership requirements

- (5) In appointing the members of the Advisory Council, the Minister must:
 - (a) have regard to the desirability of the membership of the Advisory Council reflecting the diversity of people with disability; and
 - (b) ensure that all members are persons with skills, experience and knowledge that will help the Advisory Council perform its functions; and
 - (c) ensure that:
 - (i) a majority of the members are people with disability;
 - (ii) at least 2 of the members are carers of people with disability;
 - (iii) at least one of the members is a person with knowledge in relation to disability in rural and remote areas;
 - (iv) at least one of the members is a person with knowledge in the supply of equipment, or services, to people with disability.

Note: A particular member may meet one or more of the conditions (a), (b), (c) and (iv).

1 of appointment

A member of the Advisory Council holds office for the period of appointment. The period must not exceed 3 years.

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

Acting appointments

Appointment to act during vacancy

- (1) The Minister may, by written instrument, appoint a person to act as the Principal Member, for a specified period of not more than 12 months, in the office of the Principal Member, whether or not an appointment is made to the office.
- (2) The Minister may, by written instrument, appoint a person to act as a member of the Advisory Council other than the Principal Member, for a period of not more than 150 days, during a vacancy in the office of a member of the Advisory Council other than the Principal Member, whether or not an appointment is made to the office.
- (2A) The Minister must consult the States and Territories before making an appointment under subsection (2).

Appointment to act during absence etc.

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

Note 1: The Minister must tell the Ministerial Council as soon as possible of the appointment of a person to act as the Principal Member or another member of the Advisory Council under subsection 176(2).

Note 2: For rules that apply to acting appointments, see section 176 of the *Acts Interpretation Act 1901*.

Remuneration and allowances

- (1) A member of the Advisory Council is to be paid the remuneration determined by the Remuneration Tribunal. If no determination of the Tribunal is in operation, the member is to be paid the remuneration determined by the regulations.
- (2) A member of the Advisory Council is to be paid the allowances determined by the regulations.
- (3) This section has effect subject to the *Remuneration Tribunal Act 1973*.

Leave of absence

Principal Member

- (1) The Minister may grant leave of absence to the Principal Member on such conditions that the Minister determines.
- (2) Before the Minister grants leave of absence to the Principal Member under subsection (1), the Minister must consult the host jurisdiction.

Other members

- (3) The Principal Member may grant leave of absence to a member of the Advisory Council on the terms and conditions that the Principal Member determines.

- (4) The Principal Member must notify the Minister if the member of the Advisory Council leave of absence for

Disclosure of interests to the Minister

A member of the Advisory Council must give written disclosure of interests, pecuniary or otherwise, that the member has or could conflict with the proper performance of the member's

Disclosure of interests to the Advisory Council

- (1) A member of the Advisory Council who has an interest in a matter being considered or about to be considered by the Council must disclose the nature of the interest to a meeting of the Council.
- (2) The disclosure must be made as soon as possible after the member's knowledge.
- (3) The disclosure must be recorded in the minutes of the meeting.
- (4) Unless the Advisory Council otherwise determines, the member must
 - (a) must not be present during any deliberation by the Council on the matter;
 - (b) must not take part in any decision of the Council on the matter.
- (5) For the purposes of making a determination under subsection (4), the member must
 - (a) must not be present during any deliberation of the Council on making the determination; and
 - (b) must not take part in making the determination.
- (6) A determination under subsection (4) must be recorded in the minutes of the Council.

Resignation of members of the Advisory Council

- (1) A member of the Advisory Council may resign his or her office to the Minister a written resignation.
- (2) The resignation takes effect on the day it is received by the Minister, or the later day specified in the resignation, on that later day.
- (3) The later day specified in the resignation must not be later than the day the resignation is received by the Minister.

Termination of appointment of members of the Advisory Council

- (1) The Minister may terminate the appointment of a member of the Advisory Council
 - (a) for misbehaviour; or
 - (b) if the member is incapable of performing the duties of the office.
- (2) The Minister may terminate the appointment of a member of the Advisory Council
 - (a) the member:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration to his or her creditors; or
 - (b) the member is absent, except on leave of absence granted by the Council; or
 - (c) the member fails, without reasonable excuse, to disclose his or her interests (which deal with the disclosure of interests); or

- (d) the Minister is satisfied that the performance of for a significant period.

Procedures relating to termination

- (3) The Minister must consult the host jurisdictions about appointment of the Principal Member.
- (4) Before the Minister terminates the appointment of a member other than the Principal Member, the Minister must:
 - (a) seek the support of all the host jurisdictions for the termination;
 - (b) be satisfied that the termination is supported by:
 - (i) the Commonwealth; and
 - (ii) a majority of the group consisting of the host jurisdictions.

r terms and conditions of members of the Advisory Council

- (1) A member of the Advisory Council holds office on the terms and conditions relating to matters not covered by this Act that are determined by the Minister and a majority of host jurisdictions.
- (2) Before the Minister determines terms and conditions of the Advisory Council holds office, the Minister must be satisfied that the terms and conditions and a majority of host jurisdictions agree to the terms and conditions.

3—Procedures of the Advisory Council

Procedures of the Advisory Council

The Advisory Council may determine its own proced

–Chief Executive Officer and staff etc.

1—Chief Executive Officer

Establishment

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

Functions of the CEO

- (1) The CEO is responsible for the day-to-day administration of the Agency.
- (2) The CEO has power to do all things necessary or appropriate in connection with the performance of his or her duties.
- (3) The CEO is to act in accordance with the objectives, policies and directions of the Board under paragraph 124(1)(b).
- (4) The Board may give written directions to the CEO at any time in relation to his or her duties.
- (5) The CEO must comply with a direction under subsection (4).
- (6) A direction under subsection (4) is not a legislative instrument.
- (7) The CEO must give the Board a copy of any significant report or document that she receives, as soon as reasonably practicable after receiving it.

Appointment of the CEO

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

Note: For reappointment, see section 33AA of the *Acts Interpretation Act 1901*.
- (5) The CEO must not be a member of the Board.
- (6) Despite subsection (1), the first CEO is to be appointed by the Minister.
- (7) Before the Minister makes an appointment under subsection (6), the Minister must consult the host jurisdictions about the appointment.
- (8) This Part (other than subsection (1)) applies to the CEO as if the CEO had been appointed under subsection (1).

Acting appointments

The Board may, by written instrument, appoint a person to act as the CEO:

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

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

remuneration and allowances

- (1) The CEO is to be paid the remuneration that is determined by the Tribunal. If no determination of that remuneration by the Tribunal, the CEO is to be paid the remuneration that is prescribed by the Board.
- (2) The CEO is to be paid the allowances that are prescribed by the Board.
- (3) This section has effect subject to the *Remuneration and Allowances Act 2013*.

leave of absence

- (1) The CEO has the recreation leave entitlements that are prescribed by the Tribunal.
- (2) The Board may grant the CEO leave of absence, on such terms and conditions as to remuneration or otherwise as the Board thinks fit.

outside employment

The CEO must not engage in paid employment outside of the NDIS without the Board's approval.

disclosure of interests

- (1) A disclosure by the CEO under section 29 of the *Public Governance and Accountability Act 2013* (which deals with the duty of disclosure to the Board).
- (2) Subsection (1) applies in addition to any rules made by the Board.
- (3) For the purposes of this Act and the *Public Governance and Accountability Act 2013*, the CEO is taken not to have complied with section 29 of that Act if the CEO does not comply with subsection (1).

resignation of the CEO

- (1) The CEO may resign his or her appointment by giving notice to the Board.
- (2) The resignation takes effect on the day it is received by the Board, or on the later day specified in the resignation, on that later day.
- (3) The later day specified in the resignation must not be later than the day the resignation is received by the Board.

termination of appointment of the CEO

- (1) The Board may terminate the appointment of the CEO:
 - (a) for misbehaviour; or
 - (b) if the CEO is incapable of performing the duties of his or her office.
- (2) The Board may terminate the appointment of the CEO if:
 - (a) the CEO:
 - (i) becomes bankrupt; or
 - (ii) applies to take the benefit of any law for the relief of debtors; or
 - (iii) compounds with his or her creditors; or
 - (iv) makes an assignment of his or her remuneration to his or her creditors; or
 - (b) the CEO is absent, except on leave of absence, for more than 15 days in any 12 months; or
 - (c) the CEO engages, except with the Board's approval, in any other paid employment (see section 164).

- (d) the CEO fails, without reasonable excuse, to comply with the *Governance, Performance and Accountability* duty to disclose interests) or rules made for the
 - (e) the Board is satisfied that the performance of the CEO over a significant period.
- (3) If the Board terminates the appointment of the CEO, the Board must specify the reasons for the termination.

r terms and conditions of the CEO

The CEO holds office on the terms and conditions (if any) covered by this Act that are determined by the Board.

2—Staff etc.

- (1) The staff of the Agency must be persons engaged un
- (2) For the purposes of that Act:
 - (a) the CEO and the staff of the Agency together co
 - (b) the CEO is the Head of that Statutory Agency.

ices of other persons to be made available to the Agency

- (1) The Agency may arrange with:
 - (a) an Agency Head (within the meaning of the *Publ* (within the meaning of that Act); or
 - (b) a body established for a public purpose by or un for the services of officers or employees of the Ager body to be made available to assist the Agency in th
- (2) The Agency may arrange with the appropriate author services of officers or employees of the following to Agency in the performance of its functions:
 - (a) the Public Service of the State or Territory;
 - (b) a body established for a public purpose by or un

ultants

The Agency may engage consultants to assist in the p

nsitional provisions for staff of the Agency

Schedule 1 has effect.

–Reporting and planning

1—Reporting

Division A—Reporting by Board members

Annual report

- (1) The annual report prepared by the Board members at section 46 of the *Public Governance, Performance and Accountability Act 2013* must include the things described in subsections (2) and (3).
- (2) The annual report must include the following for the period:
 - (a) details of any directions given under section 121;
 - (b) details of any statements given under section 122;
 - (c) information (including statistics) and analysis the following in the period:
 - (i) participants;
 - (ii) funding or provision of supports by the Agency.
- (3) The Minister may, by legislative instrument, prescribe analysis, described in paragraph (2)(c) that must be included in the annual report.
- (4) The annual report must include:
 - (a) the summary, that was prepared under section 111, being prepared, of the annual financial sustainability report;
 - (b) the report of the reviewing actuary's review and summary mentioned in paragraph (a).

Prerequisite to making instrument under subsection (3)

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

Providing certain information to the Ministerial Council

- (1) The Board members must give the Ministerial Council, when, or as soon as practicable after, the Board members or the Finance Minister:
 - (a) information, a report or a document given to the Minister under paragraph 19(1)(b) of the *Public Governance, Performance and Accountability Act 2013*;
 - (b) particulars of a decision or issue notified to the Minister under paragraph (d) or (e) of that Act;
 - (c) an annual report given to the Minister under section 111.
- (1A) If the Board members inform the Minister of activities under section 175 of the Act, the Board members must also inform the Minister of the activities.
- (2) The Board members must cause a copy of information to be provided to a Minister of a host jurisdiction under section 175 to the Minister as soon as practicable after the Agency gives the information to the Minister.
- (3) As soon as practicable after any of the following events, the Board members must tell the Ministerial Council that the event has occurred:
 - (a) appointment of the person as the CEO by the Board;
 - (b) resignation of the person as the CEO;
 - (c) termination of the person's appointment as the CEO.

Quarterly report to the Ministerial Council

- (1) The Board members must:
 - (a) prepare a report on the operations of the Agency starting on 1 July, 1 October, 1 January or 1 April;
 - (b) give the report to the Ministerial Council within the period to which the report relates.
- (2) The report must include information (including statistics) of the following in the period to which the report relates:
 - (a) participants in each host jurisdiction;
 - (b) funding or provision of supports by the Agency.
- (3) The Minister may, by legislative instrument, prescribe in subsection (2) that must be included in the report.

Prerequisite to making instrument under subsection (3)

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

First report

- (5) If this section commences on a day other than a day specified in paragraph (1)(a):
 - (a) the Board members are not required to prepare a report under subsection (1) immediately before the next quarter start day;
 - (b) the first report under this section must be for the period:
 - (i) starting on the day this section commences;
 - (ii) ending immediately before the second quarter start day.

Division B—Reporting by the Agency

Section 126—Information requested by Commonwealth, State or Territory

- (1) The Agency must give the Minister information requested by the Minister:
 - (a) expenditure, relating to a particular host jurisdiction, of money received by the Agency from the Commonwealth or that host jurisdiction;
 - (b) activities of the Agency relating to a particular host jurisdiction.
- (2) The Agency must give a Minister of a host jurisdiction the following Ministerial Council information requested by that Minister:
 - (a) expenditure of money received by the Agency from that jurisdiction;
 - (b) expenditure, relating to that jurisdiction, of money received by the Agency from the Commonwealth; or
 - (c) activities of the Agency relating to that jurisdiction.

Division C—Reporting by the Minister

Section 127—Reporting to the Ministerial Council

- (1) As soon as practicable after giving a direction to the Board under section 125, the Minister must give a statement to the Ministerial Council.
- (2) As soon as practicable after any of the following events, the Minister must tell the Ministerial Council that the event has occurred:
 - (a) appointment of the person as:
 - (i) the Chair or another member of the Board;
 - (ii) the Principal Member or another member of the Board.

- (iii) the first CEO;
- (b) appointment of the person to act as:
 - (i) the Chair or another member of the Board;
 - (ii) the Principal Member or another member of the Board;
- (c) grant of leave of absence for the person for a period specified in section 131 or 151;
- (d) resignation of the person as a Board member or
- (e) termination of the person's appointment as a Board member or as a member of the Advisory Council.

2—Planning

Corporate plan

- (1) In preparing a corporate plan under section 35 of the *National Disability Insurance Scheme and Accountability Act 2013*, the Board must have regard to section 125 of this Act.
- (2) The corporate plan must include details of the following:
 - (a) the financial sustainability of the National Disability Insurance Scheme (including estimates of the current and future expenditure of the Scheme);
 - (b) the risks and issues relevant to the financial sustainability of the Scheme and the management of those risks and issues.
- (3) The Board must give a copy of the plan to the Minister for Social Services for the period covered by the plan.
- (4) If the Board varies the plan, the Board must notify the Minister of the variation.
- (5) Subsection 35(3) of the *Public Governance, Performance and Accountability Act 2013* (which deals with the Australian Government's key financial management principles) apply to a corporate plan prepared by the Board.

–Finance

Payments to the Agency by the Commonwealth

- (1) There is payable to the Agency such money as is appropriate for the purposes of the Agency.
- (2) The Finance Minister may give directions about the manner in which, money payable under subsection (1) is to be paid.
- (3) If a direction under subsection (2) is given in writing, it is an instrument.

Payments to the Agency by the host jurisdictions

The Agency may receive money paid to it by a host jurisdiction for funding reasonable and necessary supports for participants in the Insurance Scheme launch who are in the host jurisdiction.

Application of money by the Agency

- (1) The money of the Agency consists of:
 - (a) money paid to the Agency under section 178; and
 - (b) money received by the Agency under section 179; and
 - (c) any other money paid to, or received by, the Agency.
- (2) Subject to subsection (3), the money of the Agency is to be applied:
 - (a) in payment or discharge of any expenses, charges or liabilities undertaken by the Agency in the performance of its powers; and
 - (b) in payment of remuneration and allowances payable to or for the Agency.
- (3) The money of the Agency that was received by the Agency under subsection (1) is to be applied only for the purpose mentioned in that subsection.
- (4) Subsections (2) and (3) do not prevent investment, under the *Governance, Performance and Accountability Act 2013*, of money immediately required for the purposes of the Agency.

1—Actuarial assessment of financial sustainability

1—Scheme actuary and annual financial sustainability

Nomination of scheme actuary

- (1) The Board must, in writing, nominate as scheme actuary
 - (a) who is a Fellow of The Institute of Actuaries of Australia;
 - (b) who the Board considers is a fit and proper person on the basis of his or her experience or knowledge, to be the scheme actuary;
 - (c) who is not the reviewing actuary.
- (2) The Board must, in writing, revoke the nomination if the actuary is not a Fellow of The Institute of Actuaries of Australia.
- (3) Subsection (2) does not limit subsection 33(3) of the *Performance and Accountability Act 2013* (deals with revocation and variation of instruments).

Duties of scheme actuary

Duties relating to annual financial sustainability report

- (1) The scheme actuary must do all of the following each year:
 - (a) assess:
 - (i) the financial sustainability of the National Disability Insurance Scheme;
 - (ii) risks to that sustainability; and
 - (iii) on the basis of information held by the Actuary, the supports to people with disability;
 - (b) consider the causes of those risks and trends;
 - (c) make estimates of future expenditure of the National Disability Insurance Scheme;
 - (d) prepare a report of that assessment, considering the risks identified in paragraph (a);
 - (e) prepare a summary of that report that includes the risks identified in paragraph (a).

Duty to make quarterly estimates of future expenditure

- (2) At least once each quarter, the scheme actuary must make estimates of the future expenditure of the National Disability Insurance Scheme. For this purpose, **quarter** means a period of 3 months ending on 1 October, 1 January or 1 April.

Note: The CEO must give the Board a copy of the advice.

Duty to provide information and advice on request

- (3) The scheme actuary must, on request from the Board, provide the Board with the information or advice.

Duty to report concerns to Board

- (4) If the scheme actuary has significant concerns about the financial sustainability of the National Disability Insurance Scheme, or the risk to the financial sustainability of the National Disability Insurance Scheme, he or she must report those concerns to the Board as soon as practicable.

Rules for performance of scheme actuary's duties

The Minister administering the *Insurance Act 1973* may make rules that the scheme actuary must comply with in performing his or her duties.

2—Reviewing actuary

nomination of reviewing actuary

- (1) The Board must, in writing, nominate as reviewing a
 - (a) who is a Fellow of The Institute of Actuaries of
 - (b) who the Board considers is a fit and proper person with sufficient experience or knowledge, to be the reviewing actuary;
 - (c) who is not the scheme actuary; and
 - (d) who is not a member of the staff of the Agency
- (2) The nomination has effect for 3 years or a shorter period.
- (3) The Board must, in writing, revoke the nomination if
 - (a) ceases to be a Fellow of The Institute of Actuaries of
 - (b) becomes a member of the staff of the Agency
- (4) Subsections (2) and (3) do not limit subsection 33(3) (which deals with revocation and variation of instrument).

Reviewing actuary for first 3 years

- (5) The Board must nominate the Australian Government as the first reviewing actuary, as soon as reasonably practicable after the commencement of this section. The nomination has effect for 3 years after the commencement of this section and subsection 33(3) of the *Acts Interpretation Act 1988* (subsection (3) of this section).

Nominations and revocations are not legislative instruments

- (6) Neither a nomination made under subsection (1) nor a revocation made under subsection (3) is a legislative instrument.

functions of reviewing actuary

- (1) The reviewing actuary must, on request by the Board, prepare and submit to the Board actuarial reports and advice received by the Board.
- (2) The reviewing actuary must review and report to the Board on the sustainability report and summary prepared under section 33.
- (3) The reviewing actuary must include in each of his or her reports a statement whether he or she is satisfied that the Agency has sufficient resources necessary for him or her to conduct the review to which the report relates.
- (4) If the reviewing actuary has significant concerns about the National Disability Insurance Scheme, or the risk management of the Scheme, he or she must report those concerns to the Board as soon as practicable.

3—Assistance of scheme actuary and reviewing a

Agency to assist scheme actuary and reviewing actuary

The Agency must make arrangements to enable:

- (a) the scheme actuary to perform his or her duties
- (b) the reviewing actuary to perform his or her duties

—Miscellaneous

tion

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

Note: However, the Agency may be subject to taxation under section 177-5 of the *A New Tax System (Goods and Fringe Benefits Tax Assessment Act 1986)*.

er 7—Other matters

–Debt recovery

1—Debts

s due to the Agency

- (1) If:
 - (a) a payment is made to a person that is, or purports to be, an amount to or in respect of a participant; and
 - (b) the person is not entitled for any reason to the payment and the amount of the payment is a debt due to the Agency taken to arise when the person receives the payment
- (2) Without limiting paragraph (1)(b), a person is taken to have made a payment of an NDIS amount if the payment should be taken to have been made for one or more of the following reasons:
 - (a) the payment was made as a result of a computer error;
 - (b) the payment was made as a result of:
 - (i) a contravention of this Act, the regulations or the National Disability Insurance Scheme rules; or
 - (ii) a false or misleading statement or a misrepresentation;
 - (c) the participant died before the payment was made
- (3) If a person does not comply with subsection 46(1) in relation to a payment of an equal amount, an equal amount is a debt due to the Agency by the person.
- (4) The National Disability Insurance Scheme rules may be made to require that, if a payment of an NDIS amount, an equal or lesser amount is a debt due to the Agency.

2—Methods of recovery

1 proceedings

- (1) A debt under this Act is recoverable by the Agency brought by the CEO on behalf of the Agency in a court of law.
- (2) Subject to subsections (3), (4) and (5), legal proceedings for the recovery of the debt are not to be commenced after the end of the period (the recovery period) starting on the first day an officer becomes aware, or could reasonably be expected to become aware, of the circumstances that gave rise to the debt.
- (3) If, within the recovery period, part of the debt is paid, legal proceedings for the recovery of the balance of the debt may be commenced within 6 months after the day of payment.
- (4) If, within the recovery period, the person who owes the debt dies, legal proceedings for the recovery of the debt may be commenced within 6 years starting on the day of acknowledgment of the debt.
- (5) If, within the recovery period, any of the following occurs, legal proceedings for the recovery of the debt may be commenced within 6 years after the end of the activity:
 - (a) a review of a file relating to action for the recovery of the debt;
 - (b) other internal Agency activity relating to action for the recovery of the debt.

Arrangements for payment of debt

- (1) The CEO may enter into an arrangement with a person to pay a debt, owed by the person to the Agency under this Act, in a way set out in the arrangement.
- (2) An arrangement entered into under subsection (1) has effect, on and after the day specified in the arrangement, whether that day is the day the arrangement commences (whether that day is the day the arrangement commences or a later day).
- (3) If an arrangement entered into under subsection (1) commences on a day other than the day specified in subsection (2), it has effect on and after the day on which it commences.
- (4) The CEO may terminate or alter an arrangement entered into under subsection (1):
 - (a) at the debtor's request; or
 - (b) after giving 28 days' notice to the debtor of the termination or alteration; or
 - (c) without notice, if the CEO is satisfied that the person has provided false information about his or her true capacity to repay the debt.

Recovery of amounts from financial institutions

- (1) If:
 - (a) an NDIS amount or NDIS amounts are paid to a person from an account kept with the institution; and
 - (b) the CEO is satisfied that the payment or payment of the amount was made by someone who was not the person or one of the persons named in the account kept with the institution;
 the CEO may give a written notice to the institution requiring the institution to pay to the Agency, within the reasonable period stated in the notice, the lesser of the amount specified in the notice, being an amount not exceeding the amount of the NDIS amounts;

- (d) the amount standing to the credit of the account institution.
- (2) If:
- (a) an NDIS amount or NDIS amounts that are interperson (the *first person*) are made to a financial account that was kept with the institution by the first person and one or more other persons; and
 - (b) the first person died before the payment or payment to the CEO may give a written notice to the institution under paragraphs (a) and (b) and requiring the institution to pay the amount within a reasonable period stated in the notice, the lesser of the period and the period specified in the notice;
 - (c) an amount specified in the notice that is equal to or less than the NDIS amounts;
 - (d) the amount standing to the credit of the account institution.
- (3) As soon as possible after issuing a notice under subsection (2) to the deceased estate in writing of:
- (a) the amount sought to be recovered from the deceased estate;
 - (b) the reasons for the recovery action.
- (4) A financial institution must comply with a notice given to it under subsection (2).
- Penalty: 300 penalty units.
- (5) It is a defence to a prosecution of a financial institution for failing to comply with a notice given to it under subsection (1) or (2) if the financial institution was incapable of complying with the notice.
- (6) If a notice is given to a financial institution under subsection (1) (wrong account) or under subsection (2) (death of person) in respect of an NDIS amount or NDIS amount payable to the Agency from the institution in respect of the debt recovered by any other person in respect of the NDIS amount or

3—Information relating to debts

Requirement to obtain information from a person who owes a debt to the Agency

The CEO may require a person who owes a debt to the Agency to provide one or more of the following:

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

Requirement to obtain information about a person who owes a debt to the Agency

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

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

Notice of requirement

- (1) A requirement under this Division must be made by an officer of the Agency to whom the requirement is made.
- (2) The notice must specify:
 - (a) the nature of the information or document that is required;
 - (b) how the person is to give the information or produce the document;
 - (c) the period within which the person is to give the information or produce the document to the Agency; and
 - (d) the officer to whom the information is to be given or the document is to be produced; and
 - (e) that the notice is given under this section.
- (3) The period specified under paragraph (2)(c) must begin on the day on which the notice is given.
- (4) The notice may require the person to give the information or produce the document to a specified officer to answer questions.
- (5) If the notice requires the person to appear before an officer, the notice must specify the time and place at which the person is to appear. The notice must also specify the time at which the notice is given.

Penalty for refusal or failure to comply with requirement

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

Penalty: 30 penalty units.

Note: If a body corporate is convicted of an offence against this section, section 4B of the *Crimes Act 1914* allows a court to impose a fine of up to 100 penalty units.

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

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

- (3) It is a reasonable excuse for an individual to refuse to provide a document on the ground that to do so might tend to expose the individual to a penalty.

4—Non-recovery of debts

CEO may write off debt

- (1) Subject to subsection (2), the CEO may, on behalf of the Agency, write off a debt, for a stated period or otherwise.
- (2) The CEO may decide to write off a debt under subsection (1) if:
 - (a) the debt is irrecoverable at law; or
 - (b) the debtor has no capacity to repay the debt; or
 - (c) the debtor's whereabouts are unknown after all reasonable steps have been taken to locate the debtor; or
 - (d) it is not cost effective for the Agency to take action to recover the debt.
- (3) For the purposes of paragraph (2)(a), a debt is irrecoverable if:
 - (a) the debt cannot be recovered by means of deduction from the relevant 6 year period mentioned in section 194 or 195; or
 - (b) there is no proof of the debt capable of sustaining recovery; or
 - (c) the debtor is discharged from bankruptcy and the debt was not incurred before the debtor became bankrupt and was not incurred after the debtor became bankrupt; or
 - (d) the debtor has died leaving no estate or insufficient assets to repay the debt.
- (4) A decision made under subsection (1) takes effect:
 - (a) if no day is specified in the decision—on the day the decision is made; or
 - (b) if a day is specified in the decision—on the day specified, or on the day before, on or after the day the decision is made.
- (5) Nothing in this section prevents anything being done that would not have been done if the debt had not been written off under this section.

CEO may waive Agency's right to recover debt

- (1) On behalf of the Agency, the CEO may waive the Agency's right to recover all or a part of a debt from a debtor only in the circumstances mentioned in section 194 or 195.
- (2) A waiver takes effect:
 - (a) on the day specified in the waiver (whether that is the day the decision to waive is made); or
 - (b) if the waiver does not specify when it takes effect—on the day the waiver is made.

Note: If the CEO waives the Agency's right to recover all or a part of a debt and the debt exists, the debt is not recoverable.

Waiver of debt arising from error

The CEO must waive the right to recover the proportion of a debt that is attributable to an administrative error made by the Agency, if the payment or payments that gave rise to that proportion of the debt were made:

- (a) the debt is not raised within 6 weeks from the first day the debt arose; or
- (b) if the debt arose because a person has complied with a requirement of the Act, the debt is not raised within 6 weeks from the end of the period of compliance, or whichever is the later.

Note: This section does not allow waiver of a part of a debt arising from an administrative error and partly by one or more other factors (such as the debtor's financial position).

Waiver of small debt

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

- (a) the debt is, or is likely to be, less than \$200; and
- (b) it is not cost effective for the Agency to take action to recover the debt.

Waiver in relation to settlements

- (1) If the Agency has agreed to settle a civil action against a debtor for less than the full amount of the debt, the CEO may not recover the difference between the debt and the amount that is the subject of the settlement.
- (2) If the CEO has agreed to settle proceedings before the Agency relating to recovery of a debt on the basis that the debtor will repay the amount of the debt, the CEO must waive the right to recover the debt and the amount that is the subject of the settlement.
- (3) If:
 - (a) the Agency has recovered at least 80% of the debt; and
 - (b) the Agency and the debtor agree that the debtor will repay the whole of the debt; and
 - (c) the debtor cannot repay a greater proportion of the debt, the CEO must waive the remaining 20% or less of the debt.
- (4) If the CEO and a debtor agree that the debtor's debt will be repaid by paying the Agency an agreed amount that is less than the full amount of the debt at the time of the agreement (the *unpaid amount*), the CEO may not recover the difference between the unpaid amount and the full amount of the debt.
- (5) The CEO must not make an agreement described in subsection (4) unless satisfied that the agreed amount is at least the present value of the debt repaid in instalments of amounts, and at times, determined by the Agency.
- (6) For the purposes of subsection (5), the present value of the debt is worked out in accordance with the method prescribed in the Regulations under the Insurance Scheme rules.

Waiver in special circumstances

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

- (a) the debt did not arise in whole or part as a result of:
 - (i) a contravention of this Act, the regulations or the Insurance Scheme rules; or
 - (ii) a false or misleading statement or a misrepresentation by the debtor;
- (b) there are special circumstances (other than financial hardship to the debtor) that the CEO is satisfied make waiver appropriate; and
- (c) the CEO is satisfied that waiver is more appropriate than recovery of the debt.

–General matters

Method of notification by CEO

If this Act, the regulations or the National Disability Insurance Agency permit the CEO to notify a person, the CEO may not:

- (a) by sending the notice by prepaid post addressed to the address last known to the CEO; or
- (b) by giving the notice to the person personally; or
- (c) in any other way the CEO considers appropriate.

Information not required to make a decision

- (1) If this Act, the regulations or the National Disability Insurance Agency request or application to be in a form approved by the Agency, the CEO may not make a decision on the request or application if it is not in that form.
- (2) If this Act, the regulations or the National Disability Insurance Agency require the CEO to require information or documents for the purpose of making a decision or doing a thing, the CEO is not required to do the thing until the information or documents are provided.

Protection of participant against liability for actions of persons

Nothing in this Part renders a participant guilty of an offence in relation to any act or omission of a person who does a thing in relation to the participant.

Protection against criminal liability

A person who does a thing because of section 74 is not liable for an offence under this Act in relation to:

- (a) any act or omission of the participant concerned; and
- (b) anything done, or omitted to be done, in good faith.

Legal effect of CEO's certificate

- (1) For the purposes of paragraph 21B(1)(c) of the *Criminal Code*, a certificate to an offence against Part 7.3 or 7.4 of the *Criminal Code*, a certificate signed by the CEO is prima facie evidence of the facts stated in the certificate.
- (2) The certificate may specify:
 - (a) the person to whom, or in relation to whom, an offence was committed because of an act or omission for which the person was convicted of an offence against Part 7.3 or 7.4 of the *Criminal Code*, the Agency or this Act; and
 - (b) the amount paid; and
 - (c) the act or omission.

Note: Parts 7.3 and 7.4 of the *Criminal Code* deal with certain offences involving misleading statements.

Legal assistance for review not funded

Nothing in this Act permits or requires the Agency to provide legal assistance to prospective participants or participants in relation to this Act.

Delegation by the Minister

- (1) The Minister may, in writing, delegate to the CEO his or her functions under this Act, the regulations or the National Disability Insurance Scheme rules.
- (2) The Minister must not delegate to the CEO his or her functions under this Act, the regulations or the National Disability Insurance Scheme rules if each host jurisdiction has agreed to the delegation.
- (3) When exercising powers under a delegation, the CEO must comply with any directions of the Minister.

Delegation by the CEO

- (1) The CEO may, in writing, delegate to an officer any of his or her functions under this Act, the regulations or the National Disability Insurance Scheme rules.
- (2) Despite subsection (1), the CEO may delegate the CEO's functions under Chapter 4 (privacy) only to an officer who is a member of the National Disability Insurance Scheme under section 169.
- (3) A person exercising powers or functions under a delegation must comply with any directions of the CEO.

Application of Act to unincorporated bodies

- (1) This Act applies to an entity that is a registered provider if the entity wishes to apply for approval as a registered provider under this Act but it applies with the changes mentioned in subsection (2).
- (2) In addition, Division 2 of Part 1 of Chapter 4 applies to an entity that is a registered provider but it applies with the changes mentioned in subsection (1).
- (3) An obligation that would be imposed on the entity is
 - (a) if the entity is a partnership—each partner; or
 - (b) in any other case—each member of the committee of management but may be discharged by any of the partners or any member of the committee of management.
- (4) A thing that the entity would be permitted to do may
 - (a) if the entity is a partnership—any partner; or
 - (b) in any other case—any member of the committee of management.
- (5) An offence against this Act that would otherwise be committed by the entity instead to have been committed by:
 - (a) if the entity is a partnership—any partner:
 - (i) who was knowingly concerned in, or party to, the offence; or
 - (ii) who aided, abetted, counselled or procured the commission of the offence;
 - (b) in any other case—any member of the committee of management:
 - (i) who was knowingly concerned in, or party to, the offence; or
 - (ii) who aided, abetted, counselled or procured the commission of the offence.

Time frames for decision making

- (1) If this Act requires the CEO to make a decision or do a thing under the National Disability Insurance Scheme rules, the decision or thing may be made, or the thing done, within a longer period than the specified period.
- (2) If this Act requires or provides for a person other than the CEO to make a decision or do a thing under the National Disability Insurance Scheme rules, the decision or thing is to be done within a longer period.

–Constitutional matters

binds Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) However, this Act does not make the Crown liable to

native constitutional basis

- (1) Without limiting its effect apart from this subsection, have if its operation were expressly confined to:
 - (a) the provision of pharmaceutical, sickness or hos
 - (b) the provision of medical services or dental servi
cription).
- (2) Without limiting its effect apart from this subsection, have if its operation were expressly confined to acts. in relation to, a Territory or a place acquired by the C purpose.
- (4) Without limiting its effect apart from this subsection, have if its operation were expressly confined to acts. communication by means of a postal, telegraphic, te (within the meaning of paragraph 51(v) of the Const
- (5) Without limiting its effect apart from this subsection, have if its operation were expressly confined to acts. census and statistics (within the meaning of paragraj
- (7) Without limiting its effect apart from this subsection, have if its operation were expressly confined to acts.
 - (a) the Commonwealth; or
 - (b) an authority of the Commonwealth.

urrent operation of State laws

- (1) It is the intention of the Parliament that this Act is nc of a State or Territory to the extent that that law is ce with this Act.
- (2) The regulations may prescribe kinds of laws of State laws to which subsection (1) applies.

Note: Before the regulations can be made, the Minister mu all the host jurisdictions agree: see paragraph 210(2)

–Review of the Act

Review of operation of Act

- (1) The Minister must cause an independent review of the Act to be undertaken commencing on the second anniversary of the commencement of the Act.
- (2) The review is to be undertaken by a person or persons in accordance with an agreement of the Ministerial Council.
- (3) The terms of reference of the review must be agreed by the Ministerial Council.
- (4) The person or persons undertaking the review must complete the review within 6 months of the commencement of the review.
- (5) Upon receiving the report, the Minister must give a copy of the report to the Ministerial Council to:
 - (a) make recommendations in response to the report;
 - (b) obtain COAG's response to the report within the period specified in a copy of the report to the Ministerial Council.
- (6) The Minister must consider the report.
- (7) The Minister must cause copies of the report to be tabled in each House of Parliament within 15 sitting days of that House after the report is received by the Ministerial Council.
- (8) The Minister must cause copies of COAG's response to the report to be tabled in each House of the Parliament within 6 months of giving the report to the Ministerial Council.
- (9) If the Minister fails to cause copies of the response to the report to be tabled in each House of the Parliament within the period referred to in subsection (8), the Minister must give an explanation of the failure to be tabled in each House of the Parliament within 15 sitting days of that House after the end of that period.

–Legislative instruments

National Disability Insurance Scheme rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
 - (a) required or permitted by this Act to be prescribed Insurance Scheme rules; or
 - (b) necessary or convenient to be prescribed in order to give effect to the Act.
- (2) Despite section 14 of the *Legislation Act 2003*, National Disability Insurance Scheme rules may make provision for or in relation to a matter incorporating any matter contained in an instrument existing from time to time.
- (2A) The National Disability Insurance Scheme rules may
 - (a) the CEO to specify assessment tools; and
 - (b) the circumstances in which the CEO is to use the tools.
- (3) When making National Disability Insurance Scheme rules, the Minister must regard to the need to ensure the financial sustainability of the National Disability Insurance Scheme.
- (4) The Minister must not make Category A National Disability Insurance Scheme rules unless the Commonwealth and each host jurisdiction agrees to the making of the rules.
- (5) The Minister must not make Category B National Disability Insurance Scheme rules relating to:
 - (a) an area, law or program of a host jurisdiction; or
 - (b) the commencement of the facilitation of the preparation of a plan by persons who are identified (wholly or partly, and directly or indirectly) to a host jurisdiction;
 unless the host jurisdiction has agreed to the making of the rules.
- (6) The Minister must not make Category C National Disability Insurance Scheme rules unless the Commonwealth and a majority of host jurisdictions agree to the making of the rules.
- (7) The Minister must not make Category D National Disability Insurance Scheme rules unless each host jurisdiction has been consulted in relation to the making of the rules.
- (8) The following table sets out the categories of National Disability Insurance Scheme rules for the purposes of this section.

Categories of National Disability Insurance Scheme rules

Item	Category of rules	Description
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Categories of National Disability Insurance Scheme rules

Item	Category of rules	Description
1	Category A National Disability Insurance Scheme rules	<p>Rules made for the purposes of any o provisions:</p> <p>(a) section 17;</p> <p>(b) paragraph 23(1)(c), except to the rules are of a kind mentioned in s</p> <p>(ba) section 25;</p> <p>(c) section 27;</p> <p>(d) section 33;</p> <p>(e) section 35;</p> <p>(ea) section 44;</p> <p>(eb) section 48;</p> <p>(f) section 66;</p> <p>(g) section 67;</p> <p>(ga) section 70;</p> <p>(gb) subparagraph 72(1)(c)(i);</p> <p>(gc) section 73;</p> <p>(h) section 74;</p> <p>(i) section 75;</p> <p>(j) section 76;</p> <p>(k) section 80;</p> <p>(l) section 88;</p> <p>(m) section 93.</p> <p>All other rules, except Category B N; Insurance Scheme rules, Category C Disability Insurance Scheme rules an National Disability Insurance Schem</p>
2	Category B National Disability Insurance Scheme rules	<p>Rules made for the purposes of any o provisions:</p> <p>(a) paragraph 21(2)(b);</p> <p>(b) section 22;</p> <p>(c) subsection 23(3);</p> <p>(ca) section 32;</p> <p>(d) section 58.</p>
3	Category C National Disability Insurance Scheme rules	<p>Rules made for the purposes of any o provisions:</p> <p>(a) subsection 32A(4);</p> <p>(b) section 45;</p> <p>(c) section 204.</p>
4	Category D National Disability Insurance Scheme rules	<p>Rules made for the purposes of any o provisions:</p> <p>(a) section 40;</p> <p>(d) section 46;</p> <p>(f) section 106;</p> <p>(g) section 107;</p> <p>(h) section 182;</p> <p>(i) section 194.</p>

ulations

- (1) The Governor-General may make regulations prescri
- (a) required or permitted by this Act to be prescribe

- (b) necessary or convenient to be prescribed for car Act.
- (2) Before the Governor-General makes regulations under
 - (a) if the regulations are for the purposes of section remuneration and allowances of Board member Council and the CEO)—consult the host jurisdiction regulations; or
 - (b) otherwise—be satisfied that the Commonwealth agreed to the making of the regulations.

Rule 1—Transitional provisions for staff of the Agency

Note: See section 171A.

FaHCSIA agreement covers staff of the Agency

- (1) The FaHCSIA agreement covers the Commonwealth employees), the Community and Public Sector Union Arts Alliance in relation to the APS employees' employment established by subsection 169(2).

Note: For *APS employee* and *SES employee*, see section 2

- (2) The FaHCSIA agreement has effect under subclause
 - (a) it had been made by the CEO on behalf of the Commonwealth
 - (b) references in the agreement to the Secretary were
 - (c) references in the agreement to the Department or Statutory Agency established by subsection 169(2)
- (3) For the purposes of the *Fair Work Act 2009*, the FaHCSIA agreement under this clause is taken to be an enterprise agreement as it has effect apart from this clause.
- (4) Guidelines and policies relating to employment conditions and other employment-related matters that had effect for that agreement immediately before the commencement of this clause for the purposes of that agreement as it has effect under this clause.
- (5) Guidelines and policies have effect under subclause (4)
 - (a) references in them to the Secretary were references to the Secretary of the Commonwealth
 - (b) references in them to the Department or FaHCSIA Agency established by subsection 169(2).
- (6) Subclause (4) does not prevent the alteration or revocation of the agreement as they have effect under that subclause, by the CEC

End of coverage by FaHCSIA agreement

- (7) The FaHCSIA agreement ceases to cover the Commonwealth employees, the Community and Public Sector Union and the Media Arts Alliance under subclause (1) on the coming into operation of
 - (a) is made by the CEO on behalf of the Commonwealth
 - (b) covers the Commonwealth and the APS employees (including SES employees) employed in the Statutory Agency established by subsection 169(2).
- (8) Subclause (7) has effect subject to section 58 of the *Industrial Relations Act 1996*.

Transitional provisions about transitional staffing matters

The Minister may, by legislative instrument, provide in relation to the staff of the Agency.

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in t

Legislation history and amendment history—Endnotes 3 and

Amending laws are annotated in the legislation history and amen

The legislation history in endnote 3 provides information about e
amend) the compiled law. The information includes commencem
details of any application, saving or transitional provisions that a

The amendment history in endnote 4 provides information about
(generally section or equivalent) level. It also includes informati
compiled law that has been repealed in accordance with a provisi

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel
changes to a compiled law in preparing a compilation of the law
not change the effect of the law. Editorial changes take effect fro

If the compilation includes editorial changes, the endnotes includ
general terms. Full details of any changes can be obtained from tl

Misdescribed amendments

A misdescribed amendment is an amendment that does not accur
made. If, despite the misdescription, the amendment can be giver
is incorporated into the compiled law and the abbreviation “(md)
amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended,
is added to the details of the amendment included in the amendm

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph /sub-subpara
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = prev
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)
Div = Division(s)	reloc = relocate
ed = editorial change	renum = renum
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed ar
gaz = gazette	s = section(s)/s
LA = <i>Legislation Act 2003</i>	Sch = Schedule
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivi
(md) = misdescribed amendment can be given effect	SLI = Select Le
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory
mod = modified/modification	Sub-Ch = Sub-
No. = Number(s)	SubPt = Subpa
	<u>underlining</u> = w commenced

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement
National Disability Insurance Scheme Act 2013	20, 2013	28 Mar 2013	s 3–12, 55–73 and 117–210: 29 Mar 2013 (s 2(1) items 2, 5, 6, 9) s 13–54 and 74–116: 1 July 2013 (s 2(1) items 3, 4, 7, 8) Remainder: 28 Mar 2013 (s 2(1) item 1)
National Disability Insurance Scheme Legislation Amendment Act 2013	44, 2013	28 May 2013	Sch 1 (items 1–19, 21–26, 33–43, 46, 56–58): 1 July 2013 (s 2(1) items 2, 4, 6, 7, 9, 11) Sch 1 (items 20, 27–32, 44, 45, 47–55): 29 May 2013 (s 2(1) items 3, 5, 8, 10)
Aged Care (Living Longer Living Better) Act 2013	76, 2013	28 June 2013	Sch 4 (items 5A–5D): 1 Aug 2013 (s 2(1) item 5)
Social Services and Other Legislation Amendment Act 2014	14, 2014	31 Mar 2014	Sch 12 (items 27, 28): 1 Apr 2014 (s 2(1) item 8)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 10 (items 36–53) and Sch 14: 1 July 2014 (s 2(1) items 6, 14)
as amended by			
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)
as amended by			
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (items 395–397): 5 Mar 2016 (s 2(1) item 2)
National Disability Insurance Scheme Amendment Act 2016	51, 2016	5 May 2016	Sch 1: 1 July 2016 (s 2(1) item 2)

Act	Number and year	Assent	Commencement
Statute Update Act 2016	61, 2016	23 Sept 2016	Sch 3 (item 31): 21 Oct 2016 (s 2(1) item 1)

Endnote 4—Amendment history

Provision affected	How affected
Chapter 1	
Part 2	
s 3.....	am No 44, 2013
s 4.....	am No 44, 2013
Part 4	
s 9.....	am No 44, 2013; No 76, 2013; No 62, 2014
s 10.....	am No 126, 2015
Chapter 3	
Part 1	
s 22.....	am No 44, 2013
s 23.....	am No 44, 2013
s 24.....	am No 44, 2013
s 27.....	am No 44, 2013
s 29.....	am No 76, 2013
Part 2	
Division 2	
s 33.....	am No 44, 2013
s 34.....	am No 44, 2013
s 35.....	am No 44, 2013
s 40.....	am No 44, 2013
Division 3	
s 44.....	am No 44, 2013
s 46A.....	ad No 14, 2014
s 46B.....	ad No 14, 2014
Chapter 4	
Part 2	
s 60.....	am No 44, 2013
s 61.....	am No 44, 2013
s 66.....	am No 44, 2013
Part 3	
s 70.....	am No 44, 2013
Part 4	
s 74.....	am No 44, 2013
s 75.....	am No 44, 2013
Part 5	
Division 1	
s 78.....	am No 44, 2013
s 80.....	am No 44, 2013
Division 2	
s 86.....	am No 44, 2013
s 88.....	am No 44, 2013
s 90.....	am No 44, 2013
s 93.....	am No 44, 2013
Part 6	
s 99.....	am No 44, 2013
Chapter 5	
Part 1	
s 104.....	am No 44, 2013

Provision affected	How affected
s 105.....	am No 44, 2013
Chapter 6	
Part 1	
s 117.....	am No 62, 2014
s 118.....	am No 44, 2013
s 121.....	am No 62, 2014; No 126, 2015
Part 2	
Division 1	
s 125.....	am No 62, 2014
s 125A.....	rs No 44, 2013 am No 62, 2014
s 125B.....	ad No 44, 2013
Division 2	
s 126.....	am No 51, 2016
s 134.....	am No 62, 2014
Division 3	
s 138.....	am No 62, 2014; No 51, 2016
Part 4	
Division 1	
s 165.....	rs No 62, 2014
s 167.....	am No 62, 2014
Part 5	
Division 1	
Subdivision A	
s 172.....	am No 62, 2014
s 173.....	am No 62, 2014
Division 2	
s 177.....	rs No 62, 2014
Part 6	
s 180.....	am No 62, 2014
Part 6A	
Division 1	
s 180B.....	am No 44, 2013; No 62, 2014
Chapter 7	
Part 1	
Division 4	
s 193.....	am No 44, 2013
Part 2	
s 200.....	am No 61, 2016
Part 5	
s 209.....	am No 44, 2013; No 126, 2015

