2025-2026

THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA

SENATE

NATIONAL DISABILITY INSURANCE SCHEME AMENDMENT (SECURING THE NDIS FOR FUTURE GENERATIONS) BILL 2026

REVISED EXPLANATORY MEMORANDUM

(Circulated by the authority of the
Minister for Disability and the National Disability Insurance Scheme,
the Hon Mark Butler MP)

NATIONAL DISABILITY INSURANCE SCHEME AMENDMENT (SECURING THE NDIS FOR FUTURE GENERATIONS) BILL 2026

OUTLINE

The National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (the Bill) will protect the National Disability Insurance Scheme (NDIS, Scheme) for people with permanent and significant disability and for future generations who will rely on it.

The Bill addresses two key vulnerabilities. First, the NDIS is currently growing at a rate that was unforeseen when it was established in 2013 under the *National Disability Insurance Scheme Act 2013* (the Act). If left unchecked, this puts the long term sustainability of the NDIS at risk. This Bill includes important changes to improve the quality of NDIS supports for participants and put the Scheme on a more sustainable footing, now and for future generations.

Second, over time the NDIS has become the target for fraudulent activity, impacting the Scheme as a whole. Fraud has a direct and devastating impact on the lives of participants and their families, leading to lower quality services, exploitation and harm. The National Disability Insurance Agency (Agency) does not have the necessary powers to regulate and monitor the payment of over $50 billion per year.

While this Bill focuses on these two key vulnerabilities, it also makes a number of technical amendments to improve the operation of certain aspects of the Act. It draws on key independent reports, including the Independent Review into the National Disability Insurance Scheme (NDIS Review) conducted in 2023 and co-chaired by Professor Bruce Bonyhady AM and Ms Lisa Paul AO PSM, and the advice of the NDIS Provider and Worker Registration Taskforce (Registration Taskforce), completed in 2024 and chaired by Ms Natalie Wade. Amendments also take account of the findings of the Australian National Audit Office's report *National Disability Insurance Scheme Fraud and Control Program* (2019) and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission), which ran from 2019 to 2023.

The Bill contains 5 schedules.

Schedule 1 sets out the key measures that will help put the NDIS back on a sustainable footing now and into the future. This includes amendments that achieve the following:

1. Clarify the meaning of 'functional capacity' and provide for the assessment of thresholds of functional capacity. This is consistent with Recommendation 3 (action 3.1) of the NDIS Review, which recommended that the Agency introduce a more consistent and robust approach to determining eligibility for access to the NDIS based on transparent methods for assessing functional capacity.

2. Introduce sensible controls and conditions on unscheduled plan reassessments to ensure that they can only be requested where there is a genuine and ongoing change in a participant's support needs. Amendments will also ensure that only participants, and those authorised to act on their behalf, can request a plan reassessment.
3. Make clear that NDIS supports can only be provided to address needs arising directly from impairments that meet the disability requirements in section 24 of the Act and/or the early intervention requirements in section 25 of the Act.
4. Provide a mechanism to directly manage the financial sustainability of the Scheme by reducing the funding for specified groups of supports across the Scheme.
5. Introduce the concept of 'plan renewals' for old framework plans. This legislates the existing administrative process of 'plan continuations' but ensures that all 'renewed' plans comply with the requirements of section 33 of the Act in relation to funding component amounts, total funding amounts and funding periods.
6. Lift certain parameters around the assessment of reasonable and necessary supports into the Act and update the principles that apply to participants and their plans.
7. Allow for the suspension of plans where reasonable attempts have been made to contact the participant and the participant has not responded to requests for relevant information. Allow for a plan to be revoked if contact is not made within 90 days.
8. Clarify the definition of permanence by introducing the concept of 'all appropriate treatment'. This is consistent with Recommendation 3 (action 3.9) of the NDIS Review that legislative change to strengthen the operation of the permanence criteria be considered.
9. Require that a participant's eligibility for certain other service systems must be taken into account when making decisions about access to the NDIS.

Schedule 2 includes measures that address fraud within the NDIS and provide the Agency with necessary powers to regulate the payment of NDIS amounts. This includes amendments that achieve the following:

1. Enable improved regulation of the NDIS by amending the definition of NDIS provider. This is consistent with the advice of the Registration Taskforce.
2. Provide the Agency with compliance and enforcement powers by triggering provisions of the *Regulatory Powers (Standard Provisions) Act 2014* and providing for a range of new civil penalties. Safeguards will be established when regulatory action is taken in respect of participants.
3. Update the Agency's functions to allow it to investigate criminal activity and amend certain information gathering powers to ensure that information obtained by the Agency's Chief Executive Officer (CEO) from participants and prospective participants can be used as part of those investigations.
4. Require that providers, nominees and participants retain records relating to the provision of supports and/or claiming for NDIS amounts for specified periods of time. A civil penalty will apply to a provider who fails to comply with this requirement.

5. Require that claims for NDIS amounts are made within 90 days of a support being provided.
6. Enable a new approach to plan management, including transitioning to a panel arrangement for plan managers. This will include provisions to ban providers of plan management supports from providing any other supports under the NDIS, to end the extensive conflicts of interest that currently exist in the plan management market.

Schedule 3 includes changes to NDIS governance, including:

1. The establishment of a clearer and more transparent mechanism to set and enforce prices under the NDIS. Maximum prices for NDIS supports will be incorporated into a legislative instrument made on the advice of the Agency following its Annual Pricing Review. The legislative pricing mechanism will also allow for the indexation of old framework plans.
2. Allow for the use of automated decision making within the NDIS, including protections and requirements on how decisions and processes are to be automated, and for standard operating procedure instruments.
3. Clarify the operation of the prohibition on managing funding for supports if a participant or nominee has been convicted of certain criminal offences.

Schedule 4 makes minor amendments to facilitate the operationalisation and roll out of new framework planning.

Schedule 5 deals with transitional matters relevant to the entirety of the Bill.

BACKGROUND

The NDIS is one of Australia's most important social support schemes, however it continues to grow at a rate far higher than other comparable programs. The Scheme has deviated from its original intent to support people with significant and permanent disability and has uncontrolled inflation in participant support costs. A distorted market structure with integrity weaknesses is also contributing to costs and negatively impacting on participants. Without measures to address these drivers of growth, safeguard participants and strengthen the integrity of claiming of NDIS amounts, the future of the NDIS is at risk.

The Bill implements a package of measures that are necessary to address immediate cost pressures in the NDIS and help set the NDIS on a more sustainable footing into the future. This Bill introduces amendments which continue to support implementation of critical recommendations of the NDIS Review and the Disability Royal Commission.

In January 2026, National Cabinet agreed to work together to reduce the annual cost growth of the NDIS down to 5 to 6 per cent, or lower. Amendments in this Bill help to restore the NDIS to its original intent, stabilise unsustainable growth and make the NDIS more equitable for those who need it most.

FINANCIAL IMPACT STATEMENT

The changes in the Bill are expected to contribute towards National Cabinet's agreement to reduce annual cost growth increases for the Scheme to 5 to 6 per cent, or lower.

The immediate changes arising from this Bill can be operationalised by the Agency following commencement. Changes relating to planning can be operationalised from 1 October 2026, and changes to access from 1 January 2028.

IMPACT ANALYSIS

The following impact analysis are attached to this explanatory memorandum:

- Impact analysis equivalent: National Disability Insurance Scheme Reforms, May 2026
- Impact analysis equivalent: Mandatory Registration of all National Disability Insurance Scheme Providers, May 2026

CONSULTATION

Many of the proposed amendments respond to, or have been informed by, recommendations of the NDIS Review. The NDIS Review engaged closely and extensively with people with disability, their families, carers, providers and workers. The NDIS Review heard from over 10,000 people and organisations and hosted 14 webinars and over 200 virtual and face-to-face consultations including 38 regional, rural and remote engagement and 50 phone interviews. The NDIS Review also received over 4,600 online submissions from both individuals and organisations. This Bill will implement the following NDIS Review recommendations:

- Action 3.1 recommended a more consistent and robust approach to determining NDIS eligibility. This included establishing an agreed definition of substantially reduced functional capacity. Proposed amendments in Schedule 1, Part 1, will introduce an agreed definition of 'functional capacity' to give more clarity to prospective participants and support consistency in decision making. This is the first step in implementing a more consistent approach to assessing substantially reduced functional capacity.
- Action 3.9 recommended legislative changes to strengthen the operation of the permanence criteria following the Federal Court decision known as *National Disability Insurance Agency v Davis [2022]*. Proposed amendments in Schedule 1, Part 8, will insert a definition and approach to assessing permanence of impairments when determining whether a person meets the disability requirements or early intervention requirements.
- Action 2.15 recommended updating governance of the NDIS and compensation schemes to reduce overlap and ensure costs are not being shifted to the NDIS (or vice versa). This included ensuring that during eligibility assessment for the NDIS, the Agency can identify any potential overlap between the NDIS and compensation

schemes. Proposed amendments in Schedule 1, Part 9, would tighten eligibility to the NDIS where alternative supports are available through other service systems which can reasonably meet the needs of a person, or where the service system has a responsibility for meeting the needs of a person such as workers' compensation or motor vehicle accident compensation schemes.

- Recommendation 17 called for the development of a risk-proportionate model for regulation of all providers, and to strengthen the regulatory response to long standing and emerging quality and safeguards issues. Amendments proposed in Schedule 2 strengthen the ability of the Agency and the NDIS Quality and Safeguards Commission (Commission) to effectively manage the integrity of the NDIS, improve safety and enhance quality.
- Action 11.3 recommended that the Australian Government, not the Board of the Agency, should make the final determination on prices for NDIS supports. Amendments proposed in Schedule 3, Part 1, make the Minister the decision-maker on NDIS prices.

The proposed amendments to the definition of NDIS provider will enable a proportionate model for mandatory registration of NDIS providers. These have also been informed by the recommendations of the Registration Taskforce.

The Registration Taskforce was established in February 2024 to provide advice on the design and implementation of the new graduated risk-proportionate regulatory model proposed in Recommendation 17 of the NDIS Review in consultation with the disability community. The Registration Taskforce hosted over 30 roundtables across Australia to hear from communities on specific topics. It also ran a public submission process from 6 March 2024 to 5 May 2024, which received over 700 submissions from people with disability, their families and advocates, NDIS providers, workforce representatives and other relevant stakeholders.

The Registration Taskforce was supported by subject matter experts, including peak body representatives and people with lived experience, who formed five Advisory Working Groups, including: participants and nominees; disability care workers and organisations; providers and regulators; intergovernmental; and academic and policy experts.

From 19 December 2025 to 28 February 2026, the Australian Government held a public consultation on the NDIS provider definition to inform future decisions on amending or altering this term as proposed by the Registration Taskforce. The NDIS provider definition received 269 submissions from a wide range of stakeholders including people with disability, carers, peak bodies, community organisation, registered and unregistered NDIS providers, advocacy groups and governments.

The Bill is a first step to securing the NDIS for future generations. While several of the measures introduced by the Bill will commence in the short term, many others will be implemented over an extended period, allowing for further consultation with people with disability, their families, carers, advocates and other key stakeholders.

The Australian Government will establish a Technical Advisory Group to provide advice on an appropriate threshold and assessments for substantially reduced functional capacity, informed by consultation with the community and states and territories. Advice from the Technical Advisory Group will inform NDIS rules which will, amongst other things, set out the methods or criteria to be applied for the purposes of determining a person's functional capacity. This will include classifications or thresholds relevant to an assessment of a person's ability to undertake a specified activity.

In addition, several other key changes will be implemented through the design and development of legislative instruments. This includes NDIS rules to facilitate the mandatory registration of providers who deliver high risk supports, and circumstances which go to determining whether an individual has undertaken all appropriate treatment for the purposes of determining whether an impairment is permanent or likely to be permanent. Consultation will occur through the process of developing and making these instruments.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

The statement of compatibility with human rights appears at the end of this explanatory memorandum.

NATIONAL DISABILITY INSURANCE SCHEME AMENDMENT (SECURING THE NDIS FOR FUTURE GENERATIONS) BILL 2026 (THE BILL)

ABBREVIATIONS AND ACRONYMS USED IN THIS EXPLANATORY MEMORANDUM

- **Act** means the *National Disability Insurance Scheme Act 2013*
- **AFP** means Australian Federal Police
- **Agency** means the National Disability Insurance Agency
- **Bill** means the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026
- **Board** means the Board of the National Disability Insurance Agency
- **CEO** means the Chief Executive Officer of the National Disability Insurance Agency
- **Committee** means the Senate Community Affairs Legislation Committee
- **CRPD** means the United Nations Convention on the Rights of Persons with Disabilities
- **Commission** means the National Disability Insurance Scheme Quality and Safeguards Commission
- **Commissioner** means the National Disability Insurance Scheme Quality and Safeguards Commissioner
- **Getting the NDIS Back on Track Act** means the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*
- **ICCPR** means the International Covenant on Civil and Political Rights
- **ICESCR** means the International Covenant on Economic, Social and Cultural Rights
- **Inquiry** means the Senate Community Affairs Legislation Committee inquiry into the National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026
- **Integrity and Safeguarding Act** means the *National Disability Insurance Scheme Amendment (Integrity and Safeguarding) Act 2026*
- **Legislation Act** means the *Legislation Act 2003*
- **LEOMR** means the *Legislation (Exemptions and Other Matters) Regulation 2015*

- **NDIA** means the National Disability Insurance Agency
- **NDIS** means the National Disability Insurance Scheme
- **NDIS Review** means the 2023 Independent Review into the NDIS
- **NDIS rules** means rules made under section 209 of the *National Disability Insurance Scheme Act 2013*
- **Regulatory Powers Act** means the *Regulatory Powers (Standard Provisions) Act 2014*
- **Royal Commission** means the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (2023)
- **Scheme** means the National Disability Insurance Scheme
- **Tribunal** means the Administrative Review Tribunal

NOTES ON CLAUSES

Section 1 sets out how the new Act is to be cited – that is, as the *National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Act 2026.*

Section 2 provides a table setting out the commencement of the Bill. Sections 1 to 4, Schedule 5 and anything not elsewhere covered in the table commence the day after the Bill receives Royal Assent. Schedule 1, Parts 1 to 3, Schedule 3 and Schedule 4 commence on the seventh day after the Bill receives Royal Assent. Other parts of the Bill are to commence on a specified day or a day to be fixed by proclamation. Reasoning for delaying the commencement of these parts is set out in the table below.

Provisions	**Commencement**	**Reason for delayed commencement**
1. Sections 1 to 4 and anything in this Bill not elsewhere covered by this table	The day this Bill receives the Royal Assent.	
2. Schedule 1, Parts 1 to 3	The seventh day after this Bill receives the Royal Assent.	
3. Schedule 1, Part 4	1 October 2026.	Delaying commencement will allow the Agency to operationally prepare for these changes. This includes information communications technology enhancements, providing additional training and guidance for delegates and communicating changes with participants.
4. Schedule 1, Parts 5 and 6	1 February 2027.	Delaying commencement will allow the Agency to operationally prepare for these changes. This includes information communications technology enhancements, providing additional training and guidance for delegates and communicating changes with participants.

Provisions	Commencement	Reason for delayed commencement
5. Schedule 1, Part 7	1 October 2026.	Delaying commencement will allow the Agency to operationally prepare for these changes including providing additional training and guidance for delegates and communicating changes with participants.
6. Schedule 1, Parts 8 and 9	1 January 2028.	Delaying commencement will allow for amendments to commence at the same time as access changes to enable the commencement of Thriving Kids.
7. Schedule 2, Parts 1 to 4	The seventh day after this Bill receives the Royal Assent.	
8. Schedule 2, Part 5	1 December 2026.	Delaying commencement will allow sufficient time for claims older than 90 days to be made before the new timeframe takes effect.
9. Schedule 2, Part 6	A single day to be fixed by Proclamation. However, if the provisions do not commence within the period of 24 months beginning on the day this Bill receives the Royal Assent, they commence on the first day of the first calendar month to start after the end of that period.	Delaying commencement will provide adequate time for the Agency to conduct a competitive procurement for suitable registered plan management providers. The Agency intends to finalise the procurement and have deeds of arrangement in place with registered plan management providers by 1 October 2027. Providing a commencement date by proclamation provides flexibility should the procurement exercise be delayed by unforeseen circumstances.

Section 3 provides that legislation that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule has effect according to its terms.

Section 4 provides for a future review of the amendments proposed to be made by the Bill.

Subsection 4(1) provides that the Minister must cause a review to be conducted of the operation of the amendments proposed to be made by this Bill.

Subsection 4(2) provides that the review must be conducted at the same time as the review under section 4 of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* of the operation of the amendments made by that Act. That review is required to commence in October 2027.

Subsection 4(3) provides that the persons conducting the review must be independent of the Agency and of the Department.

Subsection 4(4) provides that the review must consider the impact of the amendments proposed to be made by the Bill on the following matters:

- access to the NDIS;
- participant outcomes, including continuity and quality of supports;
- review and appeal rights under the *National Disability Insurance Scheme Act 2013*;
- the viability and sustainability of the provider market;
- service delivery in thin markets;
- the interaction between the amendments made by this Act and any foundational supports or related systems of support.

Subsection 4(5) provides that the persons conducting the review must give the Minister a written report of the review.

Subsection 4(6) provides that the Minister must cause the report to be tabled in each House of the Parliament at the same time as the review under section 4 of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*.

SCHEDULE 1 — ACCESS AND PLANNING MEASURES

Summary

Schedule 1 sets out changes that put the NDIS on a sustainable footing now and into the future. This includes amendments relating to Scheme access that define substantially reduced functional capacity and permanence. There are also clarifications to access requirements where someone is, or could be, eligible for supports from other service systems.

This Schedule also sets out changes that relate to planning. This includes clarifying and strengthening the requirement for support needs to be directly related to eligible impairments, specifying the circumstances in which a participant can request a plan reassessment and expanding the ability to suspend plans in certain circumstances. This Schedule will introduce the concepts of plan renewals, to replace the administrative practice of plan continuations, as well as support determinations to help manage the financial sustainability of the Scheme. The Schedule will also strengthen the approach to determining reasonable and necessary supports for old framework plans.

Background

Currently, the operation of access settings is inconsistent with the original intent of the Scheme, allowing a significant number of Scheme entrants who were never intended to be supported by the NDIS. There are a range of reasons for this, including Administrative Review Tribunal (Tribunal) and Federal Court decisions which have, over time, gradually expanded the scope of access to the Scheme. The ongoing use of 'access lists', originally intended to support Scheme roll out, has also created automatic eligibility for people with certain conditions, whilst other people are required to demonstrate evidence of disability. This favours those with means to obtain diagnosis. These are in turn conducted without policy guidance to support consistent or equitable access decisions.

The NDIS Review found the current approach to accessing the Scheme is inconsistent and inequitable and not always benefitting people with disability who require the most support. This had led to unfair outcomes and contributed to participant numbers in the Scheme well beyond its original intent of supporting people with significant and permanent disability. The NDIS Review recommended significant reform to access including the removal of access lists.

The volume of supports the NDIS is funding is unsustainable and out-of-step with supports funded in other parts of the care and support economy. Changes are needed to bring the NDIS in line with other support systems and ensure government is funding a sustainable level of supports, while continuing to meet the needs of people with permanent and significant disability.

Section 3 of the Act sets out the objects of the Act. Ensuring the financial sustainability of the Scheme is not currently incorporated into any specific object, but amending paragraph 3(3)(b) directly requires that regard must be had to the Scheme's sustainability for the first time.

Financial sustainability of the NDIS is about making sure the Scheme is affordable both near term and over the long term so it can support future generations of Australians. The NDIS was intended to operate as a targeted, insurance-based Scheme for people with permanent and significant disability. It is not intended to operate as an unconstrained funding source for all disability related needs, nor should it be used to address supports that would be more appropriately provided by other service systems.

The NDIS Review identified that the concept of 'reasonable and necessary' is complex and discretionary and there is a lack of clarity and confusion related to what can be funded as 'reasonable and necessary'. The NDIS Review also found the interpretation of 'reasonable and necessary' can result in inconsistent planning and creating an expectation gap between what supports participants want and what the NDIS can sustainably deliver.

To improve consistency and equity across the Scheme, the application of 'reasonable and necessary supports' must link to consideration of what is reasonable for the Scheme to fund. This means funding for some NDIS supports may be less than the actual cost of providing or acquiring the support. This Schedule is intended to provide clarification about what supports can be considered for reasonable and necessary funding.

Part 1—Defining functional capacity

To be eligible for the NDIS, a person's impairment or impairments must result in substantially reduced functional capacity in at least one key activity. Activities include mobility, communication, social interaction, learning, self-care and self-management.

The concepts of functional capacity and substantially reduced functional capacity are not clearly defined in the Act, NDIS rules or operational guidance. The term substantially reduced functional capacity has no meaning outside NDIS legislation and is not well understood in the community or among service providers.

The NDIS Review and independent research organisations like the Grattan Institute have highlighted that the absence of a clear definition of substantially reduced functional capacity has contributed to inconsistent decision making about access. It has also led to variable outcomes through internal and external review processes. The NDIS Review recommended legislative changes to support a more consistent and robust approach to determining access to the NDIS based on transparent methods for assessing functional capacity (Recommendation 3). This included development of an agreed definition of substantially reduced functional capacity to give more clarity to prospective participants and promote consistent decisions.

This measure will introduce an agreed definition of 'functional capacity' to give more clarity to current participants, prospective participants and support consistency in decision making. This is the first step in implementing the more consistent approach to assessing substantially reduced functional capacity. The next step is linking the definition of functional capacity to the outputs of a functional assessment process that measures the impact of impairment and allow participants to be compared to their peers. This second step relies on category A NDIS rules for implementation.

Further work is required to identify appropriate functional capacity assessments which can be used to assess functional capacity in the NDIS access process. The definition of functional capacity will support future work to develop a robust framework to define and determine appropriate thresholds for substantially reduced functional capacity. It will also guide the use of functional capacity assessments by the Agency to deliver a more structured and consistent application of the legislative criteria of the Act.

Notes on Clauses

Item 1 – Section 9 (paragraph (b) of definition of *developmental delay*)
This item amends paragraph (b) of the definition of *developmental delay* in section 9 of the Act by omitting the words 'in one' and substituting 'in relation to one' of the following areas of a major life activity. This clarifies but does not change the interpretation of the definition of developmental delay.

Item 2 – Section 9 (at the end of the definition of *developmental delay*)
This item inserts a legislative note at the end of the definition of *developmental delay* in section 9 to direct the reader to proposed new section 9B for the meaning of functional capacity.

Item 3 – Section 9
This item amends section 9 by inserting a definition of *functional capacity*. The amendment provides that functional capacity, in relation to an activity has the meaning given by new section 9B.

Item 4 – After Section 9A
This item inserts proposed new section 9B to set out an approach to determining whether a person's impairment or impairments result in substantially reduced functional capacity to undertake activities outlined in the disability requirements or early intervention requirements.

Proposed new subsection 9B(1) would define 'functional capacity'. A person's functional capacity will relate to their ability to undertake an activity without assistance from other people, assistive technology or modifications and in a setting that excludes, as far as possible, the impact of the person's environmental and personal circumstances.

The requirement to assess functional capacity excluding the environmental and personal circumstances, as much as possible, intends to confine the assessment to the person's intrinsic ability to undertake an activity. This approach avoids reliance on personal and external factors that may vary between individuals and are not attributable to the impairment, such as financial means or living arrangements. This promotes a more objective and consistent assessment of the functional impact of the person's impairment.

Proposed new subsection 9B(2) inserts a new NDIS rule making power in relation to any matter regarding the definition of 'functional capacity' in 9B(1).

Proposed new subsection 9B(3) allows that the new NDIS rules may prescribe methods or criteria to apply classifications or thresholds relevant to the assessment of functional capacity. It also allows the prescription of matters that may, must or must not be taken into account when assessing functional capacity or circumstances in which a matter is taken to exist or to not exist in relation to assessing a person's functional capacity.

These rules will be category A NDIS rules.

There will be no immediate impact of the new definition of functional capacity. It is clarifying the current intended application of functional capacity in relation to access decisions. New category A NDIS rules to prescribe methods and criteria to set thresholds relevant to the assessment of functional capacity are expected to commence from 1 January 2028.

Item 5 – Paragraph 24(1)(c)
This item amends paragraph 24(1)(c) by omitting the words 'to undertake one or more of the following activities' and substituting 'in relation to one or more of the following activities (when considered as a whole activity)'.

This amendment clarifies that the assessment of functional capacity focuses on the person's overall ability to undertake an activity, rather than by reference to tasks or actions considered in isolation. This supports a more consistent and holistic assessment of functional capacity in relation to that activity.

Item 6 – At the end of subsection 24(1)
This item adds a note at the end of subsection 24(1). The new note assists the reader by referring to section 9B for the definition of 'functional capacity in relation to an activity'.

Item 7 – Subparagraph 25(1)(c)(i)
This item amends subparagraph 25(1)(c)(i) by omitting the words 'upon the functional capacity of the person to undertake' and substituting 'or impairments upon the person's functional capacity in relation to undertaking'. This is a technical amendment that updates the language to be consistent with other parts of the Act.

Item 8 – Subsection 25(1) (note)
This item amends the note at the end of subsection 25(1) omitting the word 'Note' and substituting the words 'Note 1'. This is a technical amendment that is consequential to inserting a second legislative note under this subsection.

Item 9 – At the end of subsection 25(1)
This item adds a new legislative note at the end of subsection 25(1). The new note assists the reader by referring to section 9B for the definition of 'functional capacity in relation to an activity'.

Item 10 – Subsection 209(8) (table item 1, column headed 'Description', before paragraph (aaa))
This item is consequential to item 4. It amends table item 1 in subsection 209(8) so that the new NDIS rule making power dealing with the assessment of functional capacity is a category A NDIS rule, requiring the agreement of all states and territories.

Item 11 – Application provision
This item provides that the amendments made by this Part apply in relation to a determination or decision made by the CEO in relation to whether a person meets the disability requirements or early intervention requirements, or both, made on or after the commencement of this item, whether or not the person is a participant before the commencement of this item.

This means the new definition of functional capacity introduced in this measure will apply to all current participants in the NDIS as well as anyone who applied to the NDIS previously or applies in the future.

Part 2 – Limit unscheduled plan reassessments

Section 48 of the Act currently provides that the CEO may conduct a reassessment of a participant's plan at any time. This may happen on the request of the participant or on the CEO's own initiative. The CEO can decide to do one of three things in response to a request by a participant:

- make a decision that the plan needs to be varied under subsection 47A(1).
- make a decision that the plan needs to be reassessed.
- make a decision not to conduct a reassessment of the plan.

Unscheduled plan reassessments are a key driver of plan and whole of Scheme inflation as they frequently increase the value of a plan, even where increases are not necessary or appropriate. Unnecessary reassessments and plan increases are often the result of a lack of clarity and appropriate controls around when plans should be reassessed. Some requests for plan reassessments are made by intermediaries, such as support coordinators and plan managers, and some requests are made even without a participant's knowledge.

Section 48 of the Act currently does not contain any direct limitations on the circumstances in which a plan reassessment may be requested, how frequently they may be requested and who may make a request on behalf of the participant. NDIS rules may only set out matters to which the CEO must have regard in making a decision under section 48, for example by prescribing methods, criteria or circumstances in which a reassessment must or must not be undertaken. However, NDIS rules cannot effectively confine when a plan reassessment may be undertaken.

This Part will introduce sensible controls and conditions on plan reassessments to ensure that they can only be requested where there is a genuine change in a participant's support needs. It will also ensure that only participants, and those authorised to act on their behalf, can request a plan reassessment, ensuring that a reassessment request is due to a genuine change in needs, and is not a way for providers to access more NDIS funding.

This Part only applies to participant requested plan reassessments. There will be no change to the CEO's ability to initiate a plan reassessment at any time and for any reason, ensuring there is still the option of a CEO initiated plan reassessment where appropriate. In emergency circumstances, a participant's plan may be varied where a reassessment is not appropriate or necessary, for example due to a short term increase in support needs due to an unanticipated medical event involving a participant's primary carer.

Notes on Clauses

Item 12 – Paragraph 32(3)(b)

This item amends paragraph 32(3)(b) by inserting 'or (2A)' after '32B(2)'. This is a technical amendment required due to the amendments made by item 13 which insert new subsection 32B(2A).

Item 13 – Subsection 32B(2)
This item inserts a new subsection (2A) and note after subsection 32B(2). Section 32 relates to participants that are to have new framework plans. Subsection 32B(1) provides that NDIS rules may specify classes of participants that are to have new framework plans, and for each class specified, the period within which the CEO must give a notice under subsection (2).

Under subsection 32B(2), the CEO must, within the period specified in the NDIS rules for a class, give a participant in the class written notice that the participant is to have a new framework plan.

The new subsection 32B(2A) provides that if a participant who is a member of a class specified for the purposes of paragraph (1)(a) requests a reassessment of the participant's plan under paragraph 48(2)(b), the CEO may give the participant written notice that the participant is to have a new framework plan (even if the period specified for the purposes of paragraph (1)(b) has not ended).

In circumstances where a plan reassessment is requested by a participant, the intent of this amendment is to give the CEO the discretion to arrange for a participant to have a new framework plan rather than reassessing the participant's old framework plan. This will enable the timely transition of participants to new framework planning and avoid the need for a participant to go through additional planning processes.

The new note clarifies that where the CEO gives the participant a notice in accordance with new subsection (2A), subsection 48(3) (decision on request) does not apply in relation to the request for reassessment (see subsection 48(4)). This assists the reader by identifying that a decision to issue a notice to transition to new framework planning instead of conducting a reassessment is not a reviewable decision. This is consistent with the current approach to issuing notices under subsection 32B(2).

Item 14 – Subsection 32B(3)
This item amends subsection 32B(3) by omitting the words 'The notice' and substituting 'A notice given under subsection (2) or (2A)'. This is consequential to the amendments made by item 13, which inserts new subsection 32B(2A).

Item 15 – Paragraph 32C(b)
This item amends paragraph 32C(b) by inserting a reference to subsection 32B(2A). Paragraph 32C(b) deals with the application of the subdivision of the Act dealing with the content of new framework plans. This is consequential to the amendments made by item 13, which inserts new subsection 32B(2A).

Item 16 – At the end of section 45
This item adds a new subsection 45(6) which provides that to avoid doubt, paragraph 45(4)(c) does not cover circumstances where the participant has been unable to request a reassessment because the conditions in new section 48A are not satisfied.

Subsection 45(4) provides that the Agency must not pay an amount under the Scheme to any person in respect of a participant's plan where that amount would be over a funding component amount or a total funding amount. A series of exemptions to subsection (4) are then set out in subsection 45(5).

Paragraph 45(5)(c) provides that the Agency can pay above a funding component amount or total funding amount if the CEO is satisfied that the participant has been unable to request a variation or reassessment of the participant's plan because of one or more of the participant's impairments or a lack of decision making support.

Proposed new subsection 45(6) clarifies that subsection 45(5)(c) does not provide an exemption where a reassessment has not been conducted because conditions set out in proposed new section 48A are not satisfied (see item 21).

Item 17 – Subsection 47(1) (note 1)
This item amends note 1 under subsection 47(1) by inserting '(if the conditions in subsection 48A are satisfied)' after the words 'variation of the participant's plan or'. This is a consequential amendment to the amendments made by item 21, which inserts new section 48A.

This note informs the reader that a participant requested reassessment can only occur if the conditions in new section 48A are satisfied.

Item 18 – Subsection 48(2)
This item repeals subsection 48(2) and substitutes new subsections (2) and (2A).

New subsection 48(2) provides that a reassessment of a participant's plan may be conducted on the CEO's own initiative or at the request of the participant, their plan nominee, or a child's representative. This explicit limitation on who can request a reassessment will end the ability for plan managers and support coordinators requesting reassessments without good reason and without the participant's knowledge.

New subsection 48(2A) provides that the request for reassessment of a participant's plan must be in the form approved by the CEO, and must include any information or documents required by the CEO. A legislative note after subsection (2A) reminds the reader that, in accordance with section 197 of the Act, where a request is not made in the correct form, or does not include the requisite information or documents, the CEO is not required to make a decision on the request.

Example – Lachlan
Lachlan is an adult with an above knee amputation and an acquired brain injury. He has a 3-year NDIS plan. Lachlan's support coordinator submits a request via email for a reassessment of Lachlan's plan. Lachlan is training to participate in a sporting event and after discussing his training plans with the support coordinator they decide Lachlan would benefit from more funding for support coordination to help him arrange his supports, as well as increased funding for improved daily living and social and community participation..

The request was made by the support coordinator who is not permitted under the Act to request a plan reassessment on Lachlan's behalf, and the request is not approved. Lachlan requested his plan nominee submit the request for a plan reassessment which was approved.

Item 19 – Subsection 48(3)
This item amends the period for the CEO to make a decision about a reassessment following a request from a participant. The period is extended from 21 days to 90 days, beginning on the day the CEO received the request.

The item also amends the wording of the provision to reflect that a request for reassessment can be made by the participant, their plan nominee or child representative, and that conditions must be satisfied before making the request, as set out in new paragraph 48(2)(b).

Item 20 – Subsection 48(4)
This item repeals subsection 48(4), substitutes a new subsection 48(4) and adds a legislative note to the provision.

Subsection 48(3) of the Act sets out the decisions that the CEO can make in response to a participant's request for a reassessment, which include a decision that the plan needs to be varied, a decision that the plan needs to be reassessed or a decision that the plan should not be reassessed. Subsection 48(4) currently provides that if the CEO does not make a decision about a participant's request for a reassessment within 21 days, then the CEO is taken to have decided not to conduct a reassessment of the plan.

New subsection 48(4) provides that subsection 48(3) does not apply if the CEO instead gives a participant written notice under subsection 32B(2A) that the participant is to have a new framework plan.

The effect of new subsection 48(4) is that the CEO is not required to make a decision under subsection 48(3). If the CEO instead gives a participant a notice under new subsection 32B(2A) that they are to have a new framework plan, the CEO must facilitate the preparation of a new framework plan. A participant's supports needs will be assessed as part of the new framework planning process, negating the need for a reassessment of their old framework plan.

A legislative note to subsection 48(4) reminds the reader of the requirements if the CEO gives a participant a notice that they are to have a new framework plan.

Item 21 – After section 48

This item inserts new section 48A which sets out the conditions that must be satisfied before the CEO can conduct a reassessment of the participant's plan in response to a request by a participant.

New subsection 48(1) will provide that all of the following must be satisfied in order for the CEO to conduct a reassessment under paragraph 48(2)(b):

- There has been a significant change in the ongoing support needs that arise from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements.
- The significant change relates to one or both of the following:
    - a change in the participant's functional capacity in relation to communication, social interaction, learning, mobility, self-care or self-management;
    - the participant's personal or environmental circumstances
- If the significant change is to a participant's functional capacity, the condition in subsection 48A(2) must also be met.
- If the significant change is to a participants personal or environmental circumstances, the condition in subsection 48A(3) must also be met.

New subsection 48A(2) will provide that the condition in that subsection is satisfied if:

- the change in the participant's functional capacity is significant and ongoing; and
- the change in functional capacity:
    - directly relates to a change in an existing impairment in relation to which the participant meets the disability requirements or early intervention requirements; or
    - arises from a new or acquired impairment in relation to which the participant meets the disability requirements or early intervention requirements; and
- the participant has experienced a substantial reduction in the participant's ability to perform daily activities.

New subsection 48A(3) will provide that the condition in that subsection is satisfied if there has been an unanticipated, significant and ongoing change in the participant's:

- living arrangements; or
- education arrangements; or
- work arrangements; or
- network for informal support.

A significant change is a major change that substantially affects a participant's support needs.

Example – Liam
Liam has used almost all of the funding in his core supports budget earlier than expected. He requests a reassessment of his plan to obtain additional funding. There has been no change in Liam's functional capacity or support needs since his plan was approved.

Liam's request for a plan reassessment is declined because there has been no change to his functional capacity or significant change to his ongoing support needs.

Example – Sophie
Sophie has an intellectual disability who lives with her elderly mother. Sophie's mother provides daily personal care and supervision however her health has significantly deteriorated and she is moving into residential aged care. This means she will no longer be able to provide this support to Sophie and there is no other family members are able to assist. Sophie requests a reassessment of her plan.

The request is approved because there is a significant change to Sophie's ongoing disability related support needs related to a significant and ongoing change in her informal supports.

Example – Fatima
Fatima has recently commenced part-time employment for the first time. As a result, they now require additional transport supports and assistance with personal care at work. There is no change to Fatima's functional capacity.

Fatima requests a reassessment of their plan. The request is approved because there is a significant change to Fatima's support needs related to a significant and ongoing change in their work arrangements.

Example – Majak
Majak's primary carer is going overseas for a two week holiday. During this time, Majak requires additional support. Majak requests a reassessment of his plan.

The request for a plan reassessment is declined because the change in Majak's support needs is temporary and not ongoing. Majak may be able to use his NDIS funding flexibly to meet his needs during the two weeks his primary carer is away or alternatively a plan variation may be appropriate.

Example – Mai
Mai is a participant who has met the disability requirements due to a neurological impairment impacting her lower limb function. Mai lives independently and uses a manual wheelchair to mobilise. Mai experienced a dog bite injury to her hand and is temporarily unable to utilise her wheelchair or transfer independently and requests a plan reassessment.

A plan reassessment is not completed as the change in Mai's functional capacity is temporary in nature, however the delegate completes a variation of Mai's plan to include short-term additional supports. The change in functional capacity is not directly arising from the neurological impairment for which Mai met the disability requirements; however, Mai requires the additional supports in order to safely transfer and use the wheelchair she requires due to the support needs arising from her neurological impairment.

Item 22 – Section 49B
This item amends section 49B by inserting 'or (2A)' after '32B(2)'.

The effect of the amendment is that section 49B now prevents the CEO from conducting a reassessment of an old framework plan if the participant has been given a notice by the CEO under subsections 32B(2) or (2A), advising that the participant is to have a new framework plan.

Item 23 – Subsection 99(1) (table item 6C, column 2),
This item amends column 2 of item 6C of the table in subsection 99(1) by omitting the words 'or subsection 48(4)'. The effect of the amendment is that subsection 48(4) is no longer a reviewable decision for the purposes of section 99 of the Act.

This is consequential to the amendments made by item 20, repealing and replacing subsection 48(4) so that that provision no longer deals with a reviewable decision.

Items 24 to 26 – Section 100
These items remove references to subsection 48(4) from relevant parts of section 100, which deals with review of reviewable decisions. Specifically, subparagraph 100(1A)(a)(ii), paragraph 100(5)(b) and subparagraph 100(6A)(b)(ii).

These amendments are consequential to the amendments made by item 20, which repeals and replaces subsection 48(4) so that the provision no longer deals with a reviewable decision.

Item 27 – Application of amendments
This item is an application provision that provides that the amendments made by this Part apply in relation to a request for reassessment of a participant's plan made before, on or after the day this item commences.

Part 3—Strengthen link between an impairment and need for support

The current reasonable and necessary decision making criteria for old framework plans lacks specificity. It is open to very broad interpretation where participants have multiple impairments, some meeting the disability requirements or early intervention requirements, and others not. Support needs arising out of impairments that do not meet the disability or early intervention requirements should not be met by the Scheme.

This measure responds to decisions of the Tribunal and the Federal Court that expanded access to NDIS supports beyond the original intent. The unintended expansion has included where there is only a causal or contributary (rather than direct) link between the need for a support and an impairment that meets the disability requirements or early intervention requirements. This has resulted in plan inflation impacting Scheme sustainability and inconsistent decision making creating inequity between NDIS participants.

This Part seeks to clarify what the NDIS should and should not fund to its original intent. It introduces a clear and strengthened link between a participant's support needs and impairments which have met the disability requirements or early intervention requirements. Amendments will require the need for NDIS supports to be arising directly from impairments for which the participant meets the disability requirements or early intervention requirements.

The purpose of these amendments is to clarify that where multiple impairments or comorbidities exist, only the support needs arising from impairments for which the participant meets the disability or early intervention requirements are eligible for NDIS funding. This provides clarity in interpretation and decision making and provides participants with certainty on how the need for support is determined.

Notes on Clauses

Item 28 – Subsection 32K(3A)
This item repeals subsection 32K(3A), which is the requirement for NDIS rules made for the purposes of section 32K to take account of the variety of factors that may affect a participant's need for NDIS supports. This item responds to Tribunal and Federal Court decisions that have expanded the scope of what the NDIS is intended to fund beyond the original intent and beyond what it is appropriate for the NDIS to fund. The repeal of this subsection will remove ambiguity and make it clear that the NDIS can only fund supports that are needed as a direct result of an impairment that meets the disability or early intervention requirements.

Items 29 and 30 - Subsection 32L(6) (note 1), subsection 32L(6) (note 2)
These items deal with the legislative notes under subsection 32L(6).

Item 30 deals with note 2 under subsection 32L(6), which currently assists the reader by noting that a participant's disability support needs arising from an impairment in relation to which the

participant meets the disability requirements or the early intervention requirements may be affected by a variety of factors, including environmental factors or the impact of another impairment in relation to which the participant does not meet either of those requirements.

This note will be repealed, reflecting the need to clarify the intended operation of the Act to ensure that only supports that are needed directly as a result of an impairment that meets the disability requirements or early intervention requirements will be funded by the NDIS.

Item 29 is consequential to item 30 and removes the reference to 'Note 1', replacing it with a reference to 'note' reflecting the fact that the second note to subsection 32L(6) is being repealed.

Item 31 – Paragraph 34(1)(aa)

This item repeals and replaces paragraph 34(1)(aa). This provision was originally inserted into the Act by the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024* (Getting the NDIS Back on Track Act) but the interpretation and application it was given by subsequent Federal Court and Tribunal decisions went significantly beyond the original intent. This item repeals and replaces paragraph 34(1)(aa) so that it is consistent with the original and ongoing intent of the Scheme to provide supports to address needs arising directly out of an impairment or impairments that meet the disability requirements or early intervention requirements.

Replacement paragraph 34(1)(aa) will provide that a reasonable and necessary support must be necessary to address needs of the participant arising directly from an impairment in relation to which the participant meets the disability requirements or early intervention requirements. This direct link between a support and an impairment is critical in upholding the purpose of the Scheme.

This clarifies that reasonable and necessary supports for a participant are confined to those needs which arise directly from impairments in relation to which the participant meets the disability requirements or early intervention requirements. Whether this is the case will depend on whether the impairment is the direct and immediate source, cause or origin of the need for support as opposed to a contributory cause of the need. The impact of a participant's individual characteristics and environmental circumstances will be taken into account in determining need.

Support needs which relate to impairments that do not meet the disability requirements or early intervention requirements should not be funded by the NDIS and cannot be considered reasonable and necessary supports for a participant.

Item 32 – Subsection 34(1) (note)
This item repeals the note, and substitutes it with: 'For the purposes of paragraph (aa), at the time at which the disability requirements or early intervention requirements need to be met is the time the CEO decides to approve the statement of participant supports'.

The effect of this amendment is to remove references in the legislative note to the fact that 'a participant's disability support needs arising from an impairment in relation to which the participant meets the disability requirements or the early intervention requirements may be affected by a variety of factors, including environmental factors or the impact of another impairment in relation to which the participant does not meet either of those requirements.' This will reduce ambiguity on how paragraph 34(1)(aa) is intended to operate.

The purpose of this note is to assist the reader with interpretation and application of subsection 34(1).

Item 33 – Application provision
This item states the amendments made by this Part will apply in relation to a statement of participant supports approved by the CEO on or after the commencement of this item.

Example – Hamish
Hamish is a 20 year old participant who was born with a limb difference of absence of his arms. Hamish needs assistive technology, and support with personal care to attend university. He is eligible for the NDIS based on the physical impairment related to his limb difference. Hamish also has dyslexia which is impacting his ability to read and write, which is affecting his studies.

Hamish has a support needs assessment for a new framework plan. The assessment identifies the disability support needs directly arising from his limb difference, as this is the only impairment for which Hamish meets the disability requirements. In calculating the funding amount for Hamish's supports, Hamish only receives funding for those support needs identified in the needs assessment as directly arising from eligible impairments.

Any support needs directly relating to the impacts of dyslexia are not considered in the development of his reasonable and necessary budget as Hamish's impairment related to dyslexia does not meet the disability requirements or early intervention requirements.

Example – Samira
Samira is a 42 year old participant living with multiple sclerosis and chronic pain related to osteoarthritis. Samira is unable to mobilise on her own and uses a wheelchair to move around the home and community. Samira's osteoarthritis mainly affects her hands and she has some deformity in her hand joints as a result of this condition. Samira

takes a range of prescription medications to manage the impacts of her multiple sclerosis and osteoarthritis.

Samira is undertaking a plan reassessment for an old framework plan, and her current wheelchair has come to the end of its service life. A wheelchair similar to the one she is currently using will no longer meet her needs as she now requires one with a higher weight capacity and a more specialised hand controller as she is finding it difficult to use the current controller due to the deterioration in her hand function due to osteoarthritis.

In determining the reasonable and necessary supports during the plan reassessment the Agency planner only considers Samira's support needs directly arising from the impairment related to multiple sclerosis as this was the impairment which met the disability requirements in Samira's case. As part of considering Samira's mobility impairment, the NDIS planner notes Samira is unable to mobilise without the use of a wheelchair due to impacts of multiple sclerosis and she is unable to safely and effectively use the wheelchair without the specialised hand controller.

The NDIS planner includes funding for a wheelchair with the required hand controller. The wheelchair itself is required due to the support needs arising from the impairment of multiple sclerosis which met the disability requirements and Samira cannot use the wheelchair without the specialised hand controller.

Example – Nykolai
Nykolai is 14 years old and lives with his parents and two younger siblings. Nykolai was diagnosed with cerebral palsy when he was 18 months old and became an NDIS participant due to his physical impairment related to cerebral palsy.

Nykolai was diagnosed with Attention Deficit Hyperactivity Disorder (ADHD) one year ago and is undertaking a plan reassessment for an old framework plan. Nykolai's parents have requested support to assist with Nykolai's support needs related to the ADHD as they are struggling to manage some behaviours associated with ADHD which are impacting on their other children and also causing issues for Nykolai at school.

When the NDIS planner is considering the reasonable and necessary supports for Nykolai, they cannot consider support needs related to ADHD as this impairment does not meet the disability requirements or early intervention requirements for access to the NDIS. The reasonable and necessary supports are developed to cover Nykolai's support needs related to his physical impairment only.

Example – Josephine
Josephine lives with intellectual disability and also has been diagnosed with Type 2 diabetes. Josephine is an NDIS participant for intellectual impairment she experiences

due to intellectual disability. Josephine's impairment related to Type 2 diabetes does not meet the disability requirements or early intervention requirements for access to the NDIS. As a result of her intellectual disability, Josephine struggles to manage her weight and diet which impacts the management of her Type 2 diabetes.

Josephine undergoes a support needs assessment for a new framework plan. The support needs assessment identifies the disability support needs directly arising from her intellectual impairment. This includes support for eating and drinking, cooking and shopping and managing her medication. Josephine receives funding in her flexible budget in relation to these needs.

The reasonable and necessary budget does not include funding for needs solely arising from her Type 2 diabetes, such as insulin, or advice from medical professionals.

Example – Amrit
Amrit lives with left sided weakness as a result of a stroke and is an NDIS participant due to a physical impairment. Amrit requires a walking frame to assist with mobility. Amrit has also been diagnosed with obesity which does not meet the disability requirements or early intervention requirements for access to the NDIS.

Amrit is having a plan reassessment for an old framework plan and the NDIS planner determines a bariatric walking frame is a reasonable and necessary support for Amrit. This is because the comorbidity of obesity means in order for Amrit's mobility support needs in relation to the stroke to be met, a bariatric walking frame is required as a standard walking frame would not be safe for their use.

Part 4—Support Determinations

The Act does not have adequate controls to effectively target and tighten the funding of supports for old framework plans. In circumstances where the Scheme is growing at a rate that was unforeseen when it was established, specific controls over funding are needed to put the Scheme back on a sustainable footing into the future.

This Part will establish support determinations which are legislative instruments that can reduce funding for a specified group of supports in old framework plans by operation of law. The use of support determinations will correct over funding in certain groups of supports, keep plans aligned with what is 'reasonable' for the Scheme as a whole to fund and put the Scheme on a more sustainable footing into the future.

Support determinations enable responsible administration of the NDIS by allowing for adjustments to the funding of certain classes of supports that may be overfunded or no longer justified. Providing the capacity to promptly address overfunding of a particular group of supports will protect the Scheme from needing broader or more strict interventions. Targeted reductions can reduce pressure across the Scheme while ensuring that supports that are critical to the health and safety of participants are maintained at necessary levels.

These determinations are not applied on a 'plan-by-plan' basis, but rather have the effect of reducing the funding for certain groups of supports across the Scheme. Changes to funding as result of support determinations are not subject to merits review. This is consistent with the Administrative Review Council's *What decisions should be subject to merit review? 1999*, which provides that legislation-like decisions of broad application are not suitable for merits review. This is because they are subject to the accountability safeguards that apply to all legislative decisions and are not directed towards the circumstances of a particular person.

Notes on Clauses

Item 34 – After section 34

This item inserts a new section 34A, which allows the Minister to make a legislative instrument to determine reduced funding for groups of supports.

New subsection 34A(1) provides for the legislative instrument. It states that for the purposes of ensuring financial sustainability of the Scheme, the Minister may determine by legislative instrument:

- a percentage (lower than 100 per cent) by which a funding component amount for a specified group of supports is reduced for the duration that the determination is in force; and
- the old framework plans that the determination applies to (which must be plans that come into effect on or after the day the determination commences).

Since the Bill was introduced, engagement with the community and further consideration about the implementation of the support determination has indicated a need for additional flexibility in how the support determination can be framed and applied. As a result, parliamentary amendments have replaced proposed subsection 34A(1) so that it provides that the legislative instrument may determine the following:

- a percentage for reducing funding component amounts for a group of supports specified in the determination; and
- the class of participants' plans to which the percentage applies, which may be:
    - all old framework plans that commence on or after the day the determination commences, or
    - the class of old framework plans specified in the determination.

This provides clearer drafting and allows for greater flexibility in how the support determination is crafted to apply to plans and participants.

The effect of subsection 34A(1) is that the Minister may only make a support determination for the purposes of ensuring the financial sustainability of the Scheme – it cannot be made for any other purpose. In this context, financial sustainability means ensuring the Scheme can keep funding NDIS supports now and into the future without growing beyond what governments can sustainably fund. This means funding for some NDIS supports may be less than the actual cost of providing or acquiring the support, while still being reasonable and necessary.

The effect of a support determination is reducing a funding component amount for a specified group of supports. Funding component amounts are determined in accordance with subsection 33(2A) and apply to groups of supports. These groups are the categories of supports that appear in participant plans and include:

- Core:
    - Assistance with Daily Living
    - Assistance with Social, Economic and Community Participation
    - Consumables
    - Transport
    - Home and Living
    - Young People in Residential Aged Care
- Capacity Building:
    - Behaviour Support
    - Improved Living Arrangements
    - Increased Social and Community Participation
    - Finding and Keeping a Job
    - Relationships
    - Health and Wellbeing
    - Lifelong Learning

    - Choice and Control
    - Improved Daily Living Skills
    - Support Coordination and Psychosocial Recovery Coaches
- Capital:
    - Assistive Technology
    - Assistive Technology Maintenance, Repair and Rental
    - Home Modifications
    - Specialist Disability Accommodation
- Recurring
    - Transport Recurring

The support determination must specify the class of plans to which a percentage reduction applies. This could be all old framework plans or a class of old framework plans specified in the determination. A class of old framework plans may be specified by reference to the features of plans, such as the nature of supports that a participant receives, reference to features of a participant, such as particular circumstances, or both.

The support determination does not allow for the reduction in funding component amounts partway through a plan. The reduction will always occur at the beginning of a new plan, whether that is a new participant's first plan, a reassessed plan or a renewed plan (see Part 5 of this Schedule). This gives participants certainty over how much funding they will have access to over the course of a plan. Reductions in funding component amounts continue in effect until the support determination is amended or repealed.

Similarly, the repeal of a support determination part way through a participant's plan will have no impact on the funding amounts available to a participant. It will only have an impact at the commencement of the next plan.

A legislative note after subsection 34A(1) explains that Part 4 of Chapter 3 of the *Legislation Act 2003* (Legislation Act), relating to sunsetting, does not apply to the determination. This is due to the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOMR) which provides that instruments made under the Act are exempt from sunsetting (see table item 42AC in section 12 of those Regulations). It is appropriate for all legislative instruments made under the Act to be exempt from sunsetting as they form part of an intergovernmental scheme, as provided in the Attorney-General's Department's *Guide to managing sunsetting of legislative instruments*.

Significant community concern has been raised about the practical effect of the support determinations on funding in participant plans. While the government has committed to only applying the support determination to specific supports, evidence provided to the Committee highlighted concern about the breadth of the Ministerial powers to specify additional groups of supports in the future.

To address this concern, new subsection 34A(1A) provides that a specified group of supports must be one of the following:

- assistance with social, economic and community participation
- improved daily living skills.

This is consistent with the government's stated intent and the May 2026 *National Disability Insurance Scheme Reforms Impact Analysis*.

New subsection 34A(1B) clarifies that the determination may specify one or both groups of supports. Where both groups of supports are specified, the support determination may specify the same or a different percentage reduction for each group. This clarifies the intended operation of the support determination and is consistent with the government's intent to apply different percentages to the assistance with social, economic and community participation and improved daily living skills groups of supports.

New subsection 34A(1C) provides that the determination may specify a subgroup of supports within a specified group of supports as an excluded subgroup for the purposes of calculating a net funding component amount. This means the support determination can specify that a reduction is not to apply to a specified subgroup of supports. The excluded subgroup of supports may consist of one or more kinds of supports. This means that an excluded subgroup could be made up of one or more specific supports, or support items.

This provides a mechanism to carve out certain types of supports which sit within the broader group. This mechanism will be used to carve out funding for supports in employment from the assistance with social, economic and community participation group of supports and disability related health supports from the improved daily living skills group of supports in line with the Government's policy intent. As a result, funding allocated to these 'sub-groups' would not be impacted by a support determination.

New subsection 34A(1D) ensures that a class of participant plans identified in a support determination can be specified with reference to the features of plans, features of participants, or both.

The Bill includes safeguards to ensure participants are not adversely affected by support determinations. It is not intended to affect supports that are essential to a participant's health, safety or continuous 24/7 care and support. The application of a support determination is confined to specified support categories, such as social, economic and community participation and improved daily living skills. The Bill includes the ability to specify excluded subgroups of supports within a broader support category.

Participants may continue to request changes to their plan at any time, including an unscheduled reassessment where there has been a significant and ongoing change in their functional capacity, or an unanticipated, significant and ongoing change in their circumstances.

Decisions about reasonable and necessary supports and unscheduled reassessments remain reviewable, ensuring participants continue to have access to merits review where they disagree with a decision. Where an unscheduled reassessment is requested, the assessment will focus on changes since the participant's most recent assessment by a delegate.

The NDIA also retains the ability to initiate plan reassessments and plan variations where necessary to protect participant safety. This includes circumstances where action is required to prevent or lessen a threat to a participant's life, health or safety, such as where the NDIA becomes aware of a material change in circumstances or information indicating the participant may be at risk. These mechanisms ensure that supports, including continuous 24/7 care and support, can be adjusted in a timely and proportionate way in response to emerging risks or changing needs.

Proposed new subsection 34A(2) provides that the determination will do the following while it is in place:

- Where a plan includes a group of supports that is included in the determination, the funding component amount for those supports is taken instead to be the amount worked out under subsection 34A(2A).
- The reduction will apply to funding during each funding period, so as not to change the proportion of the funding provided during each funding period:
    - if the plan specifies funding periods for reasonable and necessary supports as a whole – the total funding amount
    - if the plan specifies funding periods for each group of supports – the funding component amount for the group
- The total funding amount stated in the plan is to be reduced by the dollar amount that the funding component amount is reduced.

This means that the support determination does not change the content of a participant's plan, nor does it alter a decision by the CEO about what supports are reasonable and necessary for a participant. Instead, it reduces the funding available to a participant for a group of supports by a specified percentage.

A legislative note after proposed new subsection 34A(2) assists the reader by clarifying that the amounts as reduced are the amounts that have effect for the purposes of references in the Act to a total funding amount or a funding component amount. This is particularly relevant to section 45 of the Act which provides that the Agency may not pay an NDIS amount under a participant's plan if doing so would exceed a participant's funding component amount and/or total funding amount.

New subsection 34A(2A), introduces a method for calculating a reduced funding component amount. The method applies the specified percentage to the net funding component amount, accounting for any excluded subgroups.

The funding component amount (FCA) is the amount stated in a participant's plan for the relevant group of supports. The net FCA is the amount of funding that a participant will have access to once a support determination has been applied to that group of supports. It is calculated as follows:

- unless paragraph (b) applies—the funding component amount stated in the plan for the specified group of supports; or
- if the determination specifies an excluded subgroup within the specified group—the funding component amount stated in the plan for the group of supports minus the portion of the funding component amount that is attributable to funding for the supports in the excluded subgroup.

Example – Connor

Connor's plan includes a social, economic and community participation budget of $73,000, which includes funding for social and community activities as well as supports in employment.

A support determination is in place which specifies a reduction of 50 per cent for social, economic and community participation supports. The determination specifies supports in employment as an excluded subgroup of supports.

In determining the reduction to Connor's social, economic and community participation budget, the funding component amount that is subject to the support determination is $27,000. This is because $46,000 specifically relates to supports in employment. After applying the 50 per cent reduction to $27,000, the net funding component amount available to Connor for social, economic and community participation is $59,500.

New subsection 34A(2B) provides that the support determination must specify how to determine the portion of the funding component amount that is attributable to funding for supports in the excluded subgroup. This ensures that the appropriate amount is identified in a clear and transparent manner.

Proposed new subsection 34A(3) will provide that in making a support determination, the Minister must consider the safety of participants. Important safety considerations include whether a reduction in funding for groups of supports could place participants at risk of neglect, crisis, or loss of essential functioning.

In practice, this requirement would be supported by advice from the NDIA and the Department on the likely effects of a proposed support determination. This advice would draw on consultation with the disability community, available data, actuarial analysis and operational insights to assess risks to participants, including impacts on vulnerable cohorts and any unintended consequences.

The assessment would also consider system-level impacts, for example, effects on the availability, quality or stability of provider markets, and continuity of existing care arrangements. Where a determination is expected to have more than a minor impact, these matters would be formalised through an Impact Analysis prepared in accordance with the Australian Government's policy impact framework, supporting a systematic assessment of risks, benefits and distributional impacts and embedding safety considerations in the evidence base for the Minister's decision.

Proposed new subsection 34A(4) provides that a support determination does not have the effect of altering the text of a plan. This makes it clear that the actual decision of the CEO is not being changed – all that is being changed is the amount of funding available to a participant in relation to a specified group of supports. Item 45 deals with notifying participants if funding under their plan has been affected by a support determination.

Proposed new subsection 34A(5) is for the purposes of avoidance of doubt. It makes it clear that the determination has effect (that is, it reduces the amount of funding available to spend on groups of supports) even if the following applies:

- the funding in a participant's plan for a reasonable and necessary support is less than the total cost of the support
- the funding in a participant's plan for all reasonable and necessary support funded as a whole is less than the total cost of the supports.

This makes it clear that limitations can be put on the funding available to a participant, even if that results in partial funding of a support.

Example - Omar

Omar has an old framework plan with $40,000 in the Assistance with Social, Economic and Community Participation budget. The Minister could make a determination that the funding component for Assistance with Social, Economic and Community Participation will be reduced by for example 25 per cent. The Minister would have to consider participant safety when setting the determination.

After the determination is made nothing will change for Omar until his plan is next reassessed or renewed.

If Omar's plan is renewed, the amount that he can spend on community participation supports under his new plan will be the funding amount set in the new plan for community participation reduced by 25 per cent. This means he will have $30,000 in his Assistance with Social, Economic and Community Participation budget.

If Omar's plan is reassessed, the reasonable and necessary amount for his community participation budget will be determined by the delegate as per usual processes. If the delegate determines Omar's new plan should have $35,000 in the Assistance with Social,

Economic and Community Participation budget, the 25 per cent reduction will apply so that $26,250 (75 per cent of the reasonable and necessary amount for Assistance with Social, Economic and Community Participation) included in Omar's new plan will be available for him to spend.

Part 5—Plan renewal

Currently, old framework plans do not have an end date, but instead include a scheduled reassessment date. Most participants do not actually undergo a plan reassessment before the scheduled reassessment date. Instead, the Agency extends the scheduled reassessment date by 12-months, adds additional funding to cover the extended plan duration and rolls over any unspent funds from the previous plan period. This is an administrative practice referred to as a 'plan continuation'. This occurs for around 85 per cent of plans. This process ensures administrative efficiency and also prevents participants from having to go through reassessments when their support needs have not changed.

While plan continuation ensures continuity of funding for participants, it also results in an accrual of any unspent funds. This inflates the value of participant's plans over time, beyond what was originally considered to be reasonable and necessary by the CEO.

To replace the administrative process of plan continuations, this Part will establish plan renewals. Establishing this legislative process will provide certainty and legal clarity around how the continuation of old framework plans operates.

Proposed new section 50A will create new statements of participant supports by operation of law (that is, it does not involve a decision of the CEO). New plans created through the plan renewal mechanism would replicate, with some modifications, the reasonable and necessary supports that were contained and in place at the end of the previous plan, with funding aligned to the period of the new plan. This would prevent unspent funds rolling over from the old plan but ensure that reasonable and necessary supports are maintained.

Old framework plans will no longer have a 'reassessment date', but rather an 'end date'. Renewed plans commence immediately after the end date of the previous plan. All plans will be renewed for a period of 12 months. A renewed plan is based on the content of the previous plan, subject to certain adjustments, including the removal of one off funding, such as funding for asset assistive technology or home modifications, and applying indexation factors to supports or groups of supports so that the value of the plan retains its purchasing power.

Where a plan includes funding periods, groups of supports, total funding amounts and funding component amounts at the plan's end date, those aspects of a plan will also be replicated in a renewed plan with adjustments made to cater for variations and indexation. Transitional arrangements deal with plans that do not yet include those matters when this Part commences.

The requirement to include funding periods, groups of supports, total funding amounts and funding component amounts in old framework plans commenced with the *National Disability Insurance Scheme (Old Framework Plan) Determination 2024* (OFP Determination) on 9 October 2024. The OFP Determination operationalised changes to section 33 of the Act that were made by the Getting the NDIS Back on Track Act to insert the concepts of funding

periods, groups of supports, total funding amounts and funding component amounts into the Act.

Any plan in place at commencement of this Part where the statement of participant supports was originally approved before 9 October 2024 will not contain these legislative arrangements. However, all of these concepts do appear in the text of a participant's plan. For example, a participant's plan will still identify groups of supports, such as capacity building daily activity supports or capital supports, and allocate an amount of funding to that group, which is effectively a funding component amount.

Transitional provisions will provide that these groups of supports identified in statements of participant supports approved prior to 9 October 2024 will become a group of supports in accordance with paragraph 33(2A)(b) of the Act. Funding allocated to those groups will become funding component amounts in accordance with 33(2A)(c) of the Act. The total of those funding component amounts will become the total funding amount in accordance with paragraph 33(2A)(a). One 12-month funding period will apply to all groups of supports as imposing shorter funding periods would materially alter the operation of a plan and requires a decision by the CEO.

Plan renewals and adjustments occur by operation of law, meaning that they do not require a decision by the CEO and are not subject to merits review. This is because renewed plans are replicating a planning decision that was made by the CEO and was subject to merits review at the time it is made.

In its publication *What decisions should be subject to merits review? 1999*, the Administrative Review Council stated that 'automatic' or 'mandatory' decisions are not appropriate for merits review. They arise where there is a statutory obligation to act in a certain way upon the occurrence of a specified set of circumstances. In that case, there is nothing on which merits review can operate. As no decisions are made to renew a plan, there is no decision that may be reviewed.

Notes on Clauses

Items 35 to 37 – Section 9 (definitions)
Items 35 to 37 insert new definitions into section 9 of the Act that are consequential to other amendments made by this Part.

Item 35 inserts a new definition of 'end date' into section 9 of the Act. The definition provides that an end date for an old framework plan means the date specified in the plan under proposed new paragraph 33(2)(ba) (see item 39).

A legislative note assists the reader by pointing to the transitional provisions that convert existing 'reassessment dates' in old framework plans to 'end dates' (see item 58).

Item 36 repeals and replaces the definition of 'reassessment date'. This would have the effect of applying the definition of 'reassessment date' only to new framework plans. This item is consequential to the amendments made by item 39 to give old framework plans an 'end date' rather than a 'reassessment date'.

Item 37 inserts a new definition of 'section 50A successor', by pointing to proposed new subsection 50A(6) (see item 50). Proposed new subsection 50A(6) provides that a plan is a 'section 50A successor' to an original plan if that plan is a renewal of the original plan or a renewal of another plan that was a renewal of the original plan. In effect, a section 50A successor is any renewed plan. The definition is relevant to how renewed plans are treated in the context of internal and external review.

Item 38 – Subsection 32A(2)

This item repeals and replaces subsection 32A(2), which provides a definition of 'old framework plan.' Currently subsection 32A(2) defines an old framework plan as a plan made under Subdivision C of Division 2 of Part 2 of Chapter 3 of the Act (which deals with the content of old framework plans). This item adds a reference to a plan renewed by force of proposed new section 50A. This ensures that the definition of old framework plan captures renewed plans.

Items 39 and 40 – Subsection 33(2)

These items make amendments to what must be included in the statement of participant supports for an old framework plan.

Item 39 adds proposed new paragraph 33(2)(ba) to subsection 33(2) to require that the statement of participant supports must include the date the plan is to end.

Item 40 amends paragraph 33(2)(c) to omit the words 'the date by which, or the circumstances in which,' and substitutes with the words 'any circumstances in which'. This reflects the fact that old framework plans will no longer have a scheduled reassessment date, but old framework plans may still provide circumstances in which a plan must be reassessed.

These items together reflect the new 'plan renewal' process which provides for plan 'end dates' rather than 'reassessment dates'. Upon reaching the end date, the plan would undergo the plan renewal process outlined in the proposed new section 50A.

Where relevant, the statement of participants supports for an old framework plan may contain circumstances in which an old framework plan is to be reassessed. In addition, section 48 will still allow a plan to be assessed at any time.

Item 41 – Subsection 37(1)
This item repeals and replaces subsection 37(1), which relates to when a participant's plan comes into effect. Currently, subsection 37(1) provides that a participant's plan comes into effect when the CEO has received the participant's statement of goals and aspirations and approved the statement of participant supports. This item will add that for a plan that is a renewal of another plan by force of section 50A, a plan comes into effect immediately after the previous plan's end date.

The impact of this is that a renewed plan commences immediately after the previous plan ends to ensure there is no period of time in which a participant does not have a plan in place.

Item 42 – Paragraph 37(3)(a)
This item repeals and replaces paragraph 37(3)(a), which deals with when a participant's plan ceases to be in effect. Currently, paragraph 37(3)(a) provides that a plan ceases to be in effect when it is replaced by another plan due to a plan reassessment. This amendment provides that a plan also ceases to be in effect when it is replaced due to a plan renewal.

Item 43 – Subsection 37(4)
This item is a technical amendment replacing the reference to paragraph 37(3)(a) by substituting with subparagraph 37(3)(a)(i) to reflect the amendments made by item 42.

Item 44 – Section 38
This item is a technical amendment which inserts '(1)' before 'The CEO' to reflect the fact that item 45 inserts new subsections into section 38.

Item 45 – At the end of section 38
This item adds two new subsections to section 38 which deals with when a copy of a plan is to be provided to a participant. It currently provides that the CEO must provide a copy of a participant's plan to the participant within 7 days after the plan comes into effect.

Proposed new subsection 38(2) will provide that if the plan is a renewal, the CEO must provide a copy of the plan to the participant as soon as practicable. This may be more than 7 days after the plan comes into effect. The Agency also intends to give notification to a participant in advance of the plan being renewed.

Proposed new subsection 38(3) deals with notification to a participant if a funding component amount in a plan is affected by a determination reducing the funding for groups of supports made under proposed new section 34A (see item 34). This new subsection will require the CEO to notify a participant if a funding component amount in their plan is affected by a support determination at the same time as they receive a copy of their plan.

This item ensures that participants are fully aware of the content of their plan and the funding amounts that they are able to access during their plan's duration.

Item 46 – Paragraph 47A(1A)(a)
This item is a consequential amendment to the replacement of 'reassessment dates' with 'end dates' for old framework plans. The item omits a reference to plan reassessment dates from paragraph 47A(1A)(a), which deals with permitted variations of old framework plans.

Item 47 – Subparagraph 47A(1A)(d)(iii)
This item is a consequential amendment to the replacement of 'reassessment dates' with 'end dates' for old framework plans. The item repeals subparagraph 47A(1A)(d)(iii) which allows for adjustments to funding to deal with a change to a reassessment date.

Item 48 – Subsection 49(1)
This item is consequential to the replacement of 'reassessment dates' with 'end dates' for old framework plans. Section 49 deals with the reassessment of a participant's plan before the plan's reassessment date. The item amends subsection 49(1) to clarify that the requirements to reassess or vary a plan before a plan's scheduled reassessment date only applies where there is in fact a reassessment date in a plan.

Item 49 – Subparagraph 49(1)(b)(ii)
This item is consequential to the replacement of 'reassessment dates' with 'end dates' for old framework plans. It omits a reference to subsection 33(2) due to the fact that statements of participant supports for old framework plans no longer contain a reassessment date.

Item 50 – At the end of Division 4 of Part 2 of Chapter 3
This item inserts new section 50A dealing with the renewal of participant's old framework plan on end date.

Proposed new subsection 50A(1) will provide that a participant's old framework plan, by force of this section, will be renewed as a new plan immediately after the end date specified in the old plan.

Two legislative notes are included to assist the reader in understanding the operation of this provision. The note first points to section 37 which provides that a new plan comes into effect immediately after the end date for an old plan, and the old plan ceases to be in effect at the same time (see item 41). The second note points to section 38, which requires a copy of the participant's renewed plan to be provided to the participant (see item 45).

Proposed new subsection 50A(2) will provide that the text of the new plan will remain the same as the old plan except for the following alterations:

- The end date for the new plan will be the 12-month anniversary of the end date of the old plan. This means that all renewed plans will be of 12 month duration.
- The new plan will not include any one-off funding for supports that were included under the old plan. One off funding includes capital supports, such as funding for assistive technology or home modifications.

- Any other alteration determined in accordance with an instrument made under subsection 50A(3).

Matters that will be replicated in a new plan include funding periods, funding component amounts and total funding amounts (subject to any of the above alterations) and plan management type.

A legislative note accompanying this subsection explains a funding component amount in the old plan might have been affected by a determination made under section 34A. Those determinations do not directly alter plans, meaning that a funding component amount stated in the old plan, will be the same in the new plan (unless altered in another way).

Proposed new subsection 50A(3) provides that the Minister may, by legislative instrument determine alterations, or a method to work out alterations for the purposes of paragraph 50A(2)(c), which allows for alterations when a plan is renewed. Including a method in the legislative instrument for working out alterations would provide important transparency for participants in understanding how their plan has been modified.

A legislative note under this subsection provides examples of alterations that may be contained in the instrument. The note mentions the following examples:

- a new plan does not include a temporary variation of an old plan (such as a variation that responds to an unexpected medical event affecting a participant's carer); or
- a new plan does not include time-limited funding to the extent the funding has already been used (for example, School Leaver Employment Supports (SLES) are limited to two years across plans. Any unused portion of SLES funding would be added to the renewed plan, but the funding would not be 're-set' or re-granted through a renewal).

Other alterations that may be included in the instrument include an alteration to take account of an indexation factor (see item 3 in Schedule 3 to this Bill).

A legislative note after subsection 50A(3) explains that Part 4 of Chapter 3 of the Legislation Act, relating to sunsetting, does not apply to the determination. This is due to the LEOMR which provides that instruments made under the Act are exempt from sunsetting (see table item 42AC in section 12 of those Regulations). It is appropriate for all legislative instruments made under the Act to be exempt from sunsetting as they form part of an intergovernmental scheme, as provided in the Attorney-General's Department's *Guide to managing sunsetting of legislative instruments*.

Proposed new subsection 50A(4) provides that, to avoid doubt, the new plan does not require a new statement of participant supports to be prepared with the participant and approved by the CEO. Further, the making of the new plan does not involve the making of any reviewable decision. A discussion of why plan renewals are not reviewable decisions is above in the explanation of this Part as a whole.

A note is included which clarifies that the statement of participant supports included in the old plan is included in the new plan in accordance with subsection 50A(2).

Effect on renewed plans of administrative or judicial review of a previous plan

Proposed new subsections 50A(5) to (7) deal with the impact of administrative or judicial review of a previous plan on a renewed plan. This is important to ensure that renewed plans are consistent with original decisions that have been substituted as a result of merits review after a plan has been renewed.

Proposed new subsection 50A(5) applies if the following circumstances exist:

- as a result of an administrative or judicial review, a decision is made to vary or substitute a decision in relation to a participant's plan; and
- the review decision takes effect from a day before the review decision was made; and
- a section 50A successor to the original plan came into effect the day before the review decision was made, but after the review decision takes effect.

If the above circumstances exist, then subsection 50(A)(1) is taken to have applied:

- so as to renew the original plan as affected by the review decision; and
- so as to renew each later section 50A successor to the original plan that was affected.

The effect of subsection 50A(5) is that if an original decision to approve a statement of participant supports was substituted as a result of internal or external review of that decision, every subsequent renewed plan is consistent with that substituted decision. This is critical because renewed plans are not subject to review themselves, rather they replicate a previous decision to approve a statement of participant supports. If that original decision is found not to be the correct or preferable one, then the renewed plan should be consistent with the correct or preferable decision.

Proposed new subsection 50A(6) will provide that a plan is a section 50A successor to the original plan if, by force, the plan is a renewal of:

- the original plan; or
- another plan that was a renewal directly or indirectly, of the original plan by force of this section.

Proposed new subsection 50A(7) will provide that the Minister may, by legislative instrument, determine circumstances that might affect a section 50A successor to a participant's plan after it comes into effect; and whether or how, those circumstances are to alter the plan if they arise. If circumstances specified in the determination arise, they have the effect specified in the determination on any section 50A successor to a participant's plan to which the determination applies.

This instrument is in effect an equivalent to the instrument to be made under subsection 50A(3). In this case, the instrument can make adjustments to plans that were substituted as the correct or preferable decision following administrative or judicial review. For example, the instrument could provide for an adjustment to remove one off supports in renewed plans and to ensure that sufficient indexation factors are applied across all of the renewed plans.

A legislative note after subsection 50A(7) explains that Part 4 of Chapter 3 of the Legislation Act, relating to sunsetting, does not apply to the determination. This is due to the LEOMR which provides that instruments made under the Act are exempt from sunsetting (see table item 42AC in section 12 of those Regulations). It is appropriate for all legislative instruments made under the Act to be exempt from sunsetting as they form part of an intergovernmental scheme, as provided in the Attorney-General's Department's *Guide to managing sunsetting of legislative instruments*.

Renewal of suspended plans

Proposed new subsection 50A(8) will provide that a plan will be renewed even if the plan is suspended at the time that a renewal is to occur. Despite the renewal, the suspension will remain in effect until it ceases in accordance with the relevant plan suspension provisions.

Item 51 – Subparagraph 101(2)(b)(ii)
Section 101 deals with the date of effect of later decisions before a review is completed. This item omits 'section 37' and substitutes it with 'paragraph 37(1)(a)' to make it clear that the date of effect provisions do not apply to renewed plans.

Item 52 – At the end of subsection 101(2)
This item adds a note at the end of subsection 101(2) which explains that the subsection does not apply to a plan as renewed by force of section 50A. This makes it clear that, unlike varied plans, renewed plans are not subject to review.

Item 53 – Subparagraph 103(2)(c)(ii)
Section 103 deals with applications to the Administrative Review Tribunal. This item omits 'section 37' and substitutes it with 'paragraph 37(1)(a)'. This item omits 'section 37' and substitutes it with 'paragraph 37(1)(a)' to make it clear that the date of effect provisions do not apply to renewed plans.

Item 54 – At the end of subsection 103(2)
This item adds a note at the end of subsection 103(2) which explains that the subsection does not apply to a plan as renewed by force of section 50A. This makes it clear that, unlike varied plans, renewed plans are not subject to review.

Item 55 – At the end of Part 6 of Chapter 4
This item adds a new section 103A which deals with the effect of a plan ceasing as a result of renewal under section 50A. Proposed new section 103A is included to avoid doubt and make

it clear that an application for review may be made, and review may be conducted, regardless of whether the plan being reviewed has ceased to be in effect as a result of a plan renewal.

A legislative note is included which explains that under section 50A, an old framework plan is renewed as a new plan on the old plan's end date. Although the making of the new plan does not involve a reviewable decision, this does not prevent a review of the old plan, and the review of the old plan could also affect the new plan (dependent on the outcome of the review).

Item 56 – Application of amendments

This item provides that amendments made by this Part apply to a participant's old framework plan that comes into effect before, on or after the day this item commences.

Item 57 – Review of decisions after this item commences

This item explains that if, on or after the day this item commences, a decision is made on review of an earlier decision, the amendments made by the Part apply in relation to the making of the decision on review, regardless of whether the earlier decision was made before, on or after the day this item commences.

Item 58 – Transitional provision for reassessment dates in old framework plans

This item provides a series of transitional provisions for old framework plans. This item applies to a participant's old framework plan that was in effect immediately before this item commences. These transitional provisions would allow for the Minister to bring forward the reassessment date of a participant's plan if the date is after 1 October 2027. The intent of these provisions is to ensure that all participants undergo either a plan renewal or plan reassessment within 12-months from 1 October 2026, to enable application of the support determination (see Part 4 of this Schedule). This would support equity by ensuring the reductions imposed by the support determination are applied to all participants within a 12-month period, and it would also support broader Scheme sustainability.

Reassessment date on or before 1 October 2027

Subitem 58(2) provides that if a plan has a reassessment date on or before 1 October 2027 at the commencement of this item, then that date is taken instead to be the plan's end date.

A note is included which explains that instead of being reassessed under section 49 before that date, these plans will be automatically renewed as new plans immediate after that date by force of new section 50A.

Reassessment date after 1 October 2027

Subitem 58(3) provides that if a plan has a reassessment date after 1 October 2027 at the commencement of this item, that date is taken to be replaced by whichever date (the revised date) is specified for the plan in, or worked out in accordance with a legislative instrument

made by the Minister. The revised date is taken to be the plan's end date and not the plan's reassessment date.

A note is included which explains that instead of being reassessed under section 49 before that date, these plans will be automatically renewed as new plans immediately after that date by force of new section 50A.

Subitem 58(4) provides that the Minister may, by legislative instrument, determine a date for a plan, or how to work out a date for a plan where the plan reassessment date is after 1 October 2027. This may result in the date being earlier than the date specified in the plan for the purposes of reassessment. It is intended that participants with reassessment dates beyond 1 October 2027 would be brought forward in batches. This will likely be based on the timing of their scheduled reassessment date. For example, all participants with a reassessment date occurring 3-months from 1 October 2027 may have their reassessment dates brought forward earlier than participants with a later reassessment date.

Plans continued past previous reassessment dates

Sub-item 58(5) applies to plans that have been through the administrative continuation process explained in the overview of this Part. The sub-item applies if, before this item commences, the reassessment date of a participant's plan has passed without reassessment of the plan being completed, and the participant was notified by the Agency that their plan would continue until a specified date, the specified date most recently notified to the participant is taken to be the reassessment date specified in the plan. In effect, the most recent reassessment date provided to a participant by the Agency is taken to be the plan end date.

Item 59 - Renewal of old framework plans approved before 9 October 2024

This item applies to old framework plans where the plan was approved before 9 October 2024 when the OFP Determination commenced. The statement of participant supports in these plans will not specify total funding amounts, funding component amounts or funding periods for the purposes of subsection 33(2A).

For the purposes of that plan, subsection 50A(2) as in force after this item commences is taken to include the below additional paragraphs after paragraph (b). The effect of the below paragraphs is to impose additional alterations to the previous plan beyond those already set out in subsection 50A(2) (see item 50):

(ba) if an amount of funding is specified in the old plan for a support, or group of supports:
- that support is, or those supports are, a group of supports for the purposes of paragraph 33(2A)(b) and;
- the amount is the funding component amount for the group for the purposes of paragraph 33(2A)(c).

(bb) if because of (ba) above, the new plan includes a funding component amount for one or more groups of supports – that amount, or the sum of those amounts is the total funding amount for the purposes of paragraph 33(2A)(a)

(bc) if (ba) above applies to the old plan, the period from the day the new plan takes effect to its end date is a single funding period for the purposes of 33(2A)(d).

Example – Jorge

Jorge has a 24 month old framework plan including funding of $20,000 for assistance with social, economic and community participation. There is a ministerial determination in place reducing the amount of funding for social, economic and community participation by for example 25 per cent. When his plan is renewed, the amount of funding that would have been provided for this support without the ministerial determination in place is first calculated. In Jorge's case this is $10,000 because plan renewals last for 12 months and his previous plan included $20,000 for 24 months.

After Jorge's annualised budget amount has been calculated, the percentage reduction of 25 per cent is applied. The reduction reflects the ministerial determination to reduce the level of funding for all participants who receive social, economic and community participation support, not a change to Jorge's entitlement to the support category.

The reduction is applied after the renewed amount is established. It does not affect whether the support is included in the renewed plan, nor does it alter the basis on which the renewed amount was calculated. Instead, it operates as a final adjustment to the funding available.

Jorge's renewed plan includes $7,500 assistance with social, economic and community participation supports. This reflects a reduction of 25 per cent, or $2,500 from the $10,000 Jorge was entitled to before the reduction of 25 per cent was applied based on the ministerial determination.

Example – Riley

Riley has a 12 month NDIS plan which was created through a plan renewal. Their plan is due for another renewal as the plan end date is approaching. There is a ministerial determination in place reducing the amount of funding for assistance with social, economic and community participation by for example 50 per cent. Riley had $20,000 in their plan for assistance with social, economic and community participation supports before the ministerial determination commenced. Their last plan renewal was completed after the ministerial determination was in place so the 50 per cent reduction was applied and they have $10,000 in their current plan for assistance with social, economic and community participation.

When Riley's plan is renewed, the amount of funding that would have been provided for assistance with social, economic and community participation supports without the ministerial determination in place is retained as $20,000 as per the prior plan. Then the ministerial determination is applied to this amount, so Riley's renewed plan is $10,000 for assistance with social, economic and community participation.

Example – Tye

Tye's old framework plan is due for a reassessment, however the reassessment has not been scheduled due to Tye being unwell. In prior years when Tye's plan had not been reassessed by the plan reassessment date he had a plan continuation and his plan rolled over, with unused funding remaining available in it. This year, Tye's plan reassessment date becomes the plan end date. On the day after the plan end date, Tye's plan is renewed instead of being rolled over and a new plan is put in place for 12 months. The new plan contains the same text, funding periods and supports that were in place at the end-date of the prior plan, but any unused funding is no longer available. The plan starts afresh for the next 12 months.

Example - Soraya

Soraya has an old framework plan due for reassessment. As her contact details were out of date, the reassessment was unable to be scheduled before the reassessment date. Soraya's current plan included supports to assist her with personal care and community access as well as one-off funding for a new manual wheelchair which has been purchased, and ongoing maintenance funding. Soraya's plan reassessment date becomes the plan end date, and her plan is renewed the day after her plan end date for another 12 months. Her new plan has the same supports as she had previously but without the one-off funding for the wheelchair. Her plan still includes the ongoing maintenance funding for her wheelchair.

Example - Maria

Maria has an old framework plan approved before 9 October 2024. Her plan has been rolled over for the last 3 years and does not include funding periods, funding components or a total funding amount. Maria's old framework plan is a 12 month plan and includes core supports of $10,000 and a daily living amount of $6,000. When her plan is renewed she receives a total funding amount of $16,000 with a plan end date in 12 months. Maria will receive $10,000 as one funding component for core supports, and $6,000 as another funding component for improved daily living. The funding period for these supports will be a 12 month period.

Part 6—Reasonable and necessary supports

The provision of 'reasonable and necessary supports' is one of the key pillars of the NDIS. However, its interpretation has broadened over time, expanding the scope of the Scheme beyond the Parliament's original intent. The way in which reasonable and necessary supports are determined has Scheme wide fiscal implications directly linked to Scheme sustainability.

In old framework plans, participants receive reasonable and necessary supports. There is no definition of what is 'reasonable' or 'necessary', but only a list of principles-based criteria set out in subsection 34(1) of the Act. This has resulted in a high degree of discretion, subjectivity and lack of consistency in decision making by delegates of the CEO, tribunals and courts. Guidance for decision makers is provided through the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Supports for Participants Rules) but has not been successful in reducing inconsistency. In new framework plans, participants will receive a 'reasonable and necessary budget'. There is currently limited explanation of what reasonable and necessary means in the context of new framework planning.

Amendments made in this Part create stronger parameters around what is considered reasonable and necessary under the NDIS, including reframing what it means for a support to be reasonable. What is reasonable should be determined in part by what is reasonable to expect the Scheme to fund having regard to consistency across government funded social service systems and within available resources (consistent with Article 2 of the *Convention on the Rights of Persons with Disability*). In some cases, what is reasonable to fund may be less than the actual cost of a support. It is a different concept to the prevailing one, which is often what participants expect to receive from the NDIS. This change is relevant to both old framework and new framework plans.

Amendments made by this Part also incorporate consideration of Scheme sustainability more directly into decision making. This is achieved through amendments to the objects and principles of the Act to embed Scheme sustainability considerations, to make sure the NDIS remains viable, effective and affordable.

This Part also strengthens the considerations the CEO must make when determining whether a support is 'reasonable and necessary' by inserting specific value for money considerations, effective and beneficial considerations, and family support considerations. These are currently factors in the Supports for Participants rules but will be strengthened by inclusion in the primary legislation.

Finally, this Part provides for a legislative instrument that allows the Minister to set maximum funding amounts, intensity or ratios for individual supports or classes of supports. These funding amounts can be made with reference to a certain class of participants to make sure the limitations are appropriately targeted. This instrument will be based on peer reviewed and

published evidence about what level and kind of support is appropriate and beneficial for participants.

Notes on Clauses

Item 60 – Paragraph 3(1)(d)
This item repeals paragraph 3(1)(d) and substitutes with 'provide NDIS supports for participants in the National Disability Insurance Scheme that are reasonable and necessary, so far as is consistent with the financial sustainability of the Scheme; and'.

The purpose of this item is to embed the concept of financial sustainability of the scheme into the objects of the Act to provide clarity and direction to the interpretation of the NDIS Act. Financial sustainability is concerned with the cumulative impact of funding across groups of supports and ensuring that responsibility for disability supports is appropriately shared across other mainstream service and community support systems. It is to be given effect through specific, structured constraints on decision making which determine to what extent particular supports may be funded as 'reasonable and necessary'.

This must be balanced against other objects of the Act and support equity and consistency in the determination of reasonable and necessary support for participants with similar needs.

Item 61 – Subsection 4(5) and (11)
This item omits 'reasonable and necessary' and substitutes with 'NDIS supports'. The principle under 4(5) now reads 'People with disability should be supported to receive NDIS supports, including early intervention supports.'

The principle at paragraph (11) now reads 'NDIS supports for people with disability should:'

The purpose of these amendments is to embed the provision of NDIS supports into the general principles which guide actions under the NDIS Act.

Items 62 to 67 – Principles relating to participants and their plans
Part 1A of Chapter 3 of the Act deals with principles relating to participants and their plans. Currently it contains only section 17A, which deals with principles relating to the participation of people with disability. Other principles relating to plans are set out in section 31 of the Act.

These items expand and clarify the principles relating specifically to plans and planning, noting that these are in addition to the principles set out in section 4 of the Act. While there is some duplication, it adds to and clarifies the participant principles that are critical to decisions regarding participant plans.

Item 62 amends the heading of section 17A from 'principles relating to participation of people with disability' to 'principles relating to participation and plans'. This reflects the changes made by item 63.

Item 63 adds three new paragraphs to subsection 17A(3). The amendments will provide that the NDIS is to:

- where relevant, respect the role of family, carers and other persons who are significant in the life of participants; and
- where relevant, recognise and respect the relationship between participants and their families and carers; and
- support communities to respond to participants' individual goals and needs.

The purpose of this item is to incorporate key overarching principles from section 31 of the Act into section 17A. This reflects the move away from having principles that only apply to plans.

Item 64 amends subsection 17A(4) to add a reference to section 17B, to clarify that the principles set out in section 17A are in addition to the principles set out in sections 4 and 17B of the Act.

Item 65 inserts a new section 17B, dealing with principles relating to Scheme sustainability. These principles form a key part of ensuring that decisions in relation to participants and their plans are taken in the context of ensuring that the Scheme can remain sustainable into the future.

Proposed new section 17B will provide that in performing the CEO's functions and exercising the CEO's powers under Chapter 3 of the Act, the CEO must have regard to principles set out in section 17B.

Proposed new subsection 17B(2) provides that considerations relevant to the performance of the CEO's functions and exercise of the CEO's powers include the following:

- the NDIS is to fund supports for participants to meet disability support needs that arise directly from impairments in relation to which participants meet the disability requirements or early intervention requirements. This reflects and expands the application of the amendments made by Part 8 of this Schedule.
- the desirability of supporting communities to respond to the goals and needs of participants. The NDIS was never designed to replace ordinary community supports which are critical, as strong community capability helps participants achieve their goals more sustainably and inclusively. In addition, participants often do better when informal supports, including family, peers, clubs, employers and local services play a role alongside funded supports.
- the financial sustainability of the Scheme, having regard to reports of the Scheme actuary under Part 6A of Chapter 6. This is achieved by only providing supports that are necessary, effective and good value and by preferring options that achieve the participant's goals at the lowest reasonable cost while still being safe and appropriate.

Subsection 17B(3) will provide that participants should be responsible for day-to-day living costs, including costs incurred whether or not a person has a disability. The NDIS is intended to fund only disability related supports, not the ordinary expenses that everyone has. The NDIS is not intended to be a form of social security or income supplementation. This principle will also protect the financial sustainability of the Scheme as ordinary living costs are large and ongoing. Covering them would significantly expand spending and reduce the Scheme's ability to fund necessary disability supports for participants.

Subsection 17B(4) will provide that funding under the NDIS should be used efficiently and the distribution of Scheme funding should be equitable across participants as a whole, having regard to similarities in needs and circumstances. When funding is directed efficiently towards supports that are evidence-based, necessary and good value, more participants can receive supports that actually help them pursue goals and improve functional capacity, rather than funding being absorbed by ineffective, inefficient, duplicative or over priced items. Decision making should also be directed at building fairness and consistency so that participants with similar levels of functional impact should be treated consistently so that access to supports is not determined by factors like advocacy capacity or provider influence.

In addition to the principles in sections 4 and 17A, the purpose of these principles is to strengthen the requirement for the sustainability of the Scheme to be a core consideration in how the CEO performs their function and exercises powers relating to participants and their plans.

Item 66 repeals Division 1 of Part 2 of Chapter 3 (which consists only of section 31). This reflects consolidation of principles dealing with planning decisions incorporated into one Part of the Act. The purpose of this item is to remove the principles under section 31 as the relevant principles from this section will be included in amendments made to section 4 and new section 17B.

Item 67 inserts new subsection 32K(6) to require the Minister to take into account the principles in sections 17A and 17B, in addition to having regard to the financial sustainability of the Scheme as is required when making any NDIS rules, when making NDIS rules relating to working out the total funding amount for reasonable and necessary budgets for new framework planning.

Item 68 – After subsection 33(2E)

This item inserts new subsections 33(2EA) and 33(2EB) after subsection 33(2E) of the Act. Subsection 33(2E) of the Act currently allows the Minister, by legislative instrument, to determine a number of matters dealing with the content of a statement of participants supports for an old framework plan.

New subsection 33(2EA) will provide that a determination made under subsection 33(2E) may specify a maximum amount of funding for supports, maximum intensity for provision of

support or a maximum ratio of worker to participant for provision of supports. This can be determined for a support or class of supports in relation to participants generally or a class of participants.

Maximum amounts would refer to the maximum funding amount for a support or group of supports that could be included in a participant's plan, regardless of any other considerations. Maximum intensity for the provision of a support refers to the frequency and/or duration for the provision of support. For example, the maximum intensity for a participant in a specified class may be 12 hours per year of a particular kind of therapy support.

A legislative note to subsection 33(2EA) makes clear that the determination is not required to specify a maximum for all supports. The intention is only to specify maximums based on clear evidence, either of benefit to participants or impact on scheme sustainability.

For example, a determination could specify a maximum intensity for a particular therapy support if research shows that any more than that intensity does not add any benefit for an individual.

Proposed new subsection 33(2EB) will provide that where a maximum amount for a support or class of supports is determined, the method for calculating funding component amounts must not exceed the maximum amount.

Two legislative notes at the end of subsection 33(2EB) provide important clarification for the reader. The first note states that subsections 33(2E), (2EA) and (2EB) apply regardless of whether the outcome is that a funding component amount does not meet the actual cost of supports in the group of supports to which it relates.

The second note reminds the reader that subsection 33(2E), (2EA) and (2EB) do not affect the CEO's duty to be satisfied of the matters mentioned in subsection 34(1). In particular, the fact that a maximum amount, intensity or ratio is specified for a support or class of supports does not require or imply that a decision maker should include funding up to that maximum as a default or target amount. That is, a decision maker is still required to consider what supports may be reasonable and necessary before applying the determination under section 33(2E) that may have the impact of reducing the funding component amounts that would otherwise have been included in a participant's plan. Once a support is considered reasonable and necessary, the determination operates only to constrain the amount of funding that may be included, not to determine the amount that should be included.

Example - Astrid

Astrid's old framework plan is currently being reassessed. During the plan reassessment discussion, Astrid and the NDIS planner discuss future goals and support needs. Astrid advises she has been accessing the community several times a week with a support

worker to do her shopping, go to medical appointments, as well as weekly coffee and movie outings.

The NDIS planner determines the reasonable and necessary supports for Astrid to access the community are 12 hours per week, equating to $44,000 for 12 months. A support determination is in effect which places a maximum dollar amount on funding for social, community and civic participation categories. The maximum dollar amount is $30,000.

Astrid's budget contains the $44,000 which is the value of the reasonable and necessary social, community and civic participation supports, however the maximum amount Astrid is able to spend from this budget is $30,000 in line with the support determination.

Example - Marco
Marco and his parents are undertaking a plan reassessment for Marco's old framework plan. Marco's parents have provided a range of reports from Marco's speech pathologist, occupational therapist and physiotherapist on how Marco is progressing towards his goals, and recommendations on the number of allied health hours required in Marco's next plan. The NDIS planner is reviewing the recommendations in the reports which add to a total of 96 hours for the 12 month period.

A support determination is in effect which sets a maximum intensity for therapy supports, which is 25 hours per discipline of therapy. The NDIS planner determines the 30 hours per discipline is reasonable and necessary for Marco and includes this in his NDIS plan, however in line with the support determination, Marco is able to receive a maximum of 25 hours per discipline. As Marco accesses three different types of allied health supports, this would equate to 75 hours in total.

Items 69 and 70 – Paragraph 34(1)(f)

Item 69 adjusts punctuation and is consequential to item 70.

Item 70 inserts a new paragraph 34(1)(g) into subsection 34(1). Subsection 34(1) sets out the matters that the CEO must be satisfied of in specifying supports in a statement of participant supports.

New paragraph 34(1)(g) provides that the CEO must be satisfied the support is not more appropriately provided or funded by another scheme, or government service system. This amendment builds on the amendments made by Part 9 of this Schedule to make sure that the considerations about access to other service systems taken into account as part of access decisions are also taken into account as part of planning decisions.

Items 71 and 72 – after subsection 34(1)
These items deal with legislative notes after subsection 34(1).

Item 71 is a consequential amendment reflecting the insertion of a second note under subsection 34(1).

Item 72 adds a note at the end of this subsection to advise the reader that a support is not an NDIS support if it is declared by the NDIS rules under subsection 10(4). The purpose of this item is only to assist the reader in understanding the existing operation of section 34 of the Act.

Item 73 – After subsection 34(1)

This item adds additional considerations for the CEO in determining whether a support is reasonable and necessary. A series of subheadings are included to assist with structure, content and improve readability.

Value for money considerations

Proposed new subsections 34(1A), (1B) and (1C) provide guidance to the CEO in considering whether a support meets the requirements in paragraph 34(1)(c) that a support will only be reasonable and necessary if it represents value for money, in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support. These subsections do not limit the matters that the CEO may have regard to for the purposes of paragraph 34(1)(c).

Proposed new subsection 34(1A) will provide that when deciding whether a support represents value for money, the CEO must consider whether comparable supports are available at a lower cost than the supports, and if they are, consider whether one of those lower cost comparable supports would represent better value for money than the support.

Proposed new subsection 34(1B) will provide that in deciding whether the provision of equipment or modifications represents value for money, the CEO must consider the comparative cost of purchasing or leasing the equipment or modifications and may decide that purchasing equipment or modifications represents value for money even if the comparative cost of leasing is lower.

Proposed new subsection 34(1C) will provide that in relation to a support that is the provision of equipment or modifications, the CEO must consider whether the participant's circumstances are likely to change in the short term in a way that would affect the participant's need for the equipment or modifications. If it is, the CEO must, unless satisfied by evidence to the contrary, presume that the support represents value for money only if the support is provided by leasing the equipment or modifications.

Proposed new subsection 34(1D) will provide that whilst the CEO must consider whether comparable supports are available at a lower cost (34(1A)(a)), consider the comparative cost of purchasing or leasing equipment or modifications (34(1B)(a)), and whether the participant's circumstances are likely to change in the short term (34(1C)(a)), this does not limit other matters the CEO can considered in determining whether a support represents value for money under paragraph 34(1)(c).

> **Example – Ivan**
> Ivan is a 52 year old participant with motor neurone disease. Ivan's functional capacity is declining quickly, with his support needs continuing to change. Ivan requires a wheelchair to mobilise, however due to his changing needs, it would not represent value for money for a wheelchair to be purchased, instead funding is included so Ivan is able to lease a wheelchair appropriate for his current needs.

Effective and beneficial considerations

Proposed new subsections 34(1E) and (1F) provide guidance to the CEO in considering whether a support meets the requirements in paragraph 34(1)(d) that a support will only be reasonable and necessary if the support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice. There has been a lot of inconsistency in how paragraph 34(1)(d) is applied and the weight that decision makers give to documentation and evidence put before them. These subsections provide clarity on how differing, and potentially inconsistent, material is to be considered.

Subsection 34(1E) sets out the order of importance of matters that the CEO may have regard to when deciding whether a support will be, or is likely to be, effective and beneficial for the participant. If considering 2 or more of the following matters, the CEO must consider them in the following order of importance:

- research and evidence which is published, peer reviewed and generalisable (that is, can be applied to a cohort of people beyond the subjects of the study);
- evidence of the effectiveness of the support for people in similar circumstances to the participant, having regard to the participant's circumstances such as age and nature of impairments;
- evidence of demonstrated outcomes for the participant in improving, maintaining or reducing a decline in the participants functional capacity, or capacity for social and economic participation in using the support in previous plans;
- any other matters the CEO considers appropriate

The CEO may decide they are not satisfied that a support is, or is likely to be, effective and beneficial if there is limited or no published or peer reviewed evidence, even if there is evidence of effectiveness of the support either generally or for the participant in particular.

Example – Paulina

Paulina has an above knee amputation and has requested support to access hyperbaric oxygen therapy to help manage pain related to the amputation. The evidence base for hyperbaric oxygen therapy varies a lot depending on the condition being treated and there is limited to no evidence it is effective in managing post amputation pain. Therefore, the treatment is not considered effective and beneficial for Paulina and it cannot be included in her NDIS plan as a reasonable and necessary support.

Family etc, support

Proposed new subsections 34(1G), (1H) and (1J), provide guidance to the CEO in considering whether a support meets the requirements in paragraph 34(1)(e) that a support will only be reasonable and necessary if the funding or provision of the support takes account of what is reasonable to expect families, carers, informal networks and the community to provide.

In relation to parental support for a child, there is a wide breadth in the level of care and support different children may require, regardless of whether or not they have a disability. New subsection 34(1G) provides that where a participant is a child, the CEO must take into account the presumption that parents are responsible for providing substantial care and support for their children. New subsection 34(1H) provides that substantial care and support includes:

- supervision, personal care, transport, emotional support and behavioural support, and
- other assistance with the activities of daily living that, regardless of the child's disability, would reasonably be expected of a parent of a child of a similar age

Subsection 34(1J) provides that, in relation to a participant who is a child, the CEO must not decide that a support is reasonable and necessary having regard to what is reasonable for others to provide, if the primary purpose of the support is for one or more of the following:

- reducing burden on parental time, below what is reasonably expected of any parent
- improving household efficiency
- parental preference for the provision of support instead of parental care.

New subsection 34(1K) provides that when considering whether a support takes into account what is reasonable to expect families, carers and informal networks to provide, the CEO must consider whether:

- relying on these supports would expose a participant or others to a material risk of harm, abuse or neglect that cannot be mitigated through informal or lower costs supports
- the desirability of supporting, maintaining and strengthening informal supports and community networks in preference to replacing those supports with funded supports, except where those supports are necessary because of:
    - a material risk as mentioned above
    - the unsustainability of those supports.

The purpose of these amendments is to clarify the considerations of what is reasonable to expect informal supports to provide in supporting a participant. While these amendments consider it is appropriate for informal supports to provide a level of care and support, they also include important considerations where there is a risk or a likelihood the informal supports are unable to be sustained. For example, it would not be reasonable to lift or physically manage a child in unsafe ways that risk injury to a carer or to pay for disability supports for incontinence for an older child where that is associated with their permanent disability.

Item 74 – After paragraph 47A(1)(a)
This item inserts a requirement for the variation not to result in the duplication of a support already funded within a participant's plan.

The purpose of this item is to clarify that supports included as part of a variation of a participant's plan are not able to duplicate the kinds of supports which are already included in the plan.

Item 75 – Application of amendments in this Part
Amendments made by this Part apply to decisions made on or after the day this item commences, including decisions made in relation to plans in effect immediately before that day.

Item 76 – Review of decisions after item commences
This item explains amendments made by this Part apply in relation to a review of a decision that begins on, or after the date this item commences, regardless of whether the decision, or application for review was made before this item commences.

Part 7—Plan suspensions etc.

Currently, the CEO is unable to suspend a participant's plan if a participant cannot be contacted or fails or refuses to respond to requests for information. The result is that the participant's plan continues to be extended, without the Agency having any insight into the status or wellbeing of the participant. This poses risks to the participant and an integrity issue for the Agency as it cannot verify that a participant continues to require support, or that NDIS funding is being used to obtain supports for the participant.

Additionally, the CEO is currently unable to suspend a participant's plan where the participant refuses to engage in a plan reassessment process but is otherwise contactable by the Agency. The result is that the participant's plan continues to be extended without the Agency having any insight into whether the supports in a participant's plan remain reasonable and necessary.

Amendments made by this Part will enable the CEO to suspend a participant's plan if the CEO is satisfied reasonable attempts have been made to contact the participant for the purposes of requesting information and reports under sections 36 and 50 of the Act and the participant is not contactable. Attempts at contact must be undertaken using appropriate and accessible methods, including engagement with a participant's nominee or support network where appropriate and there must be at least 5 attempts at contact. The CEO would be required to give the participant a written notice of a decision to suspend their plan, specifying the date of effect. If the participant then contacts the Agency, the CEO would be required to decide to either cease the suspension or make a request for information within 28 days.

Subsection 41(2) of the Act sets out the effects of a suspension of a statement of participant supports. Most importantly, during a period of suspension a person is not entitled to be paid NDIS amounts so far as the amounts relate to supports that are acquired or provided during that period. In addition, a participant is also not entitled to make a request for a variation or reassessment during a period of suspension.

This Part will also allow the CEO to revoke a person's status as a participant in the NDIS if the CEO had made reasonable attempts to contact the participant for the purposes of making a request under section 36 or 50 for information or reports, and the participant was not contactable. The CEO would also be able to revoke a person's status as a participant if their plan has been suspended for at least 90 days.

Notes on Clauses

Item 77 – Subparagraph 19(2)(b)(ii)

This item is consequential to other amendments made by this Part. Currently subparagraph 19(2)(b)(ii) provides that if a person is a participant in the NDIS but the CEO subsequently decides to revoke the participant's status as a participant, then that person may make another

access request at any time. This item amends subparagraph 19(2)(b)(ii) to insert a reference to new subsection 30(1A) (see item 79) so that the subparagraph includes references to all provisions under which a person's status as a participant may be revoked.

Item 78 – Paragraph 29(1)(c)

This item is consequential to other amendments made by this Part. Current paragraph 29(1)(c) deals with when a person ceases to be a participant because their status as a participant has been revoked by the CEO. This item amends paragraph 29(1)(c) to insert a reference to new subsection 30(1A) (see item 79) so that the paragraph includes references to all provisions under which a person's status as a participant may be revoked.

Item 79 – After subsection 30(1)

This item inserts new subsections 30(1A) to (1D) after subsection 30(1). Section 30 deals with the revocation of participant status. Proposed new subsection 30(1A) will provide that the CEO may revoke a person's status as a participant if the CEO is satisfied that:

- the CEO has made reasonable attempts to contact the participant to request information or reports under section 36 or section 50 and the participant is not contactable, or
- the participant's plan has been suspended under proposed section 40A because the participant is not contactable (see Item 83) for at least 90 days.

This amendment allows the CEO to revoke the status of participants where they are uncontactable, but ensures that there are appropriate safeguards in place. The CEO is still required to make an active decision to revoke a participant's status as a participant and provide notice to the participant of the day on which the revocation is to take effect (see item 81).

New subsections 30(1B) to (1D) define what reasonable attempts to contact a participant must include. New subsection 30(1B) clarifies that the CEO must contact the participant directly, unless the participant has a nominee or other authorised person if there is no nominee. This ensures that contact must be made with the person most likely to be in a position to respond, support a participant to respond or respond on a participant's behalf. Nominees have obligations under the Act to inform the CEO of any matter or give information or documents when requested by the CEO.

New subsection 30(1C) provides that the CEO must comply with the following requirements before they may be satisfied that the participant is not contactable:

- At least 5 attempts have been made to contact the person (being the participant, nominee or other authorised person) using that person's preferred form of contact.
- The last of those attempts was made at least 3 months, and not more than 4 months after the first of those attempts. This ensures that there is an appropriate timeframe in which the required attempts at contact must be made.
- If the person's preferred form of contact is not in writing, at least one additional attempt has been made in writing, during the period between the first and last of the attempts to contact the person.

New subsection 30(1D) provides that if the person the CEO is attempting to contact is the participant, an attempt at contact does not count as one of the 5 attempts if the CEO becomes aware, before the suspension comes into effect, that at the time the attempt was made, the participant was in the care of a hospital or other institution or was experiencing homelessness. There is not a positive obligation on the CEO to investigate whether one of the above applies to the participant, but the CEO will rely on existing mechanisms, including notification by a person on behalf of a participant or information gained through hospital liaison officers and justice liaison officers.

Item 80 – Subsection 30(2)
This item would amend subsection 30(2) to insert a reference to the proposed subsection 30(1A). This amendment would ensure that subsection 30(2) appropriately references the circumstances in the Act under which a participant's status may be revoked.

Item 81 – Subsection 30(7)
This item would amend subsection 30(7), which relates to notifying a participant of a decision to revoke access to the Scheme. This would be a minor amendment, inserting a reference to proposed subsection 30(1A). It would ensure all the circumstances in which a participant's status may be revoked, are appropriately referenced in 30(7) and that the CEO must give a participant written notice of a revocation made under subsections 30(1) and 30(5).

Item 82 – Subsection 32D(5)
This item would repeal and replace subsection 32D(5). Subsection 32D(5) constrains the operation of existing subsection 32D(4), which relates to time limits for approving statement of participant supports.

This amendment would ensure that subsection 32D(4) does not apply if a participant's plan is suspended under proposed subsection 40A(1) relating to when participants are not contactable.

Item 83 – After section 40
This item would insert a new section 40A into the Act. This would provide that the CEO may suspend a participant's plan if the participant is not contactable, subject to certain conditions.

New subsection 40A(1) would provide that if the CEO has made reasonable attempts to contact the participant seeking information or reports under existing sections 36 or 50, and the participant is not contactable, the CEO may suspend the participant's plan. A note would also be added to explain to the reader that suspension is a reviewable decision under section 99 of the Act.

New subsections 40A(1B) and (1C) define what reasonable attempts to contact a participant must include. New subsection 40A(1A) clarifies that the CEO must contact the participant directly, unless the participant has a nominee or other authorised person if there is no nominee. This ensures that contact must be made with the person most likely to be in a position to

respond, support a participant to respond or respond on a participant's behalf. Nominees have obligations under the Act to inform the CEO of any matter or give information or documents when requested by the CEO.

New subsection 40A(1B) provides that the CEO must comply with the following requirements before they may be satisfied that the participant is not contactable:

- At least 5 attempts have been made to contact the person (being the participant, nominee or other authorised person) using that person's preferred form of contact.
- The last of those attempts was made at least 3 months, and not more than 4 months after the first of those attempts. This ensures that there is an appropriate timeframe in which the required attempts at contact must be made.
- If the person's preferred form of contact is not in writing, at least one additional attempt has been made in writing, during the period between the first and last of the attempts to contact the person.

New subsection 40A(1C) provides that if the person the CEO is attempting to contact is the participant, an attempt at contact does not count as one of the 5 attempts if the CEO becomes aware, before the suspension comes into effect, that at the time the attempt was made, the participant was in the care of a hospital or other institution or was experiencing homelessness. There is not a positive obligation on the CEO to investigate whether one of the above applies to the participant, but the CEO will rely on existing mechanisms, including notification by a person on behalf of a participant or information gained through hospital liaison officers and justice liaison officers. New subsection 40A(2) provides that if the CEO decides to suspend the plan under subsection 40A(1), they must notify the participant of the decision in writing, as well as the day on which the suspension is to take effect. A participant's plan is suspended from the date specified in the notice to the participant. This amendment would ensure that a participant is aware of the CEO's decision and the date the suspension takes effect.

New subsections 40A(3) and (4) together will provide that if a participant contacts the Agency within 90 days of the CEO deciding to suspend a plan under subsection 40(1), within 28 days, the CEO must do one of the following:

- decide to cease the suspension of the plan that is in effect at the time, and give the participant a written notice of the cessation decision; or
- make a request under section 36 or section 50 for information or reports relating to the participant.

The CEO may elect to remove the suspension because in contacting the Agency, the participant would have provided the required information or reports. Alternatively, the participant may still be refusing to supply the requested information or reports, in which case a continued suspension would be appropriate as the participant has been fully appraised of what is required of them but continues to refuse.

New subsection 40A(5) will provide that if the CEO decides to cease the suspension, the suspension ceases at the time the CEO makes the decision.

New subsection 40A(6) will provide that if the CEO decides to request information or reports relating to the participant, and the CEO receives the information or reports within the period specified in the request, the CEO must decide within another 28 days of receiving the information or reports to either cease the suspension of the plan by providing written notice or request further information or reports.

If information or reports are not received within the period specified in the request, the suspension continues until the participant contacts the Agency or the CEO revokes the participant's status as a participant, whichever happens sooner.

Despite the 90 day period specified in 40A(3) (that is, the period in which a participant must respond to the CEO), if the participant contacts the Agency after the suspension decision is made the CEO may, but does not need to, decide to cease the suspension or request information or reports relating to the participant at which the time suspension will still be in effect.

Example - Sheridan
Sheridan was contacted by the NDIS to commence an unscheduled Agency initiated plan reassessment after it was identified her current plan contained supports assessed as potential duplicates. The delegate contacted Sheridan to explain the reason for the reassessment and arrange a meeting to complete the plan reassessment.

Sheridan did not attend the meeting to complete the plan reassessment and subsequent attempts to contact her were unsuccessful. The delegate attempted to contact Sheridan for information relating to the reassessment of her plan five times by telephone over the course of four months with calls unanswered and messages not responded to. The delegate also sent two emails and a letter in the post requesting Sheridan provide the requested information and contact the NDIS to rebook the planning meeting.

The delegate reviewed the file and could see Sheridan was making regular self-managed claims for supports in her NDIS plan. These claims all related to community access and no specific risks related to Sheridan not having access to NDIS funding were identified. As the delegate has been unable to contact Sheridan to complete the plan reassessment, and reasonable attempts had been made to contact her, the delegate makes a decision to suspend Sheridan's plan. Sheridan's plan is suspended and she is advised of this in writing. Sheridan can no longer access NDIS supports until she contacts the Agency. Once Sheridan contacts the Agency and attends her plan reassessment meeting, her plan suspension is ceased and she is again able to use her NDIS supports.

Example – Cyrus

Cyrus has an NDIS plan due for a scheduled reassessment. The Agency has attempted to contact Cyrus five times to arrange the reassessment multiple times over the course of four months using his preferred contact method of email. There has been no response from Cyrus so contact attempts are also made using telephone and letter. The delegate can see there have been no claims made from Cyrus's plan for several months.

Cyrus does not respond to any of the contact attempts so the delegate reviews the file and determines there are no specific risk factors identified. The delegate makes a decision to suspend Cyrus's plan and advises Cyrus of this in writing. As Cyrus does not contact the Agency over the next 90 days, a decision is made to revoke his status as an NDIS participant.

Item 84 – After paragraph 41(1)(a)

This item inserts a new paragraph into subsection 41(1) which deals with when a statement of participant supports in a participant's plan is suspended. New paragraph 41(1)(aaa) will provide that a statement of participant supports may be suspended in accordance with section 40A (which deals with participants who are not contactable).

This ensures that subsection 41(1) mentions each of the circumstances in which a plan may be suspended.

Item 85 – Subsection 99(1) (table item 3, column 2), Item 86 – Subsection 99(1) (after table item 5)

This item inserts a new reviewable decision under subsection 99(1). This means a decision to suspend a participant's plan under subsection 40A(1) is a reviewable decision under the Act.

Item 87 – Application and transitional provisions

This item provides that amendments made by this Part will apply to participant's plans that come into effect before, on or after the day this item commences.

This item also provides that the CEO may have regard to reasonable attempts made to contact the participant before, on or after this item commences.

Part 8—Tightening meaning of permanence to reduce access where an impairment can be treated

The NDIS Review recommended a more effective approach to determining access. This approach includes how permanence is assessed to refocus the Scheme on supporting people with significant and permanent disability.

Currently paragraph 24(1)(b) of the Act provides that in order for a person to meet the disability requirements, they must have an impairment or impairments that are, or are likely to be, permanent. Sub-paragraphs 25(1)(a)(i) and (ii) require a person to have an impairment that is, or is likely to be, permanent in order to meet the early intervention criteria (unless the person is a child with developmental delay).

The *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (Becoming a Participant Rules) set out (amongst other things) how to determine whether an impairment should be considered permanent, or likely to be permanent. Rule 5.4 provides that an impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.

This Part inserts an approach to assessing permanence of impairments when determining whether a person meets the disability requirements or early intervention requirements. The intent of this item is to provide a clear definition of permanence including what constitutes appropriate treatment. Amendments also include circumstances which cannot be considered when determining whether a prospective participant has undertaken all appropriate treatment.

The NDIS was never intended to replace health, rehabilitation and treatment services which play a critical role in preventing lifelong disability. The intent of this Part is to clarify the interpretation of permanence by inserting a definitive test which limits people who are not intended to be participants of the Scheme being found eligible.

Notes on Clauses

Item 88 – Section 9
This item inserts a new term ‘appropriate treatment’ for an impairment or impairments in the definitions section of the Act. Appropriate treatment has the meaning given by proposed new section 25A.

Item 89 – After subsection 24(4) (before note 1)
This item inserts a new subsection 24(5).

The purpose of this item is to define how permanence is assessed for the purposes of determining whether a person meets the disability requirements under section 24 of the Act. It inserts a new subsection 24(5), which provides that an impairment or impairments are not

permanent or likely to be permanent unless a person has undertaken all appropriate treatment for an impairment or impairments.

This item also specifies that to be found permanent, the person's impairment or impairments are likely to persist for the person's lifetime. This means that the person's impairment or impairments cannot be reversed or remedied and will continue to exist throughout the person's life course, regardless of treatment undertaken or the passage of time.

Two notes are inserted to assist the reader with interpretation. The first note points the reader to proposed new section 25A for the meaning of appropriate treatment and when a person is taken to have undertaken all appropriate treatment for an impairment or impairments.

The second note acknowledges some permanent impairments require ongoing treatment to maintain a person's functional capacity. The purpose of this note is to ensure the CEO considers circumstances where ongoing treatment for permanent impairments is appropriate. For example some people may seek access to the NDIS with impairments that are likely to require ongoing clinical care, such as impairments attributable to psychosocial disability or degenerative conditions. This note makes it clear that a need for ongoing treatment to maintain a level of functional capacity (that is still substantially reduced functional capacity) is not a barrier to access the NDIS.

Proposed new subsection 24(6) makes it clear that subsections 24(2) and 24(3) have an effect subject to new subsection 24(5).

Item 90 – Subparagraph 25(1)(c)(i)

This item amends subparagraph 25(1)(c)(i) to remove 'mitigating or alleviating' and substitute it with 'reducing'. The purpose of this amendment is to differentiate this from the assessment of permanence, which requires consideration of whether treatment can alleviate the impact of an impairment.

This amendment will simplify the assessment about whether the provision of early intervention supports is likely to benefit the person by reducing the impact of the person's impairment to undertake communication, social interaction, learning, mobility, self-care or self-management.

Item 91 – After subsection 25(1A)

The purpose of this item is to define how permanence is assessed for the purposes of determining whether a person meets the early intervention requirements. It inserts a new subsection 25(1B), which provides that an impairment or impairments are not permanent or likely to be permanent unless a person has undertaken all appropriate treatment for an impairment or impairments.

This item also specifies that to be found permanent, the person's impairment or impairments are likely to persist for the person's lifetime. This means that the person's impairment or

impairments cannot be reversed or remedied and will continue to exist throughout the person's life course, regardless of treatment undertaken or the passage of time.

Two notes are inserted to assist the reader with interpretation. The first note refers the reader to section 25A to understand the meaning of appropriate treatment and when a person is taken to have undertaken all appropriate treatment for an impairment or impairments.

The second note acknowledges some permanent impairments require ongoing treatment to maintain a person's function. The purpose of this note is to ensure the CEO considers circumstances where ongoing treatment for permanent impairments is appropriate.

Item 92 – After section 25

This item inserts a new section 25A dealing with the meaning of *'appropriate treatment'*. This concept is key to determining whether a person's impairment or impairments is permanent or likely to be permanent for the purposes of considering whether they meet the disability requirements or early intervention requirements.

Proposed new subsection 25A(1) provides that appropriate treatment for a person's impairment or impairments is treatment that is evidence based, is regularly undertaken in Australia and can reliably be expected to improve, reverse or alleviate the impact of the impairment or impairments.

There has been extensive community concern about the amendments clarifying the definition of permanence in the Act, particularly around the requirement that an individual must undertake appropriate treatment. To address this, two legislative notes are inserted after subsection 25A(1)(c) to clarify the interpretation of 'appropriate treatment'.

The first note responds to evidence heard by the Committee about concerns regarding the affordability of treatment and whether individuals will be required to pay for private treatment to gain access to the NDIS. This note clarifies the interpretation of 25A(1)(c) that provides that appropriate treatment is one that is regularly undertaken or performed in Australia. The note explains that treatment is regularly undertaken or performed in Australia if there is public funding available for the treatment. Publicly funded treatments include, for example, those on the Medicare Benefits Schedule, the Pharmaceutical Benefits Scheme and public hospitals.

The second note responds to evidence received by the Committee that individuals would be required to undergo invasive or potentially traumatic treatments in order to gain access to the NDIS. In particular, concerns were raised that individuals with a psychosocial disability will be required to undergo chemical restraint to access the NDIS.

This note clarifies that appropriate treatment does not include restrictive practices involving seclusion, chemical restraint, mechanical restraint, physical restraint or environmental restraint. A 'restrictive practice' is defined in the *National Disability Insurance Scheme Act 2013* to mean 'any practice or intervention that has the effect of restricting the rights or freedom

of movement of a person with disability'. To aid in interpretation in practice, the legislative note relies on the definition of 'regulated restrictive practice' set out in the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018*. Section 6 of those rules provides that a restrictive practice is a ***regulated restrictive practice*** if it is or involves any of the following:

- seclusion, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted;
- chemical restraint, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness or a physical condition;
- mechanical restraint, which is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes;
- physical restraint, which is the use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person;
- environmental restraint, which restrict a person's free access to all parts of their environment, including items or activities.

A person may require ongoing treatment for some permanent impairments in order to maintain functional capacity in relation to an activity, even if the person has undertaken all appropriate treatment. For example, participants with psychosocial conditions who may require ongoing or intermittent treatment throughout their lives.

Treatment may be appropriate treatment for a person's impairment or impairments regardless of whether the person's individual circumstances restrict the person from accessing the treatment. A person's personal and environmental circumstances, including financial and geographical circumstances, are not relevant in considering whether a person has undertaken all appropriate treatment. This is because ensuring people with disability have access to mainstream services, regardless of their circumstances, is the responsibility of all mainstream support systems.

Person may be taken to have undertaken all appropriate treatment.

Proposed new paragraph 25A(3)(a) provides that a person is taken to have undertaken all appropriate treatment for an impairment or impairments if there is a medical reason that a person cannot undertake what would otherwise be all appropriate treatment. This ensures that

where a person is not able to undertake all appropriate treatment for their impairment or impairments due to medical reasons, this does not preclude them from meeting the permanence criteria.

Proposed new paragraph 25A(3)(b) together with proposed new subsection 25A(4) will provide that a person is also taken to have undertaken all appropriate medical treatment in circumstances determined in category D NDIS rules. Such circumstances could include consideration of cultural or personal belief systems.

Proposed new subsection 25A(5) clarifies that NDIS rules made for this purpose may make different provision for different classes of participants and different impairments or classes of impairments.

The purpose of this rulemaking power is to capture circumstances where it may be inappropriate to determine there are treatment options available for some impairments. For example, this may include types of treatment options for people with psychosocial disability.

Example – Matiu
Matiu has a diagnosed neurological condition affecting his lower limb function. He has been under the care of his General Practitioner and a neurologist for several years and has undertaken all recommended treatment, including medication trials, physiotherapy and rehabilitation programs. Despite this, he continues to experience significant and persistent mobility issues. His treating specialist has advised that no further treatment is likely to result in a material improvement in his functional capacity.

Matiu applies to the NDIS based on a physical impairment related to his ongoing neurological condition which substantially reduces his functional capacity in mobility. Matiu is found to be eligible for the NDIS because his physical impairment is determined to be permanent and he meets all other access criteria in the Act. This is because his long term treatment and advice from his treating specialist means he has undertaken all appropriate treatment to improve, reverse or alleviate his impairment.

Example – Soo
Soo is a 5 year old with a history of long term middle ear infections who lives with her mother in regional Australia. Soo's mother has applied for her to access the NDIS providing an audiogram indicating a bilateral moderate hearing loss with no indication of sensorineural (permanent) components. Soo is on a waiting list to see an ENT specialist who visits children in her local area every second month.

Soo is found to not be eligible for the NDIS as there is not enough evidence that her impairment will be permanent and will likely persist for her lifetime. She has not yet undergone all investigations for potential treatment options that may improve, reverse or alleviate the impact of her impairment, including evidence-based, low-risk

interventions such as grommets. The fact that she is living in a regional area where waitlists to see specialists are longer than in metropolitan areas is not able to be taken into consideration in determining whether Soo is eligible for the NDIS.

Her mother is informed that she can re-apply for the NDIS on behalf of her daughter, after further investigations and recommended treatment options are completed and if it is confirmed that her hearing loss is likely permanent and results in substantially reduced functional capacity.

Item 93 – Subsection 209(8) (table item 4, column headed 'Description', before paragraph (aa))

This item is consequential to item 92. It amends table item 4 in subsection 209(8) so that the new NDIS rule making power dealing with circumstances in which a person is taken to have undertaken all appropriate treatment is a category D NDIS rule, requiring consultation with all states and territories.

Item 94 – Application provision

This is an application provision that provides that amendments made by this Part apply in relation to a determination or decision made by the CEO in relation to whether a person meets the early intervention requirements or disability requirements, or both, made on or after the commencement of this item, whether or not the person is a participant before the commencement of this item. This means that the amendments can apply to decisions about whether a participant meets the disability or early intervention requirements any time after this Part commences.

Part 9—Eligibility based on access to other services

The NDIS was always intended to form part of a disability eco-system, not replace supports more appropriately provided by other service systems such as aged care, state and territory compensation schemes and mainstream supports. As a result the NDIS has expanded beyond its original intent, increasingly operating as a substitute or replacement for other service systems.

In determining whether a person meets the disability requirements or early intervention requirements for access to the Scheme, there is currently no requirement to consider whether a person is eligible to receive support through another system. If a person has access to other systems of support, this is generally dealt with as part of planning to ensure there is no duplication of funding. This has led to the situation where the NDIS is providing disability related support to people who could be receiving those supports through another more appropriate service system.

This Part introduces amendments which tighten eligibility to the NDIS where alternative supports are available through other service systems which can reasonably meet the needs of a person, or where the service system has a responsibility for meeting the needs of a person, such as workers compensation or motor vehicle accident compensation schemes.

Amendments made in this Part also enable category A NDIS rules to prescribe other service systems deemed to be alternative support services. This may be declared by reference to a particular service, such as aged care. The Minister can also declare alternative supports by reference to particular impairments for example for some chronic health conditions. For the Minister to prescribe other service systems as alternative support services, the NDIS rules must be agreed with all states and territories.

Notes on Clauses

Item 95 – Section 9

This item adds several new terms to the definitions in section 9.

- *excluded impairments* has the meaning given by subsections 25B(2), (3) and (4):
    - this includes impairments caused by a motor vehicle accident or work related injury that may be addressed by other service systems, such as relevant compensation schemes.
- *meets the alternative support requirements has the meaning given by subsection 25B(1).*
    - A person will need to meet the alternative support requirements as part of the access decision in order to access the NDIS. The NDIS is considered an alternative support for a person if, they are not included in a class or have a circumstance prescribed in NDIS rules, and meet the disability requirements or

early intervention requirements for at least one impairment which is not an excluded impairment.
    - Where a person has an excluded impairment, then another service system is considered to be the alternative support. For example a State or Territory motor vehicle accident compensation scheme.
- *workers' compensation law* means a law of the Commonwealth, State or a Territory that provides compensation or other benefits for or in respect of a work-related injury suffered by persons without requiring proof of any breach by, or by persons associated with, employers.
- *work related injury* in relation to a person means:
    - an injury (other than a disease) suffered by the person, that is a physical or mental injuring arising out of, or in the course of, the person's employment; or
    - an aggravation of a physical or mental injury (other than a disease) suffered by the person (whether or not that injury arose out of, or in the course of, the person's employment), that is an aggravation that arose out of, or in the course of that employment.

Item 96 – At the end of subsection 21(1)

This item adds a new criteria to be met when the CEO is considering whether a person meets the access criteria. New paragraph 21(1)(d) will provide that a person will only meet the access requirements if the CEO is satisfied that, at the time of considering the request, the person meets the alternative support requirements.

Item 97 – Before section 26

This item inserts new section 25B relating to alternative support requirements. It sets out what excluded impairments means and explains when a person meets the alternative support requirements.

Proposed new subsection 25B(1) will provide that a person meets the alternative support requirements if all of the following apply:

- the person is not included in a class of person prescribed by NDIS rules;
- the circumstances prescribed by the NDIS rules do not apply to the person;
- if the person meets the disability requirements or early intervention requirements, in relation to one or more impairments – at least one of those impairments is not an excluded impairment.

Some participants will seek access to the NDIS where they live with a range of impairments, including some that have resulted from a motor vehicle accident or work-related injury. Where a person's impairments are all as a result of one of these events, it is likely the participant will be considered to have excluded impairments where another service system is appropriate or responsible for addressing their needs.

Where a person lives with multiple impairments, with at least one of those impairments not being as a result of a motor vehicle accident or work-related injury, this impairment must meet the disability requirements or early intervention requirements in order for the person to meet access to the Scheme. In this scenario, only supports directly arising from the impairment which met the disability requirements or early intervention requirements will be considered when determining the participant's support needs. Support needs as a result of the excluded impairments will not be funded.

Excluded impairments – motor vehicle accidence compensation schemes.

Proposed new subsection 25B(2) will provide that an impairment is an excluded impairment if:

- the impairment was caused by a motor vehicle accident; and
- a Commonwealth, State or Territory law provides for compensation or other benefits for, or in respect to the impairment.

Excluded impairments – workplace compensation schemes

Proposed subsection 25B(3) will provide that an impairment is an excluded impairment if:

- the impairment was caused by a work-related injury; and
- workers compensation law provides for compensation or other benefits for, or in respect to the impairment.

Excluded impairments – declared alternative supports.

Proposed new subsection 25B(4) will provide that an impairment is an excluded impairment if a support is declared by NDIS rules to be an alternative support for the impairment.

An alternative support may be declared by reference to the system of service delivery, or support service through which the support is offered. Before making NDIS rules which declare that a support is an alternative support for an impairment, the Minister must be satisfied that it is not appropriate to fund or provide support for the impairment through the NDIS.

Item 98 – At the end of subsection 30(1)

This item adds 'the CEO is satisfied that the person does not meet the alternative support requirements' as a circumstance in which a participant's status may be revoked.

The effect of this item is that where a person does not meet the alternative support requirements, the CEO can revoke a person's status as a participant in the Scheme. This is not automatic revocation and requires a decision of the CEO.

Item 99 – Subsection 209(8) (table item 1, column headed 'Description', before paragraph (c))

This item is consequential to item 97. It amends table item 1 in subsection 209(8) so that the two new NDIS rule making powers in proposed new section 25B are category A NDIS rules, requiring the agreement of all states and territories.

Item 100 – Application—alternative support requirements

This item provides that the requirement to meet the alternative support requirements applies in relation to a person who makes an access request on or after the commencement of this item.

Item 101 – Application—revocation of participant status

This item provides that a person's status as a participant may be revoked as a result of failure to meet the alternative support requirement whether the person became a participant before, on or after the commencement of this item.

Example – Amir

Amir is a 45 year old participant who lives with an intellectual disability. Amir's intellectual disability was diagnosed when he was eight years old. Amir was recently in a motor vehicle accident in which he was a passenger, resulting in paraplegia.

Amir already meets the disability requirements in relation to his intellectual impairment, and seeks a reassessment of his plan for supports relating to his paraplegia. However as his physical impairment was caused by a motor vehicle accident for which he is entitled to compensation, this is considered an excluded impairment as his support needs are most appropriately met through the relevant state and territory compensation scheme.

Amir is eligible for the NDIS based on the impairment related to his intellectual disability and his NDIS plan will include funded supports to address his support needs arising from his intellectual disability. Any support needs arising from his paraplegia will be provided through the relevant compensation scheme.

Example – Jaymie

Jaymie is 27 years old and lives with significant vision loss as a result of a work-related injury. They apply to the NDIS to access support related to their sensory impairment.

Jaymie is found to be not eligible for the NDIS because they do not meet the alternative support requirements in relation to their sensory impairment. This is because their impairment is considered an excluded impairment as it was caused by a work-related injury. Jaymie's support needs are most appropriately met through worker's compensation entitlements which they are entitled to apply for and receive through the relevant workplace compensation scheme.

SCHEDULE 2 —FRAUD AND INTEGRITY MEASURES

Summary

Schedule 2 sets out amendments that strengthen the ability of the Agency to effectively identify, investigate and respond to noncompliance and fraud and ensure the integrity of the NDIS. This includes amendments which would enable limiting the number of registered plan management providers. These providers would be subject to more rigorous integrity and compliance requirements under a deed of arrangement with the Agency. Amendments include an updated definition of 'NDIS provider' and changes to claiming timeframes. Further amendments provide the Agency with compliance and enforcement powers by triggering provisions of the Regulatory Powers Act and inserting a range of civil penalty provisions. This is further supported by introducing additional requirements for information gathering and retention of records.

Background

The NDIS Review and the Royal Commission called for strengthened safeguards to protect participants and improved processes to protect the Scheme from fraud and noncompliance. Fraud and noncompliance have a direct and devastating impact on the lives of participants and their families, often leaving them without the means to cover every day supports that enable their basic human rights. When exposed to fraud and non-compliance, participants are subjected to lower quality services, exploitation and harm.

The Australian National Audit Office (2019) identified in their report *National Disability Insurance Scheme Fraud and Control Program* that the NDIS was designed and implemented without effective fraud prevention and control systems and processes. To ensure integrity in the NDIS, multiple risk proportionate controls that balance quality and safeguarding are required. Robust and enforceable powers that have a strong focus on strengthening the NDIS regulatory landscape will deter provider noncompliance, poor and sharp practice while encouraging the delivery of high quality supports and services.

The Agency currently only has access to stronger powers such as criminal prosecution and relies heavily on external law enforcement agencies to conduct information gathering activities and undertake investigations. This can cause delays and risk the success of prosecutions and other responses. The Agency needs a broader suite of regulatory and enforcement powers to deter bad actors who seek to exploit the Scheme, as well as enabling it to undertake its statutory functions appropriately without external reliance.

While criminal prosecution addresses the worst offences against participants and the Scheme, the introduction of civil penalties provides a middle ground for tackling non-compliance, where legal action may not be appropriate or necessary.

In the second quarter of 2025-26, there were 1,455 plan management providers who received a payment. The plan management market is highly concentrated, with a small number of large

providers having majority market share. However, a significant proportion of providers support a very small number of participants. The Agency has identified smaller plan management providers are more likely to exhibit risk factors for conflicts of interest, collusion, fraud and poor record-keeping. This fragmented and lightly regulated market makes consistent oversight difficult and leaves the system vulnerable to misuse.

Part 1—Registration of NDIS providers

NDIS provider registration is a regulatory process by which an individual or entity is assessed by the Commission to deliver specific NDIS supports.

Registration requires providers to meet defined quality and safeguarding standards, undergo independent audits and suitability assessments, comply with worker screening (in risk assessed roles), meet reporting obligations and maintain ongoing adherence to governance and safety requirements as set out by the Commission. Low registration of NDIS providers has resulted in a lack of market visibility which hinders the Commission in addressing poor provider behaviour, including fraudulent and sharp practice, as well as exploitation, abuse, violence and neglect of people with disability resulting in significant quality and safety risks.

An underlying problem to provider registration is the current definition of an NDIS provider under section 9 of the Act. The current definition is too broad and encompasses retailers and suppliers that it was never intended to. Within the current definition, mainstream retailers who are paid for their goods or services with NDIS funding are obliged to comply with the Code of Conduct, despite their lack of awareness that they are providing supports under a participant's plan. This includes supermarkets, hardware stores and pharmacies.

This Part introduces an amended definition of 'NDIS provider' that addresses these issues, whilst ensuring appropriate and relevant regulatory oversight remains. NDIS rules will allow for the clarification of the definition of NDIS provider. Work on those NDIS rules has commenced and will take into account responses to the *Getting It Right: A New Definition for NDIS Providers* consultation that was open to the public from 19 December 2025 to 28 February 2026.

Notes on clauses

Amendments to the Crimes Act 1914

Item 1 – Section 85ZZGM (paragraph (b) of the definition of person with disability)
This item amends section 85ZZGM of the *Crimes Act 1914* by omitting 'paragraph (b) of the definition of NDIS provider in section 9 or that Act' and substitutes it with 'paragraph 10C(1)(b). This is a consequential amendment to ensure that provisions amended by this Part are correctly reflected.

Amendments to the National Disability Insurance Scheme Act 2013

Item 2 – Section 9 (definition of NDIS provider)
This item repeals and replaces the definition of NDIS provider so that the definition points to new section 10C for the definition of NDIS provider.

Item 3 – After section 10B
This item inserts the new definition of NDIS provider in new section 10C. The new definition specifies persons or entities who are NDIS providers and persons or entities who are not NDIS providers.

New subsection 10C(1) provides that a person or entity is an NDIS provider if the person or entity is:

- a person (other than the Agency) who receives:
    - funding under the arrangements set out in Chapter 2; or
    - NDIS amounts (other than as a participant)
- a person or entity:
    - who provides supports or services to people with disability other than under the NDIS and is prescribed by category D NDIS rules

New subsection 10C(2) provides that a person or entity is not an NDIS provider if they are included in a class of persons or entities prescribed in category D NDIS rules.

The intent of this item is to more clearly distinguish the types of people, suppliers, organisations and entities who are considered to be NDIS providers, and provide an ability to carve out suppliers and organisations who should genuinely not be considered NDIS providers. Further work on clarifying the definition will be done through the process of making the relevant NDIS rules.

Item 4 –Subsection 73C(2)
Section 73C deals with applications to become a registered NDIS provider. This item omits a reference to the current definition of NDIS provider and replaces it with a reference to proposed new subparagraph 10C(1)(b)(ii). This is a consequential amendment to ensure that other provisions in the Act refer to the correct provisions.

Item 5 – Paragraph 201A(1)(a)
Section 201A deals with the delegation by the Minister to the Commissioner of the power to make certain NDIS rules. This item omits a reference to the current definition of NDIS provider and replaces it with a reference to proposed new subparagraph 10C(1)(b)(ii). This is a consequential amendment to ensure that other provisions in the Act refer to the correct provisions.

Item 6 – Subsection 209(8) (table item 4, column headed 'Description', paragraph (a))
This item is consequential to item 3. It amends table item 4 in subsection 209(8) so that the new NDIS rule making powers dealing with the definition of NDIS providers are category D NDIS rules, requiring consultation with all states and territories.

Item 7 – Transitional—prescribed providers
This item applies to NDIS rules that are in force immediately before the commencement of the item and are made for the purposes of the current definition of *NDIS provider* in section 9 of

that Act. This item provides that those NDIS rules continue in force (and may be dealt with) on and after the commencement of this item as if the NDIS rules were made for the purposes of subparagraph 10C(1)(b)(ii) (see item 3).

The purpose of this item is to ensure that the NDIS rules currently in place which relate to the definition of NDIS provider continue to be in force. The effect is that the *National Disability Insurance Scheme (NDIS Provider Definition) Rule 2018*, which deals with continuity of support and 'ILC program funding recipients', will continue in force once the current definition of *NDIS provider* is replaced.

Part 2—Civil Penalties and Regulatory Powers

The Agency's legislative framework and monitoring and investigative powers are weak when compared to other comparable program administrators across the Australian Government. The Agency does not have access to monitoring and investigation powers under the Regulatory Powers Act. Additionally, the Agency does not have sufficient, effective and proportionate mid-range enforcement powers to deal with low to mid-level fraud and noncompliance that does not warrant criminal sanction.

As a result, the Agency is heavily reliant on Australian Federal Police (AFP) resources to investigate cases of fraud, including the application for, and execution of, search warrants. This is not an efficient or effective use of AFP resources and can be subject to extensive delays due to competing priorities.

The Agency also does not currently have the power to issue compliance notices or infringement notices, or to seek an enforceable undertaking, to address low and mid-level non-compliance with the Act. This has created an enforcement gap whereby the Agency does not have a mid-tier regulatory response to deal with misuse of NDIS funds and inaccurate claiming before resorting to civil and criminal enforcement pathways.

This Part extends the monitoring and investigation powers in Parts 2 and 3 of the Regulatory Powers Act to the Agency. This will enable the Agency to investigate serious fraud and non-compliance in relation to claims and payments in the NDIS. These powers will enable the Agency to fulfil its statutory function under section 118(1)(ba) of the Act in preventing, detecting, investigating and responding to misuse or abuse of, or criminal activity involving, the NDIS. Additionally, this Part gives the CEO the power to give a compliance or infringement notice, and to seek an enforceable undertaking, in relation to a range of new civil penalties. Some wording changes to the Act have also been made to clearly demonstrate that those pre-existing sections relate to the functions of the Commission. A minor change to update the powers of the Commission has been made to create monitoring provisions for the anti-promotion orders inserted in the *National Disability Insurance Scheme Amendment (Integrity and Safeguarding) Act 2026* (Integrity and Safeguarding Act).

This Part also inserts a range of new civil penalty provisions, including parallel civil penalties to existing criminal offences, within the Act. These new civil penalties cover a range of matters, including: acquittal of NDIS amounts, requirements to provide information, privacy offences, provision of fraudulent information, failure to comply with CEO requirements, unauthorised use and disclosure, and soliciting or offering to supply, protected Agency information. These new civil penalty provisions are intended to deter providers and individuals from engaging in unlawful and non-compliant conduct by imposing financial penalties.

Notes on clauses

Item 8 – Section 9 (definition of *compliance notice*)
This item repeals the current definition of *compliance notice* and substitutes it to allow for both a notice given by the Commission in Part 3B of Chapter 4 of the Act under s73ZM and a notice given by the Agency under the new powers conveyed in this Part in Chapter 4.

Item 9 – Section 9 (definition of *enforceable undertaking*)
This item repeals the current definition of *enforceable undertaking* and substitutes it with a new clarified and expanded definition which allows for an enforceable undertaking to be issued by the Agency under new subsection 73ZSJ(1) or subsection 73ZSJ(4). The Commission's existing enforceable undertaking framework is not impacted by this change, however the wording of the definition has been clarified to specify that an enforceable undertaking issued by the Commission may be issued under subsection 73ZP(1) or subsection 73ZP(4).

Item 10 – Section 9
This item inserts two new definitions into the Act ***NDIA inspector*** and ***NDIA investigator.*** These definitions have been added to create a clear distinction between the functions performed by staff of the Agency and staff of the Commission. These are:

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

Item 11 – Before subsection 53(1)
This item inserts the subheading '*CEO may require information or documents*' before subsection 53(1) to reflect the structure and content of this section. This is a technical amendment to improve readability.

Item 12 – At the end of Section 53
This item inserts a subheading and civil penalty of 60 penalty units for a failure to comply with the requirement to give information or produce a document under subsection 53(1). This penalty amount aligns with the recently amended civil penalty in subsection 57(1A), made in the Integrity and Safeguarding Act

Item 13 – At the end of section 64
This item inserts a note at the end of section 64 informing readers that a defendant bears an evidential burden in relation to the matter in this subsection pursuant to subsection 13.3(3) of the *Criminal Code*.

The addition of the note maintains assists the reader in understanding the operation of the legislation.

Item 14 – Paragraph 73ZDA(5)(i)
This item inserts the words 'under Part 3B or 3C of this Chapter' after the words 'compliance notice'.

This is a consequential amendment required as a result of other amendments made by this Act which restructure the arrangement of Chapter 4.

Item 15 – Paragraph 73ZDA(5)(j)
This item inserts 'under Part 3B or 3C of this Chapter' after the words 'enforceable undertaking'.

This is a technical amendment required as a result of other amendments made by this Bill which restructure the arrangement of Chapter 4.

Item 16 – Part 3B of Chapter 4 (heading)
This item changes the heading of Part 3B from 'Compliance and enforcement' to 'Compliance and enforcement in relation to Commissioner functions'. This is to aid readability and clearly identify the compliance and enforcement powers for the Commission.

Item 17 – After paragraph 73ZE(1)(a)
This item inserts complying with anti-promotion orders under section 73ZOB as a provision subject to monitoring by the Commission. This has been inserted to create adequate coverage for the Commission for the new anti-promotion order measure that was introduced by the Integrity and Safeguarding Act.

Item 18 – Subsection 73ZF(1)
This item repeals subsection 73ZF(1) and inserts a new subsection 73ZF(1). This includes a new subheading '*Provisions subject to investigation'.* The item amends subsection 73ZF(1) to include provisions which are subject to investigation under Part 3 of the Regulatory Powers Act. These include:

- New civil penalty provisions in:
    - Division 4 of Part 1 of Chapter 6 of the Act
    - Division 2 of Part 2 of Chapter 6 of the Act
    - Part 3A, or this Part, of Chapter 6 of the Act
- an offence provision in Part 3A, or this Part, of Chapter 6 of the Act
- an offence against the *Crimes Act 1914* or the *Criminal Code* that relates to
    - a provision mentioned in paragraph (a) or (b); or
    - a function of the Commission.

This item also includes a note to assist the reader providing that Part 3 of the Regulatory Powers Act creates a framework for investigating whether a provision has been contravened. It includes powers of entry, search and seizure.

These powers have not changed, but this has been clearly articulated to ensure a clear delineation between the respective powers the Commission and the Agency have under the Regulatory Powers Act.

Items 19 – 32 have been amended to clarify the delineation of powers between the Commission and the Agency under the Regulatory Powers Act, reflecting their separate statutory functions under the Act. These are technical changes to ensure the remit of both agencies is clearly articulated within the Act.

Item 19 – Subsection 73ZG(1)
This subsection is amended by omitting the words 'for the purposes of this Act' and replacing them with 'issued for the purposes of a provision mentioned in subsection 73ZF(1)'.

Item 20 – Subsection 73ZH(1)
This item substitutes 'this Act' with 'a provision mentioned in subsection 73ZF(1)'.

Item 21 – Subsection 73ZI(1)
This item substitutes 'this Act' with 'a provision mentioned in subsection 73ZF(1)'.

Item 22 – Subparagraph 73ZI(2)(a)(iii)
This item amends subparagraph 73ZI(2)(a)(iii) to remove 'this Act or under the Regulatory Powers Act as it applies in relation to this Act' and replace with 'this Part or under the Regulatory Powers Act as it applies in relation to this Act because of this Part'.

Item 23 – Subparagraph 73ZI(2)(c)(iii)
This item amends subparagraph 73ZI(2)(c)(iii) by inserting 'because of this Part' after 'in relation to this Act'.

Item 24 – Paragraph 73ZI(4)(a)
This item amends paragraph 73ZI(4)(a) to remove 'this Act or under the Regulatory Powers Act as it applies in relation to this Act' and replace with 'this Part or under the Regulatory Powers Act as it applies in relation to this Act because of this Part'.

Item 25 – Subsection 73ZK(1)
This item inserts the subheading '*Enforceable civil penalty provisions'.* This item amends subsection 73ZK(1) by repealing the subsection and replacing it with a list of the civil penalty provisions enforceable under Part 4 of the Regulatory Powers Act.

This item also adds a note to state that Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

This item does not change the existing civil penalty provisions enforceable under the Regulatory Powers Act the Commission can currently utilise. This amendment instead lists the

current provisions the Commission can enforce, rather than the current wording which states every civil penalty provision of this Act.

This has been amended to delineate between the Commission and the Agency, as each will have different civil penalty provisions available to them to enforce.

Item 26– Subsections 73ZK(2), (3) and (4)
This item amends subsections 73ZK(2), (3) and (4) by omitting 'of this Act' and replacing it with 'mentioned in subsection (1)'.

This item ensures the list of civil penalty provisions in subsection 73ZK(1) (see item 25) applies to the authorised applicant, the relevant court and liability of Crown subsections.

Item 27– Section 73ZKA
This item amends section 73ZKA by omitting 'of this Act' wherever occurring and substituting it with 'mentioned in subsection 73ZK(1)'.

This item ensures the list of civil penalty provisions in subsection 73ZK(1) (see item 25) applies to serious contraventions of civil penalty provisions.

Item 28 – Subsection 73ZL(1)
This item inserts the subheading '*Provisions subject to an infringement notice'.* Subsection 73ZL(1) is repealed and replaced with a civil penalty provision specified in subsection 73ZK(1), other than section 59A and 73D, is subject to an infringement notice under Part 5 of the Regulatory Powers Act.

This item ensures the list of civil penalty provisions in subsection 73ZK(1) (see item 25) other than subsections 59A or 73D, applies to infringement notices that can be issued under the Regulatory Powers Act.

Item 29 – Subsection 73ZL(4)
This item amends subsection 73ZL(4) by omitting 'of this Act' and replacing it with 'mentioned in subsection (1)'.

This item ensures the list of civil penalty provisions in subsection 73ZK(1) (see item 25) applies to liability of Crown subsection related to infringement notices.

Item 30 – Paragraph 73ZM(1)(a)
This item amends paragraph 73ZM(1)(a) by inserting 'to the extent the NDIS provider's conduct relates to the Commissioner's functions' after 'this Act'.

Item 31 – Before paragraph 73ZP(1)(a)
This item inserts adds subsection 55(A) (Commissioner's power to obtain information to ensure integrity) as an enforceable provision.

This amendment allows for the Commission to issue an enforceable undertaking regarding a notice to produce under section 55A of the Act.

Item 32 – Subsection 73ZP(3)
This item omits 'provisions of this Act and substitutes it with 'provisions mentioned in subsection (1)'. This amendment clarifies that an enforceable undertaking can only be issued under provisions that are stipulated in subsection 73ZP(1).

Item 33 – After Part 3B of Chapter 4
This item inserts a new Part to Chapter 4, titled Part 3C 'Compliance and enforcement in relation to Agency functions'. This Part outlines the compliance, enforcement and regulatory actions which the Agency can undertake in line with the Regulatory Powers Act. It has been inserted to clearly differentiate the powers of the Agency from the powers of the Commission.

New Section 73ZSA - Monitoring powers
New section 73ZSA deals with Monitoring powers of the Agency.

Provisions subject to monitoring

Subsection 73ZSA(1) includes a list of provisions that are subject to monitoring under the Regulatory Powers Act.

A note under subsection 73ZSA(1) assists the reader by advising that Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the provisions mentioned in this subsection have been complied with. It includes entry and inspection powers.

Information subject to monitoring

Subsection 73ZSA(2) provides that information given in compliance with a provision mentioned under subsection 73ZSA(1) is subject to monitoring under Part 2 of the Regulatory Powers Act.

A note under subsection 73ZSA(2) assist the reader by advising that Part 2 of the Regulatory Powers Act creates a framework for monitoring whether the information is correct. This includes powers of entry and inspection.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court

Subsection 73ZSA(3) includes a list of authorised roles relating to monitoring powers and information that is subject to monitoring.

Person assisting

Subsection 73SZA(4) provides that an authorised person may be assisted by other persons in exercising powers or performing functions or duties under Part 2 of the Regulatory Powers Act in relation to this Part.

New Section 73ZSB - Investigation powers
New section 73ZSB deals with investigation powers of the Agency.

Provision subject to investigation

Subsection 73ZSB(1) includes a list of provisions that are subject to investigation under the Regulatory Powers Act

A note under subsection 73ZSB(1) assists the reader by advising that Part 3 of the Regulatory Powers Act creates a framework for investigating whether the provisions mentioned in this subsection have been complied with. It includes entry, search and seizure powers.

Authorised applicant, authorised person, issuing officer, relevant chief executive and relevant court.

Subsection 73ZSB(2) provides a list of authorised applicants relating to investigation powers and information that is subject to investigation.

Person assisting.

Subsection 73ZSB(34) provides that the authorised person may be assisted by other persons exercising powers or preforming functions or duties under Part 3 of the Regulatory Powers Act in relation to this Part.

New Section 73ZSC - Use of equipment to examine or process things
New section 73ZSC deals with the use of equipment to examine or process things when exercising investigation powers under Part 3 of the Regulatory Powers Act, where premises are entered under an investigation warrant.

Equipment may be brought to premises

Subsection 73ZSC(2). provides that the authorising person, or person assisting, may bring any equipment reasonably necessary to the premises for the purposes of examining or processing a thing found at the premises to determine whether it may be seized.

Thing may be moved for examination or processing

Subsection 73ZSC(3) provides that a thing found at a premises may be moved for examination or processing to determine whether it may be seized if the occupier of the premises consents in writing or the following both apply:

- it is significantly more practicable to move the item due to the timeliness and cost of examining or processing it at another place, and the availability of expert assistance;
- the authorised person or person assisting suspects on reasonable grounds that the item contains or constitutes evidential material.

Notification of examination or processing and right to be present

Subsection 73ZSC(4) provides that where something is moved to another place for the purposes of examination or processing, the authorised person must, if practicable to do so, inform the occupier of the premises of the address of the place and time that the examination or processing will be carried out, and allow the occupier or their representative to be present during that time.

Subsection 73ZSC(5) provides that the authorising officer does not need to comply with this if they have reasonable grounds to believe doing so might endanger the safety of the occupier or their representative, or prejudice an investigation or prosecution.

Time limit on moving the thing

Subsection 73ZSC(6) provides that a thing may be moved to another place for examination or processing for no longer than 14 days.

Subsection 73ZSC(7) provides that the authorised person may apply to an issuing officer for one or more of an extension of time if the authorised person has reasonable grounds that the thing cannot be examined or processed within 14 days, or the time previously extended.

Subsection 73ZSC(8) provides that the authorised person must give notice of the application to the occupier of the premises, and that person is entitled to be heard in relation to the application.

Subsection 9 provides that a single extension cannot exceed 7 days.

Equipment at premises may be operated

Subsection 73ZSC(10) provides that the authorised person or person assisting may operate equipment already at the premises to carry out examination or process to determine whether it should be seized where there are reasonable grounds that:

- the equipment is suitable for examination or processing; and
- the examination or processing can be carried out without damage to the equipment or thing.

New Section 73ZSD - Use of electronic equipment at other place

New section 73ZSD deals with the use of electronic equipment at another place during the when exercising investigation powers under Part 3 of the Regulatory Powers Act.

Subsection 73ZSD(1) applies if the authorised person exercises investigation powers for the purposes of a provision mentioned in subsection 73ZSB(1) Subsection 73ZSD(2) provides that an authorised person, or person assisting is able to operate the equipment to access data where electronic equipment is moved from the premises.

Subsection 73ZSD(3) provides that the authorised person or person assisting may operate the equipment to access data where there is reasonable grounds to believe that any data accessed by operating the electronic equipment constitutes evidential material. In these circumstances the authorising person or person assisting may copy any or all of the data accessed to a disk, tape or other associated device.

Subsection 73ZSD(4) provides that if the CEO is satisfied that the data is not required, or is no longer required for the purposes of this Act or other judicial or administrative review proceedings, the CEO must arrange for the removal of the data from any device in the control of the Agency and the destruction of any reproduction of the data in the control of the Agency.

Subsection 73ZSD(5) provides that if the authorising officer or the person assisting finds evidential material that is accessible after operating the equipment, they may seize the equipment and any disk, tape or other associated device, or if the material can be put in documentary form, put the material in that form and seize the documents produced.

Subsection 73ZSD(6) provides that an authorised person or a person assisting may only seize equipment if it is not practicable to copy the data to a disk, tape or associated device or put the material in documentary form or where possession of the equipment by the occupier of the premises could constitute an offence.

New Section 73ZSE - Person with knowledge of a computer or a computer system to assist access etc.

New section 73ZSE deals with assistance to access a computer or computer system from a person with knowledge for the purposes. Subsection 73ZSE(1) applies if an authorising person exercises investigation powers under Part 3 of the Regulatory Powers Act in relation to premises.

Subsection 73ZSE(2) provides that the authorised person may seek an order from an issuing officer as per paragraph 73ZSB(2)(c) requiring a specific person to provide any information or assistance reasonable and necessary to allow for the following to be undertaken:

- access, copy or convert data held in, or accessible from, a computer or data storage device that:
    - is on the premises; or
    - has been moved to another premises for examination or processing; or
    - has been seized for the purposes of investigation under the Act.

Subsection 73ZSE(3) provides that the issuing officer may grant the order if they are satisfied that:

- there are reasonable grounds for suspecting evidential material is held in, or is accessible from, the computer or data storage device and they are satisfied:
- the specified person is:
    - reasonably suspected of having committed an offence or contravened the civil penalty provision stated in the relevant warrant; or
    - the owner or lessee of the computer or device; or
    - an employee of the owner or lessee of the computer or device; or
    - a person engaged under a contract for services by the owner or lessee of the computer or device; or
    - a person who uses or has used the computer or device; or
    - a person who is or was a system administrator for the system including the computer or device.
- the specified person has relevant knowledge of:
    - the computer or device or a computer network which the computer or device forms or formed a part; or
    - measures applied to protect data in, or accessible from, the computer or device.

Subsection 73ZSE(4) provides that if the computer or data storage device that is the subject of the order is seized under this Part or under the Regulatory Powers Act; and the order was granted on the basis of an application made before the seizure, the order does not have effect on or after the seizure.

Subsection 73ZSE(5) provides that if the computer or data storage device is not on the premises, the order must:

- specify the period within which the person must provide the information or assistance; and
- specify the place at which the person must provide the information or assistance; and
- specify the conditions (if any) determined by the issuing officer as the conditions the requirement on the person is to provide the information or assistance is subject.

Subsection 73ZSE(6) provides that a person commits an offence if they fail to comply with the order. This offence attracts a penalty of 30 penalty units for a participant; or in any other case, imprisonment for 2 years or 120 penalty units, or both.

> **Example – Morgan**
> Morgan provides support coordination services and operates the business as a sole trader. Morgan is currently being investigated under Part 3 of the Regulatory Powers Act for the misuse of the NDIS funding, including claiming for services never provided.
>
> Morgan uses his laptop to undertake his business, including keeping participant records, and making claims for services. Morgan has refused to assist investigators to access his

laptop and there is an order in place under section 73ZSE which requires him to provide assistance to allow an authorised person to access the data on his laptop.

If Morgan refuses to provide this assistance he will have committed an offence with a penalty of imprisonment for 2 years, or 120 penalty units or both.

New Section 73ZSF – Compensation for damage to electronic equipment

New section 73ZSF deals with compensation for damage to electronic equipment.

Subsection 73ZSF(1) provides that this section applies where electronic equipment was being operated as mentioned in section 73ZSC or section 73ZSD and damage is caused to the equipment, the data recorded on the equipment is damaged or programs associated with the use of the equipment, or use of data are damaged or corrupted. Additionally, the damage or corruption has occurred because insufficient care was exercised in selecting the person to operate the equipment or by the person operating the equipment themselves.

Subsection 73ZSF(2) provides that the Commonwealth must pay the owner of the equipment, or the user of the data or programs with reasonable compensation for the damage or corruption, as agreed between the Commonwealth and the owner or user.

Subsection 73ZSF(3) provides that if the owner or user and the Commonwealth fail to agree, the owner or user may initiate proceedings in either the Federal Court of Australia, the Federal Circuit and Family Court of Australia or a court of a State or Territory that has jurisdiction to determine such reasonable amount of compensation payable.

Subection73ZSF(4) provides that in determining the amount of compensation payable, regard is to be had as to whether to occupier of the premises or the occupier's employees or agents where available at the time and provided any appropriate warning or guidance on the operation of the equipment.

New Section 73ZSG – Civil Penalty Provisions

New section 73ZSG deals with civil penalty provisions enforceable under Part 4 of the Regulatory Powers Act.

Enforceable civil penalty provisions and under

Subsection 73ZSG(1) provides a list civil penalty provisions which are enforceable.

A note is also included which states Part 4 of the Regulatory Powers Act allows a civil penalty provision to be enforced by obtaining an order for a person to pay a pecuniary penalty for the contravention of the provision.

Authorised applicant

Subsection 73ZSG(2) provides that the CEO is an authorised applicant in relation to the civil penalty provisions.

Relevant Court

Subsection 73ZSG(3) provides the following courts as relevant courts in relation to civil penalty provisions:

- the Federal Court;
- the Federal Circuit and Family Court of Australia (Division 2)
- a court of a state or territory that has jurisdiction in relation to matters arising under the NDIS Act.

Liability of Crown

To avoid doubt, subsection 73ZSG(4) provides that subsection 205(2) does not prevent the Crown from being liable to pay a pecuniary penalty under a civil penalty order under Part 4 of the Regulatory Powers Act.

New Section 73ZSH – Infringement Notices

New section 73ZSH deals with infringement notices under Part 5 of the Regulatory Powers Act.

Provisions subject to infringement notices

Subsection 73ZSH(1) provides that subject to 73ZSH(2), a civil penalty provision as specified in subsection 73ZSG(1) is subject to infringement notice.

A note is includes which states Part 5 of the Regulatory Powers Act creates a framework for using infringement notices in relation to provisions

Subsection 73ZSH(2) provides that civil penalty provision is not subject to an infringement notice if the person who has contravened the provision is either:

- a participant; or
- a prospective participant; or
- a plan nominee; or
- a person who has parental responsibility in accordance with section 74(1)

Infringement officer

Subsection 73ZSH(3) provides for the purposes of Part 5 of the Regulatory Powers Act, the CEO is an infringement officer relating to provisions mentioned in subsection 73ZSH(1).

Relevant chief executive

Subsection 73ZSH(4) provides for the purposes of Part 5 of the Regulatory Powers Act, the CEO is the relevant chief executive relating to provisions mentioned in subsection 73ZSH(1).

Liability of Crown

To avoid doubt, subsection 73ZSH(5) provides that subsection 205(2) does not prevent the Crown from being liable to be given an infringement notice under Part 5 of the Regulatory Powers Act.

New Section 73ZS1 – Compliance Notices
New section 73ZSI sets out the requirements for the issuing of compliance notices.

Subsection 73ZSI(1) provides that the CEO may give a compliance notice to a person if they are satisfied that the person is not complying with the NDIS Act, where the person's conduct relates to the Agency's functions or where the CEO is aware of information that suggests the person may not be complying with the NDIS Act.

Subsection 73ZSI(2) provides that the CEO must not issue a compliance notice to either:

- a participant; or
- a prospective participant; or
- a plan nominee; or
- a person who has parental responsibility in accordance with section 74(1)

Subsection 73ZSI(3) provides that compliance notices must include all of the following:

- the name of the person that is being given the notice;
- a brief description of the actual or suspected non-compliance;
- specified action the person must take, or refrain from taking in order to address the actual or suspected non-compliance;
- specified reasonable period that the person must undertake or refrain from undertaking the specified action;
- if the CEO considers it appropriate, include a reasonable timeframe that the person must provide evidence that they have taken or refrained from taking the specified action;
- state that a failure to comply with the notice is subject to a civil penalty;
- set out any other matters that are specified in the relevant NDIS rules;

Subsection 73ZSI(4) provides that a person contravenes this subsection if they fail to comply with the compliance notice. Where this occurs a civil penalty of 60 penalty units applies.

Subsection 73ZSI(5) provides that the CEO may by writing to a person, vary or revoke a compliance notice if considered appropriate to do so. In deciding whether to vary or revoke a

compliance notice, the CEO must consider any submissions received from the provider before the end of the period mentioned in the notice provided.

Example – RRR Support Services
The Agency has evidence from multiple fraud tip off reports made by members of the public, and a review of claiming activity that suggests RRR Support Services may not be complying with the NDIS Act. Evidence suggests RRR Support Services has been over claiming for provider travel to deliver services, including claiming for travel when the service was not delivered. The proprietor of RRR Support is issued with a compliance notice under section 73ZSI.

Under the compliance notice, the proprietor is required to cease overclaiming and inappropriate claiming for provider travel from the date the notice is received, and provide additional evidence for all provider travel claims for the next 12 weeks.

The proprietor is also required to audit their provider travel claims for the last 12 months and provide additional details to the Agency, including the staff member completing the travel and the associated claim details for all provider travel claims made in that period. The audit must be completed in the next 8 weeks. If the proprietor does not comply with the notice, this may be considered an offence with a civil penalty of 60 penalty units.

New Section 73ZSJ – Enforceable Undertakings
New section 73ZSJ deals with enforceable undertaking enforceable under Part 6 of the Regulatory Powers Act.

Enforceable provisions

Subsection 73ZSJ(1) provides a list of relevant provisions which are enforceable.

A note is included which states that Part 6 of the Regulatory Powers Act creates a framework for accepting and enforcing undertakings relating to compliance with provisions

Subsection 73ZSJ(2) provides that the CEO must not accept or enforce an undertaking in relation to a civil penalty provision mentioned in subsection 73ZSJ(1) from or against:

- a participant; or
- a plan nominee; or
- a person who has parental responsibility in accordance section 74(1)

Authorised person

Subsection 73ZSJ(3) provides that the CEO is an authorised person in relation to the enforceable undertaking provisions.

Relevant Court

Subsection 73ZSJ(4) provides the following courts as relevant courts in relation to enforceable undertaking provisions:

- the Federal Court;
- the Federal Circuit and Family Court of Australia (Division 2)
- a court of a state or territory that has jurisdiction in relation to matters arising under the NDIS Act.

Other undertakings

Subsection 73ZSJ(5) provides that an authorised person may accept any of the following undertakings:

- a written undertaking given by a person that they will pay another person an amount worked out in accordance with the undertaking, in order to provide compensation for loss or damage suffered as a result of a contravention or alleged contravention.
- a written undertaking given by a person in connection with a matter relating to a contravention or alleged contravention.

  Example – True Plan Management Services
  True Plan Management Services repeatedly fails to comply with administrative obligations under the NDIS Act, despite education and engagement. The Agency considers whether to pursue a compliance notice and potential civil penalties.

  After assessing the circumstances, including True Plan Management Services' cooperation, the impact on participants, and the proportionality of available responses, the Agency determines that an enforceable undertaking would better achieve compliance. True Plan Management Services voluntarily agrees to implement system improvements, provide assurances about future compliance, and accept external support or monitoring where appropriate.

  The enforceable undertaking avoids the need for penalties while still creating binding obligations. It provides a clear pathway to compliance, supported by transparency, documentation, and ongoing oversight.

New Section 73ZSK-Appointment of NDIA inspectors and NDIA investigators

New section 73ZSK sets out the requirements for the appointment of NDIA inspectors and investigators.

Subsection 73ZSK(1) provides that the CEO, in writing, may appoint one of the following as an NDIA inspector, NDIA investigator or both:

- a member of staff of the Agency
- a person assisting the CEO

- a person performing services for the Commonwealth under a contract with the Commonwealth.

Subsection 73ZSK(2) provides that the CEO must not appoint a person unless they are satisfied that the person is an appropriate person to be appointed to the roles, and has suitable training or experience to properly exercise the powers which they are authorised.

Subsection 73ZSK(3) provides that NDIA inspectors and NDIA investigators must comply with any directions of the CEO.

Subsection 73ZSK(4) provides that if direction is given under subsection 73ZSK(3) in writing, the direction is not a legislative instrument.

New Section 73ZSL - Determination relating to exercise of regulatory powers

New section 73ZSL deals with determinations in relating to the exercising monitoring or investigation powers under Part 2 or Part 3 of the Regulatory Powers Act.

Subsection 73ZSL(1) provides that the Minister must, through legislative instrument, determine conditions that must be met by an authorising person before, and during the exercise of monitoring or investigation powers under Part 2 or 3 of the Regulatory Powers Act, as it applies to the powers under sections 73ZSA and 73ZSB of the NDIS Act.

Subsection 73ZSL(2) provides that the determination must include considerations authorised persons must make including:

- the circumstances of the participant or prospective participant; such as:
- the circumstances and nature of the conduct subject to regulatory action; and
- the exercise of powers in relation to the participant or prospective participant.

A series of examples are included to explain the type of circumstances and considerations the Minister may consider when determining conditions that must be met. These include:

- Circumstances under paragraph (a) could include the participant or prospective participant's: ability to understand the exercise of the regulatory power; ability to comply with requirements imposed in the exercise of the regulatory power; or personal, social or environmental circumstances.
- Circumstances and nature of the conduct under paragraph (b) could include: the nature and seriousness of the conduct; whether and to what extent the relevant conduct was beyond the participant's control; or whether there are any less intrusive means to achieve the regulatory objective.
- Considerations in relation to the exercise of the powers under paragraph (c) could include: whether a participant should be assisted by a nominee; how to ensure that information related to the exercise of regulatory powers is communicated to the participant in accessible forms; or ensuring that a participant's disability, or reliance on

supports because of disability, is not taken to mean non-cooperation or evidence of intentional non-compliance.

The purpose of this item is to ensure appropriate safeguards exist for participants and prospective participants where there is a need for the Agency to exercise regulatory powers. This item ensures an assessment of participant risk and circumstances is factored into decisions on whether or how powers are used.

A legislative note after subsection 73ZSL(2) explains that Part 4 of Chapter 3 of the Legislation Act relating to sunsetting, does not apply to the determination. This is due to the LEOMR which provides that instruments made under the Act are exempt from sunsetting (see table item 42AC in section 12 of those Regulations). It is appropriate for all legislative instruments made under the Act to be exempt from sunsetting as they form part of an intergovernmental scheme, as provided in the Attorney-General's Department's *Guide to managing sunsetting of legislative instruments*.

New Section 73ZSM - Determination relating to when powers must not be exercised

New section 73ZSM provides that the Minister may determine, by legislative instrument, circumstances where authorised persons must not exercise monitoring or investigation powers under sections 73ZSA and 73ZSB of the NDIS Act.

Item 34 – Before subsection 80(1)

This item inserts the subheading '*Duties of nominees'* before subsection 80(1) to reflect the updated structure and content of this section. This is a technical amendment intended to improve readability.

Item 35 – At the end of section 80

This item adds a civil penalty of 60 penalty units in relation to a nominee who knowingly engages in conduct which breaches the duty imposed by subsection 80(1). This penalty unit amount aligns with the recently amended civil penalty in subsection 57(1A) which was inserted by the Integrity and Safeguarding Act.

Example – Rafia

Rafia is the plan nominee for her adult daughter Daisy. Rafia was contacted to arrange a plan reassessment meeting for Daisy but advised she was too busy to meet for the next few weeks. The Agency agreed to contact her in 3 weeks' time to arrange the meeting.

At the end of the 3 week period, the Agency attempted to contact Rafia multiple times over several weeks, however Rafia did not respond to any contact attempts made by phone, email and letter. Daisy's plan requires reassessment to ensure Daisy is receiving support appropriate for her needs. Daisy's plan has been administratively continued for

5 years and the Agency have determined the plan should be reassessed rather than continued again.

Daisy's plan will be suspended if Rafia does not support her to have a plan reassessment completed. If it is determined that Rafia, as Daisy's plan nominee, is knowingly engaging in conduct which breaches her duty as plan nominee to engage in a reassessment of Daisy's plan, Rafia is liable to receive a civil penalty of 60 penalty units.

Item 36 – Before subsection 83(1)

This item inserts the subheading '*CEO may give nominee written notice to inform Agency'* before subsection 83(1). The purpose of this amendment is to assist readability.

Item 37 – After Subsection 83(3)

This item inserts the subheading '*Nominee must inform Agency'* to improve the readability of the section.

A nominee of a participant must inform the Agency if either an event or change of circumstances happens, or is likely to happen and this change of circumstances is likely to effect the ability of the nominee to act as plan or correspondence nominee for the participant, or will either affect the ability for the CEO to give notices to the nominee or affect the nominee's ability to comply with any notices given.

The nominee must inform the Agency as soon as practicable after the event or change of circumstances occurs, or when the nominee first becomes aware of the likelihood of it occurring. The nominee must also inform the Agency of the event or change of circumstances and how it will, or is likely to, affect their ability to continue to act as a plan nominee or correspondence nominee, or how it will affect the ability for the CEO to give notices to the nominee, or affect the nominee's ability to comply with any notices given. There may also be matters prescribed in NDIS rules that the nominee must also inform the Agency of.

This item adds a civil penalty of 30 penalty units in relation to a nominee who knowingly engages in conduct which breaches the duty imposed by subsection 83(3A). The purpose of this civil penalty is to act as a deterrent for engaging in conduct which may pose a risk to participant safety, decision making and ability to engage with in required activities as a NDIS participant.

Example - Minh

Minh is the plan nominee for her nephew Wei. Minh is planning to travel overseas for 9 months and will be out of mobile or internet contact for most of the time she is away. Minh must notify the Agency of this pending change in circumstances because it will impact her ability to act as Wei's plan nominee.

If the Agency is not able to contact Minh in her role as plan nominee to act on Wei's behalf there may be negative impacts on Wei's ability to continue to access his NDIS funding, for example if he needs to have a plan reassessment during the time Minh is overseas. If Minh does not inform the Agency of her travel plans she may be liable for a civil penalty of 30 penalty units.

Items 38-40 – Section 84
These items amend section 84, which deals with statements by a plan nominee regarding disposal of money.

Item 38 inserts the subheading '*CEO may require nominee to give statement'* before subsection 84(1). The purpose of this amendment is to assist readability of the section.

Item 39 inserts the subheading '*Offence'* before subsection 84(6). This improves the readability of the section.

Item 40 inserts new subsections 84(8A) and 84(8B). New subsection 84(8A) establishes a civil penalty of 30 penalty units in relation to a plan nominee who refuses or fails to comply with a notice under subsection 84(1) to provide information about the disposal of an NDIS amount paid to the nominee on behalf of the participant.

New subsection 84(8B) provides that a plan nominee does not contravene the civil penalty provision if they have a reasonable excuse for a failure to comply with the notice.

A legislative note inserted after subsection 84(8B) clarifies that the defendant bears an evidential burden in relation to establishing the plan nominee had a reasonable excuse. The note refers to reader to section 96 of the Regulatory Powers Act.

Finally, this item inserts the subheading '*Extension to various matters etc.'* before subsection 84(9). This assists with the readability of the section

Item 41 – Paragraph 90(4)(a)
This item amends paragraph 90(4)(a) by replacing the reference to section 83 with a reference to subsection 83(1).

The amendment improves the accuracy of the cross reference and removes potential ambiguity. It is technical in nature and does not change the policy intent or substantive operation of the provision.

Item 42– After Subsection 90(4)
This item inserts new subsection 90(4A).

New subsection 90(4A) provides that the CEO may, by written instrument, suspend or cancel one or more of a nominee's appointments if:

- the nominee informs the Agency under subsection 83(3A) that an event or change of circumstances has happened or is likely to happen; and
- having regard to that information, the CEO is satisfied that it is appropriate to do so.

This amendment ensures the CEO can action changes to nominee appointments where there is an impact to their ability to comply with notices given by the CEO.

Item 43 – Subsection 90(5) (heading)
This item omits 'a notice under' from the heading above subsection 90(5). This is a technical amendment intended to improve readability and internal consistency with related provisions.

Item 44 – Paragraph 90(5)(a)
This item amends paragraph 90(5)(a) by replacing the reference to sections 83 and 84 with a reference to subsections 83(1) and 84(1).

The amendment improves the accuracy of the cross reference and removes potential ambiguity. It is technical in nature and does not change the policy intent or substantive operation of the provision.

Item 45 – After subsection 90(5)
This item inserts new subsection 90(5A).

New subsection 90(5A) provides that the CEO may, by written instrument, suspend or cancel one or more of a nominee's appointments if:

- the nominee is required to inform the Agency under subsection 83(3A) that an event or change of circumstances has happened or is likely to happen; and
- the nominee does not comply with the requirement.

Item 46 – Section 97
This item amends section 97 which deals with the protection of participants against liability of actions of nominees. The amendments will clarify that nothing in Part 5 of Chapter 4 of the Act renders a participant criminally or civilly liable in relation to the actions or omissions of the participant's nominee.

Item 47 – Section 98
This item amends section 98 which deals with protection of nominees against criminal liability. These amendments expand the protections to also include a nominee being protected against being liable to an action, suit or other civil proceeding as a result of any act or omission of the participant or anything done in good faith by the nominee in their capacity as nominee.

Items 46 and 47 ensure that a participant cannot be held liable for actions of their nominee and vice versa.

Item 48 – Subsection 99(1) (after table item 16B)

This item adds two new reviewable decisions to the NDIS Act. These include:

- a decision by an authorised Agency official to give a compliance notice to a person
- a decision by an authorised Agency official to vary or revoke a compliance notice.

Item 49 – Paragraph 109(3)(a)

This item amends paragraph 109(3)(a) by replacing the references to subsection 110(1) or (2) with references to subsections 110(1), (2), (3) or (4). A preliminary notice to a potential compensation payer or insurer must contain a statement of obligations regarding liability to pay compensation and notification requirements. Failure to comply with obligations may be considered an offence attracting penalties, including civil penalties.

Item 50 – Section 110 (heading)

This item amends the heading above section 110 by omitting 'Offence—potential' and substituting 'Potential'. This reflects the fact that section 110 no long just deals with offences (see item 52).

Item 51 – Before subsection 110(1)

This item inserts the subheading '*Offences*'. This is a technical amendment that supports content structure, format and readability.

Item 52 – At the end of section 110

New subsection 110(2) adds a civil penalty where a person (a potential compensation payer) contravenes this subsection if:

- the potential compensation payer is given a notice under subsection 109(1) in relation to a participant or prospective participant; and
- before or after receiving the notice, the potential compensation payer becomes liable to pay compensation to the participant or prospective participant; and
- the potential compensation payer does not give written notice to the CEO of the liability within 7 days after becoming liable or receiving the notice, whichever is later.

This attracts a civil penalty of 60 penalty units.

New subsection 110(3) provides that an insurer contravenes this subsection if:

- the insurer is given a notice under subsection 109(2) in relation to a claim by a participant or prospective participant; and
- before or after receiving the notice, the insurer becomes liable to indemnify the potential compensation payer, either wholly or partly, in relation to the claim; and
- the insurer does not give written notice to the CEO of the liability within 7 days of becoming liable or receiving the notice, whichever is later.

This attracts a civil penalty of 60 penalty units.

Item 53 to 55 – Subsection 111(5), Section 114 (heading), Before subsection 114(1)
These items are technical amendments as a result of changes made in this Part. The purpose of these amendments is to support structure, format and assist with readability, interpretation and application.

Item 53 omits the word '(offences)', substitute '(offences and civil penalties)'.

Item 54 Omits 'Offence—making', substitute 'Making'.

Item 55 inserts the subheading '*Offences*'. This is a technical amendment that supports content structure, format and readability.

Item 56 – At the end of subsections 114(2) and (4)
This item adds a note to explain that a defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the *Criminal Code*.

Item 57 – At the end of section 114
This item adds a civil penalty relating to making a compensation payment after receiving a notice. A person (the potential compensation payer) contravenes this subsection if:

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

This attracts a civil penalty of 60 penalty units.

This item does not apply if:

- in the case of a notice under section 109—the CEO has given the potential compensation payer written notice that the notice is revoked; or
- 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
- the CEO has given the potential compensation payer written permission to pay the amount.

An insurer contravenes this subsection if:

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

This attracts a civil penalty of 60 penalty units.

This does not apply if:

- in the case of a notice under section 109—the CEO has given the insurer written notice that the notice is revoked; or

- in the case of a notice under section 111—the insurer has paid to the Agency the amount specified in the notice; or
- the CEO has given the insurer written permission to pay the amount.

This item adds at note to explain a defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the Criminal Code

Item 58 – After paragraph 118(1)(ba)
This item adds 'to secure compliance with, and enforce, the provisions in relation to which Part 3 of Chapter 4 applies by exercising the powers conferred by that Part;' to the list of functions of the Agency. This amendment ensures that exercising monitoring and investigation powers (as provided for in item 33) occurs as part of performing functions of the Agency, as part of the prevention, detection, investigation and response to misuse, abuse of, or criminal activity involving, the NDIS.

Item 59 – After paragraph 181E(d)
This item updates the Commissioner's core functions by amending paragraph (d) to include 'to secure compliance with this Act (other than in relation to matters within the Agency's functions) through effective compliance and enforcement arrangements, including through the monitoring and investigation functions conferred on the Commissioner by Part 3B of Chapter 4'.

This is a consequential amendment required as a result of amendments made to extend the monitoring and investigation powers to the Agency (as provided for in item 33), ensuring a distinction between the functions of the Commission and the functions of the NDIA.

Item 60 – Before subsection 185(1)
This item inserts the subheading '*CEO may give notice*'. This is a technical amendment that supports content structure, format and readability.

Item 61 – Before subsection 185(4)
This item inserts the subheading '*Offences*'. This is a technical amendment that supports content structure, format and readability.

Items 62 to 63 – At the end of subsection 185(5), After subsection 185(5)
Section 185 deals with the recovery of amounts from financial institutions. The CEO may issue a notice to a financial institution if an NDIS amount is paid to an account kept by the financial institution and the CEO is satisfied that the payment of the NDIS amount was intended to be made to someone who is not the person who holds the account under subsections (1).

Subsection 185(2) provides that if an NDIS amount was intended to be made to a person with an account kept by the financial institution, however the person died before the payment was made, the CECO may give a notice to the financial institution setting out these matters including requiring the financial institution to pay the Agency an amount, within a reasonable period as stated in the notice.

Subsection 185(5) provides that it is a defence to a prosecution of a financial institution for failing to comply with a notice given under subsection (1) or (2), if the financial institution proves it was incapable of complying with the notice.

Item 62 adds a note that states a defendant bears an evidential burden in relation to the matter in this subsection: see subsection 13.3(3) of the Criminal Code. This means the financial institution is required to prove they were incapable of complying with the notice.

Item 63 adds a civil penalty where a financial institution contravenes subsection 185(5) by not complying with a notice given under subsection (1) or (2). This offence attracts a civil penalty of 300 penalty units. This does not apply a financial institution is incapable of complying with the notice.

A note is included that states a defendant bears an evidential burden in relation to the matter in this subsection: see section 96 of the Regulatory Powers Act.

This item also inserts a subheading '*Offset of debts*'. This is a technical amendment to assist with structure, format and readability. Consistent with item 62, this means the financial institution is required to prove they were incapable of complying with the notice.

Item 64 – Section 189 (heading)
This item omits '*Offence—refusal*' and substitute '*Refusal*'. This is a technical amendment as a result of structure and format changes and assists with readability.

Item 65 – Before subsection 189(1)
This item inserts the subheading '*Offence*'. This is a technical amendment as a result of structure and format changes and assists with readability.

Item 66 – After subsection 189(2)
This item inserts a civil penalty where a person refuses or fails to comply with a requirement under Division 3 to give information or produce a document relating to debts. This offence attracts a civil penalty of 30 penalty units. This does not apply where a person has a reasonable excuse.

This item includes a subheading *'Reasonable excuse'*. This is a technical amendment as a result of structure and format changes and assists with readability.

Item 67 – After section 202

This item adds a new section which deals with the delegation of compliance and enforcement powers by the CEO. This section states what powers and functions the CEO can delegate and to the type of Australian Public Service employee within the Agency. This includes the classification of the employee.

Before delegating a power or function, the CEO must have regard to:

- whether the employee is of sufficient seniority to exercise the power or perform the function; or
- whether the employee has appropriate qualifications or expertise to exercise the power or perform the function.

Anyone exercising powers or performing functions under a delegation must comply with any directions of the CEO.

Item 68 to 70 – Section 202B (at the end of the heading),subsection 202B(1), and subsection 202B(1) (table heading)

These items amend section 202B to deal with delegation of regulatory powers by the Commissioner. This includes amendments to the table heading and inserting 'in relation to Commissioner functions' after (compliance and enforcement) in subsection 202B(1). As a result of amendments made to extend the monitoring and investigation powers in Parts 2 and 3 of the Regulatory Powers Act to the Agency, consequential amendments to section 202B are required to ensure distinction between regulatory powers delegated by the Commissioner from regulatory powers delegated by the CEO.

Item 71 and 72 – Section 205(3) and 205 (note)

Item 71 makes technical amendments to section 205(3) to update references to sections 73ZL, 73ZSG or 7SZSH as a result of amendments made to the Act.

Item 72 repeals and replace the note to clarify that sections 73ZK and 73ZSG deal with civil penalty orders and sections 73ZL and 7SZSH which deal with infringement notices.

Item 73 – Section 209(8) (table item 4)

This item adds a new category D NDIS rule to the table. This new rule is (ta) paragraph 73ZSI(3)(g). This is a technical amendment to include the provision in the list of category D NDIS rules the Minister can make in consultation with states and territories.

Item 74 – Application of amendments

This item outlines the application of the amendments made by this Part. The purpose of this item is to assist the reader to understand where the amendments made by this Part come into effect:

- subsection 53(3) applies where a person becomes subject to a requirement under subsection (1) of that section on or after the commencement of this item
- subsection 84(8A) applies where a person is given a notice under subsection (1) of that section on or after the commencement of this item.
- subsection 110(3) applies in relation to a person if:
    - the person is given a notice under subsection 109(1) of the Act on or after the commencement of this item; and
    - the person becomes liable as mentioned in paragraph 110(3)(a) of the Act (as inserted by this Part) on or after the commencement of this item.
- subsection 110(4) applies in relation to an insurer if:
    - the insurer is given a notice under subsection 109(2) of the Act on or after the commencement of this item; and
    - the insurer becomes liable as mentioned in paragraph 110(3)(b) of the Act (as inserted by this Part) on or after the commencement of this item.
- subsection 114(5) applies where a person is given a notice under subsection 109(1) or 111(1) in relation to the payment of compensation to a participant or prospective participant on or after the commencement of this item.
- subsection 114(7) applies where an insurer is given a notice under subsection 109(2) or 111(2) in relation to in relation to a liability to indemnify a person on or after the commencement of this item.
- subsection 185(5A) applies where a financial institution is given a notice under subsection (1) or (2) of that section on or after the commencement of this item.
- subsection 189(2A) applies where a person becomes subject to a requirement under Division 3 of Part 1 of Chapter 7 of that Act on or after the commencement of this item.

Item 75 – Application provision

Amendments made to the Act that relate to the exercising of monitoring and investigation powers under the Regulatory Powers Act apply in relation to conduct engaged in on or after the day of commencement of the Act.

Part 3—Information gathering powers

The Agency's current information gathering powers are not sufficient to support effective compliance, investigation and integrity functions. In particular, limitations on the ability to obtain information from participants and prospective participants restricts the Agency's capacity to investigate suspected misuse of Scheme funds and support enforcement action where required. These constraints can result in critical information being unavailable or unusable, hindering timely investigation and limiting the Agency's ability to respond to non-compliance and fraud.

The amendments made by this Part strengthen the Agency's ability to obtain relevant information across its statutory functions by expanding and aligning information gathering powers. This will enable the Agency to access necessary information to support compliance activities, including investigations into potential misconduct, and to provide appropriate evidentiary support for enforcement or referral to law enforcement bodies.

This Part also addresses inconsistencies in the current framework by ensuring information obtained from participants and prospective participants can be used, where appropriate, to support integrity and investigative activities, including in relation to suspected criminal conduct.

Importantly, these strengthened powers are accompanied by clear safeguards. Individuals will be explicitly informed of protections against self-incrimination when information is requested, consistent with established legal principles. Existing offence provisions for non-compliance will continue to be subject to a reasonable excuse defence, ensuring that the exercise of these powers remains proportionate and appropriate.

Notes on clauses

Item 76 – At end of subsection 53(2)
Section 53 of the Act deals with the power to obtain information from participants and prospective participants to ensure the integrity of the NDIS. It provides that if the CEO has reasonable grounds to believe that a participant or prospective participant has information that is relevant a matter set out in subsection 53(2), then the CEO may require that person to provide that information.

This item adds 'the functions of the Agency' as a relevant matter allowing the CEO to require information from participants and prospective participants to ensure the integrity of the NDIS.

Items 77 to 79 – Section 54
Section 54 of the Act deals with written notices of a requirement to give information under section 53. It provides that a requirement to provide information must be provided in writing and specify matters set out in subsection 54(2). Subsection 54(3) deals with time periods for the provision of information in response to a notice.
Item 77 inserts a new subheading '*Contents of notice*' above subsection 54(2) to improve the readability of section 54.

Item 78 adds two additional requirements that must be specified in a notice given under section 54. New paragraph 53(2)(f) will provide that the notice must specify that the failure to comply with a notice may expose a person to a civil penalty under subsection 53(3) (see item 12, in Part 2 of this Schedule). New paragraph 53(2)(g) will provide that the notice must specify that the person is not required to give the information or document if doing so might incriminate the person or expose them to a penalty.

This amendment ensures that a person is fully aware of the requirements that apply to them and the consequences of a failure to comply with those requirements.

Item 79 inserts a new subheading '*Notice may require person to appear and answer questions'* to improve the readability of section 54 and reflect the addition of new subsection 54(4).

New subsection 54(4) will provide that the notice given under section 54 may also require a person to give information by appearing before a specified Agency officer to answer questions. The notice must also specify a time and place at which the person is to appear, which must be at least 14 days after the notice is given.

This item makes section 54 consistent with section 56 of the Act, which deals with a written notice of a requirement to provide information under sections 55 or 55A.

Item 80 – Paragraph 56(2)(d)
This item repeals and substitutes paragraph 56(2)(d). Section 56 deals with giving written notices of requirement to provide information under sections 55 or 55A. Subsection 56(2) deals with the content of that notice. Paragraph 56(2)(d) currently provides that if the notice given under section 56 is given by the CEO, then the notice must state the Agency officer to whom the information is to be given or the document is to be produced.

The new paragraph 56(2)(d) will also require the notice to advise that a failure to comply with a notice may be an offence under subsection 57(1) and that, if the person is an individual, the individual is not required to give the information or produce the document if doing so might tend to incriminate them or expose them to a penalty.

This item ensures individuals are aware of the protection against self-incrimination when provided a notice to provide information for the purposes of sections 55 or 55A. This item also ensures that an individual is aware of the potential consequences of failing to comply with the requirement to provide information or documents.

Item 81 – Paragraph 118(1)(ba)
Section 118 of the Act deals with the functions of the Agency. Paragraph 118(1)(ba) currently provides that one of the functions of the Agency is to prevent, detect, investigate and respond to misuse or abuse of, or criminal activity involving, the NDIS where it relates to certain matters. This item amends paragraph 118(1)(ba) to add 'responding to and assisting in the prosecution of criminal activity' to this function of the Agency.

This ensures information obtained during relevant investigations can be relied upon during criminal prosecutions.

Item 82 – Application provision
Amendments to sections 53, 54 and 56 of the Act made by this Part apply in relation to a notice given on or after the day of commencement of this item.

Part 4—Retention of records

The NDIS currently has no universal, enforceable obligation to retain records or evidence relating to the payment of NDIS amounts. While subsection 45A(3) allows the Agency to request documents at the point of claim, the scale of the Scheme means this is not sufficient to ensure payment integrity. The Agency currently processes approximately 660,000 claims per day, and it is not currently operationally feasible to review and verify every claim prior to payment. As a result, the Agency must rely on post-payment assurance activities to verify that supports have been delivered as claimed.

Effective post-payment review often requires evidence beyond that submitted at the point of claim. However, in the absence of a legislative requirement to retain records, the Agency frequently encounters missing, incomplete or unreliable documentation, which limits its ability to verify claims and take appropriate compliance action.

This Part addresses this integrity gap by establishing a statutory record keeping obligation for providers, participants and other persons to retain records relating to claims and the provision of supports for specified minimum periods. This obligation will be supported by NDIS rule making powers to prescribe the types, formats and minimum standards of records, ensuring sufficient clarity to support compliance while allowing flexibility that would not be achievable in primary legislation.

The NDIS rules will also enable requirements to be proportionate to the roles and responsibilities of providers, participants and other parties. In order to operationalise these amendments, category D NDIS rules will need to be in place that specify the kinds of records that need to be kept.

Notes on clauses

Item 83 – After section 45A

This item adds a new section 45B that sets out the requirements for keeping and retaining records relating to claims and the provision of an NDIS support. This section deals separately with requirements on NDIS providers, participants and other persons.

A series of NDIS rule making powers are included in this item which will specify the kinds of records required. The NDIS rules will also detail the prescriptive nature of the information required in the records to be retained. NDIS rules allow for more detailed requirements to be explained and ensures the obligations of NDIS providers, participants and other persons can be well understood.

Legislative notes throughout new section 45B point the reader to subsection 182(4) of the Act, which provides that a debt is due to the Agency if a person making a claim and receives an NDIS amount, has a requirement to keep a record, but does not comply with that requirement (see item 86).

NDIS providers
Subsections 45B(1) to 45B(4) deal with requirements on NDIS providers.

An NDIS provider must retain records that relate to a claim for the payment of an NDIS amount or the provision of an NDIS support to which a claim for the payment of an NDIS amount relates, if the record is of a kind prescribed by NDIS rules. Unless NDIS rules prescribe a shorter period, records must be kept for a period of 7 years beginning on the day that the claim is made.

Where an NDIS provider is required to keep and retain a record for a period specified and the person refuses or fails to comply with this requirement, they may be subject to a civil penalty of 120 penalty units. This civil penalty is consistent with amendments made by the Integrity and Safeguarding Act and is a proportionate penalty for the non-compliance offence. The civil penalty does not apply to a person if circumstances prescribed in NDIS rules apply to them.

Participants
Subsections 45B(5) and 45B(6) deal with requirements on participants.

Participants who make a claim for the payment of an NDIS amount must keep and retain a record that relates to the claim, or the provision of an NDIS support related to the claim, for a period of 3 years beginning on the day the claim was made. The types of records required to be retained will be prescribed in NDIS rules. The NDIS rules may also specify a shorter period for retaining the record.

Other persons
New subsections 45B(7) and (8) deal with the requirements on persons other than participants and NDIS providers. This would include nominees and individuals who are responsible for a participant who is a child under subsection 74(1).

A person who is not an NDIS provider or participant who makes a claim for the payment of an NDIS amount must keep and retain a record that relates to the claim or the provision of an NDIS support related to the claim for a period of 5 years beginning on the day the claim was made. The types of records required to be retained will be prescribed in NDIS rules. The NDIS rules may also specify a shorter period for retaining the record.

Language requirements.
Subsection 45B(9) will provide that records that are required to be kept and retained must be in English, or be readily accessible and convertible into English.

> **Example – NDIS Provider – ABC Therapy**
> ABC Therapy is a registered NDIS provider that delivers and claims for supports provided to participants. During a review of a claim for NDIS amounts, ABC Therapy is asked to provide records to support claims that have been paid. ABC Therapy is able

to provide invoices, service delivery records, and records identifying who delivered the supports and when they were provided.

Under section 45B(1), an NDIS provider will be required to keep and retain prescribed records relating to a claim or the provision of an NDIS support for 7 years. ABC Therapy has complied with the record-keeping requirement and is able to produce the required records within the prescribed period. The records substantiate the claims made, and the Agency is satisfied that the payments were valid. No debt is raised under section 182(4).

Example – NDIS Provider – Flower Support Services
Flower Support Services is a registered NDIS provider that delivers and claims for supports provided to participants. A claim for supports is flagged for review by the Agency. Flower Support Services is requested to provide records relating to the claims that have been paid, however they are not able to as they have not retained relevant records.

Under section 45B(1), an NDIS provider will be required to keep and retain prescribed records relating to a claim or the provision of an NDIS support for 7 years. In this case, Flower Support Services has not kept or retained the required records within that period. As a result, the Agency is unable to substantiate that the supports claimed were delivered in accordance with the Act. A debt may be raised under section 182(4) in respect of the amounts that cannot be substantiated.

Example – Tamara
Tamara is a self-managed participant who submits her own claims through the NDIS myplace portal. Tamara keeps copies of invoices, service agreements, and support delivery records.

Tamara submits a claim for support services which is later reviewed by the Agency. Tarmara is asked to provider records confirming the supports were delivered.

Tamara provides copies of invoices and a schedule of service. These records substantiate the claim, and the Agency confirms that the payment was valid. Tamara has complied with the recording retention requirements, however still needs to keep the relevant records for 3 years.

Item 84 – Subsections 46(2) and (3)
This item is consequential to the insertion of new section 45B by item 83. It repeals subsections 46(2) and (3) which currently deal with the ability to make NDIS rules in relation to the retention of records.

Item 85 – Paragraph 92(1)(a)
This item is consequential to the amendments made by items 83 and 84. It replaces a reference to subsection 46(2) in paragraph 92(1)(a) with a reference to new subsection 45B(7). Subsection 92(1) deals with the requirements on a nominee after the appointment of a nominee has been cancelled. This item will ensure that previous nominees are required to continue to comply with any record keeping requirements that apply to them.

Item 86 – Subsection 182(4)
This item amends section 182 which deals with debts to the Agency. Specifically, the item repeals and replaces subsection 182(4) which deals with debts that are due to the Agency as a result of a failure to retain certain records. The new subsection 182(4) will provide that if a person makes a claim for an NDIS amount and receives payment, but fails to comply with a requirement to keep records that relate to the claim, an amount equal to that NDIS amount is a debt due to the Agency.

Item 87 – Subsection 209(8) (table item 4)
This item is consequential to item 83. It amends table item 4 in subsection 209(8) so that the new NDIS rule making power dealing with the kinds of records that are to be retained is a category D NDIS rule, requiring consultation with all states and territories.

Item 88 – Application of amendments
The requirements to keep and retain records relating to claims will apply to claims made on or after commencement of the amendments.

Part 5—Reducing claim times

The Act has a statutory 2 year timeframe for claims for NDIS amounts to be submitted. This two-year timeframe became operative on 3 October 2025 following a 12-month transition.

While the introduction of a statutory claims period has reduced very aged claims, significant integrity issues continue to arise for claims older than 90 days. Claims submitted more than 90 days after the service was delivered are disproportionately associated with higher rates of claims that are not payable under the NDIS, a higher proportion of cases where the claim cannot be verified with the participant, and greater integrity risks, including opportunistic claiming.

Reducing the timeframe to 90 days will strengthen the Agency's ability to verify supports, reduce inappropriate payments being made and improve trust and confidence in the Scheme.

This amendment will commence on 1 December 2026. Delaying commencement until this date is intended to allow sufficient time for claims older than 90 days to be made before the new timeframe takes effect.

Notes on clauses

Item 89 – Paragraph 45A(5)(a)
This item amends paragraph 45A(5)(a) by omitting the words '2 years' and substituting '90 days'.

This has the effect of reducing the timeframe for making a claim from 2 years to 90 days from the date of the provision or acquisition of a support.

Subsection 45A(6) will continue to operate without change, allowing claims outside of the 90 day timeframe to be accepted if the CEO is satisfied that exceptional circumstances apply and the claim was made within a reasonable period having regard to those circumstances. This ensures flexibility is maintained for those with genuine barriers to timely claiming.

Part 6—Registered plan management providers

The Act currently provides that a statement of participant supports must provide that funding under a plan is to be managed wholly or partly by the participant, a registered plan management provider, the Agency or a plan nominee. Section 9 of the Act defines registered plan management provider as an NDIS provider who is registered to manage the funding for supports under plans as mentioned in paragraph 73E(2)(a). Around 60 per cent of NDIS funding is paid through plan management providers.

Plan managers have an important role within the NDIS to assist participants to manage funding within their plans. While there are some controls over who may become a plan manager (particularly that all plan management providers must be registered NDIS providers), there is evidence of plan managers providing low quality services and/or engaging in unscrupulous practices. In the second quarter of 2025-26, there were 1,455 active plan management providers, many of whom provide services to 20 participants or less.

The plan management market faces widespread integrity and compliance problems, with many plan management providers failing to properly verify claims, engaging in conflicts of interest and facilitating noncompliant or fraudulent spending. Criminal groups exploit weak oversight, using inactive or phoenixing ABNs and false invoices to access NDIS funds. Regulation is limited, service standards vary significantly, and the Agency has little visibility or influence over plan management provider practices, especially among the many small providers with poor record keeping and high rates of self-payment. This fragmented market makes consistent oversight difficult and leaves the system vulnerable to misuse.

While the plan management market is already highly concentrated, with a small number of very large providers supporting a significant proportion of participants, the numerous smaller plan management providers are more likely to exhibit risk factors for conflicts of interest, collusion, fraud and poor record keeping. Examples include plan management providers directing funding to downstream service providers that they control or are an associated entity (such as a relative). The Agency has also identified instances where plan managers can approve and pay their own invoices for additional services they provide (such as support coordination) without input from participants. They can also complete payments to providers without confirmation from participants that the services were received. Payment integrity issues are also present, including non-payments, wrong payments, late payments and over-payments.

Amendments made by this Part would reduce the size of the plan management market by limiting registered plan management providers to only those with a deed of arrangement in place with the Agency. The deed would provide a range of standards, processes and requirements that strengthen governance and integrity. Amendments would also strengthen protections against conflicts of interest. Transitional provisions would provide a 6-month transition timeframe from the date of commencement of the measure for existing plan management providers who do not enter a deed of arrangement with the Agency after the

commencement of this Part. This is intended to ensure an orderly transition of the plan management market.

Notes on clauses

Item 90 – Section 9 (*definition of registered plan management provider*)
This item would amend the existing definition of registered plan management provider in section 9 of the Act. The amendment would omit the words 'paragraph 73(2)(a)' and substitute with the words 'subsection 73E(2A)'. This is a consequential amendment, reflecting other amendments proposed in this Part.

Item 91 – Section 9
This item inserts a new definition of ***related party*** into section 9 of the Act. The term has the meaning given by subsection 73EA(2A) as inserted under item 97.

Item 92 – Subsection 73C(1) (note)
This item is a consequential amendment which would omit the word 'Note' and substitute with 'Note 1' reflecting that an additional note has been added.

Item 93 – At end of subsection 73C(1)
This item would insert a new note 'Note 2' at the end of subsection 73C(1) referring to proposed new subsection 73E(2B) which provides the circumstances in which a person can be a registered plan management provider.

The purpose of the note is to clarify that a person can be registered in relation to multiple types of services, except for when managing the funding for supports under participants' plans.

Item 94 – Paragraph 73E(2)(a)
This item would repeal paragraph 73E(2)(a) which provides that a person may be registered in respect of managing the funding of supports under participants' plans. Subsection 73E(2) also provides that a person may be registered to provide specified classes of supports under a participant's plan. This item supports amendments made by this Part that ensure that a person registered to provide plan management supports cannot be registered to provide any other kind of supports or services.

Item 95 – After subsection 73E(2)
This item inserts two additional subsections, 73E(2A) and 73E(2B) which deal with the registration of a person to manage the funding of supports under a participant's plan. These amendments ensure that, if a person is registered to provide plan management supports, they cannot be registered to provide any other type of support.

Subsection 73E(2A) provides that a person may be registered to manage the funding of supports under participants' plans, subject to the conditions imposed by the newly inserted

subsection 73EA(1), namely that a deed of arrangement must be in place between the person and the Agency (see item 97).

Subsection 73E(2B) imposes conditions on the operation of subsections 73E(1), (2) and (2A). The effect of this amendment would be to prevent the Commissioner registering a person to provide supports or services other than plan management supports if the person is registered, or applying to be registered, as a plan management provider.

The intent of these proposed amendments is to address issues of conflicts of interest, collusion and fraud that have been identified in the plan management market.

Item 96 – Subsection 73E(3)
This item amends subsection 73E(3) to add a cross reference to the newly inserted subsection 73E(2A).

The amendment would continue to ensure that the Commissioner cannot register a person to manage the funding of supports under participants' plans if the applicant has a banning order in force and registration would be inconsistent with the banning order.

Item 97 – After section 73E
This item would insert two new sections into the Act, sections 73EA and section 73EB. Proposed new section 73EA will deal with the requirements in order to be a registered plan management provider. Proposed new section 73EA deals with the consequences of failing to comply with the requirements in section 73EA.

Section 73EA
Proposed new subsection 73EA(1) will provide that a person cannot be a registered plan management provider unless a deed of arrangement is in force between the person and the Agency. Limiting the size of the plan management market to a smaller number of providers with more stringent standards enforced through a deed of arrangement will significantly strengthen integrity, verification, and accountability. Participants would still be able to choose a plan management provider, however, from a smaller pool of more tightly regulated providers.

Proposed new subsection 73EA(2) will set out a number of matters that the deed of arrangement must include. These matters are not limiting and are in addition to any other matters that may be dealt with in Commonwealth contracts. The compulsory matters include:

- Standards and processes to be met by the person in relation to integrity and governance, including reporting requirements to the Agency (for example, this might include requirements around Board structure and oversight, risk management policies, and mandatory reporting standards and timelines).
- Standards to be met by the person in relation to staff, including requirements to be satisfied in relation to key personnel of the person (for example, this might include

regular suitability assessments assessing factors, including criminal history and bankruptcy, and mandatory reporting obligations).

- Requirements to be met by the person for the handling and submitting of claims to the Agency, including verification of identity and verification of the provision of supports (for example, this might include auditable integrity processes and systems for the purposes of identifying risky-claiming behaviours and potential fraud).
- Standards and requirements to be met by the person in relation to information and communications technology and systems (for example, this might include high technical and sophisticated system capability that meets Agency technical specifications).
- Requirements to be met by the person and key personnel of the person in relation to related parties and managing and divesting conflicts of interest (for example, this might include prohibitions on direct referrals between related parties, prescriptive conflict of interest policies and mandatory notification requirements where a newly identified conflict of interest, real or perceived, is identified).

Proposed new subsection 73EA(2A) inserts a definition of 'related party'. This amendment would provide that a person is a related party of another person in any of the following circumstances:

- the person is a relative of another person (within the meaning of section 9 of the *Corporations Act 2001*);
- either person is an associated entity of the other person (within the meaning of section 50AAA of the *Corporations Act 2001*);
- circumstances prescribed by NDIS rules.

The definition of 'related party' is necessary to support new subsection 73EA(2), which requires a deed of arrangement to include requirements for managing and divesting conflicts of interest involving key personnel and related parties.

NDIS rules which could further expand the circumstances for the definition of related party would be category D NDIS rules.

Proposed new subsection 73EA(3) will provide that the Agency must keep a public register of registered plan management providers.

Section 73EB

Proposed new section 73EB creates a new civil penalty offence of 250 penalty units if a person is a registered plan management provider, manages the funding of supports under a participant's plan and does not have a deed of arrangement in place as required by section 73EA.

This penalty amount is consistent with the penalty amount applied to registered NDIS providers who do not comply with conditions of registration (see section 73J of the Act).

Item 98 – At the end of subsection 73F(2)
This item inserts anew paragraph in subsection 73F(2) imposing conditions on persons who are registered to be plan management providers. Section 73F of the Act provides that registration is subject to conditions. Subsection 73F(2) sets out a number of conditions that apply to all registered NDIS providers.

Proposed new paragraph 73F(2)(j) inserts a condition that a person who is a registered plan management provider must not provide any other supports or services under the NDIS.

These amendments further strengthen the conflict of interest protections around plan management providers and limit opportunities for collusion between registered plan management providers and providers (registered and unregistered) of any other NDIS supports.

Item 99 – After paragraph 73ZK(1)(h)
This item inserts a new paragraph (ha) to subsection 73ZK(1) to cross reference the proposed section 73EB, which would create a new civil penalty offence of 250 penalty units if a person is a registered plan management provider and manages the funding of supports under a participant's plan and does not have a deed of arrangement in place as per the proposed Section 73EA.

This amendment would confirm that the civil penalty provision proposed in section 73EB would be enforceable by the Commission.

Item 100 – Subsection 209(8) (table item 4, column headed 'Description', after paragraph (a))
This item is consequential to the insertion of new subsection 73EA(2A) by item 97. It amends table item 4 in subsection 209(8) so that the new NDIS rule making power dealing with circumstances in which a person may be a related party under new subsection 73EA(2A) is a category D NDIS rule, requiring consultation with all states and territories.

Item 101 – Transitional—registered plan management providers
This item inserts transitional provisions to ensure an orderly transition of the plan management market should the Bill pass and this Part commences. The transition period would be 6 months. The combined intent of these provisions is to ensure that providers who were providing plan management services at the date of commencement of this Part could continue to provide those services during a 6-month transition period, but only to the participants they were providing services to at the commencement date. This would enable an orderly transition of participants to plan management providers that have a deed of arrangement in place with the Agency. The Agency would provide assistance and support to participants to assist them to transfer to a new plan management provider during the transition period.

Subitem (1) deals with the revocation of existing registrations. This subitem would allow the Commissioner to revoke the registration of a person to manage the funding of supports under

a participant's plan on the basis that they are not a party to a deed of arrangement that meets the requirements in subsection 73EA(2).

Subitem (2) deals with the application of civil penalty provisions during the transition period. This subitem protects a provider from being subject to a civil penalty during the 6 month transition period if they were a registered plan management provider, nominated by a person to manage the funding of supports under a participant's plan immediately before the item commences. The only penalty that this subitem protects a provider from is one that would apply as a result of the provider managing the funding of supports without being a party to a deed of arrangement that meets the requirements in subsection 73EA(2). This subitem does not protect the provider from a penalty arising out of any other behaviour.

Subitem (3) deals with the application of conditions of registration during the transition period. It would provide that the conflict of interest requirements set out in item 98 do not apply during the 6 month transition period, commencing on the day that the item commences. This gives plan management providers who have entered into a deed of arrangement with the Commonwealth time to divest of other related entities that provide other supports under the NDIS and for key personnel to end their connection with entities that provide other supports under the NDIS.

SCHEDULE 3 – GOVERNANCE ARRANGEMENTS

Summary

Schedule 3 sets out amendments to governance arrangements that support the effective operation and administration of the NDIS. This includes amendments relating to determining pricing arrangements, indexation of old framework plans and introducing amendments which support automated decision making.

Background

Determining and providing advice on maximum prices for NDIS supports has been an administrative function of the Agency since the commencement of the Scheme. In recognition of the importance of price regulation in the Scheme, the NDIS Review recommended that the Australian Government should take a more active role in pricing and payments.

The Agency also administratively applies indexation to participant plans following changes to NDIS price limits to ensure participant purchasing power is maintained.

Automation is critical for the Agency to deliver reliable, efficient and accessible services at a national scale. The Agency supports hundreds of thousands of people with disability, including NDIS participants, their families and carers, and thousands of NDIS providers on a daily basis. This includes processing claims and payments for services, assessing prospective participants' eligibility to access the Scheme, and assessing participant's support needs and preparing plans. Recognising the NDIS provides crucial support for some of the most vulnerable Australians, automating certain administrative actions in a safe, transparent and accountable way can support more timely and efficient decision making. Further, it reflects the practical reality that the Agency requires the assistance of computer programs to perform a diverse range of functions and deliver a wide variety of services.

Part 1 – Decision making on pricing

Currently, the Agency undertakes an Annual Pricing Review to determine what changes, if any, are required to NDIS prices. Each Annual Pricing Review has its own terms of reference, which set the scope of analysis. Key activities undertaken as part of the Annual Pricing Review include public consultation, intergovernmental consultation, data and market analyses. Following each Annual Pricing Review, the Agency updates a series of pricing documents on its website, including the *Pricing Arrangements and Price Limits*, the *NDIS Support Catalogue*, the *Specialist Disability Accommodation Price Guide* and the *Assistive Technology, Home Modifications and Consumables Code Guide*. The Agency sometimes makes updates to these documents and other pricing documents outside the usual Annual Pricing Review cycle to provide greater clarification or implement out-of-cycle pricing changes (for example, changes to price limits for Art and Music therapies made effective from 24 November 2025 as part of a specific pricing review of these supports).

The NDIS Review found that the Agency's current approach to setting NDIS prices was not always transparent and prices were sometimes bluntly applied (for example, limited price differentiation when supporting participants with more complex needs). The NDIS Review acknowledged the complexity in setting prices and that pricing needed to balance many objectives including promoting cost efficiency, stimulating innovation, encouraging the supply of quality supports, maintaining and building safeguards, and ensuring Scheme sustainability.

Amendments made in this Part would provide the Minister with the power to make a pricing determination. The pricing determination would set out the maximum amount, or the method to determine the maximum amount, for the acquisition or provision of an NDIS support or class of NDIS supports.

The pricing determination would be a legislative instrument that can incorporate documents by reference including pricing documents published on the Agency's website. Amendments would confirm that if a person charged an amount that was contrary to the pricing determination, the difference between the amount paid and what should have been paid would be a debt owed to the Agency. Amendments would also confirm that providing advice on pricing is a function of the Agency and that the Minister can make a unilateral direction to the Agency relating to the provision of pricing advice to support the Minister's determination. The pricing determination would only apply to funding that was managed by the Agency or by a registered plan management provider.

Amendments made in this Part would provide that if the Minister makes a pricing determination that increases the maximum amount payable for the acquisition or provision of an NDIS support, the Minister may also make an indexation determination. An indexation determination would be a legislative instrument. The indexation determination would allow the Minister to determine an indexation factor, or method for working out an indexation factor, to increase funding component amounts in old framework plans. This would allow the Minister

to ensure that participant's ability to purchase the same volume of supports at the new higher price limit could be maintained following changes to maximum prices made through the pricing determination.

Indexation for new framework plans will require design in the context of working out total funding amounts in a reasonable and necessary budget for the purposes of section 32K. Noting that the transition to new framework planning will not commence until 1 April 2027, this will provide time to consider policy design and potential future amendments to the Act.

Notes on clauses

Items 1 and 2 are dealt with at the end of this part together with items 7 and 8 as they are consequential amendments dealing with incorporation by reference.

For ease of understanding, in this Part, a determination made under new section 34B (see item 3) will be referred to as a 'indexation determination' and a determination made under new section 45C (see item 4) will be referred to as a 'pricing determination'.

Item 3 – Before section 35

This item would insert a new section 34B dealing with increasing funding under old framework plans. In effect, this new section allows for the indexation of old framework plans to ensure that they retain their purchasing power year on year.

Subsection 34B(1) would provide that if the Minister makes or varies a pricing determination to change the maximum amounts payable for the acquisition or provision of NDIS supports or class of NDIS supports (see item 4), then the Minister must also consider whether to make a determination to increase funding amounts.

The Minister can only make an indexation determination at the same time as the Minister makes or varies a pricing determination. This is because the purpose of an indexation determination is to account for price differences between one pricing determination to the next.

While it is mandatory for the Minister to consider whether to make an indexation determination whenever a pricing determination is made or varied, the Minister is not required to make an indexation determination.

Subsection 34B(2) would provide the Minister with the ability to make a legislative instrument (or indexation determination) to:

- determine an indexation factor, or method for working out an indexation factor, for the funding component amount for a specified group of NDIS supports (noting the determination could specify different indexation factors for different support groups), and
- a day, or method for working out a day, on which the indexation factor is applied.

Indexation factors will be applied at a 'support group' level. Support groups are those identified in accordance with paragraph 33(2)(b) of the Act, or in accordance with item 59 in Part 5 of Schedule 1 to this Bill. They include groups of supports such as 'Assistance with Daily Life' and 'Improved Daily Living'.

Indexation for new framework plans will require design in the context of working out total funding amounts in a reasonable and necessary budget for the purposes of section 32K.

The indexation day will generally be set as 1 July each year to coincide with the commencement of the new financial year and expected commencement of a new or varied pricing determination.

A legislative note after subsection 34B(2) explains that Part 4 of Chapter 3 of the Legislation Act, relating to sunsetting, does not apply to the determination. This is due to the LEOMR which provides that instruments made under the Act are exempt from sunsetting (see table item 42AC in section 12 of those Regulations). It is appropriate for all legislative instruments made under the Act to be exempt from sunsetting as they form part of an intergovernmental scheme, as provided in the Attorney-General's Department's *Guide to managing sunsetting of legislative instruments*.

Subsection 34B(3) would provide that the Minister must determine an indexation factor or method by reference to whether the making or variation of a pricing determination has resulted in a higher maximum amount that was previously the case for supports in the relevant group of supports. Consistent with the intent of the indexation determination, that is to ensure that a plan's purchasing power remains the same following a pricing determination, the indexation determination will generally reflect changes in the pricing determination. In addition, subsection 34B(3) indicates that indexation factors cannot result in 'negative' indexation for a group of supports. If a funding component amount is not indexed, then the funding component amount will not change.

Subsection 34B(4) would specify how the indexation determination affects an old framework plan to which it applies.

Paragraph 34B(4)(a) provides that the indexation factor would only increase the unclaimed portion of the funding component amount immediately before the indexation day. The intent of paragraph (a) is to ensure only future plan funding is indexed. This is essential, given increased maximum prices under proposed section 45C (see Item 4, below) would only be prospective and an indexation determination can only be made if linked to a pricing determination.

Paragraph 34B(4)(b) ensures that total funding amounts are also taken to be correspondingly increased by the indexation factor applying to funding component amounts.

A legislative note would also be inserted to clarify that funding amounts increased by the indexation determination have effect for other provisions in the Act, which refer to a total funding amounts or funding component amounts. The the increased funding amounts will have effect for the purposes of funding periods.

New subsection 34B(4) is critical to the payment of amounts payable under the NDIS. Subsection 45(4) of the Act provides that the Agency must not pay an amount under the NDIS in relation to an old framework plan, if the payment would result in the total funding amount or funding component amount set out in a plan would be exceeded. Subsection 34B(4) ensures that the indexed amounts are taken into account making claims for payment under the NDIS.

Subsection 34B(5) would provide that the indexation determination does not alter the text, or require alteration to the text, of a plan to which it applied.

The intent of this provision is to ensure the Agency is not required to reissue affected plans to participants, given this would be unduly administratively burdensome. This would also reflect the Agency's existing practice of not reissuing plans when they administratively index plans. Instead, participants who receive additional funds through the indexation determination would be aware of the increase when reviewing their plan via the Agency's online portal. Importantly, since indexation could only lead to an increase in plan funds, no requirement to provide formal notification is required.

Item 4 – Before section 46

This item would insert new section 45C, dealing with maximum amounts payable for an NDIS support or class of NDIS support under the NDIS.

Subsection 45C(1) would provide the Minister with the power to make a legislative instrument to determine the maximum amount, or the method to determine the maximum amount, for the acquisition or provision of an NDIS support or class of NDIS supports. This will be referred to as the pricing determination.

A legislative note after subsection 45C(1) explains that Part 4 of Chapter 3 of the Legislation Act, relating to sunsetting, does not apply to the determination. This is due to the LEOMR which provides that instruments made under the Act are exempt from sunsetting (see table item 42AC in section 12 of those Regulations). It is appropriate for all legislative instruments made under the Act to be exempt from sunsetting as they form part of an intergovernmental scheme, as provided in the Attorney-General's Department's *Guide to managing sunsetting of legislative instruments*.

Subsection 45C(2) would provide that the determination would only apply to the provision or acquisition of supports if funding for those supports are managed by either a registered plan management provider or the Agency. This recognises that self-managed participants, as informed consumers, are empowered to make trade-offs within their NDIS budget and can elect

to pay prices for supports above the maximum limit with the knowledge that this would reduce the volume of supports they could otherwise purchase.

Subsection 45C(3) would prevent the Agency from paying an amount under the NDIS to any person if it exceeds the maximum prescribed in the pricing determination. The intent of this amendment is to ensure compliance with the Minister's pricing determination. Note that this is still only applicable where funding for the relevant support is Agency or plan managed.

Subsection 45C(4) would provide that the Minister's pricing determination could also specify circumstances where the Agency could pay above the maximum amount specified in the determination. It would provide that if the Minister prescribed a circumstance and the CEO was satisfied that circumstance existed, subsection 45C(3) would not apply, meaning the Agency could pay a higher amount. The intent of this amendment is to provide flexibility for future circumstances where paying above the price limits may be appropriate, for example, to encourage provision of supports in thin markets or in cases of market failure.

Subsection 45C(5) would compel the Agency to do one of two things if it received a claim for payment that exceeded the maximum amount specified in the pricing determination. The Agency would either refuse to pay the amount, or pay only up to the maximum amount specified in the pricing determination.

A legislative note makes it clear that the Agency refusing to pay an amount under subsection 43C(5) does not, of itself, prevent a person from making subsequent claim for the acquisition of provision of the support. This note has been added in recognition that there may be instances where data-entry errors have led to a person inadvertently claiming above the maximum amount and would clarify that they are given the opportunity to rectify the error.

While currently the Agency's claims and payments system only allows for the rejection (rather than part payment) of a claim, having both of these options ensures future operational flexibility, while ensuring the policy intent of price limit enforceability is maintained.

Subsection 45C(6) would provide that a person is not entitled to a payment from the Agency if it exceeded the maximum amount specified in the pricing determination.

A legislative note would clarify that any amount paid that is above the maximum amount in the determination would be a debt owed to the Agency and draws the reader's attention to existing section 182, which deals with debts due to the Agency.

The intent of this provision is to ensure that if a person misrepresented a claim, for example, it was found that they claimed for a support which is priced higher on a Sunday than a weekday, but the support was actually provided on a weekday, the difference between the price of the weekday and Sunday support would be a debt owed to the Agency.

Subsection 45C(7) would provide that an NDIS provider must not charge more than the maximum amount prescribed in the pricing determination. The intent of this provision is to ensure the prohibition on private billing, or 'co-payments', which has existed since the Scheme commenced, is captured as part of these proposed amendments.

Subsection 45C(8) would provide that the pricing determination may provide for particular processes to be undertaken by either a participant or a NDIS provider before supports are provided or acquired. This amendment would maintain the longstanding practice that participants must seek a quote for high-cost, highly customisable supports (for example, high cost assistive technology or home modifications) before payment is made. A legislative note is also proposed for inclusion which refers to the obtaining of quotes as an indicative example.

Differentiated pricing

Subsection 45C(9) would provide that a pricing determination may set different rules or requirements for different matters.

Paragraph 45C(9)(a) provides that the pricing determination may set differentiated pricing for different types of supports or support delivery, including (but not limited to):

- support intensity (for example, higher maximum prices to support participants with more complex needs)
- remoteness (for example, where the cost of providing a support in a remote part of Australia would necessitate a higher price)
- whether the support is delivered in-person or remotely (for example via 'telehealth' or remote social engagement)

Paragraph 45C(9)(b) provides that the pricing determination may set differentiated pricing for different kinds of providers, including in relation to:

- the qualifications or experience of a provider (for example, whether the provider or the staff engaged by a provider have specific credentials related to the delivery of a support or based on years of experience in support delivery)
- whether a provider is a registered NDIS provider

Paragraph 45C(9)(c) provides that the pricing determination may set differentiated pricing for different kinds of participants, including how funding is managed under a participant's plan.

Paragraph 45C(9)(d) would provide that the pricing determination may also deal with any other relevant matters. This would provide necessary flexibility to ensure that the Minister can prescribe a range of different requirements for maximum prices. For example, requirements relating to the maximum price of a support based on the time of the day or the day of the week when the support is provided or whether the support is provided in a group or individual setting. This would also ensure that the Minister's pricing determination can respond to changing market conditions and unexpected events. For example, during the COVID-19 pandemic, the Agency introduced a range of supports linked to specific circumstances, such as a support item

to enable a provider to conduct a professional deep clean of a Supported Independent Living residence when a participant or staff member was diagnosed with COVID-19.

Subsection 45C(10) would provide that the pricing determination may be of general application or be limited. This provision would not limit subsection 33(3A) of the *Acts Interpretation Act 1901*.

Incorporation by reference

Subsection 45C(11) would provide that despite subsection 14(2) of the Legislation Act, the pricing determination can incorporate any matter contained in an instrument or other written documents by reference as in force or existing from time to time.

Subsection 45C(12) would provide that documents may be incorporated by reference even if they are created for the sole purpose of being applied, adopted or incorporated into the pricing determination. If the pricing determination incorporates documents by reference, then the Minister must ensure that the instrument or other writing is published on the Agency's website. Subsection 45C(12) also provides that a document incorporated by reference and published on the Agency's website is not a legislative instrument. Subsection 45C(13) would provide that if the incorporation by reference of particular documents under subsection 54C(11) constituted a sub-delegation of the Minister's power, that the sub-delegation is authorised.

It is necessary to override subsection 14(2) of the Legislation Act to allow for the incorporation by reference of documents as in force or existing from time to time, because the pricing documents that will be incorporated will likely need to be updated at short-notice to clarify the operation of pricing arrangements and to respond to changing market conditions. The documents proposed to be incorporated by the pricing determination are likely to be adapted versions of existing pricing documents the Agency currently publishes on its website including:

- *Pricing Arrangements and Price Limits*, which specifies price limits, claiming rules and other explanatory content to assist participants and providers understand their rights and responsibilities.
- *NDIS Support Catalogue*, which takes the form of a spreadsheet and lists support items, including the code used for claiming and associated pricing rules.
- *Specialist Disability Accommodation Price Guide*, which specifies price limits for Specialist Disability Accommodation, including variations based on dwelling type and location.
- *Assistive Technology, Home Modifications and Consumables Code Guide,* which gives further information on the specific pricing arrangements that apply for these types of support.

While documents to be incorporated into the pricing determination will be developed for the primary purpose of incorporation, they are likely to be in a format that is not compatible with

direct inclusion in a legislative instrument, particularly as they may take the form of a spreadsheet.

The Agency has published pricing documents on its website since 2016. It is intended that documents incorporated by reference in the pricing determination would continue to be published in this same area of the Agency's website.

Subsection 45C(13) would provide that if the incorporation by reference of particular documents under subsection 54C(11) constituted a sub-delegation of the Minister's power, that the sub-delegation is authorised. This provision is required to ensure that if the Agency updates incorporated documents, it will have the effect of changing the pricing determination. The Minister will be able to issue directions to Agency about the performance of its pricing advisory function, which will provide a safeguard around any updates that the Agency may seek to make to the documents (for example, setting out specific approval processes in relation to making updates to documents incorporated by reference).

Paragraph 45C(12)(b) is included because of its interaction with subsection 45C(13). Since subsection 45C(11) allows a determination made under subsection 45C(1) to incorporate material from documents as in force from time to time, any change to those documents by their authors will lead to a change in the scope of the determination. Subsection 45C(13) is included to ensure that to the extent this change could be considered a sub-delegation of the Minister's legislative power to make a determination, this sub-delegation is authorised. Paragraph 45C(12)(b) then exempts an instrument or other writing covered by subsection 45C(12) from being a legislative instrument as the instrument or other writing may otherwise be a legislative instrument because changes to the instrument or other writing can determine the content of the determination. This exemption is appropriate because the documents that would be incorporated are otherwise administrative in nature. The incorporated documents will be publicly available on the Agency's website.

The Minister will also be able to issue directions to the Agency about the performance of its pricing advisory function, which will provide a safeguard around any updates that the Agency may seek to make to the documents (for example, setting out specific approval processes in relation to making updates to documents incorporated by reference).

The intent of these provisions is to enable NDIS pricing documents to be incorporated by reference. Enabling incorporation of pricing documents by reference in the pricing determination is essential given the nature of these documents (for example, as the documents may take the form of a spreadsheet, which is not conducive for inclusion in a legislative instrument). Maintaining these documents on the Agency's website and incorporating them by reference, will also avoid undue confusion to both participants and providers, given the Agency has published these documents on its website since 2016.

Advice to the Minister

Subsection 45C(14) would provide that the Agency must give advice to the Minister about the pricing of NDIS supports to support the Minister making a pricing determination.

Advice can be either at the Agency's own initiative or in response to a request from the Minister. This advice must have regard to a range of considerations including:

- the cost of safe, efficient, high-quality and value for money supports
- supporting diversity and competition in the NDIS market as far as practicable
- supporting the financial sustainability of the NDIS

These considerations reflect the role pricing can have in stewarding the NDIS market and its impact on overall NDIS costs and broader Scheme sustainability.

Subsection 45C(15) would provide that the Agency's advice must also deal with any other pricing matters the Minister has sought advice on. This amendment would ensure that the Agency must respond to ad-hoc requests from the Minister, noting these requests may be as a result of emerging or unforeseen market issues.

Subsection 45C(16) would provide that the Agency's advice may also deal with any other matters the CEO considers relevant to pricing. Like the preceding subsection, this would ensure the advice can capture a range of matters relevant to pricing, including new or emerging issues.

Subsection 45C(16A) would provide that if the Agency provides advice to the Minister under subsection (14), the Agency must at the same time provide a summary of the advice to the Minister.

Subsection 45C(16B) would require the Minister to table a copy of the advice provided to the Minister under subsection (14), or the summary of the advice provided under subsection (16A), in each House of the Parliament within 5 sitting days after the Minister makes the determination to which the advice relates.

Subsection 45C(17) would provide that when making the pricing determination, the Minister must have regard to any relevant advice provided by the Agency under subsection 45C(14), the need to ensure the NDIS is financially sustainable and the objects and principles of the Act.

Item 5 – After paragraph 118(1)(b)

This item would insert a new function of the Agency into section 118 of the Act. Proposed paragraph 118(1)(baa) would provide that one of the Agency's functions is to provide advice about the pricing of supports.

Item 6 – After subsection 121(3)

This item would insert a new subsection 121(3AA) into existing section 121 of the Act, which deals with the Minister giving directions to the Agency about the performance of its functions.

Currently, the Minister must seek and obtain the agreement of all states and territories before issuing a direction to the Agency.

Proposed new subsection 121(3AA) would provide the Minister with the ability to issue a narrow unilaterally direction to the Agency on in relation to the performance of its pricing advisory function (see item 5).

This amendment would enable the Minister to specify arrangements for the conduct of annual pricing reviews including matters such as timing to ensure appropriate Government consideration.

Items 1, 2, 7 and 8 – Incorporation by reference – consequential amendments
These provisions are consequential to the insertion of new subsections 45C(12) and (13) regarding incorporation by reference. Currently, there are two references in the Act to incorporation by reference, in section 33 and section 209. These items replicate the approach to incorporation by reference set out in new subsections 45C(12) and (13) into existing provisions.

Item 1 amends subsection 33(2F) to insert the words ‘,with or without modification’ after the words ‘or incorporating’. This is referencing the ability to incorporate documents by reference into a determination made under subsection 33(2E).

Item 2 would insert two additional subsections after subsection 33(2F), relating to the incorporation of documents by reference in a determination made under subsection 33(2E).

Subsection 33(2F) currently provides that despite subsection 14(2) of the Legislation Act, a determination under subsection 33(2E) (dealing with grouping of supports and working out funding amounts in old framework plans) may make provision for or in relation to a matter by applying, adopting or incorporating any matter contained in an instrument or other writing as in force or existing from time to time.

Paragraph 33(2G)(b) is included because of its interaction with subsection 33(2H). Since subsection 33(2F) allows a determination made under subsection 33(2E) to incorporate material from documents as in force from time to time, any change to those documents by their authors will lead to a change in the scope of the determination. Subsection 33(2H) is included to ensure that to the extent this change could be considered a sub-delegation of the Minister’s legislative power to make a determination, this sub-delegation is authorised. Paragraph 33(2G)(b) then exempts an instrument or other writing covered by subsection 33(2G) from being a legislative instrument as the instrument or other writing may otherwise be a legislative instrument because changes to the instrument or other writing can determine the content of the determination. Paragraph 33(2G)(a) also requires that these documents be published on the Agency’s website.

An instrument made under subsection 33(2E) would be incorporating the same or substantially similar documents to those that would be created for the purpose of incorporation into a pricing determination made under subsection 45C(1). The rational for incorporation by reference for the purposes of an instrument made under subsection 33(2E) are the same as set out under the incorporation by reference section in item 4 above.

Item 7 would amend subsection 209(2) which relates to incorporating documents by reference in NDIS rules. This amendment would insert the words ‘,with or without modification’ after the words ‘or incorporating’.

Item 8 would insert two additional subsections to section 209, which relates to NDIS rules. Proposed subsection 209(2AA) would provide that if a NDIS rule incorporates a document by reference, the Minister must ensure the document is published on the Agency’s website and that the document is not a legislative instrument.

Proposed subsection 209(2AB) would provide that to the extent the regulations making provision in subsection 209(2) constituted a sub-delegation of the Minister’s power, that the sub-delegation is authorised.

Paragraph 209(2AA)(b) is included because of its interaction with subsection 209(2AB). Since subsection 209(2) allows NDIS rules to incorporate material from documents as in force from time to time, any change to those documents by their authors will lead to a change in the scope of the determination. Subsection 209(2AB) is included to ensure that to the extent this change could be considered a sub-delegation of the Minister’s legislative power to make a determination, this sub-delegation is authorised. Paragraph 209(2AA)(b) then exempts an instrument or other writing covered by subsection 209(2AA) from being a legislative instrument as the instrument or other writing may otherwise be a legislative instrument because changes to the instrument or other writing can determine the content of the determination.

Item 9 – Application provision

This item is an application provision relating to the first application of the Minister’s indexation determination (see Item 3).

Subitem (1) would provide that if at the time the Minister made the first indexation determination, the indexation determination is also associated with the first pricing determination (see item 4), then proposed subsection 34B(3) would be taken to be replaced with the proposed subitem (2). This would provide that the Minister must determine the indexation factor or method by reference to what the Minister considers appropriate in all the circumstances, on advice from the Agency. This is because the Minister would not be in a position to consider differences in maximum amounts from one pricing determination to another.

Part 2 – Automation of administrative action

The Agency has thousands of touchpoints with people with disability, including participants, their families and carers, and NDIS providers on a daily basis. To ensure that the Agency can provide high quality, efficient and timely services to a diverse range of stakeholders, it requires the ability to automate administrative actions under this Act and the Getting the NDIS Back on Track Act.

Amendments made by this Part would enable the CEO to automate specific administrative actions in a safe, consistent and transparent way. This would include 'parts' of administrative actions that lead up to a decision made by a human delegate. It would also include evaluative determinations where discretion is exercised, an evaluative judgement is made or a state of mind is formed. The Bill lists provisions directly on the face of this Act for which the CEO may, in writing, arrange for the use of computer programs to take administrative action under the CEO's oversight. However, the Minister would also be provided with a power to specify additional provisions in a disallowable legislative instrument.

Consistent with the Government's commitment to ensure automated decision making is implemented in a safe and responsible manner, this Part ensures that automation of administrative action under this Act is undertaken in a safe, consistent, transparent and accountable way. Importantly, the amendments in this Part do not displace the important role of a human delegate or the rights participants have, including for review, under this Act.

The amendments in this Part impose strong and non-delegable requirements on the CEO. Amendments will require the CEO to arrange for the use of a computer program to take administrative action, on behalf of the CEO, in writing and under the CEO's oversight. Should the CEO be satisfied that an administrative action taken by the computer program is not correct or preferable, the CEO will have the ability to substitute that action.

Where an authorised administrative action involves one or more evaluative determinations, the CEO will be required to make a notifiable instrument called a standard operating procedure instrument to set out how such a determination should always be made. To do this, the CEO will be required to be satisfied that particular circumstances relevant to each evaluative determination are sufficiently objective in nature to be discerned by a computer program. The CEO will be required to take all reasonable steps to ensure that an administrative action taken by a computer program is such an action that could be validly taken by the CEO.

Participants, providers and the broader public will be able to understand how the Agency is using automated decision making. Where the CEO arranges for the use of a computer program to take administrative action, the CEO must cause a statement to be published on the Agency's website. Where an administrative action to be undertaken by a computer program would otherwise require a notice of the action to be given to a person, that notice would be required to inform a person that it was taken by the operation of a computer program. The Agency's

annual report will also be required to include certain information about when the CEO has not been satisfied with or substituted the administrative action of a computer program.

Notes on clauses

Item 10 – Section 9

This item would amend section 9 of the Act to insert three new definitions:

- *administrative action* has the meaning given by subsection 59B(3).
- *designated provision* has the meaning given by subsection 59B(2).
- *evaluative determination* means:
    - a discretion being exercised; or
    - an evaluative judgement being made; or
    - a state of mind being formed.
- *standard operating procedure instrument* means an instrument made under subsection 59D(1).

These new definitions would be relevant to provisions on automation of administrative action in proposed new Division 5 of Part 1 of Chapter 4 of the Act (see item 11).

Human oversight

Human oversight is central to the framework for automated administrative action in this Bill. The CEO holds responsibility for automated administrative action, the legislation includes mechanisms for automated actions to be corrected or substituted where necessary and rights to merits review remain unchanged.

The Bill provides that the CEO may arrange for the use, under the CEO's oversight, of computer programs to undertake administrative action under designated provisions. These arrangements must be done in writing and are separate, and in addition to, a standard operating procedure. The power to arrange for the use of automation is not delegable to any other Agency official ensuring the highest level of oversight and accountability. A written record of arrangements made by the CEO ensures appropriate accountability, responsibility and record-keeping for the use of computer programs taking administrative action.

The form of a written arrangement is not prescribed in the Bill, however, at a minimum, it is expected that such arrangements will specify the relevant provisions under which administrative action is to be automated, the person or class of persons who would ordinarily perform that action (being a delegate of the CEO). These arrangements are internal administrative documents. The content and level of detail contained in the written arrangement will vary depending on the nature, complexity and risk profile of the provisions being automated, ensuring the arrangement is sufficient to support effective oversight, accountability, transparency and review.

The Bill also requires that the CEO must take all reasonable steps to ensure that any administrative action taken through the operation of a computer program is action that could have been validly taken by a human under the Act. The Bill allows the Minister to make a legislative instrument specifying actions that must be taken by the CEO to establish that the CEO has taken 'all reasonable steps'. Reasonable steps may include actions such as seeking legal advice to confirm that business rules are appropriate and conducting quality assurance activities and testing.

In addition, independent assurance and audit processes, with reporting to senior governance bodies within the Agency will be undertaken. This involves undertaking testing, validation and ongoing monitoring of automated administrative actions to ensure they operate consistently with legislative requirements, policy intent and Agency standards. The NDIA is also incorporating automation assurance activities into its internal audit forward program for the next financial year, following consideration by the Agency Audit and Risk Committee. This program will assess compliance with both legislative obligations and internal governance requirements.

These safeguards ensure that automation cannot expand or distort statutory powers and helps to mitigate against one of the central risks of automated administrative action—namely, that systems may apply incorrect rules or produce invalid outcomes at scale.

Substituted decisions

A key human oversight safeguard applies where the CEO is satisfied that an automated process has not produced the correct or preferrable outcome or decision. For example, a substituted decision may be made where the automated process has relied on incomplete or inaccurate data or where relevant information was not captured or properly interpreted by the system.

Substituted action is not an alternative to merits review. It operates separately where the computer system has not made the correct or preferable decision. If a participant considers that the outcome of an automated process is not correct due to an error in data or in how the computer system was applied, they can make a complaint through the established Agency complaints mechanisms.

Merits review

The Bill provides that administrative action taken by operation of a computer program under the automation provisions is treated, for all purposes, as administrative action taken by the CEO. This preserves transparency and accountability mechanisms including access to merits review that would ordinarily apply if the CEO had taken the administrative action.

This means that the merits and judicial review rights that would ordinarily apply to a decision under the Act will continue to apply irrespective of whether the decision is made by a human or by automated processes. If there are no merits review rights that attach to a particular

automated action under the Act, the Bill does not create merits review rights for that action, although it would remain open to the CEO to make a substituted decision.

Evaluative decision making

While the Bill allows a computer system to take evaluative administrative action, the Bill does not allow a computer system to take any subjective action (see subsection 59D(3)). Any evaluative administrative action must be made in accordance with the standard operating procedure instrument, which sets out the rules a computer program must follow when undertaking an evaluative administrative action. The standard operating procedure instrument allows evaluative decisions to be automated where the relevant circumstances can be identified using clear, objective criteria. If the circumstances are not objective enough to be assessed by a computer program, the matter must be considered by a human decision maker.

A standard operating procedure instrument must follow a decision logic, or a decision tree. It identifies particular circumstances and specifies the outcome that will follow if those circumstances are present. When making the standard operating procedure instrument, the CEO must be satisfied that this reflects how the CEO would make the decision.

For example, the standard operating procedure instrument may state that if circumstances A, B, C or D are present, the outcome is always 'yes'. If circumstances E, F, G or H are present, the outcome is always 'no'. Each circumstance must be capable of being objectively ascertained. If the person's circumstances do not fit within A, B, C, D, E, F, G or H, the matter is referred to a human decision maker.

As a practical example, a standard operating procedure instrument may allow the automated approval of low-value, routine claims for assistive technology where clearly defined criteria are met, such as the item being below a specified cost threshold, included on a pre-approved list, and consistent with an existing participant plan. In these circumstances, the evaluative judgement has been standardised into objective rules reflecting how a human decision maker would ordinarily decide straightforward cases. If those criteria are not met the matter would be automatically referred to a human decision maker.

Decision logic flow chart for evaluative decisions

Start **CEO proposes to use a computer program for an evaluative decision under a designated provision.**
↓
Decision 1 **Has the CEO authorised use of a computer program for the relevant designated provision?** **No: human decision maker undertakes the action.** **Yes: proceed to Decision 2.**
↓
Decision 2 **Has the CEO made a standard operating procedure instrument for the evaluative administrative action?** **No: the computer program cannot undertake the evaluative action.** **Yes: proceed to Decision 3.**
↓
Decision 3 **Does the case fall within pre-identified circumstances specified in the standard operating procedure instrument?** **No: refer to a human decision maker.** **Yes: proceed to Decision 4.**
↓
Decision 4 **Are those circumstances sufficiently objective to be ascertained by the computer program?** **No: refer to a human decision maker.** **Yes: proceed to Decision 5.**
↓
Decision 5 **Does the standard operating procedure instrument prescribe a pre-determined outcome for those circumstances?** **No: refer to a human decision maker.** **Yes: computer program may take the administrative action in accordance with the SOPI.**
↓
End **Outcome is either automated action under the standard operating procedure instrument or referral to a human decision maker.**

Item 11 – At the end of Part 1 of Chapter 4

This item would insert new Division 5 – Automation of administrative action into Chapter 4 of the Act, which deals with the administration of the Scheme. New Division 5 will outline the provisions of the Act for which the Agency may utilise computer programs to undertake administrative action. It will also outline the non-delegable requirements of the CEO to enable the automation of administrative action in a safe and consistent way and for public reporting on its use. New Division 5 will also set out the requirements of the Minister to authorise additional provisions of the Act that may be automated, in writing, in a legislative instrument.

Section 59B – Automation of administrative action

The purpose of proposed new section 59B is to provide express legislative authority for the Agency to utilise computer-based programs to undertake administrative action in specified circumstances. Importantly, this will not displace the important role of delegates in making more complex decisions. It would not displace participant rights, including review rights where they apply. Administrative action taken by the operation of a computer program would be treated, for all purposes, as administrative action taken by the CEO, and would continue to be governed by the Act's objects and principles, subject to legislated safeguards as well as any notice requirements already in the Act.

Proposed new subsection 59B(1) would provide that the CEO may, in writing, arrange for the use, under the CEO's oversight, of computer programs to take administrative action that may or must be taken by the CEO under one of the following:

- a provision of the Act specified in proposed new subsection 59C(1); or
- a provision specified in an instrument made under proposed new subsection 59C(2), which may specify:
    - a provision of the Act
    - a provision of a legislative instrument made under the Act
    - a provision of a legislative instrument made under the Getting the NDIS Back on Track Act.

A written record of an arrangement ensures appropriate accountability, responsibility and record-keeping for the use of computer programs taking administrative action.

A legislative note at the end of subsection 59B(1) assists in the interpretation of subsection 59B(1). It states that this subsection is not intended to imply that the making of an arrangement is the only means by which a computer program may be used to take administrative action if that action would otherwise not require statutory authorisation in order to be validly taken. For example, statutory authorisation would not generally be needed if a computer program is only being used to assist a decision-maker to make a decision or to send a notice. Statutory authorisation would also not be needed in order to implement a provision that creates an

outcome through the operation of law and does not involve an administrative decision being made, such as subsections 34A(2) and 34B(4) and section 50A.

In effect, this note makes it clear that the use of computer programs to undertake administrative action is not the only purpose that computer programs may be used for. Computer programs may also be used to assist a decision maker, for example by performing calculations or recommending an outcome. The note also clarifies that statutory authorisation for automation is not needed for self-executing provisions, which do not involve a decision by the CEO. Examples of self-executing provisions include subsection 34A(2) and 34B(4) and section 50A (see items 34 and 50 of Schedule 1 to this Bill and item 3 of this Schedule).

Subsection 59B(2) would provide that a provision covered by subsection 59B(1) is a *designated provision*. The purpose of the amendment is to clarify that provisions that have been identified for the purposes of subsection 59B(1) are provisions where the CEO may arrange for automation of administrative action to be taken by a computer program under the oversight of the CEO. This assists with readability of this section.

Subsection 59B(3) would insert a new definition of *administrative action* which would include any of the following:

- making, or refusing or failing to make, a decision, or a part of a decision, under a designated provision;
- exercising, or refusing or failing to exercise, a power under a designated provision;
- performing, or refusing or failing to perform, a function or duty under a designated provision;
- doing, or refusing or failing to do, anything (including giving a notice) related to making a decision or a part of a decision, exercising a power or performing a function or duty under a designated provision.

A note at the end of subsection 59B(3) adds that a number of administrative actions may be covered by a particular designated provision. For example, a designated provision might provide for multiple decisions to be made as part of making a broader overarching decision. In this case, any of those administrative actions can be automated in accordance with an arrangement under subsection 59B(1).

The purpose of the amendment would be to provide a legislative basis for the use of a computer program to make decisions or take other administrative actions under designated provisions. In some instances it is envisaged that administrative action by a computer program may involve a computer program doing something related to making a decision, such as identifying relevant information or making calculations, in order to recommend a decision to a human delegate who would make the final decision.

Automating part of an action, such as making a recommendation, with human oversight of the final decision, is an appropriate check and balance to guard against unfettered computer-based

decision making. This legislative design option (partial automation) would facilitate efficiency while also building in additional safeguards for participants by ensuring that appropriate intervention by a human is possible to correct or adjust computer-based recommendations, if required, before a final decision is made.

Evaluative administrative action

Subsection 59B(4) would provide that the CEO may arrange for the use of computer programs to undertake administrative action that involves one or more of the following:

- a discretion being exercised, which may involve a decision-maker making choices about whether to act or not act;
- an evaluative judgement being made, which may require a decision-maker to assess facts and circumstances to determine an appropriate course of action;
- a state of mind being formed, which may require a decision-maker to consider and decide whether they are satisfied that a requirement has been met.

A note at the end of subsection 59B(4) points the reader to proposed new section 59D, which would provide for the making of a standard operating procedure instrument in relation to this kind of administrative action. The making of a standard operating procedure instrument would help to support the automation of these types of administrative actions in a transparent and appropriate manner, and it is not intended to allow inappropriate automation of these actions.

CEO is treated as having taken administrative action

Subsection 59B(5) would provide that administrative action taken by the operation of a computer-program under an arrangement under subsection 59B(1) is treated, for all purposes, as administrative action taken by the CEO.

The purpose of this amendment is to ensure that the CEO is ultimately responsible for the administrative action taken by the computer program. This is intended to preserve accountability mechanisms attached to the administrative action regardless of whether a human or a computer system takes the administrative action.

Subsection 59B(6) would provide that the CEO is not prevented by subsection 100(5A) from personally reviewing a reviewable decision that the CEO is taken to have made under subsection 59B(5). Subsection 100(5A) provides that a decision-maker cannot review the reviewable decision personally if the decision-maker was involved in making the reviewable decision.

The purpose of this amendment is to make clear that if a decision made by a computer program is a reviewable decision under section 99 of the Act, then the reviewable decision can be subject to internal review by the CEO.

Substituted actions

Subsections 59B(7) to (9) deal with substituted actions. Substituted actions allow the CEO to substitute a human made decision for a computer made decision if the CEO considers that the computer made decision is not correct or preferable, providing an important safeguard for participants.

Subsection 59B(7) would provide that the CEO may take administrative action (the *substituted action*) in substitution for administrative action the CEO is treated as having taken under subsection 59B(5) if the CEO is satisfied that the administrative action taken by the operation of the computer program is not correct or preferable.

Subsection 59B(8) would provide that substituted action takes effect:

- where the CEO specifies the day on which the substituted action takes effect (which may be earlier than the day the substituted action is taken)—that specified day; or otherwise
- the day of the administrative action taken by the operation of the computer program.

The amendment would give the CEO flexibility to choose the date that the substituted action takes effect, which may be different to the date of the administrative action. The appropriate date of effect will depend on the specific circumstances of the administrative action. For example, the CEO would be able to consider whether the date may have a beneficial or detrimental impact on that person affected by the administrative action.

Subsection 59B(9) would provide that the day specified under paragraph 59B(8)(a) may be earlier than the day the substituted action is taken, but not earlier than the day of the administrative action taken by the operation of the computer program.

The purpose of this amendment would be to allow the substituted decision to return the affected person to the same position they would have been if a correct or preferable decision had been made in the first place. The substituted action cannot be backdated to a date earlier than the day the original administrative action was taken by the computer-program.

CEO may still take administrative action

Subsection 59B(10) would provide that an arrangement under subsection 59B(1) does not prevent the CEO from taking administrative action under a designated provision.

The purpose of this amendment is to clarify that the CEO may still personally take administrative action under designated provisions. In effect, this means that the fact that an administrative action may be undertaken by a computer does not mean that it has to be.

Substituted action does not limit right to review or reconsideration of administrative action

Subsection 59B(11) would provide that subsection 59B(7) does not limit any other provision of the Act or a legislative instrument mentioned in subsection 59B(1) that provides for the review or reconsideration of an administrative action.

This is a safeguarding provision, the purpose of which is to clarify that a substituted action does not limit any other provision that provides for the review or reconsideration of an administrative action.

Arrangement not a legislative instrument

Subsection 59B(12) would provide that an arrangement under subsection 59B(1) is not a legislative instrument. The instrument is of an administrative rather than legislative character.

Section 59C – Designated provisions

Listed provisions

Proposed new subsection 59C(1) would provide that for the purposes of paragraph 59B(1)(a) the following provisions of this Act are specified:

- section 33, which deals with matters that must be included in a participant's old framework plan
- section 45, which deals generally with the payment of amounts payable under the NDIS)
- section 45A, which deals with the need for a claim for payment of amounts payable under the NDIS
- section 45C (inserted by item 4 of this Schedule) which deals with maximum amounts payable under the NDIS.

Section 33

Specifying section 33 as a designated provision will ensure that computer-based programs could be used to facilitate the grouping of supports under section 33(2E). A legislative instrument under section 33(2E) of the Act requires that reasonable and necessary supports are divided into groups, taking in account a range of factors. Applying computer based decision making to this provision will ensure equality in categorising supports into consistent and predefined groups.

Sections 45, 45A and 45C

Amendments to authorise computer-based administrative action under sections 45, 45A and proposed new section 45C are required to support the claims and payment processes. The Agency currently processes over 660,000 claims per day, a significant number of which are supported using computer-based processes. It is not operationally possible for the Agency to process this volume of claims manually. The purpose of the amendment is to provide express

legislative authority for the Agency to use computer-based programs to process claims from the date that this Part commences.

It is envisaged that computer-based administrative action would be used, for example, to reject claims under subsection 45(4) where a payment would result in the participant's plan funding limit being exceeded.

A computer-based program could also be used to ensure that claims may be rejected under section 45A where a claim has not been made in accordance with subsections 45A(2) (regarding who can make a claim), 45A(3) (regarding a claim being made in an approved form with required information) or 45A(5) (regarding the time period for making a claim).

The amendment would not alter important administrative safeguards already in place by the Agency, which will ensure that claims are assessed via computer-based program only where objective criteria are satisfied. A human decision-maker would continue to assess claims that are not suitable for computer-based administrative action. For example, decisions under subsection 45(5) about paying over a total finding amount because a participant has experienced fraud would likely be made by a human decision maker.

Provisions have only been listed under subsection 59C(1) where the end to end process for computer-based decision making is clear and there is high confidence that the provision can be automated without compromising the integrity of decision making under those provisions. In the drafting of this Bill, a decision was taken not to list provisions where sufficient work had not yet been done to be clear whether or how it would be appropriate to provide for computer-based decision making.

Specified provisions

Subsection 59C(2) would provide that for the purposes of paragraphs 59B(1)(b), (c), and (d), the Minister may, by legislative instrument, specify a provision of one of the following to be a designated provision:

- the Act or a legislative instrument made under the Act;
- a legislative instrument made under the Getting the NDIS Back on Track Act. (note that item 139 of Schedule 1 to the Getting the NDIS Back on Track Act provides for the making of certain NDIS rules as transitional rules).

The purpose of the amendment would be to authorise the Minister to, by legislative instrument, specify a provision in relation to which the CEO may allow a computer program to take administrative action. This is in addition to the listed provisions in subsection 59C(1).

Given the cautious approach to listing provisions under subsection 59C(1), a legislative instrument made under subsection 59C(2) would enable the Minister to authorise computer-

based administrative actions only once the work has been done to ensure those provisions are appropriate for automation.

For example, the role of a computer system to take or assist a human in an administrative action may be uncertain because the design and build of the computer system might be underway. Further, the operation of a provision may also be dependent on the making of NDIS rules that require negotiation and agreement with the states and territories.

One such example is new framework planning. A decision was made not to list provisions relevant to new framework planning, such as sections 32K and 32L. It is clear that the operationalisation of new framework planning will involve at least computer assisted decision making to support a human delegate in complex calculations or application of methodologies. However, more work must be done on establishing the planning process and engaging with states and territories before decisions on whether and how administrative action by a computer-based program could be used in the new framework planning process.

Other matters currently being considered for computer-based decision making include making a decision about whether a prospective participant meets the age or residency requirements under sections 22 and 23 of the Act. Other aspects of decisions that do not involve objective criteria would continue to be made by a human delegate. As explained above, sections 22 and 23 have not been listed under subsection 59C(1) because sufficient work has not yet been done to establish how the end to end system would operate.

There are important safeguards for the use of a legislative instrument to specify what may be subject to computer-based decision making. Subsection 59C(3) would provide that if administrative action taken under a provision involves one or more evaluative determinations, then before specifying the provision under subsection (2), the Minister must be satisfied that it is appropriate to do so.

The Minister can take into account any relevant matters, which would include advice from the Agency and CEO as well as Commonwealth wide approaches to the automation of decision making.

In addition, the legislative instrument would be subject to parliamentary scrutiny to ensure accountability in deciding to specify a provision that could be subject to computer-based decision making.

Section 59D – CEO must make standard operating procedure instrument

Proposed new subsection 59D(1) would provide that the CEO must make a written instrument (a *standard operating procedure instrument*) if a particular administrative action is proposed to be:

- taken under a designated provision by the operation of a computer program (as authorised by section 59B); and

- taken in relation to matters dealt with by the Agency; and
- the administrative action involves one or more evaluative determinations.

The purpose of a standard operating procedure instrument is to assist with the automation of discretionary or evaluative decisions by identifying, based on objective criteria, circumstances that can safely be automated, and circumstances that would continue to require consideration by a human decision-maker. As such, a standard operating procedure instrument would not allow for truly discretionary or evaluative circumstances to be automated, as those circumstances would be left for human consideration.

For example, section 45A(1) prohibits the payment of a claim unless the CEO is satisfied that a claim for payment has been made in accordance with sections 45A(2), (3), and (5). Satisfaction is a state of mind being formed, and so this is an evaluative determination. Each of the requirements of sections 45A(2), (3) and (5) are objectively ascertainable – for example – whether the claim is made within the timeframe required by section 45A(5). These circumstances would be suitable for automation.

Content of instrument etc.

Subsection 59D(2) would provide that if the CEO makes a standard operating procedure instrument:

- the instrument must not deal with matters other than evaluative determinations; and
- the CEO must, in relation to each evaluative determination, specify in the instrument particular circumstances in which the CEO is satisfied, if those circumstances exist or do not exist, that evaluative determination must always be made in a way specified in the instrument; and
- the CEO must, in specifying those circumstances, be satisfied that the instrument is consistent with how the evaluative determination may be made by the CEO.

The purpose of this amendment is to ensure that each standard operating procedure instrument assists with the automation of discretionary or evaluative decisions in a safe, transparent and consistent way.

Objective circumstances

Subsection 59D(3) would provide that the CEO must be satisfied that the circumstances specified by paragraph 59D(2)(b) are sufficiently objective in nature, such as their existence or non-existence, can be ascertained by the operation of a computer program. The circumstances specified by paragraph 59D(2)(b) are the circumstances in which the CEO is satisfied, if those circumstances exist or do not exist, that evaluative determination must always be made in a way specified in the instrument.

The purpose of this subsection is to ensure any circumstances which are not sufficiently objective in nature would need to be dealt with by a human. This ensures that truly discretionary or evaluative circumstances are not subject to automation.

Computer program to be programmed consistently with instrument

Subsection 59D(4) would provide that if the CEO makes a standard operating procedure instrument, the CEO must ensure that the arrangement under subsection 59B(1) provides for the making of each evaluative determination in a way that is consistent with the standard operating procedure instrument.

The purpose of the amendment is to ensure that when the CEO, in writing, arranges for the use of computer programs to take administrative action under section 59B(1) and where that involves the making of an evaluative determination, the written arrangement is consistent with the standard operating procedure instrument.

Instrument may deal with more than one administrative action

Subsection 59D(5) would provide that a standard operating procedure instrument may deal with more than one administrative action. The purpose of this subsection is to enable a standard operating procedure instrument to apply to separate administrative actions where the circumstances may be the same or similar and prevent duplication of instruments.

CEO must publish proposed instrument

Subsection 59D(5A) would provide that before making a standard operating procedure instrument under subsection 59D(1), the CEO must cause the proposed instrument to be published on the website of the Agency 7 days prior to the CEO making the instrument.

This requirement responds to concerns raised during the Inquiry that additional transparency is required when automating administrative action involving evaluative determinations. Publishing the instrument will enhance transparency and enable participants, representative organisations, and other interested parties to consider and understand the implications of the instrument before it is made and starts operating.

Instrument is a notifiable instrument

Subsection 59D(6) would provide that a standard operating procedure instrument is a notifiable instrument.

Requiring a standard operating procedure instrument to be a notifiable instrument means that the instrument must be registered on the Federal Register of Legislation. This provides transparency of the instruments and allows them to be linked to the primary legislation in the Register.

Proposed subsection 59D(6) is not a substantive exemption under paragraph 8(6)(a) of the Legislation Act as standard operating procedure instruments will be administrative in character.

Section 59E – Oversight and safeguards for automation of administrative action

CEO to ensure administrative action is action that could be validly taken

Proposed new subsection 59E(1) would provide that the CEO must take all reasonable steps to ensure that administrative action taken by the operation of a computer program under an arrangement under subsection 59B(1) is administrative action that the CEO could validly take under a designated provision. This would ensure that any action taken by a computer-based program is appropriately confined to action that the CEO could validly perform themselves.

This would require the CEO to ensure that systems are in place to ensure that computer programs produce valid decisions. The steps that are reasonably required to discharge this obligation will depend on the circumstances. For example, steps may include establishing an oversight committee within the Agency, legal conformance assessments, system testing, risk assessments, or audit, performance and quality assurance mechanisms that apply to the automation.

Subsection 59E(2) would provide, without limiting subsection 59E(1), that the CEO must do the things (if any) determined by a legislative instrument made under subsection 59E(9).

A legislative note would add that administrative action may still be invalid even if subsections 59E(1) and (2) are complied with.

Subsection 59E(3) would provide that a failure to comply with subsection 59E(1) or (2) does not affect the validity of the administrative action taken by the operation of a computer program under an arrangement under subsection 59B(1).

This clause is necessary to provide certainty that thousands of automated decisions made on a daily basis under the Scheme would be valid. In the absence of such a clause, the uncertainty about whether an administrative action taken by the operation of a computer program was valid could undermine the certainty and reliability of processes that support large numbers of participants every day. For example, if the validity of claims and payments processing was uncertain, it could cause significant disruption to participants and their ability to receive supports. Importantly, this clause will have no impact on the availability of judicial review.

Notification of decisions made by the operation of computer programs

Subsection 59E(4) would provide that if, in accordance with subsection 59B, administrative action is taken by the operation of a computer program under an arrangement under subsection 59B(1), and another provision of the Act or a legislative instrument requires a notice of the

administrative action to be given to a person, then a notice must be given that informs the person that the administrative action was taken by the operation of a computer program.

This amendment would provide a safeguard to ensure notices already required in relation to administrative actions will make a person aware of the role of a computer program (if any) in taking the administrative action. This does not require the Agency to provide additional notices where a notice is not already required. This ensures transparency in the use of computer programs.

Subsection 59E(5) would provide that a failure to comply with subsection 59E(4) does not affect the validity of the administrative action taken by the operation of a computer program. The purpose of this clause is to provide certainty about the validity of administrative actions undertaken by computer programs in a similar way to subsection 59E(3). While it is important for a person to be informed that a decision was made by the operation of a computer program, it would be disruptive for a decision to be invalid if a written notice was not provided, likely due to an administrative error. Notwithstanding such an error, a person may be able to discern that an action was undertaken by a computer program because of the requirement for the CEO to make a standard operating procedure instrument in subsection 59D or publication requirements placed on the CEO in subsection 59E(6).

Publication

Subsection 59E(6) would provide that if the CEO makes an arrangement under subsection 59B(1) in relation to particular designated provisions, the CEO must cause a statement to be published on the Agency's website.

The statement is to be to the effect that the CEO has made such an arrangement and is to set out the particular designated provisions.

The purpose of this amendment would be to provide the public with information on the decision making provisions being automated by the Agency. This provides critical accountability and transparency in the use of computer-based decision making.

Details in annual report

Subsection 59E(7) would provide that when preparing the Agency's annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period, the CEO must include following the information in that annual report:

- the kinds of substituted actions taken by the CEO under subsection 59B(7) of this Act in that period; and
- the kinds of administrative action taken by the operation of the computer program that the CEO was satisfied were not correct or preferable.

The purpose of this safeguard is to ensure the public is provided with information about how computer-based decision making is operating, including about the quality of computer-based administrative action. It will also support the public to compare information across annual reports to monitor the roll out of computer-based decision making over time.

Subsection 59E(8) would provide that the CEO may also include in the report any other information (other than personal information within the meaning of the *Privacy Act 1988*) about the operation of sections 59B, 59C, 59E and 59E in that period that the CEO considers appropriate.

The purpose of this amendment is to clarify that the information to be provided in the annual report about the operation of computer-based administrative action is not confined to the requirements of subsection 59E(7).

Legislative instrument

Subsection 59E(9) would provide that the minister may, by legislative instrument, determine one or more things that the CEO must do for the purposes of subsection 59E(2).

The purpose of this amendment would be to authorise the Minister to determine one of more things that the CEO must do as 'reasonable steps' to ensure the administrative action taken by the operation of a computer program is administrative action that the CEO could validly take.

Item 12 – After subsection 202(2)
This item would insert proposed new subsection 202(2A) which provides, despite subsection 202(1), the CEO may not delegate any of the CEO's powers relating to automation of administrative actions.

The purpose is to ensure that appropriate governance, accountability and responsibility for the ethical legal and operational impact of computer-based administrative action within the Agency rests with the CEO. These are the only powers of the CEO that are explicitly prevented from delegation.

Item 13 – Application—annual reports
This item would provide that subsections 59E(7) and (8) apply in relation to an annual report under section 46 of the *Public Governance, Performance and Accountability Act 2013* for a period that begins on or after the commencement of this item. This means that the first annual report for a period after this item commences must include information about computer-based decision making.

Part 3—Minor amendments

This Part makes minor amendments to improve the operation of the Scheme. These amendments include increasing the timeframe for the CEO to consider and decide an access request, as well as amendments which improve the operational decision making relating to circumstances in which a person must not manage funding.

Notes on clauses

Item 14 – Paragraph 20(2)(a)
This item amends paragraph 20(2)(a) by omitting '21 days' and substituting '90 days'.

The purpose of this amendment is to extend the timeframe for the CEO to consider and decide an access request under subsection 20(1) from 21 days to 90 days.

The NDIS rule making power in paragraph 20(2)(b) continues to operate without change, allowing for a lesser number of days to be prescribed if required.

Item 15 – Paragraph 44(1)(aa)
This item amends paragraph 44(1)(aa) by inserting 'the CEO is aware that' before 'the participant'.

Amendments made by the Getting the NDIS Back on Track Act introduced paragraph 44(1)(aa). This paragraph, read in the context of the Act, requires the CEO to take positive steps to gather information about a participant's criminal history in order to determine whether the management of funding under a participant's must be wholly or partly managed by the agency in accordance with paragraph 43(3)(b). This absolute obligation cannot reasonably be fulfilled by the CEO because the relevant information sharing arrangements, including with state and territory law enforcement agencies do not exist. Although participants may be asked about their criminal convictions, this is not a reliable way to obtain this information as individuals may not know if an offence falls within the relevant categories or may choose not to disclose an offence if they have one.

The purpose of this amendment is to clarify that the CEO does not have an absolute obligation to investigate or conduct checks to determine whether a participant has been convicted of an offence for the purposes of paragraph 43(3)(b). Rather, the obligation only arises where the CEO has been made aware of a conviction for example, through disclosures made by the participant or through other information gathering processes. This amendment is in line with the original intention of paragraph 44(1)(aa) while ensuring the CEO can meet the legal requirements of the provision.

Item 16 – Paragraph 44(2A)(aa)
This item amends paragraph 44(2A)(aa) by inserting 'the CEO is aware that' before 'the plan nominee'.

Amendments made by the Getting the NDIS Back on Track Act introduced paragraph 44(2A)(aa). This paragraph, read in the context of the Act, requires the CEO to take positive steps to gather information about a plan nominee's criminal history in order to determine whether the management of funding under a participant's plan must be wholly or partly managed by the Agency in accordance with paragraphs 43(5)(b) and (6)(b). This absolute obligation cannot reasonably be fulfilled by the CEO because the relevant information sharing arrangements, including with state and territory law enforcement agencies do not exist. Although nominees may be asked about their criminal convictions, this is not a reliable way to obtain this information as individuals may not know if an offence falls within the relevant categories or may choose not to disclose an offence if they have one.

The purpose of this amendment is to clarify that the CEO does not have an absolute obligation to investigate or conduct checks to determine whether a plan nominee has been convicted of an offence for the purposes of section 43(5)(b) and (6)(b). Rather, the obligation only arises where the CEO has been made aware of a conviction for example, through disclosures made by the plan nominee or through other information gathering processes. This amendment is in line with the original intention of paragraph 44(2A)(aa) while ensuring the CEO can meet the legal requirements of the provision.

Item 17 – Application provision

This item is an application provision which provides that the amendment of section 20 of the National Disability Insurance Scheme Act 2013, made by this Part, applies in relation to an access request made on or after the commencement of this item.

The substantive effect of this provision is that the timeframe amended by Item 1 of this Part (being 90 days) only applies to access requests made on or after commencement of this item.

SCHEDULE 4 — NEW FRAMEWORK PLANNING

Summary

Schedule 4 sets out minor amendments to facilitate the operationalisation and roll out of new framework planning. This includes amendments to ensure a notice for a participant to have a new framework plan can be revoked and a participant can continue their old framework plan. There are also clarifications about who can undertake a support needs assessment and what information can be considered by an assessor.

This Schedule also sets out changes that relate to the design of the budget method to ensure it can include provisions to identify the needs for NDIS supports and allocate funding amounts to levels of need for NDIS supports. This is necessary because the core NDIS support needs assessment tool identifies support needs without reference to NDIS supports. NDIS supports will need to be translated using the outputs of the tool and be reflected in the budget method. Similar to proposed changes for old framework planning, this Schedule will enable the budget method to include funding caps for particular types, classes or groups of supports and ensure the supports needs assessment must identify support needs which have a direct causal connection to the impairments for which a participant meets access. The Schedule will also broaden requirements which can be included in participant's reasonable and necessary budget for the acquisition or provision of supports and which must be satisfied before funding for the supports is provided.

Schedule 4 also includes provisions to clarify what material can be incorporated by reference in NDIS rules specifying a support needs assessment tool or a budget method and modify the transitional rule making powers contained in the Getting the NDIS Back on Track Act so that they account for the amendments made by this Bill.

Background

The NDIS Review recommended a range of changes to the participant experience to provide a fairer and more consistent pathway for participants. One of the major changes proposed by the NDIS Review was to change the basis for setting a budget to a 'whole-of-person' level rather than for individual support items.

The Government is committed to rolling out new framework planning to improve the participant experience in the NDIS through more equitable funding decisions based on a holistic assessment of disability support needs. These amendments will support the effective operation of new framework planning and respond to issues emerging from initial consultation, validation and testing activities.

Notes on clauses

Item 1 – At the end of section 32B

New subsection 32B(4) will provide the CEO with an express power to revoke a notice for a participant to have a new framework plan.

Section 32B provides that NDIS rules may specify the classes of participants who are to receive new framework plans and the period within which the CEO must give a notice to each participant within that class. Section 32 requires that the CEO must commence facilitating the preparation of a participant's new framework plan as soon as practicable after a notice of transition is given to the participant.

There may be a range of circumstances in which the preparation of a new framework plan for a participant cannot be properly facilitated within a reasonable timeframe after a notice of transition is given to the participant. For example, if a participant has been hospitalised due to illness or there is some other barrier in facilitating a participant to transition to new framework planning. New subsection 32B(4) will ensure the obligation on the CEO to facilitate a new framework plan can be extinguished and a participant's old framework plan can continue and be reassessed if required.

New subsection 32B(5) will require the CEO to provide a participant with written notification of a decision to revoke a notice of transition. It will also provide that the effect of revocation is that, for the purposes of the Act, the revoked notice is taken never to have been given to the participant. New subsection 32B(6) will make clear that, if a notice of transition is revoked, a further notice of transition can be given to the participant at a later time.

Item 2 – After paragraph 32H(2)(d)

This item inserts a new paragraph 32H(2)(e). This will enable NDIS rules to prescribe an additional requirement relating to the acquisition or provision of specified supports which, if included in a participant's reasonable and necessary budget, will have to be complied with before funding will be provided for the supports. The relevant requirement that new paragraph 32H(2)(e) would permit NDIS rules to prescribe is a requirement that the CEO be satisfied of matters which the NDIS rules specify in relation to the acquisition or provision of supports.

For example, this would enable NDIS rules to prescribe matters with which the CEO must be satisfied, relating to whether the acquisition or provision of supports represents value for money. This will ensure the Agency can confirm a quote for high cost assistive technology or home modifications is value for money before funding is provided in the plan.

Item 3 – Subsection 32K(1)

This item repeals subsection 32K(1) and substitutes new subsections 32K(1A), 32K(1) and 32K(2). These provisions will continue to provide for the total funding amounts included in a participant's reasonable and necessary budget to be worked out by applying the outcomes of a participant's disability support needs assessment, reflected in the needs assessment report, in accordance with a method specified in NDIS rules. The new subsections will have two

additional effects. First, the information in the needs assessment report which will be applied in working out total funding amounts will be information 'about a participant's disability support needs', reflecting amendments to paragraph 32L(6)(a) which will broaden the description of information to be included in a needs assessment report. Second, new subsection 32K(2) will clarify that the information which may be used in working out total funding amounts is not limited to information included in a needs assessment report.

A legislative note at the end of new subsection 32K(1) confirms that in making NDIS rules to specify a budget method, the Minister must have regard to the objects and principles of this Act (see in particular the principles set out in subsections 4(5), (9A) and (11)) and the financial sustainability of the NDIS. This replicates the note which is currently included at the end of existing section 32K(1).

A further legislative note is included to confirm that NDIS rules made under subsection 209(1) of the Act to specify a budget method for the purposes of subsection 32K(1) may apply, adopt or incorporate any matter contained in a document prepared by the Agency (such as a document setting out prices or pricing benchmarks) as in force or existing from time to time. The purpose of this note is to assist the reader in understanding that the budget method can reflect variable inputs (such as support prices or pricing benchmarks) which are included in a document prepared and periodically updated by the Agency (so as to reflect, for example, movements in prices).

Item 4 –Before subsection 32K(4)

This item inserts new subsections 32K(3B), 32(3C), 32(3D) and 32K(3E). These new subsections:

- clarify the scope of the authority in subsection 32K(1) to make NDIS rules specifying a budget method, and
- enable the setting and application of funding caps for particular types, classes or groups of supports.

New subsection 32K(3B) clarifies, without limiting new section 32K(1), that a budget method specified in the NDIS rules can include provisions to:

- enable the identification of NDIS supports or stated supports, or groups or classes of NDIS supports or stated supports, needed by participants
- specify one or more levels of need for NDIS supports or stated supports, or groups or classes of NDIS supports or stated supports
- enable the identification of a level of need for NDIS supports or stated supports, or groups or classes of NDIS supports or stated supports, for participants; and
- specify one or more funding amounts for specified levels of need for NDIS supports or stated supports or groups or classes of NDIS supports or stated supports.

New subsection 32K(3C) clarifies that a funding amount which is specified for a specified level of need for an NDIS support or stated support, or a group or class of NDIS supports or stated

supports, may be more than, equal to or less than the actual cost of providing or acquiring the support or group or class of supports. By way of example, the budget method specified for the purposes of section 32K(1) will often need to specify funding amounts by setting out formulas which enable the objective calculation of an amount. This amendment will operate so that the amount calculated by applying a relevant formula does not have to match the actual cost of the support or supports in relation to which the amount has been calculated.

New subsection 32K(3D) provides that a method specified in NDIS rules made for the purposes of subsection 32K(1) may specify a maximum amount of funding for a support or a group or class of supports. This will enable the budget method to specify a maximum cap on funding which will be provided for a particular support or a particular group or class of supports. For example, this would permit the budget method to specify a maximum cap on the amount of funding which will be provided for home modifications.

New subsection 32K(3E) provides that a method specified in NDIS rules made for the purposes of subsection 32K(1) must have the effect that no maximum specified for the purposes of subsection 32K(3D) is exceeded in working out the total funding amount for flexible funding or total funding amount for a stated support or class of stated supports. In practice, this will mean that application of the budget method will not be able to result in the calculation of a funding amount for a support, or group of class of supports, which is greater than the maximum cap, if any, specified for that support or group or class of supports.

These provisions will further support consistency in the calculation of reasonable and necessary budgets for participants with similar needs and assist in facilitating reasonable and necessary Scheme sustainability measures. A needs assessment report will identify a participant's disability support needs and the method outlined in NDIS rules may allocate funding for NDIS supports, identify the level of need for NDIS supports and specify funding amounts for levels of need.

Item 5 –Paragraph 32K(5)(b)

This item amends subsection 32K(5)(b) to omit '(1)(b)' and substitute '(1A)(b)'. This amendment is consequential on the repeal of subsection 32K(1) and the substitution of new subsections 32K(1A), (1) and (2).

Item 6 – Subsection 32L(2)

This item inserts 'directly' after 'arise' in subsection 32L(2). This amendment, together with the corresponding amendment to s 32L(6)(a) and the reference to 'relevant disability support needs' in new s 32K(1), will clarify that the disability support needs of a participant which are both assessed and funded are confined to those needs which arise directly from impairments in relation to which the participant meets the disability requirements or early intervention requirements. In practical terms this means that an assessed need will only be funded if it has a direct causal connection with a relevant impairment. Whether this is the case will depend on whether the impairment is the direct source, cause or origin of the identified need as opposed

to a contributory cause of the need. The impact of a participant's individual characteristics and environmental circumstances will be taken into account in identifying need**.**

Where the relevant causal connection exists, the identification of a participant's need for NDIS supports will continue to be done on a whole of person basis.

Item 7 – At the end of subsection 32L(2)
This item inserts a new legislative note to subsection 32L(2) to confirm that NDIS rules made under subsection 209(1) of the Act to specify a support need assessment tool may apply, adopt or incorporate any matter contained in a document prepared by the Agency (such as a questionnaire or manual) as in force or existing from time to time.

The purpose of this note is to assist the reader in understanding that the support needs assessment tool can include material which is included in a document, such as a questionnaire or a manual, which is prepared and periodically updated by the Agency. This will ensure, for example, that changes in the factual information needed to adequately assess participants' disability support needs, and updates to requirements relating to the content of external information inputs to assessments, can be made in real time.

Item 8 – Subsection 32L(4)
This item repeals subsection 32L(4) and substitutes new subsections 32L(4) and (4A). These new subsections clarify what information an assessor must and must not have regard to in undertaking an assessment and specify who may undertake an assessment.

New paragraph 32L(4)(a) provides that an assessment must have regard to any information and reports requested under subsection 36(2) for the purposes of an assessment. This replicates existing paragraph 32L(4)(a). Paragraphs 32L(4)(a) and (b) make new provision for NDIS rules to prescribe information an assessment must and must not have regard to.

During consultation on the development of NDIS rules for the purposes of section 32L assessment of participant's needs for supports, there was concern about the assessor having regard to irrelevant or incorrect information held in the records of the Agency. There were also questions about whether a participant could provide their own assessment or other similar information to be considered in an assessment or to be used instead of assessment tool specified in NDIS rules.

These changes remove the broad discretionary power in existing paragraph 32L(4)(b) for an assessment to have regard to any other information held by the Agency that relates to the participant. NDIS rules will instead prescribe specific information an assessor must or must not have regard to.

New subsection 32L(4A) requires an assessment must be undertaken by a member of staff of the Agency mentioned in section 169; a consultant engaged by the Agency under section 171; or a person prescribed by NDIS rules.

During consultation on new framework planning, there was some confusion about who could undertake a support needs assessment. These changes make it clear who can do so. They will also apply to the undertaking of a replacement assessment arranged by the CEO under subsection 32L(7) of the Act, or by the Tribunal exercising the CEO's powers in a review of a decision to approve a statement of participant supports.

Item 9 – Paragraph 32L(6)(a)
This item omits the word 'identify' and substitutes the words 'include information about' in subsection 32L(6)(a). This amendment makes clearer that a needs assessment report is not required to identify needs for NDIS supports but, rather, can include information about a participant's disability support needs which can be used to identify needs for NDIS supports. This amendment interacts with the corresponding provision in new subsection 32K(1), providing flexibility for the identification of participants' needs for NDIS supports to occur either through application of the support needs assessment tool or through the application of provisions included in the budget method. This flexibility is necessary to ensure the budget method is able to work effectively.

Item 10 – Paragraph 32L(6)(a)
This item inserts the word 'directly' after 'arising' consistent with the proposed amendment to subsection 32L(2).

Item 11 – Paragraph 32L(7)(d)
This item omits 'to (6)' and substitutes 'to (6A)' in paragraph 32L(7)(d). This is a technical amendment to correct a minor omission in paragraph 32L(7)(d).

Item 12 – Subsection 209(8) (table item 1, column headed 'Description', paragraph (cg)
This item amends table item 1 of the table in subsection 209(8) so that it includes a reference to new paragraph 32H(2)(e). This means that NDIS rules made for the purposes of new paragraph 32H(2)(e) will be category A NDIS rules.

Item 13 – Subsection 209(8) (table item 1, column headed 'Description', paragraph (ci)
This item amends table item 1 of the table in subsection 209(8) so that it includes a reference to new paragraphs 32L(4)(b) and (c). This means that NDIS rules made for the purposes of new paragraphs 32L(4)(b) and (c) will be category A NDIS rules.

Item 14 – 209(8) (table item 4, column headed 'Description', after paragraph (ab)
This item amends table item 4 of the table in subsection 209(8) so that it includes a reference to new paragraph 32L(4A)(c). This means that NDIS rules made for the purposes of new paragraph 32L(4A)(c) will be category D NDIS rules. These NDIS rules, which will enable the prescription of additional persons who may conduct section 32L support needs assessments, will not have any significant policy or financial implications and so are suitable to be made as category D rules.

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

These items extend the operation of the transitional rule-making powers in Part 3 of Schedule 1 to the Getting the NDIS Back on Track Act to ensure that any changes affecting new framework planning rule-making powers in the Bill are captured within scope of transitional rule-making powers in items 138 and 139 of Schedule 1 of the Getting the NDIS Back on Track Act. This will deal with matters of a transitional nature relating to amendments made by Schedule 1 of the Getting the NDIS Back on Track Act, as further amended by the Bill.

Item 15 – Subitem 138(1) of Schedule 1

This item amends subitem 138(1) of Schedule 1 to the Getting the NDIS Back on Track Act to account for the enactment of this Bill, ensuring that NDIS rules can be made under that item to prescribe matters of a transitional nature relating to both:

- the amendments or repeals made by Schedule 1 to the Getting the NDIS Back on Track Act
- the amendment or repeal of the Getting the NDIS Back on Track Act provisions effected by the enactment of this Bill.

This is intended to ensure, for example, that NDIS rules can be made to prescribe matters of a transitional nature which relate a new framework planning provision in Division 2 of Part 2 of Chapter 3 of the NDIS Act as that provision is amended by the enactment of this Bill.

Item 16 – Subitem 138(4) of Schedule 1

This item amends subitem 138(4) to clarify that the amendment and repeal of NDIS Act provisions made by the enactment of this Bill do not limit the transitional rules that may be made for the purposes of subitem 138(1).

Item 17 – After paragraph 139(2)(d)

This item amends subitem 139(2) to include references to new subsections 32K(3B), (3D) and (3E) of the NDIS Act. This is done to ensure that subitem 139(3) operates so that these new subsections have effect as if the references in them to NDIS rules are read as references to transitional rules made under item 138.

Item 18 – After paragraph 139(2)(e)

This item amends subitem 139(2) to include references to new paragraphs 32L(4)(b) and (c) of the NDIS Act. This is done to ensure that transitional rules of the kind contemplated by item 139 can be made for the purposes of these new paragraphs, which permit the prescription of information to which an assessment must and must not have regard.

Item 19 – Paragraph 139(4)(a)

This item amends paragraph 139(4)(a) to include references to new subsection 209(2AA) and (2AB) of the NDIS Act. This is done to ensure that these new subsections apply in relation to the making under item 138 of transitional rules contemplated by item 139.

Item 20 – Subitem 139(9)

This item amends subitem 139(9) to ensure that a reference in item 139 to a provision of the NDIS Act is a reference to:

- that provision as in force on and after the commencement of Schedule 1 to the Getting the NDIS Back on Track Act, and
- as that provision is amended by the enactment of this Bill.

SCHEDULE 5 – TRANSITIONAL RULES

Summary

This Part sets out that the Minister may make transitional rules that deal with transitional matters (including any saving or application provisions) relating to any amendments or repeals in this Bill. This power would be limited in a variety of ways. Firstly, it would be time-limited, so that any rules must be made within 12-months following commencement of this Part. Secondly, any transitional rules made would expire after a period of 12 months. It would also prohibit the Minister from making rules that would create an offense or civil penalty; provide powers of arrest or detention or powers of entry, search or seizure; impose a tax; set an amount to be appropriated from the Consolidated Revenue Fund; or directly amend the text of the Act.

Background

The ability to make transitional rules was included in Getting the NDIS Back on Track Act and eventually used to address issues that arose after the Bill was passed. Transitional rules provide an opportunity for the Minister to take swift action to ensure amendments function with the intended effect to ensure the continuity and operability of the Act.

Notes on clauses

Item 1 – Transitional rules

Subitem (1) of this item empowers the Minister, by legislative instrument, to make rules of a transitional nature (including prescribing any saving or application provisions) relating to amendments or repeals made by this Act.

The purpose of this subitem is to ensure that appropriate provision can be made for matters that arise as a consequence of the transition from the previous legislative arrangements under the NDIS Act to the amended arrangements introduced by this Act. Essentially, the transition from the 'old law' to the 'new law'. While the Act includes several detailed transitional and application provisions, not all transitional issues can be fully anticipated at the time of enactment.

The transitional rule making power is intended to be used to address unforeseen or ancillary matters that are necessary to ensure the effective and orderly operation of the NDIS during the transition period. The power is confined to matters that are transitional in nature .

Subitem (2) provides that without limiting subitem (1), rules made under that subitem may provide that the provisions specified in subitem (3) have effect with any modifications prescribed by the rules. Those provisions then have effect as if they were so modified.

Subitem (3) provides that the provisions are a provision of the NDIS Act and a provision of a transitional nature (including a saving or application provision) in this Act.

Subitem (2) and (3) are intended to expand the operation of Subitem (1) allowing the Minister to make rules which modify the provisions of the NDIS Act and transitional provisions of this Act (modification power). These subitems serve as a failsafe allowing the Minister to take swift action to ensure the amendments and repeals made by this Act function with the intended effect to ensure the continuity and operability of the NDIS Act. The Minister's ability to exercise the modification power is of narrow application, limited to matters of a transitional nature only.
The rule making power under subitem (1) is time limited, both in relation to the period in which the power may be exercised and in the period of effect of any rules made through the exercise of that power.

Subitem (4) provides that rules made under subitem (1) are repealed at the end of the 12 month period beginning on the day after the rules are made, or if the rules specify an earlier time, at that time. The effect of this subitem is that rules made pursuant to the power in subitem (1) will automatically be repealed 12 months after they are made or such earlier time as the rules require. The limited period of operation is intended to cause any significant matters requiring further legislative changes to be brought before the Parliament where ongoing legislative repair is required to address those matters which have come to light during implementation.
Subitems (5) and (5A) limit the timeframe for making transitional rules under subitem (1).

Subitem (5) provides that rules relating to provisions inserted by Parts 5 and 6 of Schedule 1 (dealing with plan renewals and reasonable and necessary supports respectively) and all of Schedule 4 (dealing with new framework planning) of the Bill must be made before the end of 12 months beginning on the day the subitem commences.

Subitem (5A) limits the transitional rule-making power to 6 months for all other amendments or repeals made by the Bill.

The longer 12-month period applies to provisions relating to plan renewals, reasonable and necessary supports and new framework planning due to the delayed commencement, staged implementation, and relative complexity of these provisions. In consequence, these provisions may require additional time to identify and address any unforeseen or unintended issues.

Subitem (6) sets out other limitations on the scope of the transitional rule making power conferred by subitem (1). It provides, for the avoidance of doubt, that the rules may not be used to create offences or impose civil penalties, confer coercive powers (including powers of arrest or detention, or powers of entry, search and seizure), impose a tax, set an amount to be appropriated from the Consolidated Revenue Fund or directly amend the text of an Act.

These limitation further reinforce that the transitional rule making power is confined to matters of a transitional, saving or application nature.

Subitem (7) clarifies that any rules made pursuant to subsection (1) are not limited by:

- the operation of any part this Act, aside from matters set out in subitem (4), (5) and (6) of this item, as noted above.
- Items 138 and 139 of the of Schedule 1 to the Getting the NDIS Back on Track Act, which set out transitional rule making powers with respect to that Act.

STATEMENT OF COMPATIBILITY WITH HUMAN RIGHTS

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

NATIONAL DISABILITY INSURANCE SCHEME AMENDMENT (SECURING THE NDIS FOR FUTURE GENERATIONS) BILL 2026

The National Disability Insurance Scheme Amendment (Securing the NDIS for Future Generations) Bill 2026 (the Bill) is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the Bill

The Bill will protect the National Disability Insurance Scheme (NDIS, Scheme) for people with permanent and significant disability and for future generations who will rely on it.

The NDIS is currently growing at a rate that was unforeseen when it was established in 2013 under the *National Disability Insurance Scheme Act 2013* (the Act). If left unchecked, this puts the long term sustainability of the NDIS at risk. This Bill includes important changes to improve the NDIS for participants and put the Scheme on a more sustainable footing, now and for future generations.

Over time the NDIS has become the target for fraudulent activity, impacting the Scheme as a whole. Fraud has a direct and devastating impact on the lives of participants and their families, leading to lower quality services, exploitation and harm. The National Disability Insurance Agency (Agency) does not have the necessary powers to regulate and monitor the payment of over $50 billion per year.

This Bill focuses on these two key risks, as well as making a number of technical amendments to improve the operation of certain aspects of the Act. It draws on key independent reports, including the Independent Review into the National Disability Insurance Scheme (NDIS Review) conducted in 2023 and co-chaired by Professor Bruce Bonyhady AM and Ms Lisa Paul AO PSM, and the advice of the NDIS Provider and Worker Registration Taskforce (Registration Taskforce), completed in 2024 and chaired by Ms Natalie Wade. Amendments also take account of the findings of the Australian National Audit Office's report *National Disability Insurance Scheme Fraud and Control Program* (2019) and the Royal Commission into Violence, Abuse, Neglect and Exploitation of People with Disability (Royal Commission), which ran from 2019 to 2023.

Human Rights Implications

The Bill engages the following rights:

- Rights of people with disability – Articles 3, 4(3), 19 and 28 of the *Convention on the Rights of Persons with Disabilities* (CRPD).
- Right to freedom from exploitation, violence and abuse – Article 16 of the CRPD.
- Right to health – Article 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR) and Article 25 of the CRPD.
- Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the CRPD and Articles 2, 16,19 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR).
- Right to privacy and reputation – Article 17 of the ICCPR and Article 22 of the CRPD.
- The obligation to progressively realise certain rights – Article 4(2) of the CRPD.

Each of the relevant rights engaged by the Bill are dealt with in turn.

Rights of people with disability – Articles 3, 4(3), 19 and 28 of the CRPD

The Bill seeks to build on the objectives under section 3 of the Act, the first of which is to give effect to Australia's obligations under the CRPD in conjunction with other laws.

The CRPD recognises the barriers that people with disabilities may face in realising their rights. While rights under all human rights treaties apply to everyone, including people with disabilities, the CRPD applies human rights specifically to the context of people with disabilities.

The Bill engages the foundational principles of the CRPD by implementing measures that protect and preserve the capacity of the NDIS to deliver supports to people with permanent and significant disability and for future generations who will rely on it. It does so by introducing measures aimed at:

- fighting fraud and stopping rorts.
- slowing rapid cost increases.
- clarifying eligibility requirements.
- delivering quality services and supports.

Article 3 the CRPD establishes accessibility as a core general principle of the Convention. The principle is reflected in Article 28 which ensures access to appropriate and affordable services, devices and other assistance for disability related needs for the purposes of safeguarding and protecting the right of persons with disability to social protection. This is underpinned by the

requirement for States Parties to take positive steps towards promoting equality and non-discrimination of people with disabilities in all policies and programmes.

The Bill engages these rights by reshaping the circumstances in which disability supports can be accessed through the NDIS. A central requirement for access to the NDIS is that an impairment must be permanent or likely to be permanent, and that the impairment must result in substantially reduced functional capacity in at least one key activity (such as mobility, communication or self-care).

The current definition of 'permanence' has resulted in the unintended expansion of the NDIS to individuals with treatable impairments, whom the Scheme was never designed to support. That is, the NDIS was not intended to replace general health, rehabilitation and treatment services which play a critical role in preventing lifelong disability. Similarly, the absence of a clear definition of 'functional capacity' has contributed to inconsistent decision making in respect of whether a person meets the eligibility requirements to access the Scheme. These issues were reflected in the final report from the NDIS Review which found the current approach to accessing the Scheme is inconsistent, inequitable and not always targeted to those people with disability who require the most support. This has led to unfair outcomes and significantly contributed to unsustainable growth of the Scheme.

In line with the findings and recommendations of the NDIS Review, Part 8 of Schedule 1 of the Bill clarifies the definition of permanence to ensure the Scheme only supports people with permanent or likely permanent and significant disability, realigning this access requirement with the intention and objectives of the Act. Part 1 of Schedule 1 of the Bill introduces a new definition of 'functional capacity' and a power to make NDIS rules with respect to methods or criteria, including classifications or thresholds relevant to the assessment of an individual's functional capacity.

These provisions will make way for the implementation of a standardised, evidence-based assessment of a person's functional capacity that impacts their day-to-day living, moving away from the current approach which relies on diagnosis. The implementation of these measures in the Bill will therefore ensure fairer, more consistent and sustainable assessment outcomes, resulting in equitable access to the Scheme and thereby promoting the principles of accessibility and equality under the CRPD.

Article 19 of the CRPD recognises the right of persons with disabilities to live independently and to be included in the community, including by having access to in-home, residential and other community supports necessary to support inclusion and prevent isolation. Article 26 builds on this by requiring States Parties to take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence and full participation and inclusion in all aspects of life by strengthening habitation and rehabilitation services and programmes.

The Bill promotes the enjoyment of these rights by improving the quality of providers who deliver plan management services and high risk supports. More specifically, Part 6 of Schedule 2 will restrict the number and type of providers that can deliver plan management services, while Part 1 of Schedule 2 enables increased regulation and oversight of providers delivering high risk supports by laying the foundations to support the delivery of mandatory registration. These measures, in addition to those which seek to strengthen the integrity of payments and claims system, and prevent fraud in the NDIS, will have a net effect of improving overall quality, safety and efficacy of supports provided to NDIS participants.

Article 4(3) of the CRPD seeks to ensure consultation with, and active involvement of, persons with disabilities through their representative organisations, in the development, implementation and monitoring of legislation and policies that concern them. Notably, Article 4(3) does not require unanimity or agreement from all affected persons. The critical concern is whether legislative changes and policies are developed and implemented through meaningful consultation with the disability community, rather than via unilateral decision making.

The proposed amendments to establish a risk proportionate model for mandatory registration of all providers providing services under the NDIS have been informed by the recommendations of the NDIS Review and NDIS Provider and Worker Registration Taskforce (the Registration Taskforce).

The Taskforce was established in February 2024 to provide advice on the design and implementation of the new graduated risk-proportionate regulatory model proposed in Recommendation 17 of the NDIS Review in consultation with the disability community. The Taskforce hosted over 30 roundtables across Australia to hear from communities on specific topics, including women with disability and the use of mainstream services. It also ran a public submission process from 6 March 2024 to 5 May 2024, which received over 700 submissions from people with disability, their families and advocates, NDIS providers, workforce representatives and other relevant stakeholders.

The Taskforce was supported by subject matter experts, including peak body representatives and people with lived experience, who formed five Advisory Working Groups to co-design specific activities in areas of concern, including: participants and nominees; disability care workers and organisations; providers and regulators; intergovernmental; and academic and policy experts.

While other measures introduced by the Bill were not directly consulted on, they were informed by the NDIS Review and the Royal Commission. Both the NDIS Review and the Royal Commission undertook extensive engagement and consultation with the disability community in the course of publishing their respective reports.

Article 4(3) applies not only to the making of laws, but also to their implementation and monitoring. While some of the measures are to be implemented in the short term, many will be implemented over an extended period to allow more time for consultation with people with

disability and their families and carers, advocates, providers and experts. For example, consultation commenced in 2026 on the new way of planning, with future consultation to occur on changes to eligibility assessment, the design of the Inclusive Communities Fund, differentiated pricing, and commissioning models for supported independent living and support coordination functions.

Further, the new definition of functional capacity under section 9B of the Bill authorises the making of NDIS rules prescribing methods, criteria or circumstances which are to be applied for the purposes of determining a person's functional capacity. It is intended that NDIS rules under this section will be informed by expert advice from a Technical Advisory Group on how to assess prospective participants' functional capacity and what threshold should be used to determine eligibility. The Technical Advisory Group will hear from the disability community through a consultation process to commence in August 2026. Government will also consult with states and territories on these changes.

The Bill therefore engages Article 4(3) in a manner that is procedurally compatible with the CRPD, noting that people with disability and their representative organisations have been engaged through formal processes which have informed the identification of problems (such as exploitation and unsafe services) and the design of measures. Furthermore, the Bill imbeds mechanisms for ongoing participation and consultation via implementation arrangements.

Right to freedom from exploitation, violence and abuse – Article 16 of the CRPD

Article 16 of the CRPD seeks to ensure the protection of persons with disabilities, both within and outside the home, from all forms of exploitation, violence and abuse.

Schedule 2 of the Bill directly engages Article 16 by introducing a suite of fraud prevention measures which aim to safeguard participants and prospective participants against exploitation, neglect, coercion and abuse, particularly in the context of service provision and financial management of participant supports. This includes expanding and strengthening the powers of the Agency to keep participants safe and stop misuse of public funds. More specifically the Bill will:

- strengthen the Agency's monitoring, investigation and enforcement capabilities to enable earlier and more effective responses to non-compliance and fraudulent behaviour.
- expand the civil penalty framework to deter providers and individuals from engaging in unlawful and non-compliant conduct by imposing financial penalties.
- enhance the integrity of claims and payments by introducing mandatory record keeping obligations for providers and a reduced timeframe for submitting claims.
- strengthen the Agency's information gathering powers.

The Bill also engages and promotes Article 16 of the CRPD by enabling the strengthening of safeguards within the NDIS market, particularly in relation to high risk supports such as

personal care, daily living assistance and services delivered in closed or isolated settings. While all NDIS providers are required to meet obligations under the Act and Code of Conduct, regardless of their registration status, registered providers are subject to a higher degree of oversight, compliance and practice standards. Accessing supports and services through a registered provider gives additional assurance to participants that their chosen supports will be provided in safe and dignified way.

The Bill will introduce a new definition for 'NDIS provider', which reduces the breath of organisations, retainers and suppliers currently included. This will ensure mainstream retailers and more general suppliers of goods and services are not inadvertently included. This amended definition forms part of the foundation required to implement mandatory registration requirements through future changes. These future changes will be used to mandate registration for all providers delivering high risk supports to participants. This will ensure greater oversight and regulation over services delivered to participants who are most at risk of abuse and/or exploitation.

Additional Bill measures are directed at improving the quality of providers who deliver plan management services. Plan management has been identified as a key risk area for fraud. Significant issues have been detected in the plan management market, including fraudulent behaviour, sharp practices, conflicts of interest, payment integrity and governance issues. The Bill will facilitate a move away from the current open plan management market of around 1,455 plan management providers to a commissioned panel with a limited number of providers.

Deeds of arrangement under Part 6 of Schedule 2 will allow the Agency and Commission to establish strict quality, regulation and monitoring standards for commissioned providers on the plan management panel. This process will identify a group of high quality providers to support participants with plan management and will mean the Commission has better oversight of plan managers to protect participants from fraud. This will both improve the quality of plan management services and limit plan management services to providers who can provide safe, high quality services for participants.

Right to health – Article 12 of the ICESCR and Article 25 of the CRPD

Article 12 of the ICESCR recognises the right of every person to the enjoyment of the highest attainable standard of physical and mental health. Similarly, Article 25 of the CRPD recognises that people with disability have the right to the enjoyment of the highest attainable standard of health without discrimination on the basis of disability. This includes the provision of health services needed by persons specifically because of their disabilities and services designed to minimise and prevent further disabilities or impairment.

The Bill engages the right to health by regulating access to disability supports that contribute directly to health outcomes, and safeguarding the long term sustainability of the NDIS and its capacity to deliver those health-related supports. The Bill aims to achieve these objectives by facilitating and implementing a variety of measures including, but not limited to, enhancing

the integrity of payments and claims, strengthening provider registration requirements, preventing fraud and increasing oversight on the pricing of NDIS supports. These measures promote the right to health by improving the quality and safety of services, and reducing exposure to health-related harms caused by inadequate or unregulated care.

Other measures, aimed at preserving the long term sustainability of the Scheme may directly or indirectly limit the range of health-related supports or funding accessed through the NDIS for some individuals. These measures include the tightening of eligibility and access requirements, reducing the funding or volume of certain classes of supports and/or limiting the frequency and basis on which a participant can request an unscheduled plan reassessment. Underpinning these measures is an overarching objective to protect health outcomes by ensuring that public resources remain available to fund NDIS supports for people with significant and permanent disability.

To the extent that the Bill might limit access to supports and services for some individuals, these measures are reasonable, necessary and proportionate to ensure health-related supports can continue to be delivered to those with the most significant and complex needs, rather than being diluted across a broader class of people which the Scheme was not designed to support. In addition, the Bill does not limit access to mainstream health services and does not reduce minimum essential health entitlements, which remain available to individuals who are no longer able to access all, or parts of the Scheme as a result of the changes.

Accordingly, by regulating supports provided under the NDIS and ensuring the financial sustainability and integrity of the Scheme, the Bill promotes the effective and continued enjoyment of the right to health over time and is consistent with both Article 12 of the ICESCR and Article 25 of the CRPD.

Right to equality and non-discrimination – Articles 3, 4, 5 and 12 of the CRPD and Articles 2, 16, 19 and 26 of the ICCPR

Equality and non-discrimination are foundational principles of the CRPD. Article 3 establishes equality, non-discrimination, and respect for inherent dignity of persons with disability as general principles guiding the interpretation and implementation of all rights. Article 4 requires States Parties to take appropriate legislative, administrative and policy measures to ensure the full and equal realisation of CRPD rights without discrimination on the basis of disability, and to take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes. Furthermore, Articles 5 and 12 guarantee equality before and under the law, and explicitly prohibit all discrimination on the basis of disability, requiring States Parties to provide reasonable accommodation to promote equality and eliminate discrimination. The ICCPR similarly enshrines rights to equality and non-discrimination under Articles 2, 16, 19 and 26.

Together, the CRPD and ICCPR seek to ensure equality, prohibit discrimination and adopt positive measures, including reasonable accommodation and legal safeguards, so that persons

with disabilities can enjoy their civil, political, economic, social and cultural rights on an equal basis with others.

The Bill promotes substantive equality and non-discrimination by seeking to ensure that eligibility and access to the NDIS is determined by functional impairment and support needs, rather than primary reliance on a diagnosis. The current diagnosis-based access pathway has resulted in inconsistent outcomes and inequitable allocation of resources, with people with comparatively lower support needs being granted access to the Scheme where this was never intended. By clarifying access and eligibility thresholds and promoting a more consistent assessment approach, the Bill supports fairer and more transparent decision making, which promotes equality of persons with disability before the law.

The Bill will necessarily limit the practical benefit of the NDIS for some individuals by excluding them from accessing the Scheme under tighter eligibility and access criteria. The objective of the limitation is to address substantial concerns regarding the ongoing sustainability and equity of the NDIS. Participant numbers have grown from an original design estimate of approximately 410,000 to around 760,000. If left unchecked, increasing participant numbers and expenditure threaten the Scheme's long term viability. Existing legislative settings have not sufficiently addressed these issues, as past reforms have been unable to slow growth or correct structural incentives that draw people into the Scheme, irrespective of functional need.

Restricting access to the Scheme to individuals with the most significant support needs through tightened access and eligibility criteria is a reasonable and proportionate response to achieving the legitimate objective of preserving the Scheme for future generations. The measures are targeted at eligibility criteria only and do not affect legal capacity, personhood or access to review rights.

Also relevant to the question of proportionality is whether other arrangements or measures are available to mitigate the impact on affected individuals. Supports may come from community and mainstream services. For some cohorts, this may also be in the form of additional and new supports, as part of the commitment by the Australian Government and all states and territories under National Agreement on Foundational Supports. An example is Thriving Kids which will provide support for children with additional developmental needs.

The Bill also introduces measures that will limit a person's eligibility to access the NDIS in circumstances where they may otherwise be eligible for other support services. This might include situations where an individual has an impairment that was sustained as a result of a work-related or motor vehicle injury, for which they are entitled to compensation or other benefits under another law of the Commonwealth, state or territory government. In such circumstances, Part 9 of Schedule 1 of the Bill operates to prevent those individual's from being able to access the NDIS. These measures achieve legitimate public policy aims of avoiding the duplication of benefits ensuring that public resources are allocated efficiently.

Without such a rule, there is a continued risk that the NDIS becomes the default funder for impairments where another scheme is responsible, thereby undermining the integrity of the compensation system and increasing sustainability risks for the NDIS. The measure is also attended by various safeguards. Firstly, the exclusion is applied narrowly, only where another compensation scheme provides for compensation or benefits in respect of the impairment. Secondly, most state and territory compensation schemes fund supports which are equivalent in type, quality and duration to those available under the NDIS. Finally, individuals retain review rights if they are denied access on these grounds. These safeguards strike a proportionate balance between individual rights and the broader public interest in maintaining the sustainability and integrity of both the NDIS and various state and territory compensation schemes.

Right to privacy and reputation – Article 17 of the ICCPR and Article 22 of the CRPD

The right to privacy as provided for in Article 17(1) of the ICCPR, prohibits arbitrary or unlawful interference with an individual's privacy, family, home or correspondence. Article 22 of the CRPD and Article 16(1) of the CRC also protect the right to privacy of persons with a disability and children, respectively. These provisions contain the same 'arbitrary or unlawful interference' wording as the ICCPR. The right to privacy includes respect for informational privacy, including in respect of storing, using and sharing personal information, and the right to control the dissemination of this information.

The Bill engages the right to privacy to the extent that it authorises the storage, use or disclosure of personal information and to the extent that it involves interferences in a person's home. Several provisions of the Bill provide for the collection, use and disclosure of personal information. For example:

Section 73ZSA applies the monitoring powers under Part 2 of the *Regulatory Powers (Standard Provisions) Act 2014* (Regulatory Powers Act) to several provisions of the NDIS Act, including with respect to participants, participant plans, information held by the National Disability Insurance Agency, payments (including compensation and debt recovery), and governance.

Section 73ZSB applies the investigation powers of the Regulatory Powers Act to relevant offence or civil penalty provisions of the NDIS Act. Sections 73ZSC and 73ZSD provide that if an investigation power is used, equipment may be used to examine or process things or use electronic equipment, including to access, copy and store data, and that the things or electronic equipment may be moved to another location in order for this to occur.

Section 73ZSE provides a mechanism by which an order, in respect of which it is a criminal offence not to comply, may be issued requiring a person to assist in providing access to data held in a storage device in the context of obtaining evidence in the investigation of an offence or breach of a civil penalty provision.

Sections 73ZSH and 73ZSI allow for infringement notices and compliance notices to be issued in relation to various provisions under the NDIS Act (which may include personal information such as names).

In addition to the above, Schedule 2, item 81 expands the CEO's existing information gathering powers under section 53 of the Act to allow for the collection of any information relevant to the functions of the Agency. Under that section, the CEO can now cause a participant or prospective participant to give information or produce a document in their custody, if the CEO has reasonable grounds to believe the information or document is relevant to those functions.

To the extent that the Bill deals with the collection, use or disclosure of personal information, or involves interferences in a person's home, the measures must constitute a permissible limitation on the right to privacy. To be permissible as a matter of international human rights law, interferences with an individual's privacy must be according to law and not arbitrary. In order not to be arbitrary, any interferences must be reasonable and necessary in the particular circumstances, as well as proportionate to a legitimate objective.

The objectives of the Bill include, but are not limited to, authorising monitoring, investigation and enforcement powers in relation to providers, participants and prospective participants of the NDIS, plan nominees and other persons in order to protect the Scheme from fraud and non-compliance. These fraud measures are accompanied by various safeguards which limit the exercise of monitoring, investigation and enforcement powers, including for example:

- limiting the individuals that are able to apply for and/or exercise the monitoring and investigation powers under the Regulatory Powers Act (section 73ZSA(3) and 73ZSB(2)).
- establishing rule making powers under sections 73ZSL and 73ZSM to impose preconditions on the exercise of monitoring and investigative powers in relation to a participant or prospective participant.
- under 73ZSD(4), requiring the CEO to arrange for the removal of data on devices in control of the Agency and destruction of any other reproduction of the data in control of the Agency if data is not required, or no longer required in the course exercising investigatory powers.

With respect to the expansion of information gathering powers of the CEO, the CEO must advise a person to whom information or documentation is sought, that the individual is not required to give the information or produce the document if doing so might incriminate the person. This safeguard also promotes the right not to be compelled or testify against themself or to confess guilt under article 14(3)(g) of the ICCPR.

The inclusion of rulemaking powers under sections 73ZSL and 73ZSM recognise the need to set additional safeguards when investigation and enforcement powers are used in relation to a participant or prospective participants, who, by virtue of living with a disability are likely to

experience disproportionately higher rates of violence, abuse, neglect and exploitation. The NDIS rules made pursuant to these powers are intended to protect against the risk that the exercise of monitoring and investigation power could lead to enforcement outcomes that reflect disability related barriers, rather than misconduct, and compromise procedural fairness. Where the Bill does interfere with an individual's right to privacy, the various limitations and safeguards imposes by the Bill (in addition to safeguards contained in the Regulatory Powers Act itself) protect from arbitrary interreference and ensure the measures are reasonable and proportionate to the legitimate objective of protecting the Scheme from fraud and noncompliance.

The obligation to progressively realise certain rights – Article 4(2) of the CRPD and Article 2(1) of the ICESR

Article 4(2) of the CRPD requires States Parties to progressively work towards the full realisation of economic, social and cultural rights for persons with disabilities, using the maximum of available resources, without prejudice to those obligations contained in the Convention that are immediately applicable according to international law. Similar obligations are set out at Article 2(1) of ICESR with respect to economic, social and cultural rights as they apply to all people. This concept of 'progressive realisation' allows countries to take into account available resources in determining how an obligation is to be implemented.

A central objective of the changes introduced by this Bill is to secure the long term financial sustainability of the NDIS. The Scheme's current expenditure trajectory has been identified as a significant fiscal risk, with unchecked growth threatening the Scheme's long term viability. Measures which seek to moderate growth and restore the Scheme to its intended purpose – supporting people with permanent and significant disability – constitute appropriate use of available resources to safeguard the ongoing realisation of rights under Articles 19, 26 and 28 of the CRPD. Protecting the sustainability of the Scheme is therefore integral to ensuring progressive realisation as threats to the viability of the Scheme have the potential to significantly undermine the rights of persons with disabilities more broadly.

The Bill will also facilitate the implementation of an assessment framework that is based on functional capacity, shifting away from diagnosis based access lists. This approach is directed at ensuring that supports are prioritised and directed to those whose rights are most at risk without them, namely, persons with permanent and significant disability. By directing finite resources to those with the highest support needs, the Bill accelerates substantive or de facto equality of persons with disabilities.

Changes to access and eligibility requirements introduced by the Bill will mean that some people with disability may need to seek supports outside the NDIS such as community-based supports and mainstream service systems. To this end, the Australian Government and all states and territories have committed to a National Agreement on Foundational Supports. These supports will be delivered outside of the NDIS and include early intervention supports for

children (i.e. Thriving Kids) and may include other supports to be agreed between the Australian Government and state and territory governments as part of the National Agreement. This broader ecosystem of supports is consistent with the CRPD's emphasis on adopting all appropriate measures to ensure the promotion of human rights of persons with disabilities. In this context, progressive realisation is achieved by extending disability related supports beyond the NDIS and reducing over reliance on a single scheme that can be met more appropriately and sustainably elsewhere.

In addition, measures directed at addressing fraud within the Scheme protect participants from overcharging and the provision of low quality services provision, which divert resources away from participants and undermine the effective enjoyment of rights. Protecting against misused funds and improving service quality ensures that public resources are used efficiently and equitably, consistent with the obligation to employ the maximum of available resources.

A corollary of the duty of progressive realisation is that States Parties will not take any retrogressive measures, that is, measures that reduce the extent to which economic, social and cultural rights are guaranteed. Some elements of the changes, such as those measures which limit access to the Scheme or reduce the volume or quantity of supports, may appear on their face to be retrogressive. Retrogressive measures which can be justified as reasonable, necessary and proportionate will not constitute a violation of Australia's international human rights law obligations.

Modelling indicates that the current rate of growth of the Scheme is unsustainable and risks undermining the long term availability of supports if spending is not controlled. The measures introduced by the Bill target the key drivers of unsustainable growth rather than imposing indiscriminate reductions. In this context, the measures are reasonable and necessary to prevent the potential for more severe future disruption of rights. The broader package also includes several safeguards to ensure proportionality. Firstly, a phased implementation to allow time for consultation, development, adjustment and testing of new assessment tools. Secondly, the protection of core supports for those with permanent and significant disability, with support reductions focused primarily on inflated components. Third and finally, a commitment to develop Foundational Supports outside of the NDIS to support persons with low to moderate support needs.

Conclusion

The Bill is compatible with human rights because it advances the protection of the rights of people with disability in Australia, consistent with the CRPD, ICCPR and ICESCR. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the long term integrity and sustainability of the NDIS, for the benefit of all persons with disability who have access to the NDIS.

Minister for Disability and the National Disability Insurance Scheme,

the Hon Mark Butler MP

National Disability Insurance Scheme Reforms

Impact Analysis

Prepared by the Department of Health, Disability and Ageing

May 2026

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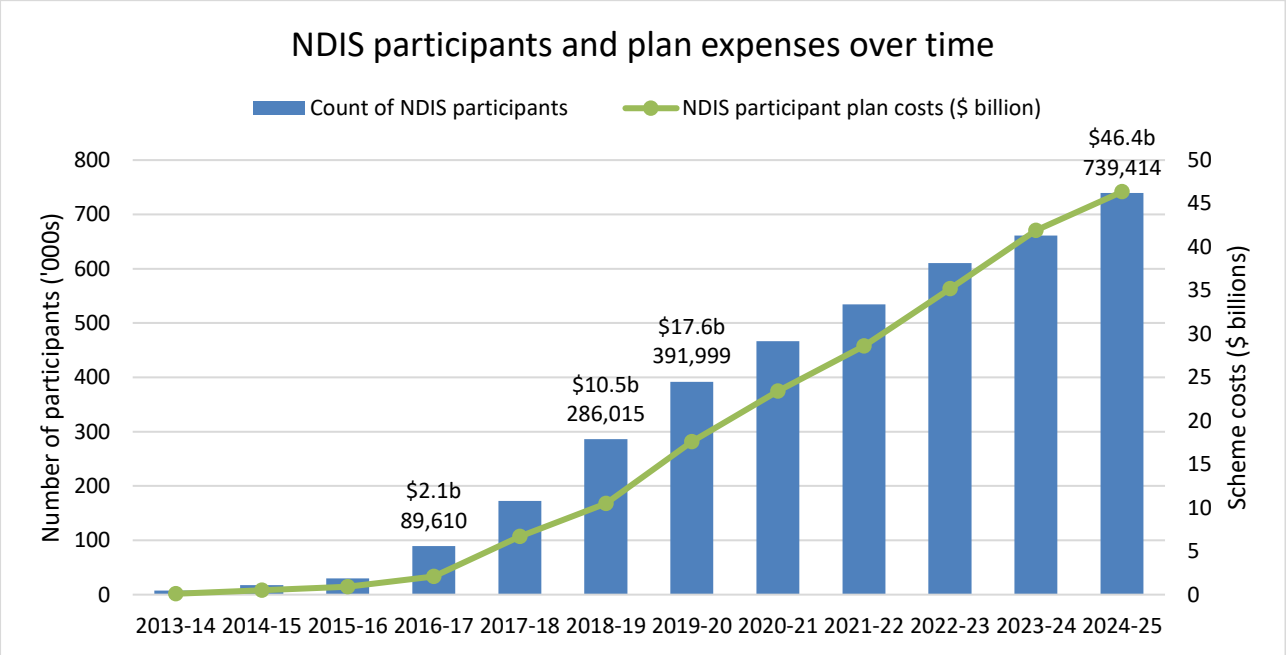
Executive Summary

The National Disability Insurance Scheme (NDIS, the Scheme) was established in 2013 to support people with permanent and significant disability. The Scheme provides funding for reasonable and necessary supports to allow people with disability to be independent, and participate in social and economic life.

The current legislative settings and implementation of the Scheme has not been consistent with its original design as envisaged in the 2011 Productivity Commission inquiry into 'Disability Care and Support'. This has seen the cost of the Scheme continue to grow beyond sustainable levels, driven by both the higher than anticipated number of participants, and higher average costs per participant than the 2011 Productivity Commission and governments anticipated.

FIGURE 1. NDIS PARTICIPANTS AND PARTICIPANT PLAN EXPENSES OVER TIME[1]



Scheme design is also contributing to growing inequity across social care systems in Australia. The NDIS provides uncapped supports to participants, while aged care and other services have set funding levels according to assessed need. The same applies to supports

[1] NDIA (2025), Annual Financial Sustainability Report (AFSR) 2024-25, p.134-135; NDIA (2021), Quarterly Report to Disability Ministers for Q4 of 2020-21, p.16, 98-100; NDIA (2015), Annual Report 2014-15, p.iv; NDIA (2014), Annual Report 2013-14, p.iv

for people with psychosocial disability funded under Medicare, whereas the NDIS is limited only by the concept of 'reasonable and necessary'.

Successive governments have introduced NDIS reforms aimed at stabilising Scheme costs and attempting to better define the boundaries of what is and is not an NDIS support based on the original scheme design. Despite this focus on sustainability measures, including legislative reforms commencing in 2023, the cost of the Scheme has continued to increase at rates significantly above inflation and population growth.

Setting NDIS growth targets

In 2023, National Cabinet committed to a *NDIS Financial Sustainability Framework* to ensure the NDIS could continue to provide life-changing outcomes for future generations of Australians with disability. The framework provided an annual growth target in the total costs of the Scheme of no more than 8 per cent by 1 July 2026, with further moderation of growth as the Scheme matured. Progress has been made, with Scheme costs reducing from 22.9 per cent in 2022-23 down to 10.5 per cent in 2025-26. However, more needs to be done to further constrain growth.

Earlier this year National Cabinet agreed to additional reforms, including to work together to target annual cost increases for the NDIS of 5 to 6 per cent, or lower. The latest projections for 2026-27 Budget, however, show that without further intervention costs will continue to escalate meaning the 8 per cent growth target would not be met when the sustainability target takes effect from 1 July 2026.

Reform to the NDIS is required to restore the Scheme to its original intent and moderate Scheme expenses to be on a sustainable trajectory, to continue supporting future generations.

The Department of Health, Disability and Ageing (DHDA, the Department) was tasked with developing one or more measures that will mitigate costs growth and help achieve National Cabinet's updated annual growth target of 5 to 6 per cent or lower.

What's in the Budget Package?

The NDIS Budget package has four pillars of reform to the NDIS that are designed to secure its future through:

- Fighting fraud and stopping rorts.
- Slowing rapid cost increases.
- Clearer eligibility requirements.
- Delivering quality services and support to participants.

Measures included in this Impact Analysis

This Impact Analysis outlines options and considerations of measures which form a part of the broader package of reforms announced in the 2026-27 Budget. The NDIS reform measures covered in this Impact Analysis are:

- Strengthening the interpretation of permanent, or likely permanent, impairment.
- Tightening eligibility based on access to other service systems.
- Limiting unscheduled plan reassessments.
- Resetting support budgets in old framework plans for social and community participation and capacity building daily activity supports.
- Tightening the definition of reasonable and necessary supports.
- Commissioning Plan Management and Support Coordination services.

The Department has prepared a separate Impact Analysis on the expansion of the mandatory registration of providers.

Reforms not detailed in this Impact Analysis are mentioned throughout the Impact Analysis to demonstrate the interactions and interconnectedness of the package of measures. Due to interactions between the measures, the number of participants impacted and the impact on Scheme costs have been modelled as a package. Where possible, impacts of the individual elements have been identified in this Impact Analysis.

1. Background

1.1 Overview

The NDIS was established in 2013 as a world leading scheme to support people with significant disability to live independently and fully participate in their communities. Its implementation over the last decade has broken new ground in supporting people with disability to utilise personalised budgets, and the Scheme provides a high level of choice of services for participants.

The Scheme operates within a public value framework underpinned by Australians' strong expectations that government will maintain institutions providing social protection to support people with disability. Public value is created when public institutions produce outcomes that are authorised by the community, operationally feasible and substantively valued beyond what markets can deliver. The NDIS was designed to meet this threshold, grounded in a commitment that disability support should be needs-based, portable and equitable.

There have been unintended consequences in the implementation of these design parameters. These have included an over-reliance on access lists which are based on diagnosis rather than impairment, inequitable and inconsistent planning outcomes for participants, and market related shortcomings, non-compliance and fraudulent activities. This has contributed to significant growth in overall expenditure, well beyond a sustainable level for demand-driven social services.

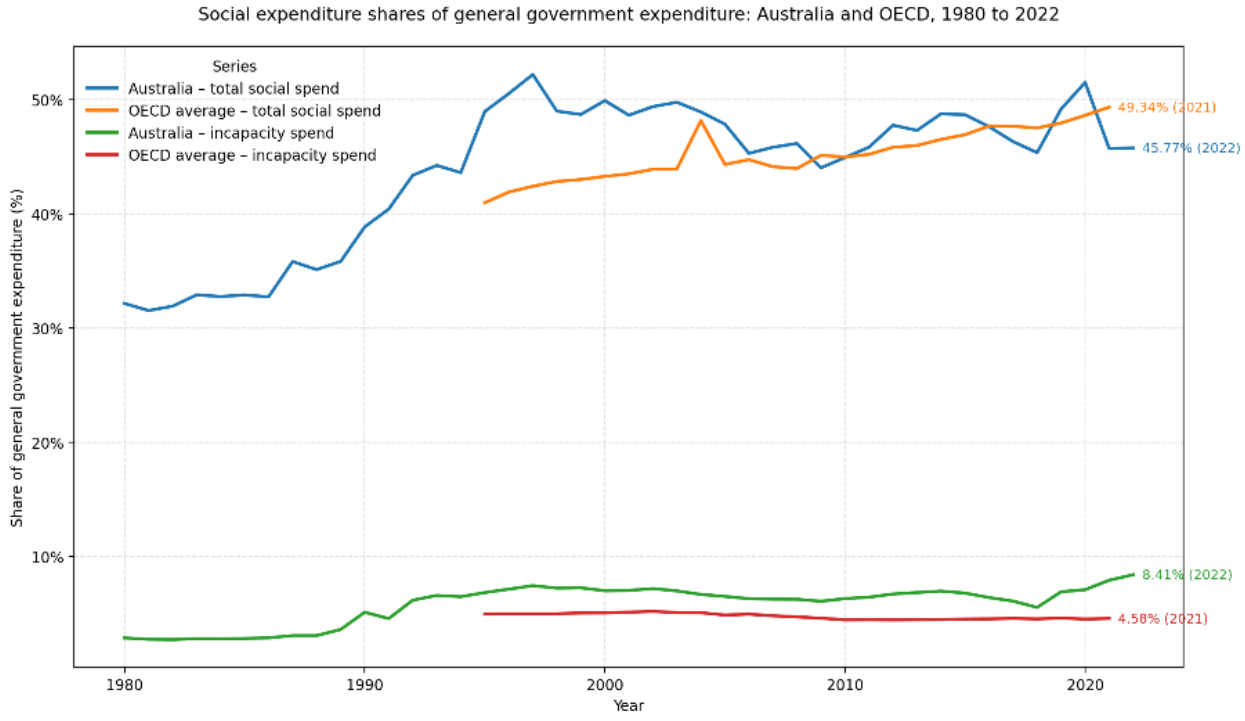
The 2023 Independent Review into the NDIS, titled *Working together to deliver the NDIS* (the NDIS Review, the review), found significant sustainability and distributional issues. The Australian and state and territory governments have already announced and implemented a range of measures aimed at addressing the issues identified in the NDIS Review, including Thriving Kids that will commence from October 2026. The NDIS reforms announced in the 2026-27 Budget are another step towards addressing those issues.

Sustainable and equitable distribution of resources are the cornerstones of social support systems. The role of government is to ensure the needs of citizens are not just met, but distributed effectively across the whole community, and this requires constant attention. Distributional effects of social services include consideration of the availability of funding, support and services and also the balance of relative benefit against other competing demands. Changes in community expectations of social service expenditure, as well as demand related to demographic changes, create pressure on budgets. This can necessitate policy changes to balance competing priorities.

As a community, Australia supports a relatively high level of social spending on disability compared to the Organisation for Economic Co-operation and Development (OECD)

average.[2] The figure below shows that while the proportion of government expenditure on social spending overall in Australia has fallen below the OECD average, spending on disability services and supports (including pensions) has increased over the last decade to nearly double the OECD average.[3] [4] [5]

FIGURE 2. SOCIAL EXPENDITURE SHARES OF GENERAL GOVERNMENT EXPENDITURE: AUSTRALIA AND OECD, 1980 TO 2022



Source: OECD Social Expenditure (SOCX) aggregates; uploaded dataset (PT_OTE_S13, ES10).

However, there is concern that the increased expenditure on the NDIS is not delivering on its original intent. Outcomes are not consistently measured, demand continues to increase, and the Scheme is driving workforce and other market distortions. The Scheme currently lacks

[2] OECD tracks social spending on incapacity-related benefits for both the public and mandatory private sector programs, which include disability pensions, pensions paid for occupational injury and disease, paid sick leave, other cash benefits, as well as residential care, rehabilitation services and other in-kind benefits.

[3] OECD (n.d.), Social expenditure aggregates, OECD Data Explorer, accessed 1 May 2026

the types of controls needed to implement a well targeted, demand driven scheme, that offers value both to participants and the community more broadly.

Investments in capacity building and therapy supports have not delivered the intended results for some participants, and in some cases have created dependence over independence. This is also the case for those accessing supports through the early intervention pathway. The policy intent of including early intervention in the Scheme design was to provide intensive supports early and reduce lifetime costs, however a significant proportion of children who enter via the early intervention pathway then go on to become permanent Scheme participants through diagnosis-based lists. These observations are not consistent with expected outcomes for an insurance-based scheme.

The Australian Government has also invested heavily over recent years to mitigate fraud and non-compliance in the Scheme. The Fraud Fusion Taskforce was established in 2022 as a partnership between 15 government agencies. Since then, the list of participating agencies is continually growing. Through the Taskforce, the NDIA works closely with the NDIS Quality and Safeguards Commission and Australian Federal Police (among others) to take action against individuals and business exploiting the NDIS. The Crack Down on Fraud program supports the work of the Taskforce and is focussed on strengthening NDIA systems to detect, prevent and respond to fraud. Investment in fraud prevention continues to be a key focus for Government to stamp out fraud and ensure NDIS funds are being used to legitimately support NDIS participants.

1.2 History of the NDIS

Prior to the creation of the NDIS, the Australian Government provided income support and employment services for people with a disability; with the majority of services that are now covered by the NDIS being primarily block funded by state and territory governments.[6] Support for people with disability was limited, without consistency between jurisdictions.[7]

The idea for a nationally consistent scheme for people with disability, like the NDIS, had existed since the 1970s, but only gathered steam after Australia became one of the

[6] Productivity Commission (2009), 'Report on Government Services, page 5-6. The Commonwealth State and Territory Agreement (CSTDA) provides a national framework for the delivery, funding and development of specialist disability services for people with disabilities in Australia. The third CSTDA was in place for five years from 2002-03 to 2006-7 and lists the specialist disability services that the Australian Government administers as open employment services, supported employment services, and targeted employment services with all other specialist disability services being administered by the state and territory governments.

[7] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 25

original signatories to the United Nations Convention on the Rights of Persons with Disabilities (CRPD) in 2007.[8]

Following the signing of the CRPD by the Australian Government, and an extended grassroots campaign, the idea for a national disability insurance program was recommended through the 2020 summit that was held in April 2008.[9] Following the summit, the Government requested the Productivity Commission undertake an inquiry into a national disability long-term care and support scheme, and its foundational report on Disability Care and Support was published on August 10, 2011.[10]

The Productivity Commission in 2017 described the NDIS as:

> "based on the premise that individuals' support needs are different, and that scheme participants should be able to exercise choice and control over the services and supports they receive."

The Scheme differs from previous approaches in a number of ways:

- It adopts a person-centred model of care and support.
- It is an insurance-based scheme — it takes a long-term view of the total cost of disability to improve participant outcomes and to meet the future costs of the Scheme.
- Funding is determined by an assessment of individual needs (rather than a fixed budget).
- It is a national Scheme.
- It funds reasonable and necessary supports for Australians with permanent and significant disability. Reasonable and necessary supports are those that help participants live as ordinary a life as possible, including care and support to build their skills and capabilities, so they can engage in education, employment and community activities.

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[8] Dickinson, H. & Yates, S. University of Sydney Human Rights Institute, 'A decade on, the NDIS has had triumphs, challenges and controversies. Where to from here?'

[9] Adrill, A. and Jenkins, B (2023), Navigating the Australian National Disability Insurance Scheme: A Scheme of Big Ideas and Big Challenges, page 28, 145

[10] Productivity Commission (2011), 'Disability care and support'

The NDIS also funds supports for people who meet early intervention criteria. This covers cases where early intervention can significantly improve an individual's outcomes and is cost effective. The focus on early intervention reflects the lifetime approach of the Scheme.[11]

1. Following the Australian and state and territory governments signing of the *Intergovernmental Agreement for the National Disability Insurance Scheme (NDIS) Launch* on 7 December 2012, and the passage of legislation through the Parliament in 2013, the Scheme moved through trial and transition to full Scheme rollout across Australia by 2020.

Throughout the trial and transition to full Scheme period, NDIS participants, providers and workers continued to be covered under state and territory quality and safeguards systems. In 2017, the Australian Government established the NDIS Quality and Safeguards Commission (NDIS Commission) via amendments to the *National Disability Insurance Scheme Act 2013* (NDIS Act). The NDIS Commission had a phased implementation from 1 July 2018 in New South Wales and South Australia, with the last state to transition being Western Australia on 1 December 2020. Over subsequent years, the NDIS Commission's enforcement powers have been progressively strengthened. However, both the NDIS Commission and National Disability Insurance Agency (NDIA) still lack the regulatory maturity and powers of other service regulators to ensure people with disability understand and have their rights upheld.[12]

The rollout of the NDIS was not without challenges. The first major review into the NDIS, coinciding with the full Scheme rollout, was conducted by David Tune (the Tune Review). It noted that "the implementation of the NDIS has not been smooth and it is evident that the pressure of rolling the Scheme out across Australia has directly impacted the NDIA ability to provide a consistent, effective and high quality service delivery offering".[13] The Tune Review also noted that the previous 2017 Productivity Commission study report into NDIS costs had observed the growth in Scheme costs and the risk that these could threaten the success and sustainability of the NDIS.[14]

Overall, the Tune Review found that while the NDIS Act was fit-for-purpose and the Scheme has improved outcomes for many; implementation issues remained with participants

[11] Productivity Commission (2017), National Disability Insurance Scheme (NDIS) Costs - Overview, page 3

[12] Disability Royal Commission (2023), Executive Summary, page 110

[13] David Tune (2019), Review of the National Disability Insurance Scheme Act 2013, page 7

[14] David Tune (2019), Review of the National Disability Insurance Scheme Act 2013, page 30

reporting inconsistent, slow and unclear decision-making, exacerbated by the NDIA's developing systems and workforce, and ICT limitations.[15]

To address these problems, the Tune Review proposed that a Participant Service Guarantee (PSG) should be legislated to set clear timeframes for NDIA decisions. A bill to create a service guarantee, the NDIS Amendment (Participant Service Guarantee and Other Measures) Bill, was introduced to Parliament in 2021 and came into effect on 1 July 2022. NDIS Rules to give effect to the PSG were put on hold when the NDIS Review was announced in October 2022, noting decision timeframes were likely to change following any changes to planning.

On 18 October 2022, the NDIS Review was announced by the then Minister for the NDIS, the Hon Bill Shorten MP. The terms of reference was broad, with the goal that it would 'put people with disability back at the centre of the Scheme'. Part one of the terms of reference looked at the design, operation and sustainability of the NDIS and part two was aimed at ways to build a more responsive, supportive and sustainable market and workforce.[16] To support the review into Scheme costs, the Review commissioned Taylor Fry and the Centre for International Economics to examine the cost effectiveness and sustainability of the Scheme.[17]

The NDIS Review undertook extensive consultation with members of the disability community, NDIS participants and other stakeholders.[18] In reporting back to the community, the review team observed that the NDIS has been – and continues to be – life changing. However, some of the underlying inequities in relation to accessing support have persisted from the support systems that preceded the NDIS' establishment.

1.3 Policy issues

1.3.1 Sustainability challenges and drift from original intent

The NDIS has experienced significant scope drift from its original intent. The 2011 Productivity Commission Report estimated the Scheme would support around 411,000

[15] David Tune (2019), Review of the National Disability Insurance Scheme Act 2013, page 7-12

[16] NDIS Review (2023), Terms of Reference for the NDIS Review

[17] Taylor Fry and the Centre for Independent Studies (2023)

[18] The extent of the Reviews consultation activities are evident in the documentation that remains on the NDIS Review website at www.ndisreview.gov.au, including on the 'news' and 'events' sections of the website, and in the publication of commissioned reports and published submissions.

people with disability, and cost around $13.6 billion annually by the time it was fully rolled out (in 2018-19).[19]

In 2017 the Productivity Commission updated their forecasts, considering the Scheme would support 476,000 participants and cost $22 billion in 2019-20 (at full Scheme, with the NDIS being available nationwide from 1 July 2020). This represented an increase in the number of participants by around 65,000 and an increase in Scheme costs (excluding offsets and operating costs) of 70 per cent from $12.8 billion.[20]

FIGURE 3. PRODUCTIVITY COMMISSION'S PROJECTIONS OF PARTICIPANTS AND SCHEME COSTS IN 2011 AND 2017

	Participant numbers	Scheme costs ($ billions)
Productivity Commission estimates 2011[a]	**411 250**	**12.82**
Population projections to 2019-20	49 544	1.54
Inflation in disability sector (wages)	-	6.38
Participants aged 65 years and older	15 285	1.09
Updated productivity Commission estimates 2017	**476 079**	**21.84**

At the end of March 2026, the Scheme was supporting 774,456 participants. Over the 12 months to the end of March 2026, the Scheme cost $50.2 billion, had a net increase of 57,455 participants and an average annualised payment per participant of $66,800.[21]

The Parliamentary Budget Office's (PBO) *2025-26 Medium-Term Budget Outlook: Beyond the Budget* forecast that, without further reform and an annual growth rate of 8 per cent, the

[19] Productivity Commission (2011), 'Disability care and support', page 788. Note: The 2011 Productivity Commission's estimated NDIS cost of NDIS $13.6 billion is comprised of the estimates of NDIS participant supports ($12.8 billion) and operational costs for the NDIA ($1.1 billion), offset by a proposed National Injury Insurance Scheme (-$0.3 billion).

[20] Productivity Commission (2017), National Disability Insurance Scheme (NDIS) Costs - Overview, page 15

[21] NDIA (2026), Summary of Statistics – March 2026. Note: The average annualised payment per participant includes cash and in-kind payments. Total supports include cash payments, in-kind payments and an allowance for support provided not yet paid.

NDIS would cost $106.7 billion in 2035-36. This would increase its share of GDP from 1.7 per cent in 2025-26 to 2.3 per cent in 2035-36.[22]

Previous Annual Financial Sustainability Reports (AFSR) produced by the Scheme Actuary demonstrate that increases in prices and real growth in payments are key drivers of growth in projected Scheme expenses. Scheme cost projections in AFSRs have also been consistently revised upwards to reflect higher numbers of children in the Scheme than previously projected.

If not addressed, higher than sustainable growth in costs threatens the Scheme's long-term viability:

> "The most important problem is that the growing cost of the NDIS will eventually break the bond of trust between people with disabilities and society as a whole. Unless these problems are addressed economic pressure will almost certainly undermine political support for the NDIS. In fact a strong case can be made for treating sustainability as a fundamental foundation of any system of human rights."[23]

The NDIS Act specifies that in giving effect to the objects of the Act, regard is to be had to "the need to ensure the financial sustainability of the National Disability Insurance Scheme".[24] Sustainability of the NDIS is therefore a critical consideration when determining the impact of reform. However, while specified in the Act, this does not and cannot translate into NDIS participant plans as was clarified in the Federal Court. Community expectation of balanced and equitable distribution of funding, both at the individual and population level means that the budget for the NDIS must be balanced against community expectations for health, education and other care and support services like Aged Care (as well as other government priorities).

The root causes of the growth in Scheme costs are the movement away from the Scheme's original intent, partly down to the design of the Scheme and its lack of financial controls, and market challenges that drive costs. These include:

- Collapse of Tier 2 supports: important programs and services that supported all people with disability were also rolled into the Scheme, leaving those who were not

[22] Parliamentary Budget Office (PBO) (2025), 2025-26 Medium-Term Budget Outlook: Beyond the Budget, Table 6-1 page 35

[23] NDIS Review (2023), Working together to deliver the NDIS: Independent Review into the NDIS Final Report, page 30; Duffy, S., Brown, M. (2023), Redesigning the NDIS: An International perspective on an Australian disability support system

[24] Section 3(3)(b) of National Disability Insurance Scheme (NDIS) Act 2013)

eligible for the NDIS without many former supports. This created the NDIS as "an oasis in the desert" forcing families to access the Scheme for supports it was never designed to provide.[25]

- Larger than expected numbers of children, with 78 per cent of all children aged 0 to 8 in the Scheme having developmental delay or autism.[26]
- A lack of clarity around what supports should be considered reasonable and necessary, leading to stressful, time-consuming and poor planning experiences and inconsistent and inequitable decisions about funding.[27]
- Access processes that were designed to support the Scheme rollout (such as Access Lists) that have resulted in confusing and inequitable access processes, and insufficient consideration of an applicants' functional impairment.[28]
- Investment in early intervention not yet demonstrating the longer term savings the Productivity Commission envisioned.
- Access under early intervention does not appropriately consider whether intervention would be cost-effective, safe or materially improve outcomes.[29]
- Line-by-line decision making in the NDIS, with inconsistencies frequently arising when arbitrary tests of what may be deemed reasonable and necessary (or not) are applied to the cost of every individual support, rather than to the whole budget.[30]

These root causes were explored extensively in the NDIS Review conducted in 2023.

1.3.2 NDIS Review findings

The NDIS Review identified that "…implementation was not always aligned with the original intentions of the Scheme".[31] It found that a number of critical problems were undermining the Scheme's effectiveness. Most concerning was the finding that the NDIS was delivering inequitable results at both the participant and population levels, with an increasing disparity

[25] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 25, 26

[26] NDIA (2026), Autism data to 31 December 2025, Table 8; NDIA (2026), Developmental Delay data to 31 December 2025, Table 8

[27] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 24

[28] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 216

[29] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 86

[30] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 26, 40

[31] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 269

between participants in terms of their level of funding, and the observable trend to rapid cost inflation for the Scheme overall, leading to concerns about sustainability.[32]

Eligibility

The NDIS review found "An effective approach to access is essential for the sustainable operation
of the NDIS".[33]

Applicants must demonstrate that they meet the disability requirements under section 24 of the NDIS Act, or the early intervention requirements under section 25 of the Act. The review noted concerns that access decisions are being driven by diagnosis rather than functional impairment, and that participants are admitted without sufficient evidence of permanent disability. It also noted specific concerns around the lack of consistency and equity of access decisions, particularly for children.

Recommendation 3 of the review was therefore to "Provide a fairer and more consistent participant pathway"[34]. Actions under this recommendation included, but were not limited to:

- The NDIA should introduce a more consistent and robust approach to determining eligibility for access to the NDIS based on transparent methods for assessing functional capacity.
- The NDIA should change the basis for setting a budget to a whole-of-person level, rather than for individual support items.
- The Australian Government should update and clarify legislation to support a more effective approach to determining access.[35]

The review also noted concerns that the lack of supports outside the NDIS was resulting in people pushing for access to the NDIS when alternatives could have led to better outcomes.[36] It also noted that the process of receiving access through an access list served a purpose in the transition phase of the Scheme, but "led to a focus on medical diagnosis rather than function and disability-related support needs. They have also led to inequity, with

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[32] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 29-31

[33] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 87

[34] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 6

[35] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 6

[36] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 28

some participants automatically eligible while others are not and favouring those with means to obtain a diagnosis".[37]

Assessing reasonable and necessary supports

The NDIS Review found significant problems with how the Scheme determines what supports participants need.

The assessment of reasonable and necessary supports in the Scheme is intended to determine each support a participant requires and set an appropriate budget. However, the Review found that the current approach is complex, inequitable and adversarial and that evidence requirements are unclear and often burdensome.[38]

The Review found that there is no standardised or transparent method for assessing function or support needs in the current Scheme. Delegates rely heavily on external reports from treating professionals, creating inequities between participants who can afford assessments and those who cannot.

Participants reported being required to present themselves in the worst possible light to justify supports and relying on costly reports from health professionals which are not always used. This deficit-based approach is disempowering and stressful for individuals and families. It also undermines the NDIS principle of promoting independence and social and economic participation.

The review further found that planning meetings are often short and transactional. They do not adequately consider life transitions or progressive conditions. This limits the ability of plans to respond to changing needs over time. Budget-setting is done by line item, rather than at a whole of person level. Each support must be justified as reasonable and necessary, which leads to inconsistent decisions and frequent disputes. Plans are rigid, and inflexible, creating perverse incentives for participants to seek frequent reviews. This approach consumes significant NDIA resources and contributes to participant stress.

There is evidence that the approach to support needs assessment and budget setting have created unequal outcomes for participants, as evidenced by higher levels of support going to those from higher socioeconomic backgrounds. For example, administrative data collected by the NDIA showed that participants in the highest socio-economic decile (as measured by the Index of Education and Occupation) received plan budgets that were 9 per cent higher

[37] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 38

[38] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 38

than participants in the lowest decile ($55,700 compared with $51,300).[39] Taylor Fry found a similar effect (a higher average for the cluster of 15 SA4 regions above a SEIFA score of 1065), but note the effect is small relative to the broader SA4-level variation.[40]

NDIS Markets

NDIS markets remain immature and uneven, with providers still adapting to a consumer-driven model amid rapid demand growth, workforce shortages, and persistent thin markets. The NDIS Review concluded that "markets have not worked as originally imagined" and are fundamentally social markets that cannot rely on competition alone. In practice, this has resulted in service gaps, variable quality, poor incentives, and exposure to risks for participants, particularly in thin and regional markets.

The current market design is a key driver of these issues. Fee-for-service funding and price caps tend to reward volume of supports rather than quality, outcomes or efficiency, while limited data and oversight weaken governments' ability to detect and respond to emerging risks. As a result, participant access, service quality, and value for money are highly variable, and market failures persist without timely intervention.

These dynamics have direct implications for NDIS sustainability. Inefficient incentives and variable service quality contribute to rising costs without consistent improvements in outcomes, while gaps in service availability drive greater reliance on higher-cost supports over time. The Review makes clear that sustainability cannot be achieved through market forces alone, requiring stronger, more active stewardship by governments to rebalance incentives, improve market performance, and ensure the Scheme delivers equitable, high-quality and financially sustainable outcomes.

In the NDIS, market stewardship is the role of government in shaping and overseeing how markets operate to ensure they deliver good public outcomes over time, such as access, quality, equity and sustainability and in responding when markets are not working as intended. Effective market stewardship includes oversight of intermediary markets and other market functions that directly influence participant access, quality, integrity and continuity of supports.

The Review found that attempts to steward the market had been limited and that "There is lack of comprehensive, accurate and timely information about who is delivering supports

[39] NDIA (2021), 'Plan budgets and socio-economic status report', page 3

[40] Taylor Fry and the Centre for Independent Studies (2023), NDIS Review – Costs, benefits and frameworks

and services and what supports are being delivered…".[41] It concluded that this had reduced governments' ability to identify and respond to emerging risks early.

In particular, the NDIS review found that regulatory and registration requirements are largely determined by the way in which a plan is financially managed, which is leading to high-risk supports being delivered with little regulatory oversight.[42]

After a plan is approved, participants can receive assistance from various intermediaries to help implement it. This includes plan managers who make payments to NDIS service providers on behalf of plan-managed participants, and conduct integrity checks on the payments that are made. It also includes support coordinators who are funded to assist participants to identify and engage with NDIS providers and non-NDIS services. During the December 2025 quarter, over 515,000 participants used a plan manager to help them administratively and understand complex information across the NDIS.[43]

Implementation of the NDIS Review's recommendation of mandatory registration of providers has established a baseline of consistent practice within the plan management market. However, the size of the plan management market and the current regulatory settings have limited the capacity of the NDIS Commission to effectively oversee this market segment.

The NDIA has estimated that around 90 per cent of plan management providers who service fewer than 100 participants show significant indicators of potential fraud or non-compliance.[44] As more participants continue to rely on plan managers, it will increase concerns and complaints about conflicts of interest, sharp practices and patterns of unscrupulous behaviours.

The NDIS Review also found that support coordination lacks "a consistent approach to ensure people receive support that is proportional to their needs."[45] It also found participants experienced a "lottery of whether their provider or specific Support Coordinator is effective or not" and that there was a lack of "sufficient care, skill or integrity" across some providers.[46] Service quality has also been impacted by duplication between the support

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[41] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 180

[42] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 212

[43] NDIA (2026), Quarterly Report to Disability Ministers for Q2 202526, page 69

[44] Australian Senate (2024), Senate Estimates – Community Affairs Legislation Committee - 3 June 2024, p.126

[45] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 99

[46] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 100

coordinator role with other NDIS intermediary functions who also assist participants to find and access supports. The NDIS Review found this has "added unnecessary complexity and resulted in considerable variation in the type and quality of navigation support" that participants receive.[47]

Poor service quality is exacerbated by a number of integrity issues across the plan management and support coordination markets. This includes sharp practices, fraudulent behaviour and conflicts of interest, including concerns where providers deliver both support coordination and other NDIS services.

These market issues result in poorer outcomes for participants, inefficiencies across the Scheme, and create risks to participant safety.

Supports outside the NDIS

The NDIS Review reflected on the changes that had occurred to the eco-system of support for people with a disability following the introduction of the NDIS. The description of 'an oasis in the desert' was used by the review to articulate how the availability of disability services outside the NDIS had diminished since the NDIS was rolled out.[48] In their feedback to the review, people with disability identified that this was particularly problematic for children and people with psychosocial disability, and that the failings of these other systems was undermining the sustainability of the NDIS.[49]

The NDIS was not intended to be the primary source of support for people with disability in Australia. It was always intended for people with significant and permanent disability, with a larger ecosystem of supports available under 'Tier 2' in the original design to support people with moderate and low support needs. The review found that these Tier 2 supports have not been delivered.[50] Similarly, state and territory run services outside of the NDIS have been wound back over time as more people relied on NDIS funded supports.

A survey of NDIS participants conducted by the Melbourne Disability Institute in 2022 found that 90 per cent of survey respondents believe that supports and services outside the NDIS

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[47] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 97

[48] NDIS Review (2023), What we have heard: Moving from defining problems to designing solutions to build a better NDIS, page 24-25

[49] NDIS Review (2023), What we have heard: Moving from defining problems to designing solutions to build a better NDIS, page 4

[50] NDIS Review (2023), Working together to deliver the NDIS - Supporting Analysis, page 31

are inadequate to meet the needs of people with disability.[51] The same survey also found that there is a significant gap between the promoted availability and accessibility of support and services to people with disability who are not NDIS participants, and people's experiences of attempting to find and use them.[52] Further, 70 per cent of people with disability indicated that they believed there is less support available outside the NDIS since the Scheme was rolled out.[53]

The Review, therefore, recommended that supports outside the NDIS should be expanded, particularly with respect to children with disability and developmental concerns,[54] and that the NDIS access settings for children under the age of 9 should be adjusted to reflect this expansion.[55] In response, National Cabinet has agreed to investment of $4 billion for the first tranche of Foundational Supports, known as Thriving Kids. Thriving Kids will commence from October 2026 to provide support for children with mild to moderate Developmental Delay and Autism outside of the NDIS. A further $6 billion in joint Commonwealth and state and territory investment is set aside for further Foundational Supports to be delivered.

The lack of available supports outside the NDIS, and the lack of clarity about what the NDIS should be responsible for, has led to the Scheme funding supports it was never envisioned to fund at its inception, for example, the cost of moving house. This is in-part due to the ambiguous, principles-based nature of the Applied Principles and Tables of Supports (APTOS) – a document between the Australian Government and states and territories to define funding responsibilities – and decisions by the Administrative Review Tribunal (ART) and courts which have expanded the scope of NDIS supports over time. This has contributed to upwards pressure on Scheme cost growth.

1.4 Who is affected

The NDIS reforms apply to all 774,456 NDIS participants currently in the Scheme and prospective participants approaching the Scheme, though not all may be directly affected by each reform. All participants, including prospective participants, are potentially affected now

[51] NDIS Review (2023), Working together to deliver the NDIS - Supporting Analysis, page 30

[52] NDIS Review (2023), Working together to deliver the NDIS - Supporting Analysis, page 30

[53] NDIS Review (2023), Working together to deliver the NDIS - Supporting Analysis, page 31

[54] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 124

[55] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 124

by inconsistent decision-making, complex processes, and inequitable outcomes.[56] There were 13,390 participant complaints in the December 2025 quarter, down from 14,109 in the September 2025 quarter but up from 12,162 in the June 2025 quarter. Participant plans are the most common focus of complaints from participants, providers and others.[57] This could reflect uncertainty about what is reasonable and necessary and/or inconsistency in how it is applied.

Families and carers, who face confusing, frustrating and deficits based access and planning processes; with parents forced to present 'the worst versions' of their children to gain support through a deficit model that is disempowering.[58]

Children with developmental delays and autism; almost a quarter of participants are aged 8 years and under,[59] yet the NDIS is not suited to delivering timely and evidence-based early intervention.

People with disability outside the NDIS; there are more than 5.5 million Australians with a disability.[60] This means that more than 86 per cent of people with disability in Australia are not in the NDIS.[61] The NDIS Review identified the government expenditure on disability supports has primarily focused on NDIS support, with 4 per cent of all disability funding spent on supports outside the NDIS in 2024-25.[62] This is a service-offering that shrunk in the years since the NDIS was introduced, and has generated demand for the Scheme.[63]

Service providers are experiencing increasing operational, financial and workforce pressures associated with administrative and operational burden and ongoing changes across the

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[56] NDIA, Summary of Statistics – March 2026, 15 April 2026

[57] NDIA, Quarterly Report to Disability Ministers for Q2 202526, pages 48-49

[58] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 26, 118

[59] NDIA (2026), Explore data, accessed 6 May 2026

[60] ABS (2022), Disability, Ageing and Carers, Australia: Summary of Findings

[61] ABS (2022), Disability, Ageing and Carers, Australia: Summary of Findings; NDIA (2026), Summary of Statistics – March 2026. Note: Data from SDAC and NDIA are provided at different points in time and cannot be compared directly. The proportion stated broadly assumes that the number of people with disability has grown in line with wider Australian population growth.

[62] https://www.ndisreview.gov.au/sites/default/files/resource/download/working-together-ndis-review-final-report.pdf Productivity Commission (2026), Report on Government Services 2026, Table 15A.4

[63] What's the difference between 'reasonable and necessary' and 'foundational' supports? Here's what the NDIS review says

NDIS.

National Disability Services' 2025 State of the Disability Sector Report found 84 per cent of providers reported leadership teams spent too much time responding to NDIS changes, while 79 per cent said helping people navigate the Scheme was taking them away from service provision.[64] The Ability roundtable white paper also argues that provider viability under the NDIS is being structurally undermined by the current pricing framework, rather than by provider inefficiency or temporary market conditions. Drawing on benchmarking data, the paper shows that a majority of providers are operating below sustainable margins or at a loss over multiple years, with declining reserves and weakening balance sheets, signalling a sector experiencing persistent financial stress rather than cyclical pressure.[65]

Workforce churn is high, particularly among disability support workers. According to the National Disability Services Workforce Census 2025, burnout was cited by 14 per cent of NDIS workers as a reason for leaving their organisation, while a further 12 per cent reported fatigue as a contributing factor. Frustration with NDIS systems and process was cited among the factors contributing to workers' experiences of burnout and fatigue.[66]

In addition to the direct impacts felt by these cohorts, the inequities in the way the NDIS is operating have whole-of-community impacts. These include:

- The perception that the NDIS is growing unsustainably, which undermines public support for social programs and means the Scheme's social license is not guaranteed. This is compounded with inequity (perceived and actual) that the Scheme can provide for some people. For example, NDIS participants are able to access more funding through the NDIS than through the Aged Care system when they turn 65, as noted by the Royal Commission into Aged Care Quality and Safety.[67]
- Taxpayer burdens, means without reform, intergenerational equity is threatened as future taxpayers inherit an unsustainable fiscal commitment.
- Government investment in the NDIS also carries an opportunity cost, with the NDIS crowding out other services that could benefit all Australians with disability; this is

[64] National Disability Services (NDS) (2025), State of the Disability Sector 2025, page 10

[65] White Paper: A Model Built to Fail - the Disability Support Worker Cost Model

[66] National Disability Services (NDS) (2025), NDS Workforce Census Report 2025, pages 33-34

[67] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 70; Royal Commission into Aged Care Quality and Safety, Volume 2: The current system, Australian Government, page 5

something that has been noted in the public discourse on the Scheme, including by think-tanks such as the Grattan Institute.[68]

- Rising intergovernmental tensions; states and territories have expressed frustration with unclear responsibilities and boundaries, which could impact the collaborative governance necessary for effective ecosystem of disability supports.[69]

1.5 What has been done

Scheme sustainability has become a significant concern for governments and was a key focus in response to the 2023 NDIS review. The sustainability of the Scheme is not just a fiscal measure, but considers the effectiveness and distributional equity of funding, both amongst participants and across the whole social services budgets at both the Commonwealth, and states and territory levels. The NDIA's articulation of its goal of financial sustainability indicates this broader focus:

> "The Scheme is successful on the balance of objective measures and projections of economic and social participation and independence, and on participants' views that they are getting enough money to buy enough goods and services to allow them reasonable access to life opportunities - that is, reasonable and necessary support.; and contributors think that the cost is and will continue to be affordable, under control, represents value for money and, therefore, remain willing to contribute."[70]

These reforms aim to establish more control to ensure the success and sustainability of the Scheme.

Previous Budget and legislative measures

Prior to the NDIS Review, the NDIS Act was amended (through the *National Disability Insurance Scheme Amendment (Participant Service Guarantee and Other Measures) Bill 2021*) to require those that perform functions or powers under the NDIS Act to have regard to the financial sustainability of the Scheme.

In 2022 the Australian Government announced the establishment of the Fraud Fusion Taskforce (FFT) in the October 2022-23 Budget. The FFT is a multiagency taskforce that is working to address fraud and criminal activity in the NDIS and other government

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[68] Grattan Institute (2025), Saving the NDIS: How to rebalance disability services to get better results

[69] Parliament of Australia – Joint standing committee on the National Disability Insurance Scheme, The interface of NDIS and mainstream services, Chapter 2

[70] NDIS 2016 Insurance Principles and Financial Sustainability Manual, page 18

programs.[71] This was supplemented by further significant investment in the NDIA's capacity to safeguard the integrity of the NDIS and its participants in the 2025-26 Budget. This included $151.0 million over four years, and $43.8 million per year ongoing, to continue enhancements to the NDIA's fraud detection capability.[72]

In the 2023-24 Budget the Australian Government announced the *Improving the Effectiveness and Sustainability of the National Disability Insurance Scheme* measure. This included, but was not limited to, funding to improve the NDIA's processes and planning decisions, funding to help participants to manage their plan within budget, and investment in the NDIA's ability to detect, respond to, and reduce fraud and non-compliance payments.[73]

The Australian Government, and the states and territories, recognised the risk created by the sustainability challenges to the Scheme, and on 28 April 2023 committed to a *NDIS Financial Sustainability Framework* that included an annual growth target of 8 per cent by 1 July 2026.[74]

On 6 December 2023, National Cabinet subsequently agreed to mechanisms to support achieving the 8 per cent target; by implementing legislative and other changes to the NDIS, based on the NDIS Review recommendations. These changes were designed to improve the experience of participants, and restore the original intent of the Scheme to support people with permanent and significant disability, within a broader ecosystem of supports.[75]

Legislative changes were made following the 2023 National Cabinet decisions through the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act* (the Amending Act). The amendments "…enable progress of key NDIS Review recommendations to clarify the NDIS access requirements and the supports that the NDIS will provide a participant, to create a new model for determining a reasonable and necessary budget, and provide more flexibility on how the Commissioner can take regulatory actions to

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[71] 2022-23 Budget Paper No. 2, page 9

[72] 2025-26 Budget Paper No. 2. pages 72-73

[73] 2023-24 Budget Paper No. 2, pages 197-198

[74] Meeting of the National Cabinet - A Better Future for the Federation | Prime Minister of Australia

[75] Meeting of National Cabinet – the Federation working for Australia | Prime Minister of Australia

protect NDIS participants from abuse, harm and neglect."[76] These changes were estimated to significantly moderate NDIS cost growth and were included in the 2024-25 Budget.

In the 2024-25 Mid-Year Economic and Fiscal Outlook (MYEFO) the Australian Government announced $1.1 billion over three years to "support the design and implementation of Foundational Supports, further reforms to the National Disability Insurance Scheme (NDIS) and implementation of the National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No.1) Act 2024 which came into effect on 3 October 2024."[77] This included funding for the implementation of the new planning framework, which is designed to make the NDIS fairer, more consistent and sustainable for the future.

New Framework Planning

The Australian Government is working with the disability community and states and territories to develop the policy and rules for NFP which will include the introduction of a support needs assessment which will:

- Use a person-centred and strengths-based approach.
- Create fairer and more consistent budgets.
- Reduce the need for expensive reports.
- Result in simpler plans with more flexibility.
- Cover longer plan periods for more certainty and fewer scheduled reviews.

This represents a shift away from individual support items to a focus on a person's individual strengths and needs. The information collected through this support needs assessment will be translated into a reasonable and necessary budget. The process for this will be determined by a method set out in a Rule, yet to be agreed with states and territories.

Thriving Kids

From 1 October 2026, rollout of Thriving Kids will commence. Thriving Kids is the first tranche of Foundational Supports and will provide supports to children age 8 and under with low to moderate Autism and Developmental Delay outside the NDIS, and to provide an alternative to families. Thriving Kids will help give children the best start in life by identifying those with additional developmental needs earlier and connecting them to supports.

To support the rollout of Thriving Kids, the Australian Government and all state and territory governments have agreed in principle to change NDIS access arrangements for children.

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[76] NDIS amendment (Getting the NDIS back on track no. 1) bill 2024, 2004-2005-2006 [i.e., the term of the Parliament – see bill]

[77] Mid-Year Economic and Fiscal Outlook 2024–25, pages 294-295

These changes will ensure children and their families are supported to access services from the system best suited to their needs.

These changes will apply from 1 January 2028, but are subject to further agreement between the Australian and state and territory governments.

Children with permanent and significant disability will continue to be eligible for the NDIS, subject to usual NDIS arrangements. These access changes will require amendments to the NDIS Act following consultation with state and territory governments and the disability community.

Impacts of reforms to date

The cumulative effect of these reforms has put downward pressure on Scheme cost growth, from around 23 per cent in 2021-22 to around 11 per cent in 2024-25. However, this is still above a sustainable level of growth. Therefore on 30 January 2026, National Cabinet agreed to further work to target annual cost increases to 5 to 6 per cent, or lower.[78]

Even with future implementation of NFP and Thriving Kids, these measures alone will not deliver sufficient sustainability outcomes. Factoring in the impacts of these existing reforms, latest projections for the 2026-27 Budget forecasts that the NDIS would still be supporting around 900,000 NDIS participants at a cost of more than $71 billion in 2029-30.[79] This is despite rollout of NFP commencing from 1 April 2027 and Thriving Kids being established from 1 October 2026 through reduced numbers of new children aged 8 and under approaching the scheme from 1 January 2028. [80]

1.6 Data availability

The major data sources relevant to this analysis are drawn from the NDIS Review itself, including the modelling conducted by Taylor Fry for the NDIS Review.

These data sources are augmented with administrative data collected by the NDIA, including but not limited to data on plan utilisation, outcomes and planning satisfaction data, and measures of intra-plan inflation. The NDIA regularly makes data publicly available on its website and through its publications.

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[78] Heads of Agreement on the National Health Reform Agreement, National Disability Insurance Scheme reforms and Foundational Supports

[79] NDIA, Internal analysis to support 2026-27 Budget estimates, unpublished

[80] NDIA, Internal analysis to support 2026-27 Budget estimates, unpublished

Limitations in what is available include with respect to measuring the effect of the reforms on participant outcomes and goal achievement, provider and markets performance and quality, cost-effectiveness and value for money (i.e. in terms of measuring which supports deliver the best outcomes per-dollar). The implementation of the NDIS reforms announced in the 2026-27 Budget will consider how to collect data to measure and monitor their impact and enable evaluation (see Section 7).

2. Need for Government intervention

2.1 Objectives for the Scheme

The objectives for the NDIS are articulated in the NDIS Act:

- give effect to certain obligations that Australia has as a party to the Convention on the Rights of Persons with Disabilities;
- support the independence and social and economic participation of people with disability;
- provide reasonable and necessary supports, including early intervention supports, for participants;
- enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports;
- facilitate the development of a nationally consistent approach to the access to, and the planning and funding of, supports for people with disability;
- promote the provision of high quality and innovative supports that enable people with disability to maximise independent lifestyles and full inclusion in the mainstream community; and
- raise community awareness of the issues that affect the social and economic participation of people with disability, and facilitate greater community inclusion of people with disability.[81]

2.2 Objectives of the reforms

The objective of the NDIS reforms announced in the 2026-27 Budget are consistent with commitments made by National Cabinet on 30 January 2026. National Cabinet:

- "…acknowledged the need for continuing reforms **to secure the future of the NDIS, ensuring it is sustainable and can continue to provide life changing support to future generations of Australians with disability**."
- Agreed to "…undertake necessary reforms to achieve annual cost increases of 5 to 6 per cent, or lower." [82]

Sustainability is not simply about cost. It considers the effectiveness of the Scheme and the willingness of governments and taxpayers to contribute to its cost because it is making a

[81] National Disability Insurance Scheme Act 2013

[82] Heads of Agreement on the National Health Reform Agreement, National Disability Insurance Scheme reforms and Foundational Supports

positive difference to people with disability. The reforms have therefore been developed with the original intent of the Scheme in mind. An overarching objective is to ensure the NDIS is there to support people with the most significant and permanent disability through providing reasonable and necessary supports.

Reform objectives relevant to this Impact Analysis include:

- Slowing the growth of Scheme costs to a sustainable level (5 to 6 per cent, or lower).
- Ensuring the NDIS remains available to Australians with significant and permanent disability.
- Making eligibility requirements for the NDIS clearer, more consistent and equitable.
- Ensuring participant's funding goes towards the supports they need most.
- Delivering quality services and support to participants.
- Ensuring intermediary functions consistently provide high-quality services to NDIS participants and other people with disability.
- Restoring confidence in the Scheme.

2.3 Intervention need

In its 2011 report, the Productivity Commission was clear that under an individualised and market-based disability support system, governments still retain responsibility for system performance, must intervene where markets fail, ensure service continuity, and actively monitor and adjust system settings over time.

Disability support markets exhibit several forms of market failure that justify government intervention. For example, the Australian Government has a role in market stewardship and imposing safeguards to ensure quality and continuity of care in the event of provider failure. Recent examples of providers choosing to exit the NDIS market include the South Australian NDIS provider Bedford and Queensland NDIS provider Centacare. The Bedford exit from the market was imminent, with limited capacity in the market to provide continuity of supports for participants. The Australian Government provided financial support for a sale. Centacare was a staged withdrawal aided by early visibility.[83] [84] [85] Further, information asymmetry

[83] Additional support for Bedford sale | Health, Disability and Ageing Ministers | Australian Government Department of Health, Disability and Ageing

[84] Additional Support for Bedford Sale | Department of Social Services Ministers

[85] 1250 workers and clients with disability protected as Bedford sale process proceeds | Premier of South Australia

between participants and providers means participants often lack the information needed to assess provider quality and the effectiveness of different supports. Thin markets, especially prevalent in regional and remote areas and for specialised supports, limit the availability of supports and therefore participant choice and competition. Australian Government intervention in thin markets have included market facilitation and commissioning approaches, aimed at improving outcomes for NDIS participants.

The NDIS was designed as a social insurance scheme taking a lifetime view of participant support needs. This requires active management to ensure the Scheme remains sustainable while continuing to meet its obligations to participants.

The Scheme has deviated over time from its original intent to support people with significant and permanent disability and government intervention is required to get it back on track. The Productivity Commission forecast in 2017 the Scheme would support 476,000 participants and cost $22 billion in 2019-20 (at full Scheme commencement).[86] At the end of March 2026, the Scheme was supporting 774,456 participants. Over the 12 months to the end of March 2026, the Scheme cost $50.2 billion, had a net increase of 57,455 participants and an average annualised payment per participant of $66,800.[87]

Reforms to date have delivered reductions in the annual growth of the cost of the Scheme, from around 22 per cent in 2021-22 to around 11 per cent in 2024-25.[88] However, the Scheme is forecast to continue to grow well above the 5 to 6 per cent target agreed by National Cabinet. The PBO's *2025-26 Medium-Term Budget Outlook: Beyond the Budget*[89] forecast that, without further reform and an annual 8 per cent growth rate, the NDIS would cost $106.7 billion in 2035-36. This would increase its share of GDP from 1.7 per cent in 2025-26 to 2.3 per cent in 2035-36.

The Scheme Actuary has projected that without action, future Scheme expenditure would increase significantly, compared to what was projected at MYEFO. The latest projections for the 2026-27 Budget estimate that Scheme expenditure will increase by $13.4 billion (or $13.9

[86] Productivity Commission (2017), National Disability Insurance Scheme (NDIS) Costs - Overview, page 15

[87] NDIA, Summary of Statistics – March 2026, 15 April 2026. Note: The average annualised payment per participant includes cash and in-kind payments. Total supports include cash payments, in-kind payments and an allowance for support provided not yet paid.

[88] NDIA, Annual Report 2024-25, p.33; NDIA, AFSR 2021-22, page 123

[89] PBO (2025), 2025-26 Medium-Term Budget Outlook: Beyond the Budget, Table 6-1 page 35

billion in cash terms) over the 5 years from 2025-26, without further reform.[90] This means that in the absence of reform, costs will continue to escalate and the 8 per cent NDIS sustainability growth target would not be met by July 2026.

At a time when Australians are increasingly concerned about cost of living and affordability,[91] growth at this rate over the medium-term could undermine the community's trust in the legitimacy of the Scheme. While the NDIS has relatively high levels of trust after the 2023-24 reforms (up from 57 per cent to 66 per cent in 2024-25 in the APSC Trust in Australian public services surveys),[92] there are indications of concern about increasing costs in media commentary that has followed the NDIS Review. The 2023 NDIS Review also found that despite the Scheme costing significantly more than originally forecast, it is not consistently delivering on its promise to participants, while also noting growing concerns about waste and fraud in the Scheme.[93] Achieving sustainable growth was argued by the NDIS Review to be essential to maintaining the Scheme's social license and securing its ongoing future.

Intervention is required to reform the access, funding and administrative settings of the NDIS Act. Without amendments to the NDIS Act there is no credible pathway to deliver sustainability, and the National Cabinet's agreed target of growth of the Scheme between 5 to 6 per cent, or lower, annually.

Achieving the annual growth target will require addressing the structural drivers that are growing the Scheme much faster than the economy and the revenue base to fund it. At a high level, these drivers are the number of participants supported by the Scheme, and the amount of support each participant receives. In addition, effective market stewardship is necessary to fully realise the Scheme's objectives, including participant choice and control, social and economic participation, integrity and safety.

2.4 Alternatives to reforms

There are no feasible alternatives to government action. The NDIS is demand-driven and the NDIA, which administers the Scheme, does not have the levers to moderate growth to the

[90] 2026-27 Budget Paper No2. Note: This variation is compared to the 2025-26 MYEFO estimates and provided on an accrual basis, while the 2026-27 Budget Paper No. 2 are provided in cash terms.

[91] ANU Poll March 2026 Holding together, Just: Wellbeing, Economic Strain, and Democratic Resilience in Australia, March 2026 | POLIS: The Centre for Social Policy Research

[92] Australian Public Service Commission (APSC) (2025), Trust in Australian public services: 2025 Annual Report, Figure 44, page 39

[93] NDIS Review (2023), Final Report - Working together to deliver the NDIS, pages 160, 236

National Cabinet agreed target without changes to the NDIS Act and other reforms announced in Budget 2026-27.

2.5 Capacity to intervene

The NDIS is co-governed and funded by the Australian Government and the states and territories.

The NDIS Act, which is Australian Government legislation, establishes Australian Government responsibility for the Scheme. Bilateral agreements with states and territories formalise cost-sharing arrangements and interface responsibilities. The NDIS is administered by an Australian Government Agency (the NDIA).

The Australian Government is required to engage and consult states and territories on policy and reforms to the NDIS. Changes to the NDIS Act do not require the formal agreement of states and territories. However, some reforms require Category A NDIS rule changes that require unanimous state and territory agreement. The Australian Government has agreed to work together with states on reforms following the 30 January 2026 National Cabinet meeting.

In addition to engagement with states and territories, the broad suite of reforms to the NDIS continues to include consultation and engagement with the disability community (including people with disability, families, carers and advocates), disability representative organisations, and advisory groups.

2.6 Measuring success

Success of the NDIS reforms announced in the 2026-27 Budget will be determined by:

- Whether these measures directly and positively contribute toward meeting the annual growth target of the Scheme of 5 to 6 per cent, or lower,
    - Scheme growth can be monitored through NDIA Quarterly Reports, NDIA Summary of Statistics, the AFSR, and future Budget variations.
- The consistency and accuracy of eligibility decisions,
    - Proxies for measurement may include the number of decision reviews requested by prospective participants, and the number of successful reviews resulting in affirmation of participant status.
- The quality of supports and services provided to participants,
    - Proxies may include the number of complaints to the NDIS Quality and Safeguards Commission, results of participant satisfaction surveys, the number of registered providers operating in various parts of the NDIS market, and indicators of improved participant outcomes from capacity-building

supports including increasing participation in key life domains and reduced reliance on formal supports over time.

- Improved integrity of the Scheme,
    - proxies may include a reduction in the estimated incidence of integrity leakage including fraud risk indicators, the number of investigations and convictions for fraud, and greater visibility of claims by the NDIS.
- Community support for the Scheme.
    - The Department will need to consider ways of measuring public sentiment and support for the NDIS. This may include direct feedback and representations from sector and organisation representatives, media and other publicly available sources.

As discussed in Section 7 of this Impact Analysis, not all of these can be easily measured. However, the proxies outlined above and further in Section 7 can be used in the interim while further work is undertaken to improve measurement, including in the context of developing an evaluation approach.

In addition, the reforms included in this Impact Analysis are a subset of the NDIS reforms announced in the 2026-27 Budget. Measuring success therefore needs to look at the impact of the reforms as a whole in achieving the stated objectives.

3. Policy options considered

3.1 Eligibility and support reforms

Eligibility and support reforms[94]
Option 1 – Do nothing (status quo)
No further action other than existing announced reforms - New Framework Planning, Thriving Kids and linked access changes.
Option 2 – A balanced approach of eligibility and support changes for the NDIS
In addition to existing reforms on New Framework Planning, Thriving Kids and related access changes: **Scheme eligibility requirements** Strengthening the interpretation of permanent, or likely permanent, impairment Tightening eligibility based on access to other service systems **Scheme planning and reassessments** Limited unscheduled plan reassessments Resetting support budgets in social and community participation and capacity building daily activity Tighten the definition of reasonable and necessary supports
Option 3 – More substantial eligibility changes
In addition to existing reforms on New Framework Planning, Thriving Kids and related access changes: **More substantial changes to NDIS eligibility**
Option 4 – More substantial changes to the volume of NDIS supports
In addition to existing reforms on New Framework Planning, Thriving Kids and related access changes: **More significant reductions in the volume of supports a participant can receive**

There are four options considered and are examined in this IA. These vary from status quo – i.e. do nothing (option 1), a balanced approach to eligibility and support changes (option 2 - preferred), through to more significant eligibility changes (option 3) or more substantial changes to supports (option 4).

[94] In addition to options 2, 3 and 4, there are some measures that the Government has already announced an intention to implement: Changes intended to support more consistent and equitable planning; and Changes intended to support Thriving Kids

3.1.1 Option 1: Status Quo

Making no changes to NDIS eligibility or funding for supports other than existing reforms for NFP and Thriving Kids would likely see the Scheme continue to grow at an unsustainable rate, with little prospect of the National Cabinet agreed target of annual growth between 5 to 6 per cent, or lower, being achieved. This option is not considered feasible.

3.1.2 Option 2: A balanced approach to eligibility and support changes for the NDIS

This option provides for tightened Scheme eligibility requirements, and more clarity about the reasonableness of funding levels for participants, as well as reductions to funding for some supports to better align with other social support programs funded by the Australian Government.

Scheme eligibility requirements

The eligibility changes under the balanced approach would include:

- Strengthening the interpretation of permanent, or likely permanent, impairment.
- Tightening eligibility based on access to other service systems.

These eligibility changes aim to restore the focus of the Scheme on supporting people with permanent and significant disability, and protect the integrity and consistency of NDIS access processes.

Strengthening the interpretation of permanent, or likely permanent, impairment

The NDIS Act requires applicants to demonstrate that their disability is attributable to an impairment (or impairments) that are permanent, or likely to be permanent. The continued reliance on Access Lists, and the implications of the Federal Court decision in *National Disability Insurance Agency v Davis 2022* (Davis) have shifted the permanence test away from its original intent.[95] Access Lists used by the NDIS, which were primarily intended to support

[95] The decision in Davis interpreted several key terms used to determine if a participants impairment(s) are permanent in a way that differed from how they were intended to operate. Prior to the Court's decision, 'permanent' impairment had been interpreted as meaning an impairment that was 'irreversible' in nature after having received the 'optimal duration and type of treatment', notwithstanding the impairment may also be episodic or fluctuating. In its decision, the court interpreted 'permanent' to mean enduring rather than 'irreversible'; 'remedy' was interpreted to mean something approaching a 'removal' or 'cure' of an impairment rather than something that would 'relieve' or 'improve' an impairment; 'available' was interpreted to mean a treatment that a participant can in reality access having regard to cost and location; 'appropriate' treatment was interpreted to mean treatment which had the capacity to 'remedy' an impairment and is suitable to be undertaken by the individual; and 'known' treatment was interpreted to mean treatment identified by a medical practitioner, and suitable to a person's particular impairment.

expedited transition in early stages of transition, have shifted the focus to diagnosis as a means of entry rather than assessment of functional capacity.

In its final report, the NDIS Review concluded these legal interpretations had widened eligibility to the NDIS, and it recommended that legislative changes be considered to strengthen the operation of the permanence criteria in response to Davis.[96]

While the impact of the Davis decision is not believed to have had a significant impact on Scheme costs currently (though may present future risk), it has resulted in confusion about the test of permanence and the expectation that appropriate treatment should be undertaken in some instances before an impairment can be considered stable and permanent.

This option would introduce primary legislative change to clarify the interpretation of the permanence access criteria, including clarification of when impairments are considered permanent, or likely to be permanent. Legislative amendments will also clarify that all appropriate treatment (that is known, evidence-based and available in Australia) must be undertaken before an impairment is considered permanent, or likely to be permanent. This requirement does not apply if there is a medical reason for an individual not to undertake all appropriate treatment, or if the person falls within a circumstance specified in NDIS rules. The NDIS was never intended to replace health, rehabilitation and treatment services which play a critical role in in preventing and reducing lifelong disability.

These changes would help ensure only people with permanent impairments (rather than treatable ones) gain access to the Scheme, reinforcing the boundaries between health services and lifelong disability supports and restoring the Scheme to its original intent.

More detailed, actuarial modelling is needed to assess the impact of this option on participants and potential mitigations before the permanence changes could be practically implemented. This option would apply to new applicants from 1 January 2028.

Tightening eligibility based on access to other service systems

The NDIS was designed to complement, not replace, supports provided through other service systems. However, over time, the operation of the Scheme has increasingly shifted towards substituting for supports more appropriately funded or provided outside the NDIS due to both legislative insufficiencies and lack of available supports outside the NDIS.

Currently, NDIS access decision makers do not need to consider whether a person is eligible to receive supports through another service system, such as state and territory workers

[96] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 232-233

compensation or motor accident schemes. This interpretation was confirmed by the 2026 Federal Court decision of *NDIA v Sutherland* which clarified that NDIS eligibility does not require individuals to prove that other services systems cannot meet their support needs first.

Under this option, primary legislative amendments would clarify the requirement for the NDIA to consider at access whether a person is eligible for similar supports through other alternative services systems. Alternative service systems would include state and territory compensation schemes.

People receiving supports through state and territory accident and injury compensation schemes are expected to be the main cohort impacted. People in receipt of other types of compensation would remain eligible for the NDIS subject to the usual requirements, and would not be impacted by these changes to access.

A worker, for example, that is injured and receives compensation from a state and territory scheme for supports such as rehabilitation, assistive technology, home modifications and ongoing personal care supports may not be granted access to the NDIS as their needs are met through another service system.

The new requirements would be applied to prospective participants from 1 January 2028. This would restrict NDIS access for people who are eligible to receive support from other specified service systems for the impairment for which they are seeking NDIS support.

Scheme planning and reassessments

For planning and reassessments, this includes three elements:

- Limit unscheduled plan reassessments.
- Reset support budgets in old framework plans for social and community participation and capacity building daily activity supports.
- Tighten the definition of reasonable and necessary supports.

These changes will reduce average and total budgets and control plan inflation .

Limit unscheduled plan reassessments

Participants and their support coordinators can request a reassessment of their plan at any time, with 17 per cent of plans subject to an unscheduled reassessment in 2025.[97] Average inflation (or plan increases) from unscheduled reassessments was 21 per cent in 2025, a large

[97] NDIA (2026), Internal analysis of unscheduled reassessments as at 31 December 2025, unpublished

driver of spending growth.[98] Processing reassessments has resourcing implications for the NDIA and the ART. In the December 2025 quarter, the NDIA was only able to meet its legislated requirement to decide whether to do a plan reassessment within 21 days in 31 per cent of cases.[99]

There are currently no limits on who may request a plan reassessment which has resulted in providers making these requests, despite the potential actual or perceived conflict of interest, or where there is no evidence of a change in circumstances. The NDIA conducted a qualitative review on two samples of plan change cases closed between June 2025 and July 2025. The review was completed in September and October 2025 and identified that around 25 per cent of plan change cases came from support coordinators.[100]

While NDIS rules outline the considerations a delegate should take into account when deciding whether to conduct a reassessment, they do not enable a delegate to refuse a reassessment on the basis that a participant's circumstances have not 'significantly' changed. There is also no requirement for these changes to be ongoing or result in a substantial change in support needs. Plan change requests can be lodged at any time, including immediately following approval of a plan indicating that the participant or support coordinator does not agree with the plan budget, rather than funding being expended.

Under this option, primary legislation would be amended to ensure that plan reassessment requests can only be accepted from an NDIS participant, a plan nominee (including guardians) or child representative with providers such as support coordinators and plan managers prevented from making these requests.

Primary legislation would also be amended to ensure that unscheduled reassessments would only be conducted where there are significant and likely ongoing change in a participant's support needs. Specifically:

- a significant and permanent change to a participant's functional capacity where that change relates to an eligible impairment;

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[98] NDIA (2026), Internal analysis of unscheduled reassessments as at 31 December 2025, unpublished

[99] NDIA (2026), Participant Service Guarantee; NDIA (2026), Quarterly Report to Disability Ministers for Q2 2025-26, Page 44

[100] NDIA (2026). Internal analysis and results from desktop reviews, unpublished.

Note: The scope of both desktop reviews were to understand who made the plan change request. One of the desktop reviews also had an additional focus on understanding whether there was appropriate consent or authority from the participant or their authorised representative when the plan change request was not initiated by the NDIA.

- a permanent change to the participant's residence which impacts on support needs;
- an ongoing change in the informal supports available to a participant; or
- an unforeseen life transition limited to commencing or leaving education or employment.

Primary legislation would also allow for a notice of transition to NFP to be provided in lieu of a reassessment. There would also be an extension of the timeframe for a delegate to decide whether to conduct a plan reassessment from 21 to 90 days.

Reset support budgets in social and community participation and capacity building daily activity budgets – SCCP budgets

Social, Civic and Community Participation Supports are central to the objectives of the Scheme and remain critical to participant wellbeing and inclusion. In addition, reasonable and necessary funding criteria require the Scheme to consider what is reasonable to expect families, carers, informal networks and the community to provide. Participation focused support, while vital to quality of life, are often shaped by environmental, social and systemic factors and involve shared responsibility with families, carers and mainstream service systems. For this reason, reasonable and necessary decisions must give greater weight to supporting core daily functioning such as toileting, showering, meal preparation, and household tasks like cleaning.

SCCP budgets are out of alignment with other parts of the care and support economy. As at 31 December 2025, participants living in Supported Independent Living (SIL)[101] arrangements – a type of living support for participants with higher support needs – receive on average $84,030 for SCCP.[102] NDIS participants not residing in SIL arrangements are provided with an average of $29,885 per year in funding for community access.[103] In contrast, Australians accessing the Aged Care Support at Home program are limited to eight fixed annual funding packages between $10,731 and $78,106.[104] People accessing the Aged Care Support at Home program must use that funding, plus co-payments where applicable, to purchase all of their supports: in-home, community access (comparable to NDIS funded SCCP) and allied health therapy (comparable to CBDA).

[101] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 293.

[102] NDIA (2026), Internal analysis of distribution of participant budgets by select support categories at 31 December 2025, unpublished

[103] NDIA (2026), Internal analysis of distribution of participant budgets by select support categories at 31 December 2025, unpublished

[104] DHDA (2025), Support at Home program manual, page 49

Resetting SCCP budgets mean there will be no changes to budgets for core daily living functional supports. For example: to assist eating, drinking, dressing, toileting, laundry, cleaning, community nursing care, assistance with medication, etc. Similarly, there will be no changes to home and vehicle modifications; personal mobility equipment; consumable products to manage incontinence and menstruation; Specialist Disability Accommodation. Similarly, NDIS participants would continue to be able to request a plan reassessment where there has been a permanent change in their circumstances, though the reduction will still be applied to the newly assessed reasonable and necessary budget for SCCP.

While acknowledged the reduction will impact participants, ensuring that funding for SCCP continues to be available (albeit at a lower rate) will help to mitigate some risks. Social and community participation research for participants with autism, intellectual disability and psychosocial disability found that community participation provides a sense of belonging, increases confidence, builds skills and social networks and reduces isolation.[105] Participants will still be able to continue to access services either at a lower frequency, or through shared/group supports which are charged at lower rates and provide greater opportunities for connection.

It should also be noted that a number of barriers were identified in the research mentioned above, including mainstream and community options not being inclusive, and difficulties in finding the right support from providers to facilitate genuine inclusion, with some participants deferring to disability-specific options for a safer experience. Government's commitment for an Inclusive Communities Fund aims to restore mainstream capability to help participants also access genuine community-based supports.

The Department acknowledges that social and community participation are central to the objectives of the NDIS and remain an important part of participant wellbeing and inclusion. However, the reasonable and necessary funding criteria require the Scheme to prioritise supports that address substantial and enduring limitations in core daily functioning – such as personal care, mobility, communication for safety and self-management – where these needs cannot reasonably be met through other service systems. Participation-focused supports, while vital to the quality of life, are more often shaped by environmental, social and systemic factors and may involve shared responsibility with families, communities and mainstream services. For this reason, reasonable and necessary funding decisions must give greater weight to core daily functioning, while continuing to support participation outcomes through appropriate, proportionate, and complementary support.

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[105] NDIA (2022), '*Getting out into the world" pathways to community participation and connectedness for NDIS participants with intellectual disability, on the autism spectrum and/or with psychosocial disability*, NDIA

Reset support budgets in capacity building daily activity budgets – CBDA budgets

As at 31 December 2025, the overwhelming majority of participants (752,454 or 99 per cent) have funding for CBDA – primarily used for allied health therapies and reports. Average annualised CBDA budgets are $13,460[106] per participant, which can purchase around 69 hours of therapy at the NDIS hourly rate of $193.99.[107] In comparison in veterans' care, access to allied health is via a General Practitioner referral and allocated in cycles. One cycle is for 12 sessions or one year, whichever ends first. While there is no limit to the number of cycles, a GP must agree further cycles are clinically necessary. Australians with a Chronic Disease Management Plan receive up to five subsidised allied health sessions per calendar year through Medicare.

Capacity building supports were always envisaged to be part of the NDIS and expected to reduce need for support over time, including capacity building budgets. However, these budgets are frequently not reduced as capacity is gained but rather, participants frequently request plan reassessments or additional supports for capacity building in other areas. Total annualised CBDA budgets grew by 11.5 per cent from December 2024 to December 2025.[108] Average CBDA budgets grew by 5 per cent over the last 12 months to December 2025.[129] Further, in most allied health disciplines there is little research evidence to support high volumes of therapy on a long-term basis.

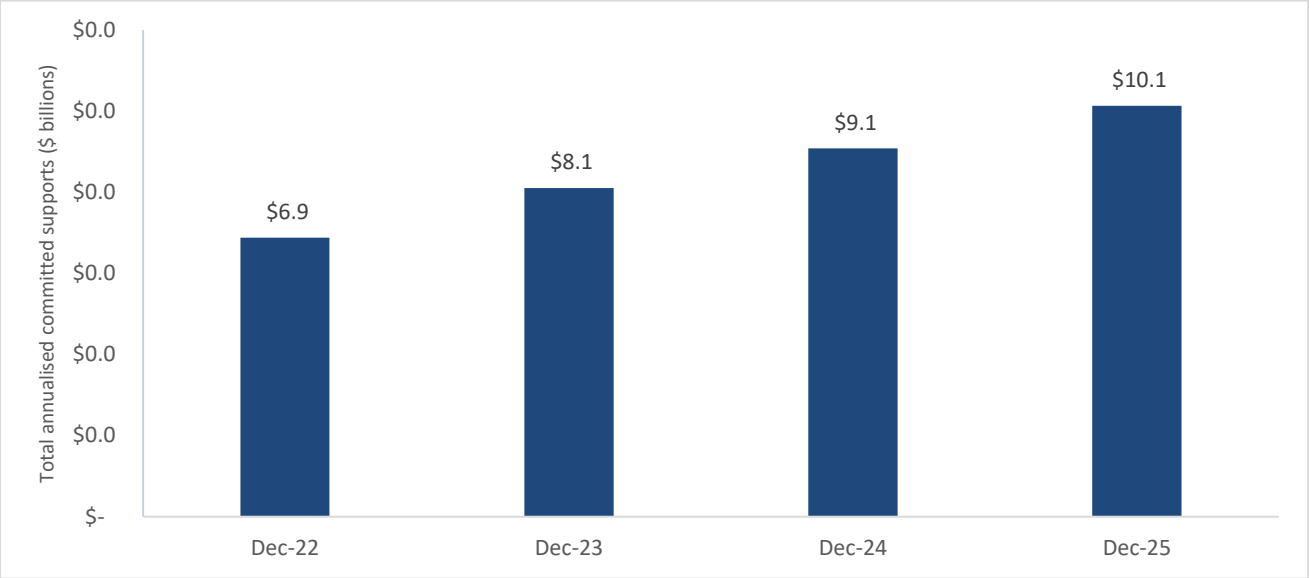
[106] NDIA (2026), Explore data; NDIA (2026), Internal analysis of distribution of participant budgets by select support categories at 31 December 2025, unpublished

[107] NDIA (2025), NDIS Support Catalogue 2025-26 v1.1, accessed 5 May 2026

[108] NDIA (2026), Supplement E to the NDIS Quarterly Report for Q2 of 2025-26, Tables E.115 and E.116; NDIA (2025), Supplement E to the NDIS Quarterly Report for Q2 of 2024-25, Tables E.115 and E.116;

[129] NDIA (2026), Explore data; NDIA (2026), Internal analysis of participant budgets by support categories at 31 December 2024. Note: Average CBDA budgets in this table is not an annualised figure. Average CBDA Budgets are based on the total committed support allocated to participants over the six-month exposure period (e.g. 1 July 2025 to 31 December 2025) divided by the number of participants with approved plan(s) at the end of the period (e.g. 31 December 2025).

FIGURE 4. TOTAL ANNUALISED CBDA BUDGETS AT 31 DECEMBER EACH FINANCIAL YEAR



The proposed option

The NDIS Act would be amended to insert an instrument making power to allow a level of reduction to be applied to particular budget categories. Under this option SCCP budgets in old framework plans would be reduced by 50 per cent and CBDA budgets would be reduced by 10 per cent.

In determining the extent of SCCP reductions, the department did consider whether reducing individuals' budgets in line with previous utilisation may be an effective way to constrain growth, however this was ultimately not progressed due to the impacts on some NDIS participants where thin market issues are prevalent. For example, where a participant's utilisation is low due to services not being available this may unfairly impact those participants more than participants with higher utilisation in areas where markets are more mature. There is also complexity in implementing reductions based on utilisation given the way in which NDIS budgets are currently developed versus completeness of data on overall SCCP spend by NDIS participants.

This option would address the significant growth in SCCP spend over recent years, and encourage more uptake of group based services at more efficient prices. Group based activities have the potential to continue to allow NDIS participants to access social, economic and community activities at a more efficient price. A shift away from individualised supports may also increase social and community outcomes.

Reductions would be phased in over 12 months from 1 October 2026. This would occur as plans are reassessed from 1 October 2026, then also as plans are renewed from 1 February 2027. Plans will be renewed as each plan reaches its scheduled reassessment date. Expected phasing is:

- 1 in 6 participants would receive the reductions in the first 4 months (1 October 2026 to 31 January 2027) when they undergo a plan reassessment either at their own request, or an NDIA initiated review, e.g. due to hospitalisation or a change of circumstance.
- All remaining participants (5 in 6) would receive the reductions through both plan reassessments and plan renewals occurring over 1 February 2027 to 30 September 2027 once ICT changes allow for bulk renewals (replacing rollovers).

A $200m Inclusive Communities Fund will also be established to rebuild capability among community organisations to provide genuine opportunities for inclusion and connection for NDIS participants and encourage participation in NDIS funded group activities.

Tighten the definition of reasonable and necessary supports

The concept of 'reasonable and necessary' supports lacks specificity, resulting in inconsistent decision making and a progressive broadening of supports funded under the NDIS as a result of Federal Court decisions. Examples include:

- *McGarrigle v NDIA* (2017) – the decision appealed was the NDIA's decision to fund only 75 per cent of Mr McGarrigle's taxi expenses based on family members providing assistance with getting to and from medical appointments. The Federal Court found that the NDIS must fully fund any support that meets reasonable and necessary criteria, and that partial funding is not permitted on the grounds of family contributions or Scheme sustainability considerations.
- *NDIA v WRMF* (2020) – the Federal Court found the NDIA could not rely on policy or assumptions about an individual's capacity or community willingness to pay for supports to decline an otherwise reasonable and necessary support. It also confirmed that value for money and Scheme sustainability considerations were participant specific, not Scheme wide.
- *NDIA v Eastham* (2026) – the Federal Court established that despite the intent of the *National Disability Scheme Amendment (Getting the NDIS Back on Track No.1) Act 2024* to explicitly link the need for a reasonable and necessary support to an impairment that meets the disability or early intervention requirements, there only needs to be a causal connection between a need for support and an impairment that meets access requirements.

This broadening of scope has contributed to plan inflation and plan budgets increasing on average over time, threatening Scheme sustainability.

Under this option, the definition of reasonable and necessary would be tightened and changes would include:

- Permitting the Minister to determine reductions in funding for groups of supports.
- Specifying a maximum amount of funding supports, maximum intensity for provision of support or a maximum ratio of worker to participant for provision of supports for a participant or groups of participants.

- A more rigorous assessment of value for money, including requiring identification and consideration of lower cost options and the length of time a participant will require the support.
- Requiring consideration of whether there is evidence that supports are effective and beneficial for a participant.
- Elevating guidance on reasonable and necessary from the rules into primary legislation on value for money considerations.
- Requiring consideration of what is reasonable to expect family members and informal supports to provide, in particular for children.
- Clarifying that supports will only be funded if required directly because of an impairment that meets the eligibility criteria for the participant.
- Consideration of whether a support would be more appropriately provided or funded by another service system.
- Requiring consideration of Scheme sustainability as part of the reasonable and necessary assessment.

3.1.3 Option 3: More substantial eligibility changes

The Department considered an option focused on more substantial changes to NDIS eligibility, without changes to participant plan budgets.

Analysis determined that while more substantial changes to NDIS eligibility (i.e. tightening eligibility requirements further) would structurally reduce the cost of the NDIS through participant exits, it would only have a short-term impact on moderating the growth of Scheme costs without changes to participant plan budgets. It therefore would be unlikely to meet National Cabinet's target of annual growth between 5 and 6 per cent, or lower, outside of the short-term even though the size of the scheme would be significantly smaller.

Furthermore, more substantial changes to NDIS eligibility were not considered an optimal option because it could result in some people with significant and permanent disability not being able to access the Scheme. This would not be consistent with the original intent of the Scheme. It would also create too great a risk that people with significant need would be left without access to supports critical to their wellbeing and safety (in the absence of adequate alternative supports outside the NDIS). Some of these people would then be expected to return to the Scheme at a later date and require additional support.

This option would also have a significant shock to the market and workforce.

3.1.4 Option 4: More substantial changes to NDIS supports

As an alternative to access changes, the Department also considered an option of more significant reductions in the volume of supports a participant can receive in their NDIS plan. This option would apply a blanket 10 per cent reduction to every support category all participants can receive except SIL and those requiring 24-hour and intensive care, including

nursing and ventilation supports. A further option to freeze all participants' budgets at 2025-26 expenditure level except SIL and those requiring 24-hour and intensive care, including nursing and ventilation supports was also considered.

More significant reductions in the volume of certain supports could result in participants experiencing regression in daily living skills, elevate the risks of injury, neglect and social isolation and ability to engage with employment and community activities. This would undermine the objectives of the NDIS, including the aim to provide reasonable and necessary supports to participants.

Further reducing the volume of supports would have a more significant impact on the NDIS provider market. This could include increasing provider viability risks, providers exits and workforce impacts. Should providers withdraw from regions or specialised service types, this would further exacerbate existing thin markets and increase risks to continuity of support or disorderly exits. The NDIS workforce is highly casualised and reducing demand to this degree may lead to workers leaving the NDIS and a reduction in the pool of suitably experienced workers.

3.2 Plan management reform options

Plan management reform options
Option 1 – Do nothing (status quo)
Option 2 – Plan management panel
Consolidate the plan management market to a smaller panel
Option 3 – Abolish the plan management market
Transition all plan management functions to the NDIA

Reforming plan management would help establish clear expectations and responsibilities in the delivery of services through a dedicated function. The reform options aim to increase the level of oversight of providers and improve quality and consistency of services for participants.

3.2.1 Option 1: Status Quo

This option would maintain current plan management arrangements without structural reform. Plan managers would continue operating under existing market and regulatory settings. There would continue to be approximately 1,400 plan managers operating in the NDIS, and there would continue to be variance in service offering and unscrupulous providers.

3.2.2 Option 2: Plan management panel

Under this option, the plan management services market would be consolidated from around 1,400 active plan managers, to a significantly smaller panel of management providers.[109] The NDIA would commission a panel of plan management providers, which would be subject to a deed arrangement and meet minimum quality and governance standards. The commissioned plan management panel will allow the NDIA, in conjunction with the NDIS Commission, to set service quality and integrity standards while directly addressing quality issues. Panel members would have more concentrated market and plan management services overall. They will therefore benefit from improved economies of scale, which would enable the NDIA to negotiate a more efficient price paid for plan management services. It would also help ensure NDIS participants receive higher quality plan management services, and improve the integrity of payments made through plan management providers.

The NDIA would run an open competitive sourcing process. In this process, the NDIA would evaluate plan management provider responses against quality criteria, and successful providers would be permitted to manage the plan managed components of funding within a participant's plan. This requirement would be in addition to any conditions of being a registered plan management provider with the NDIS Commission.

Participants who access plan management services would continue to have choice over their plan management provider, but would be required to select one of the providers of the panel.

Amendments to the NDIS Act would be required to allow the NDIA to direct participants to choose from a set list of plan management providers on the NDIA-approved panel. Once the panel was introduced, there would be a six-month transition period during which plan managers who were not on the panel would continue to be able to deliver plan management services. At the end of the transition period, plan management providers who were not on the panel would be ineligible to provide plan management services.

Under this option, the majority of plan management providers would be expected to exit the plan management market. Many plan management providers would continue to deliver other disability services. However, a number of plan management providers would be expected to close.

3.2.3 Option 3: Abolish the plan management market

This option would transition all plan management functions to the NDIA. Under this option, the NDIA would deliver some services in-house and outsource some services to payment

[109] NDIA, Quarterly Report to Disability Ministers for Q2 2025-26, pages 68-69

service providers. The NDIA would be responsible for plan management functions for all participants who are not self-managed, including ensuring claims meet integrity check and legislative requirements, managing claims and payments, and supporting participants to remain within budget.

In-house delivery of plan management functions would require significant investment from the NDIA in technology improvements.

3.3 Support coordination reform options

Support coordination reform options
Option 1 – Do nothing (status quo)
Option 2 – Light touch reform to existing support coordination market
Mandatory registration for support coordination providers
Option 3 – Commission a new support coordination service with capped program expenditure
Commissioning support coordination functions as a new support coordination and connection service
Option 4 – Commission a new support coordination service with a tighter cap on program expenditure
Commissioning support coordination functions as a new support coordination and connection service, with a greater limit on funding available to deliver the new service.

Currently, support coordinators are responsible for supporting participants to understand and use their NDIS plans and build confidence in navigating the NDIS, including by connecting participants with NDIS providers, community, mainstream and other government services. The potential options considered aim to address lack of oversight and quality control in the support coordination market. How options propose to achieve this varies from light-touch government intervention in the existing market, through to complete market reform and commissioning of a new support coordination and connection service. The potential options include:

3.3.1 Option 1: Status Quo

In this option, the Australian Government would undertake no reform of existing support coordination functions or markets. The market would continue to operate as per current arrangements with participants paying for support coordination services using their NDIS plan funding. As at 31 December 2025, there are 354,114 participants with funding for support coordination in plans.[110]

Key issues in the current support coordination market, including issues with quality and integrity and increasing service costs, would not be addressed. There were 10,903 active

[110] NDIA (2026), Explore data, accessed 5 May 2026

support coordination providers during the December 2025 quarter, and only 4,783 were registered.[111]

3.3.2 Option 2: Light touch reform to existing support coordination market

This option would involve mandating registration for support coordination providers. This would be the extent of government intervention and reform. Other existing arrangements in the support coordination market would continue, including participants paying for support coordination services using their NDIS plan funding. While this would address some quality and integrity issues, it would not address increasing costs to the scheme for the delivery of the support coordination function.

3.3.3 Option 3: Commission a new support coordination service with capped program expenditure

This option would involve the Australian Government commissioning support coordination functions as a new support coordination and connection service to commence in mid-2028. This could also provide an opportunity to merge duplicative intermediary functions in a single service, pending policy and funding decisions across other intermediary functions. The new service would be subject to capped program funding, which means the service would need to deliver an agreed scope of service within a set amount of funding. Participants would no longer need to use their NDIS plan funding to pay for support coordination services. Instead, they would be able to access the new support coordination and connection service by engaging with providers commissioned to deliver this service according to the participant's assessed need.

This option would increase government oversight of support coordination and connection services, addressing key quality and integrity issues raised by the NDIS Review and other recent consultations. It also leaves open the possibility of including support coordination and connection functions currently delivered in other programs through a single commissioned service.

This option would also support a transition approach that minimises disruption to participants and the sector during NFP reform. It would maintain existing arrangements through the initial rollout of major reforms including NFP and Thriving Kids. Detailed design and implementation of the new service would draw on existing insights from recent engagement with participants, and the disability community (see section 5.4.3), as well as market readiness testing with the sector and states and territories.

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[111] NDIA (2026), Quarterly Report Supplement E National 2025-26 (Q2), Table E.95

3.3.4 Option 4: Commission a new support coordination service with a tighter cap on program expenditure

Similar to Option 3, the Australian Government would commission support coordination functions as a new support coordination and connection service to commence in mid-2028. Participants would be able to access the new service by engaging with commissioned providers, instead of needing to pay for support coordination services using their NDIS plan funding.

Like Option 3, this option would improve the quality and integrity of support coordination services by increasing government oversight. It would retain the possibility of including support coordination and connection functions currently delivered in other programs through a single commissioned service. It would also support a smooth transition for participants and the sector to NFP reform. However, this option would implement a tighter cap on the amount of funding available to deliver the new service. This would mean there would be less funding to deliver the service than in Option 3.

This option would maintain existing arrangements through the initial rollout of major reforms including NFP and Thriving Kids. Detailed design and implementation of the new service would similarly be informed by existing insights from recent engagement with the disability community, and market readiness testing with the sector and states and territories.

4. Likely net benefit of each option

4.1 Eligibility and support reforms

A multi-criteria analysis has been conducted to determine the costs and benefits of each eligibility and support option. This more qualitative approach has been taken due to the nature of the options and the complexity involved in attempting to derive a monetised net benefit figure for each option.

The criteria chosen is as follows:

- Impact on moderating annual Scheme cost growth.
- Alignment with the original intent of the Scheme to support participants who have significant and permanent disability with reasonable and necessary supports.
- Impact on NDIS participants.
- Impact on NDIS providers and the NDIS market.

These criteria have been selected on the basis that they are consistent with the objectives of the reforms and/or enable determination of the impact on key stakeholders.

Each option has been rated on the following scale:

- -3 (largely adverse)
- -2 (moderately adverse)
- -1 (slightly adverse)
- 0 (neutral)
- +1 (slightly beneficial)
- +2 (moderately beneficial)
- +3 (largely beneficial)

The criteria are weighted equally.

The options correspond to the option numbers in the table as follows:

- Option 1 – Status Quo
- Option 2 – A balanced approach of eligibility and support changes for the NDIS
- Option 3 – More substantial eligibility changes
- Option 4 – More substantial changes to the volume of NDIS supports

TABLE 1: MULTI-CRITERIA ANALYSIS

Criteria	Option 1	Option 2	Option 3	Option 4	Explanation
Impact on moderating annual	-3	+3	+1	+2	Option 1 would result in NDIS costs continuing to grow well in excess of the original 8 per cent target under

Scheme cost growth					the *NDIS Financial Sustainability Framework* and also the 5 to 6 per cent, or lower, annual growth rate target agreed by National Cabinet in January 2026. Despite increased focus on implementing a range of sustainability measures over the past five years, the cost of the Scheme has continued to increase at rates significantly above inflation and population growth measures. **Option 2** would make a significant impact in moderating Scheme cost growth towards the National Cabinet agreed target. **Option 3** would structurally reduce Scheme costs but would have a smaller impact on the Scheme's annual cost growth rate once eligibility changes had been fully rolled out. **Option 4** would moderate Scheme cost growth but not to the same extent as Option 2.
Alignment with the original intent of the Scheme	-2	+2	+1	+1	**Option 1** would result in the Scheme continuing to operate beyond its original intent both in terms of eligibility and supports provided. **Option 2** would be a significant step towards returning the Scheme to its original intent by tightening access and supports. **Options 3 and 4** would include some changes that go towards returning the Scheme to its original intent, but both risk going too far when relied upon in isolation.
Impact on NDIS participants	0	-1	-2	-2	**Option 1** would result in the current issues negatively impacting NDIS participants persisting (inconsistency, inequity etc.). The number of NDIS participants would continue to grow and existing

					participants would remain in the Scheme. **Option 2** would reduce the number of NDIS participants and some of the supports participants can receive through the NDIS, while still enabling those with permanent and significant disability to access the Scheme and receive reasonable and necessary supports. Participants who are no longer eligible may continue to receive supports from other services systems as appropriate. Option 2 would reduce the social and community participation funding participants receive by up to 50 per cent and reduce capacity building daily activity funding by up to 10 per cent. This is likely to result in participants increasing budget utilisation, reducing the amount they access these services and/or increasing their use of group based supports. Tightened application of revised reasonable and necessary criteria is likely to result in some participants' budgets being reduced. A significant change in circumstances being reduced will limit opportunities to change plan funding amounts. **Option 3** would more significantly reduce the number of Scheme participants. It would not impact the supports of participants who remain eligible. **Option 4** would more significantly reduce the supports participants in the Scheme can receive, without impacting the number of people in the Scheme. A blanket reduction in budgets could result in participants experiencing regression or stasis in

					daily living skills, and elevate the risks of neglect and social isolation.
Impact on NDIS providers and the NDIS market	0	-1	-1	-1	**Option 1** would maintain current conditions for NDIS providers and supply of support. The Scheme would continue to grow at the current rate, increasing demand for supports and services. **Option 2** would impact NDIS providers by reducing the number of participants in the Scheme and the amount of supports available. The magnitude of impact is dependent on the supports reduced and the percentage those supports represent of provider revenue. Smaller providers might be more vulnerable due to smaller buffers, scale, and less diversification, so reductions in supply could result in financial instability and potential market exit. **Options 3 and 4** would negatively impact NDIS providers by reducing the number of participants in the Scheme and the amount of supports funded. The magnitude of impact is dependent on the supports reduced and the percentage those supports represent of provider revenue. Smaller providers might be more vulnerable due to smaller buffers, scale, and less diversification, so reductions in supply could result in financial instability and potential market exit.

Option 1 – total score of -5

Option 2 – total score of +3

Option 3 – total score of -1

Option 4 – total score of 0

4.1.1 Option 1: Status Quo

4.1.1.1 Expected impact on NDIS participants

Without further reform, the number of NDIS participants would continue to grow. At the end of March 2026, there were 774,456 NDIS participants – an 8 per cent increase from 12 months ago.[112] In the AFSR 2024-25, the Scheme Actuary estimates that there could be 1.1 million participants in 2034-35.[113] The latest projections for 2026-27 Budget estimates that, without further reform, the number of participants could grow to around 900,000 by 2029-30 and 1.2 million by 2036-37.[114]

In addition, current issues negatively impacting participants would not be addressed – this includes inconsistency and inequity in decision-making. This option would have a largely adverse impact on efforts to moderate cost growth to a sustainable level and meet the National Cabinet agreed target. Failure to take further action now may also drive the need to make more significant changes in future should costs continue to escalate well above inflation resulting in further damage to the social licence of the Scheme.

4.1.1.2 Expected impact on NDIS providers and the market

Without further reform, demand for NDIS providers and the market and workforce would continue to grow in line with the Scheme, noting demand in the care and support workforce already exceeds, or is close to exceeding, current supply. Major providers continue to report workforce shortages and without change this would continue.[115] Demand for supports would remain higher than under the reform options.

4.1.1.3 Expected impact on government

Without further reform, the Scheme would continue to grow above the target set by National Cabinet. This would put increasing pressure on governments to find the resources to meet its funding commitments to the NDIS, which would impact funding of other government priorities such as Aged Care, hospitals and pharmaceuticals.

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[112] NDIA (2026), Summary of Statistics – March 2026.

[113] NDIA (2025), AFSR 2024-25, page 20

[114] NDIA, Internal analysis to support 2026-27 Budget estimates, unpublished

[115] NDS8096 Workforce Census Report 2025 web.pdf

In the 12 months to 31 March 2026, total Scheme costs grew by 11.3 per cent.[116] This is well in excess of the lower annual growth target of 5 to 6 per cent as agreed by National Cabinet on 30 January 2026. In the AFSR 2024-25, the Scheme Actuary estimates that annual Scheme costs would reach $95.8 billion and represent 2.1 per cent of Gross Domestic Product (GDP) in 2034-35.[117] This would be up from 1.7 per cent of GDP in 2025-26, which is already in excess of both Aged Care (1.4 per cent) and the Medicare Benefits Schedule (1.2 per cent).[118]

The latest projections for 2026-27 Budget estimate that, without further reform, Scheme costs could reach $116.7 billion and represent 2.4 per cent of Gross Domestic Product (GDP) in 2036-37.[119]

4.1.2 Option 2: A balanced approach of eligibility and support changes for the NDIS

4.1.2.1 Expected impact on NDIS participants

Expected impact of strengthening the interpretation of permanent, or likely permanent, impairment

The number of prospective participants affected is unknown. Initial internal analysis conducted by the NDIA broadly estimated that the expanded definition of 'permanent impairment' from the Federal Court would have a relatively modest impact in terms of the number actual and prospective NDIS participants that would be effected.[120] However, this estimate is highly uncertain, and a point-in-time estimate only. It is based on incomplete data, and does not include an unknown number of people with treatable impairments that have never applied for the NDIS.

Detailed actuarial analysis will be needed ahead of implementation to fully understand the impact of these changes.

Expected impact of tightening eligibility based on access to other services systems

This option is intended to prevent people with disability concurrently accessing the NDIS and other highly similar services or funding. The proposal would apply to prospective participants

[116] NDIA, Summary of Statistics – March 2026, 15 April 2026

[117] NDIA (2025), AFSR 2024-25, page 12

[118] PBO (2025), 2025-26 Medium-Term Budget Outlook: Beyond the Budget, Table 6-1 page 35

[119] NDIA, Internal analysis to support 2026-27 Budget estimates, unpublished

[120] NDIA, Internal analysis on the implications of the Davis Federal Court decision, unpublished.

only as current participants' access to supports outside the NDIS is already considered during planning, where duplication of supports would be identified and funding reduced. At 31 March 2026, 8,292 NDIS participants (1.1 per cent) are estimated to be in-receipt of compensation – 3,008 of whom are in receipt of support through state and territory compensation schemes.[121]

[121] NDIA, Internal analysis of NDIS participants also receiving compensation at 31 March 2026, unpublished

FIGURE 5. NDIS PARTICIPANTS WITH COMPENSATION BY PRIMARY DISABILITY – 31 MARCH 2025

Primary Disability	Participants with compensation at 31 March 2026	Distribution (as a percentage of all participants with compensation)
Acquired Brain Injury (ABI)	2,630	32%
Spinal Cord Injury	1,283	15%
Other Physical	1,226	15%
Psychosocial disability	1,005	12%
Cerebral Palsy	395	5%
Intellectual Disability	339	4%
Autism	225	3%
Other Neurological	194	2%
Stroke	193	2%
Visual Impairment	130	2%
Hearing Impairment	96	1%
Multiple Sclerosis	64	1%
Other[122]	512	6%
Total	**8,292**	**100%**

It should be noted that the Agency does not directly record the impairment for which compensation has been provided. The NDIA defines primary disability as the impairment that has the greatest impact on participant's day-to-day functioning. This means some prospective NDIS participants who have received compensation will still be able to access the scheme for support related to a different impairment. In reality, the numbers of prospective participants excluded from the scheme as a result of these changes will likely be lower once disabilities that meet the access criteria are considered.

[122] Note: "Other" disability group includes those with a primary disability of: Developmental Delay, Global developmental delay, Down Syndrome and Other Sensory / Speech, Other and those with missing information on their primary disability.

Of all NDIS participants in receipt of compensation, 63 per cent are male, 36 per cent are female, and 1 per cent have not identified or disclosed their gender. Similar to the wider NDIS population, 8 per cent of participants receiving compensation identify as First Nations, and 9 per cent identify as Culturally and Linguistically Diverse. The majority of participants live in major cities (63 per cent), and only 2 per cent reside in remote or very remote locations.[123]

The proposal is intended to limit the number of instances where a person becomes eligible for the Scheme, and receives no (or very little) support under the Scheme on account of already having access to other services. The practical impact of these changes on the supports and services that people with disability can access from a whole-of-system perspective is, therefore, expected to be limited.

Alternative service systems would include state and territory compensation schemes (workplace and motor vehicle accident compensation schemes). According to Safe Work Australia, there were 146,700 serious work claims across Australia in 2023-24 (the last year data is available) with a median compensation paid of $16,300.[124] In terms of motor vehicle accidents, the Bureau of Infrastructure and Transport Research Economics estimates that in 2020, 3,819 people suffered disability as a result of road crashes.[125] [126] Unlike serious work injury claims, there is no central collection of statistics on the number of motor vehicle accident claims across Australia. The impacts are therefore anticipated to occur only to prospective participants who have received compensation.

It should be noted that states and territory motor vehicle insurance provides differing coverage, including in terms of running fault/no-fault schemes. This means that some people who are at fault in a motor-vehicle collision ,would remain eligible for the NDIS in some jurisdictions.

Expected impact of limiting unscheduled reassessments

Limiting who may initiate and the circumstances in which unscheduled reassessments can be requested will reduce the frequency of participants requesting and having changes made to their plan. In 2025, 16 per cent of the NDIS population had at least one unscheduled

[123] NDIA, Internal analysis of NDIS participants also receiving compensation at 31 March 2025, unpublished.

[124] Safe Work Australia (n.d.), Workers' compensation | dataswa, accessed 1 May 2026.

[125] Bureau of Infrastructure and Transport Research Economics (2022), 'Social Cost of Road Crashes'

[126] Bureau of Infrastructure and Transport Research Economics (2022), 'Social Cost of Road Crashes'

reassessment, indicating potentially high rates of changing support needs.[127] While higher, the differences in proportion for First Nations participants, Culturally and Linguistically Diverse participants, participants in remote and very Australia and female participants are more marginal in comparison (see FIGURE 6).

FIGURE 6 PARTICIPANTS WITH AT LEAST ONE UNSCHEDULED REASSESSMENT IN 2025[128]

Cohort	Participants with at least one unscheduled reassessment in the year	Total Scheme population at the end of the year	Incidence of unscheduled reassessment in the year
First Nations participants	10,921	63,381	17%
Female participants	50,569	290,064	17%
Culturally and Linguistically Diverse participants	13,110	66,517	20%
Remote Australia (MM6 and MM7)	2,319	11,714	20%
Participants in SIL	13,759	36,755	37%
All participants	**124,030**	**761,442**	**16%**

The total plan inflation rate (excluding indexation) was 21 per cent from unscheduled plan reassessments in 2025. FIGURE 7 shows that the total plan inflation rates from unscheduled reassessments were marginally higher than the average for First Nations participants, Culturally and Linguistically Diverse participants, females and those with an 'Other' gender status. Plan inflation from unscheduled plan reassessments for participants residing in remote and very remote Australia had the largest difference compared to overall

[127] NDIA, Internal analysis of plan inflation as at 31 December 2025, unpublished. Note: The proportion is calculated as the number of participants with at least one unscheduled plan reassessment as a percentage of all participants at 31 December 2025. This would include participants who had an unscheduled reassessment and left the Scheme during 2025.

[128] NDIA, Internal analysis of plan inflation as at 31 December 2025, unpublished. Note: The proportion is calculated as the number of participants with at least one unscheduled plan reassessment as a percentage of all participants at 31 December 2025. This would include participants who had an unscheduled reassessment and left the Scheme during 2025.

participants, suggesting this group could be disproportionately affected by a limiting of unscheduled reassessments.

FIGURE 7. TOTAL PLAN INFLATION (EXCLUDING INDEXATION) FROM UNSCHEDULED REASSESSMENTS IN 2025[129]

Cohort	Total plan inflation rate from unscheduled reassessments in 2025 (excluding indexation)
Culturally and Linguistically Diverse participants	22%
Female participants	22%
First Nations participants	25%
Other Gender status	25%
Participants residing in remote and very remote Australia (MM6 and MM7)	41%
Average inflation rate	**21%**

Conversely, while more participants in SIL have at least one unscheduled plan reassessment, the resulting total plan inflation from their unscheduled plan reassessment was substantially lower at 12 per cent.[130]

The outcome of this reform would be that in some instances, adjustments to goals, supports and funding would not be made due to not meeting the new threshold. Impacts will range from minimal to moderate. Requests for additional or different funding may be able to be managed through flexible use of budgets and increased utilisation of budgets. This would depend on current utilisation of participant budgets. As at December 2025, 32 per cent of

[129] NDIA, Internal analysis of plan inflation as at 31 December 2025, unpublished. Note: Total plan inflation rate is calculated as the total dollar increase in plan budgets (excluding from indexation) compared to total value of plan budgets prior to the unscheduled plan reassessment.

[130] NDIA (2026), Internal analysis of plan inflation as at 31 December 2025, unpublished. Note: Total plan inflation rate is calculated as the total dollar increase in plan budgets (excluding from indexation) compared to total value of plan budgets prior to the unscheduled plan reassessment.

participants have used 50 per cent or less of their annual plan, and 22 per cent have spent between 50 and 75 per cent.[131]

However, careful policy design and execution of safeguards (such as plan variations) will be necessary to ensure that participants are not placed at risk. For example, a non-permanent change to a participant's informal supports may still impact on the participant's disability support needs. An example could be a three year old with mobility impairment who does not have any core funding but whose sole parent carer (without any informal support themselves) breaks their arm and is not able to provide the same level of personal care and support for a short period. The change in the child's caring arrangement is not permanent and would not meet the revised criteria for an unscheduled reassessment but should instead be addressed through a plan variation. While this may still result in an increased plan value, the increase would be short term rather than permanent. Appropriate triage processes would need to be in place to ensure requests involving significant risk were considered in a timely manner.

Limiting requests for plan reassessment to participants, guardians, nominees and child representatives will require careful legislative and policy design to uphold the rights and ensure accessibility for participants with communication and decision support needs. As at December 2025, 237,253 (or 65 per cent) of all NDIS participants aged 19 or over have a disability that may affect the way they think and sometimes these participants will need support to make decisions.[132] There may also need to be diverse cultural approaches to decision making for participants and carers from First Nations (8 per cent or 63,381 participants) and Culturally and Linguistically Diverse backgrounds (9 per cent or 66,517 participants).[133]

People with disability have a right to access decision supporters, including for navigating the administrative complexity of the NDIS, which for some people with low literacy or from diverse cultural backgrounds is not possible without support. Reforms will need to avoid

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[131] NDIA, Quarterly Report Supplement E National 2025-25 (Q2), Table E.45. Note: Data is as at 31 December 2025. However it only considers participants with initial plans approved up to 30 June 2025, and includes committed supports and payments for supports provided up to 30 September 2025. This gives some allowance for the timing delay between when the support is provided and when it is paid. Plans less than 31 days in duration have been excluded.

[132] NDIA (2026), Internal analysis of NDIS participants by primary disability as at 31 December 2025, unpublished. Note: This is based on a count of participants aged 19 and over with a primary disability of psychosocial, autism, intellectual disability, developmental delay, global developmental delay and acquired brain injury.

[133] NDIA (2026), Quarterly Report to Disability Ministers for Q2 202526, pages 19,104

impinging on this right and ensure that decision-support can be enabled, with appropriate consent.

Importantly, existing participant safeguards would continue to be available such as:

- The ability for an NDIA delegate to initiate a plan reassessment when they become aware of a significant change in circumstances and the participant does not have a nominee or guardian and is unable to initiate the request themselves, acknowledging that in 2025, agency-initiated plan reviews made up only 1 per cent (740) of unscheduled reassessments.[134]
- Plan variations where a participant is experiencing an emergency or crisis situation resulting in short term changes to their support needs.
- Discretionary check-ins conducted by NDIA staff where a risk (or potential risk) for a participant is identified.

Resetting SCCP budgets

Resetting SCCP budgets will affect 393,401 (52 per cent) of NDIS participants who currently have SCCP funding in their plans.[135] At 31 December 2025, the average annualised SCCP budget for participants in SIL as at 31 December 2025 is $84,030 and for participants not in SIL, the average is $29,985. However the range in SCCP funding is wide. For participants in SIL, it can range from around $40,000 to over $130,000. For participants not in SIL, it can range from around $4,000 to around $65,000.[136] This means that SCCP as a proportion of a participant's total budget also varies, but is on average around 20 per cent.[137]

A 50 per cent reduction in a participants' SCCP budget allocation will not result in a corresponding 50 per cent reduction for most participants' SCCP spending. This is because most participants do not use their full SCCP budget. In the 6 months ending 30 September

[134] NDIA (2026), Internal analysis of plan inflation as at 31 December 2025, unpublished. Note: There were 138,910 unscheduled plan reassessments in 2025. This is comprised of participant-requested reassessments, NDIA-initiated reassessments, plan reassessments driven by the review of reviewable decisions (RoRD), outcomes from the ART, and other reasons. Participants can have more than one unscheduled plan reassessment in the year.

[135] NDIA (2026), Explore data, accessed 5 May 2026.

[136] NDIA, Internal analysis of distribution of participant budgets by select support categories as at 31 December 2025, unpublished. Note: The range for annualised SCCP budgets are rounded to the nearest $1,000 and are based on the 10th percentile and 90th percentile rather than the minimum and maximum to remove outliers.

[137] NDIA (2026), Explore data, accessed 5 May 2026. Note: Total committed supports for SCCP and in plans are based on the funding allocated to participants over the six-month exposure period (1 July 2025 to 31 December 2025)

2025, the average utilisation rate of SCCP Budgets was 80 per cent for SIL participants and 86 per cent for non-SIL participants.[138]

There is scope for participants to negotiate lower prices with SCCP providers, which would help offset a reduction in total budget allocations. For example, in the 12 months to December 2025, the NDIA found that 77 per cent of SCCP payments were charged at the price limit and a further 9 per cent at 90-99 per cent of the price limit.[139] Given the majority of payments are claimed at or near the price limit, participants could negotiate lower prices and retain a similar number of support hours despite a reduced budget.

Participants in SIL may be disproportionately impacted as there are 36,360 (or 99 per cent) of all SIL participants with SCCP budgets. This is significantly higher than the overall share of 52 per cent across all NDIS participants.[140] These changes may increase the rate of participants in SIL requesting an unscheduled plan reassessment or plan variation for their SCCP budgets.

Other cohorts that are more affected by this option than the average include women and girls, participants with an undefined gender, participants residing outside major cities (MM1) and regional centres (MM2), and Culturally and Linguistically Diverse participants. Reductions in budgets in regional areas may exacerbate provider viability in already thin markets, impacting on participant choice and control. First Nations participants are slightly less likely to have SCCP in their budgets, but do have higher average SCCP budgets and will experience a higher dollar value reduction on average.

Similarly, participants residing in remote locations (MM6) and very remote locations (MM7) will experience a higher dollar value reduction relative to the average. For other groups, the dollar impact will be smaller, including for females, participants with an 'other' gender status and participants in MM5 locations. However, these groups are also starting from lower average budgets.

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[138] NDIA, Internal analysis of utilisation by select support categories as at 31 December 2025, unpublished. Note: These utilisation rates are based on the Scheme experience for the 6 months ending 30 September 2025, measured using payments up to 31 December 2025.

[139] NDIA, Internal analysis on NDIS payments and price limits over 12 months to 31 December 2025, unpublished. Note: The analysis was based on total NDIS payments made in the 12 months to 31 December 2025. Payments that were self-managed and not subject to price controls (such as supports requiring quotes) were excluded from the analysis.

[140] NDIA (2026), Explore data, accessed 5 May 2026; NDIA (2026), Quarterly Report to Disability Ministers for Q2 2025-26, pages 7,70; NDIA (2026), Internal analysis of distribution of participant budgets by select support categories at 31 December 2025, unpublished.

FIGURE 8. PARTICIPANTS AND THEIR SCCP BUDGETS BY DEMOGRAPHIC CHARACTERISTICS – AT 31 DECEMBER 2025[141]

Cohort	Number of participants with SCCP funding	Proportion of participants with SCCP funding	Average SCCP funding	SCCP funding as % of total committed supports
First Nations participants	30,987	49%	$17,600	20%
Culturally and Linguistically Diverse participants	38,260	58%	$17,500	22%
Female participants	165,107	57%	$17,100	21%
Participants with undefined or 'Other' gender	5,177	56%	$11,700	23%
Participants residing in rural areas (MMM3 to MMM5)	76,959	53%	$16,700	23%
Participants residing in remote locations (MMM6)	3,590	51%	$21,500	19%
Participants residing in very remote locations (MMM7)	2,599	55%	$17,900	21%
Participants in SIL or SDA	40,728	98%	$41,100	17%
All participants	393,401	52%	$17,500	21%

This option would also impact on the ability for the 84,996 children and young people aged 18 and under to undertake some social and community participation because of their relatively smaller average budgets. While there are expectations on all parents to provide substantial care and support for their children, these expectations reduce as children and young people age. Social and community participation can also assist in sustaining informal care arrangements and funding a wide range of supports including customised employment, which would be constrained under the resetting of budgets.

[141] NDIA (2026), Explore data, accessed 5 May 2026. Note: Note: All data is as at 31 December 2025. Total and average committed supports for SCCP and in plans are based on the funding allocated to participants over the six-month exposure period (1 April 2025 to 30 September 2025). Committed supports are not annualised.

FIGURE 9. PARTICIPANTS AND THEIR SCCP BUDGETS BY AGE GROUP – AT 31 DECEMBER 2025[142]

Age group	Number of participants with SCCP funding	Proportion of participants with SCCP funding	Average SCCP funding	SCCP funding as % of total committed supports
0 to 8	2,637	2%	$4,400	0%
9 to 14	39,260	26%	$5,200	8%
15 to 18	43,099	55%	$8,200	19%
19 to 24	54316	78%	$17,600	28%
25 to 34	57,010	85%	$21,800	29%
35 to 44	47187	86%	$21,900	26%
45 to 54	51,386	87%	$21,000	24%
55 to 64	62,033	88%	$20,800	22%
65+	36,473	86%	$19,900	20%
All	**393,401**	**52%**	**$17,500**	**21%**

Participants with certain primary disabilities are expected to be more affected by the reductions to SCCP funding. Some disability types require limited day-to-day support for activities of daily living, but require significant support to access the community.

For example, 30 per cent of total plan budgets for participants with psychosocial disability as their primary disability is committed to SCCP (**Error! Reference source not found.**0). Acknowledging circumstances differ, participants with psychosocial disability may require less support with activities of daily living compared to someone with a physical disability. Conversely, due to social, environmental and disability related factors, they may experience significant barriers to accessing the community.

Other than participants with a primary disability of psychosocial disability, participants with a primary disability of visual impairment, Down syndrome, and Intellectual Disability may be more affected by this change. For these cohorts, total committed supports for SCCP budgets are higher than the overall Scheme proportion.

[142] NDIA (2026), Explore data, accessed 5 May 2026. Note: Note: All data is as at 31 December 2025. Total and average committed supports for SCCP and in plans are based on the funding allocated to participants over the six-month exposure period (1 April 2025 to 30 September 2025). Committed supports are not annualised.

FIGURE 10. PARTICIPANT AND THEIR SCCP BUDGETS BY PRIMARY DISABILITY – AT 31 DECEMBER 2025[143]

Primary disability	Number of participants with SCCP funding	Proportion of participants with SCCP funding	Average SCCP funding	SCCP funding as % of total committed supports
ABI	18,008	90%	$24,600	21%
Autism	131,847	41%	$11,200	20%
Cerebral Palsy	12,284	66%	$28,100	18%
Developmental Delay	231	0%	$3,600	0%
Down Syndrome	9,329	79%	$28,900	28%
Global Developmental Delay	153	1%	$5,500	0.3%
Hearing Impairment	5,679	19%	$7,200	15%
Intellectual Disability	76,412	78%	$23,000	26%
Multiple Sclerosis	9,570	78%	$14,600	17%
Other	8,252	62%	$18,800	18%
Other Neurological	20,697	80%	$21,800	17%
Other Physical	13,429	66%	$15,200	19%
Other Sensory Speech	479	26%	$7,900	18%
Psychosocial Disability	63,131	96%	$18,700	30%
Spinal Cord Injury	5,118	79%	$19,700	14%
Stroke	9,947	92%	$20,500	19%
Visual Impairment	8,732	79%	$13,233	34%
Total	**393,401**	**52%**	**$17,500**	**21%**

Due to the gendered nature of caring, women are more likely to be impacted by changes to the supports available or provided to the people they care for. 67.7 per cent of primary

[143] NDIA (2026), Explore data, accessed 5 May 2026. Note: All data is as at 31 December 2025. Total and average committed supports for SCCP and in plans are based on the funding allocated to participants over the six-month exposure period (1 April 2025 to 30 September 2025). Committed supports are not annualised.

carers were women in 2022.[144] Changes are likely to increase informal caring responsibilities, which may impact levels of social and economic participation for female carers. Opportunities to increase gender equality will be considered as part of the design and evaluation of future market reforms to delivering social and community participation and capacity building activities.

While the reduction in budgets will likely lead to a reduction in participant's ability to access the community, it is not expected to be as significant as a 50 per cent budget reduction. There are three key reasons for this.

1. Participants can use their Core support budgets flexibly across the daily activities, SCCP, consumable and transport support funding categories. Overall utilisation of SCCP budgets (85 per cent) is skewed by participants who access more SCCP than they are funded for (i.e., spend above 100 per cent).[145] While reduced SCCP budgets would constrain some participants' spending on SCCP, participants with low utilisation of their SCCP budgets are less likely to be affected.
2. Some SCCP activities are offered in group settings, which attracts lower pricing. As such, some participants will be able to substitute 1:1 SCCP activities with group activities. This would result in participants retaining the same or similar number of SCCP hours, but in group settings.
3. The Australian Government has announced the $200 million Inclusive Communities Fund to rebuild capability among community organisations and strengthen community-based inclusion. This will help to mitigate the impact of reduced SCCP by building up inclusive group based services that could be accessed by participants.

There are significant benefits that can be derived from meaningful and effective community participation. However, the decision to reduce this budget was preferred over others because it does not impact the health and safety of participants. SCCP supports do not provide support for daily living activities critical to a person's health and wellbeing, such as toileting, showering, meal preparation, and household tasks like cleaning. This change will bring SCCP supports more in alignment with other parts of the care and support economy.

Robust monitoring and evaluation will be required to identify risk to participants and the impacts of reform. These include impacts on policy priorities under Australia's Disability

[144] Disability, Ageing and Carers, Australia: Summary of Findings, 2022, Australian Bureau of Statistics

[145] NDIA, Internal analysis of utilisation by select support categories as at 31 December 2025, unpublished. Note: These utilisation rates are based on the Scheme experience for the 6 months ending 30 September 2025, measured using payments up to 31 December 2025.

Strategy – full participation in social, recreational, sporting, religious and cultural life - but also:

- Ability to access supports that meet needs.
- Safety from violence, abuse, neglect and exploitation.
- Impacts on gender equality and prevention of violence.
- Employment rates and transitions from education to employment.
- Financial independence.
- Acknowledging and supporting the role of informal support.[146]

Interaction with other reforms will also need to be monitored for unintended consequences, such as increased rates of unscheduled reassessment requests for daily activity funding (which is able to be spent flexibly on SCCP) and / or requests for Capacity Building SCCP funding.

Resetting CBDA budgets

Resetting CBDA budgets through a 10 per cent reduction will affect the majority of participants, with 99 per cent (752,454) currently funded for CBDA.[147] Participants currently have an average annualised CBDA budget of $13,460, which equates to around 69 hours of therapy supports per year or 1.3 hours per week.[148]

Due to the small scale of the reduction, this reform is not expected to have a material impact on participants with CBDA budgets less critical to the health and safety of participants than others (such as nursing care). Furthermore, overall utilisation of CBDA budgets is 61 per cent as at 31 December 2025.[149] For most participants, the reform will not impact their CBDA spending and would likely result in increased utilisation rather than needing to reduce services.

[146] Commonwealth of Australia (Department of Social Services), Australia's Disability Strategy 2021-2031, 2024 update: Building a more inclusive Australia.

[147] NDIA (2026), Explore data, accessed 5 May 2026

[148] NDIA, Internal analysis of distribution of participant budgets by select support categories at 31 December 2025, unpublished. Note: Average therapy hours funded per year and per week is based on the 2025-26 NDIS price limit of $193.99 for therapy supports.

[149] NDIA (2026), Explore data, accessed 5 May 2026. Note: Utilisation rates are calculated as the ratio between payments and committed supports for the six-month exposure period from 1 April 2025 to 30 September 2025, based on data as at 31 December 2025.

This option is expected to have a greater impact on children aged 0 to 14 who have higher annualised CBDA budgets and higher proportions of their budgets assigned to this support category.

FIGURE 11. PARTICIPANTS AND THEIR CBDA BUDGETS BY AGE GROUP – AT 31 DECEMBER 2025 [150]

Age group	Number of participants with CBDA funding	Proportion of participants with CBDA funding	Average CBDA funding	CBDA funding as % of total committed supports
0 to 8	166,507	100%	$9,900	69%
9 to 14	152,322	100%	$6,800	42%
15 to 18	77,614	99%	$5,600	23%
19 to 24	68070	98%	$5,100	10%
25 to 34	65,356	97%	$4,800	7%
35 to 44	53738	98%	$5,100	7%
45 to 54	57,771	98%	$5,400	7%
55 to 64	69,683	98%	$5,700	7%
65+	41,393	98%	$5,600	7%
All	**752,454**	**99%**	**$6,600**	**15%**

This change may more significantly impact participants residing in remote MM6 and very remote MM7 who have higher than average CBDA budgets and will experience a higher dollar value reduction in their budget. Participants in very remote locations also have higher proportions of CBDA as a share of total committed supports.

[150] NDIA (2026), Explore data, accessed 5 May 2026. Note: All data is as at 31 December 2025. Total and average committed supports for CBDA and in plans are based on the funding allocated to participants over the six-month exposure period (1 April 2025 to 30 September 2025). Committed supports are not annualised.

FIGURE 12. PARTICIPANTS AND THEIR CBDA BUDGETS BY REMOTENESS – AT 31 DECEMBER 2025 [151]

Remoteness	Participants with CBDA budget	Proportion of participants with CBDA funding	Average CBDA budget	CBDA as a share of total committed supports
Major Cities (MM1)	515,562	99%	$6,800	16%
Population > 50,000 (MM2)	82,499	99%	$6,400	14%
Population between 15,000 and 50,000 (MM3)	61,429	99%	$6,100	14%
Population between 5,000 and 15,000 (MM4)	32,982	99%	$6,100	15%
Population less than 5,000 (MM5)	48,315	99%	$6,200	18%
Remote (MM6)	6,965	99%	$8,600	15%
Very Remote (MM7)	4,668	99%	$9,000	19%
Missing	34	97%	$66,700	42%
All participants	**752454**	**99%**	**$6,600**	**15%**

Tightening "reasonable and necessary" supports criteria

Tightening 'reasonable and necessary' supports criteria will apply to new and existing participants, as they receive their first plan or are reassessed after 1 February 2027. Participants are likely to have some of their funding for NDIS supports reduce, leading to lower overall NDIS spending.

[151] NDIA (2026), Explore data, accessed 5 May 2026. Note: All data is as at 31 December 2025. Total and average committed supports for CBDA and in plans are based on the funding allocated to participants over the six-month exposure period (1 April 2025 to 30 September 2025). Committed supports are not annualised.

As at 31 December 2025, average annualised budgets are $85,100[152], or around $42,000 in average committed supports at 31 December 2025.[153] Figure 13 shows the variation in average committed supports for different demographics.

FIGURE 13: AVERAGE COMMITTED SUPPORTS BY KEY PARTICIPANT DEMOGRAPHICS – AT 31 DECEMBER 2025

Cohort	Number of participants	Average committed supports
First Nations participants	63,381	$42,200
Culturally and Linguistically Diverse participants	66,517	$46,500
Female participants	290,064	$45,300
Participants with an undefined or other gender	9,175	$28,500
Participants residing in rural areas (MMM3 to MMM5)	144,597	$39,000
Participants residing in remote locations (MMM6)	7,040	$56,700
Participants residing in very remote locations (MMM7)	4,704	$47,500
Participants in SIL or SDA	41,459	$241,500
All participants	**761,442**	**$42,500**

However, there are elements of the option that will have a greater impact on some groups. The existing requirement that a funded support must be necessary to address the needs of the participant arising from an impairment in relation to which the participant meets the disability requirements will be clarified to ensure there is a direct link. While there is no data available to indicate the numbers of participants with funding for secondary impairments considered not to meet access criteria, First Nations Australians are more likely to experience

[152] NDIA, Quarterly Report Supplement E National 2025-26 (Q2), Tables E.110

[153] NDIA (2026), Explore data, accessed 5 May 2026. Note: Average committed supports are based on the total committed support allocated to participants over the six-month exposure period (1 April 2025 to 30 September 2025) divided by the number of participants with approved plan(s) at the end of the 31 December 2025.

chronic disease due to the cumulative impacts of historical, social and systemic inequalities. The following examples are provided to describe the interaction between eligible impairments and other support needs (for example, health needs):

- A participant with diabetes is unlikely to meet access requirements for that impairment alone. But for participants with diabetes and a significant cognitive impairment they are unable to manage their diabetes safely. Because they need support for diabetes management as a direct result of their cognitive impairment, they would be eligible for support.
- A participant with Intellectual Disability and eating disorder develops mobility issues due to obesity. The Scheme would fund supports related to their Intellectual Disability, but mainstream health services would be responsible for providing supports for their mobility needs and health conditions related to their obesity.

Changes may increase expectations of informal supports. The option includes a more vigorous consideration of what informal supports are reasonable for delegates to consider. This is likely to have direct flow on impacts to family members and kin (particularly of younger people) and may impact on the role of informal support under Australia's Disability Strategy.[154] Given most carers are female, these impacts may be disproportionately experienced by women.[155]

Changes also have the potential to affect certain Closing the Gap outcomes.[156]

Greater clarity about the role of informal supports, especially for children, and additional safeguarding measures are proposed. Delegates will need to consider whether relying on family, carers, informal networks or the community would expose a participant to a material risk of harm, abuse or neglect.

Some of the proposed changes will provide greater clarity in assessing considerations such as whether a support is effective and beneficial or value for money for a participant by codifying existing rules and making it clear what a delegate must consider. However, implementation will need to carefully consider and mitigate the risk of disproportionate impacts on First Nations or Culturally and Linguistically Diverse participants, individuals who need support with decisions or who have low literacy or numeracy skills.

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[154] Commonwealth of Australia (Department of Social Services), Australia's Disability Strategy 2021-2031, 2024 update: Building a more inclusive Australia.

[155] Commonwealth of Australia (Department of Social Services), Australia's Disability Strategy 2021-2031, 2024 update: Building a more inclusive Australia.

[156] Closing the Gap targets and outcomes | Closing the Gap

Requirements to consider the comparative costs of purchasing or leasing assistive technology, vehicle modifications and home modifications are likely to have greater impact on participants with physical disability. As at 31 December 2025, there are 57,731 participants with primary disabilities of Cerebral Palsy, Multiple Sclerosis, Other Physical Disability or Spinal Cord Injury.[157] Importantly, changes would not mean supports could not be purchased or provided, but leasing would be prioritised where a participant's circumstances are likely to change. Sensitive communication and implementation of decisions will be important where participants are living with a rapidly progressive degenerative condition.

At this stage, it is difficult to assess the impact of this element as the details will form part of a legislative instrument design that is still subject to further work. For example, limitations on the level of transport funding may have a greater impact on NDIS participants in remote and regional areas where public transport is limited to taxis. Pricing is one way to ameliorate this impact.

4.1.2.2 Expected impact on NDIS providers and the market

Access

The changes to access would contribute to returning the Scheme to its original intent of supporting people with significant and permanent disability. While businesses providing NDIS supports may see easing of demand, people who no longer meet access to the Scheme could receive support through other funded services, in the private market.

As noted earlier in this analysis, some elements of the budget package such as access reforms to support Thriving Kids and establishing thresholds for substantially reduced functional capacity will require their own detailed analysis at a later date as the design is still subject to consultation and further work.

Actuarial modelling of the expected number of prospective participants expected to be affected by the access changes in this analysis as a result of the strengthened permanence criteria and tighter access for people eligible for support through other services systems is low. An indeterminable, but likely very few, new entrants who would be supported by other service systems.[158]

The impact on NDIS provider business is expected to be minimal. The NDIS-like supports provided through state and territory compensation are already excluded from the plans of participants who are receiving compensation, and the number of impacted participants is

[157] NDIA(2026), Supplement E to Quarterly Report to Disability Ministers for Q2 2025-26, Table E.16

[158] NDIA, Internal analysis, unpublished.

small in the context of the overall market. Similarly, strengthening the interpretation of permanence is not expected to affect many participants in the context of the overall market and is therefore not expected to greatly impact providers.

Supports and reassessments

Limiting who may request unscheduled plan reassessments will remove the ability for support coordinators and / or plan managers to initiate requests for unscheduled reassessments. This, combined with tightening the criteria for accepting unscheduled reassessments to those where there is significant change, is intended to reduce the rate of plan inflation. It will also help address actual or perceived conflicts of interest by removing provider involvement in activities where they have a financial incentive to increase plan size, although behavioural changes will need to be monitored to determine effectiveness.

There were around 276,000 active NDIS providers in the December 2025 quarter. Of these, 111,000 providers delivered SCCP supports, of which 100,800 (91 per cent) are unregistered.[159] In the 6 months to 31 December 2025, around 56,000 providers delivered SCCP supports to only one participant - many of these are individual support workers operating as a small provider.[160] While the reforms are significant and will be disruptive to providers, the latent demand for disability support workers in the NDIS, and the growth in other parts of the care and support economy, means it is not expected that resetting SCCP budgets will create significant employment shocks for experienced support workers.

However, there are risks of participants offsetting the reductions in their SCCP budget by drawing funds from other areas of core budget.

The smaller reduction in CBDA budgets and spend is expected to have a lower impact on the NDIS market. In the December 2025 quarter, there were 82,000 CBDA providers and of these, only about 9,000 were registered NDIS providers.[161] The impact on the allied health or therapy provider market is not expected to create significant employment or provider viability shocks, especially given there is latent unmet demand across the care and support economy.[162] The reduction to CBDA budgets help bring the NDIS funding levels more in line

[159] NDIA, Supplement E to NDIS Quarterly Report for Quarter 2 of 2025-26, Table E.95

[160] NDIA, Supplement E to NDIS Quarterly Report for Quarter 2 of 2025-26, Table E.95; NDIA, Internal analysis to support the 2025-26 Annual Price Review

[161] NDIA, Supplement E to NDIS Quarterly Report for Quarter 2 of 2025-26, Table E.95

[162] Details by region can be searched at Care Sector Demand Map | Department of Social Services, Australian Government

with other parts of the care economy such as Aged Care Support at Home, veterans' care and Medicare, and presents minimal risk to participant safety.

Reduction in NDIS growth will also help ease capacity constraints in the care sector. The care sector has experienced rapid employment growth over recent years and robust demand is expected to continue going forward.[163] Data shows there is a significant shortage of workers in the sector. Lower NDIS spending will ease demand for labour in the care and support sector, and may make it easier to fill roles in occupations where there are nation-wide shortages such as community aged care support workers.[164] Although unlikely, reduced competition for staff could put downwards pressure on some labour costs in the sector. This would lower service provision costs, meaning government can deliver care services more cost effectively, and reduce the need for service providers to pass cost pressures on to consumers.

Reforms that reduce the demand for NDIS services in the market will disproportionately affect women who make up approximately 68 per cent of the care and support workforce.[165] The magnitude of impact on providers is dependent on which supports are reduced and the percentage those supports represent of provider revenue and the extent to which the current demand for effected NDIA supports is currently met through market supply. All things being equal, providers with smaller revenue streams will be more significantly impacted by reductions in supply.

Tightening the definition of reasonable and necessary supports will also reduce NDIS funding and demand for services across all support categories.

Collectively, if reforms result in increased stress on provider viability, then governments may need to prevent market failure and ensure essential services continue.

4.1.2.3 Expected impact on government

Access

Access changes to strengthen the operation of permanence in-line with the original intent, and changes to exclude prospective participants that receive compensation through state and territory compensation, will both contribute to the 5 to 6 per cent growth target set by National Cabinet.

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[163] Jobs and Skills Australia (2025), Employment Projections - Industry outlook, accessed 1 May 2026

[164] Jobs and Skills Australia (2026), Occupation Shortage List, accessed 1 May 2026

[165] ABS (2022), Disability, Ageing and Carers, Australia: Summary of Findings, ABS website, accessed 1 May 2026

The changes may result in an increase in demand for other mainstream services systems, including private sector services.

Supports and reassessments

Collectively, the reassessment and supports option will contribute to the Australian Government achieving the 5 to 6 per cent growth target set by National Cabinet through reducing participant plan budgets and total plan inflation. Although plan utilisation may increase, overall participant plan spending is expected to reduce as a result of resetting plan budgets. The reforms will enhance cross system equity in the care and support economy.

Changes could likely impact on other government service systems at both state and territory and Commonwealth levels. A collaborative approach to design and implementation of reform as well as a robust monitoring and evaluation approach is needed to manage flow on impacts to systems like education, social security, health, child protection and employment. For example, children whose SCCP budgets are reduced may re-engage with mainstream out of school hours and vacation care programs, which could increase demand for inclusion support funding.

The Australian Government is investing $200 million to establish an Inclusive Communities Fund to rebuild capability among community organisations to host genuine participation activities. The Australian Government will work closely with the disability community to identify where investment is most needed and likely to result in improved inclusion for people with disability.[166]

Limiting the circumstances and people who can initiate plan review requests are expected to reduce unscheduled reassessments from 12,000 per month down to 5,000-6,000 per month.[167] While this will free up NDIA workforce capacity at a headline level, there may be higher workloads in plan variations, complaints and internal reviews as well as an increase in ART applications in the short term. Tightening of reasonable and necessary criteria and reductions to SCCP and CBDA budgets may also increase the workload in complaints and review areas, including the ART.

[166] Australia's Disability Strategy 2021–2031 - 2024 Update: Building a more inclusive Australia

[167] NDIA (2026), Internal analysis of plan reassessments and plan inflation in the 6 months to 31 December 2025, unpublished

4.1.3 Option 3: More substantial eligibility changes

4.1.3.1 Expected impact on NDIS participants

More substantial changes to NDIS eligibility arrangements than Option 2 would, by definition, impact more NDIS participants (current and potential). This would have a negative impact on those affected, with the degree to which the impact is mitigated dependent on the availability and quality of supports outside the NDIS.

4.1.3.2 Expected impact on NDIS providers and the market

More substantial changes to NDIS eligibility arrangements would negatively impact NDIS providers, through less demand for their services. Some NDIS providers may choose to exit the market or start or explore increasing the delivery of services in other care sectors.

4.1.3.3 Expected impact on government

This option would put more pressure on other support systems, including demand-driven programs, to support people with disability no longer eligible for the NDIS. The fiscal impact for government would depend on the long-term cost of supporting more people outside the NDIS, noting the risk that if supports are inadequate some people may seek to enter (or re-enter) the NDIS at a higher cost.

4.1.4 Option 4: More substantial changes to NDIS supports

4.1.4.1 Expected impact on NDIS participants

Applying a broadscale reduction in budgets would impact all participants. The modelling for this option was not undertaken beyond an initial cost impact. Broadscale reductions have differential impacts where participants have high plan utilisation rates. Where participants have lower utilisation rates, percentage reductions have a lesser impact, noting that utilisation does not always directly correspond to demand, particularly in areas where there are thin markets.

4.1.4.2 Expected impact on NDIS providers and the market

Reductions in support budgets would suppress demand for these services and may have a negative impact on NDIS providers. This option is likely to heighten provider viability risks, drive market exits, and disrupt the disability support workforce. Continued provider withdrawal from particular regions or service types would further concentrate thin markets, reducing participant access to supports where they live. Reduced funding in participant plans would also place downward pressure on the workforce, with employment funded through the NDIS potentially declining. Many workers rely on employment across multiple providers

to maintain sufficient income levels,[168] and may be faced with a smaller pool of providers to work for.

4.1.4.3 Expected impact on government

This option would put pressure on other support systems, including those funded by government, to provide supports no longer funded by the NDIS. The fiscal impact for government would depend on the long-term cost of providing more supports outside the NDIS, noting the risk that if supports are inadequate some people may need additional NDIS supports at a later date and potentially at a higher cost.

4.2 Plan management reforms

4.2.1 Option 1: Status Quo

4.2.1.1 Expected impact on NDIS participants

Without changes to the existing plan management market there would continue to be instances of inconsistent and low-quality service offerings, as well as unscrupulous providers. This would impact participants as some plan managers would continue to:

a. Fail to support participants to manage their plans effectively, including leaving participants without adequate supports, depletion of funds and misuse of funds.
b. Demonstrate sharp practices such as inducements to change providers, refusing to release funds when participants wanted to change plan managers, and automatic service rollovers without participant consent.
c. Be incentivised by conflicts of interest, such as also providing support coordination, downstream services or providing a range of services to a sole participant (for example support coordination and core supports), rather than participant outcomes.
d. Have poor or no complaints handling and communication.

4.2.1.2 Expected impact on the plan management market

The NDIA has estimated that around 90 per cent of plan management providers who service fewer than 100 participants show significant indicators of potential fraud or non-compliance.[169]

[168] Labour Account Australia, December 2025 | Australian Bureau of Statistics

[169] Australian Senate (2024), Senate Estimates – Community Affairs Legislation Committee - 3 June 2024 , p.126

Without changes, the plan management market would continue with some providers with unscrupulous and fraudulent motives, poor quality, variable services and capability, limited quality controls and weak mechanisms and conflicts of interest.

Roughly a quarter of the market would continue to be small, low-capability providers.[170] Many of whom are inactive or marginally active, and who are more likely to show significant indicators of fraud.

4.2.1.3 Expected impact on other NDIS providers

NDIS providers would continue to experience instances of improper invoicing, complaints management, and payment integrity issues such as non-payments, wrong payments, late payments and over-payments.

4.2.1.4 Expected impact on government

The NDIA would continue to incur significant costs for payments to plan managers. Plan management fees made up $646 million of total payments in the 12 months to 31 December 2025.[171]

If the current settings do not change, the NDIA would continue to face significant losses due to fraudulent practices and payment integrity failures driven by unscrupulous or poor-quality plan managers. Without reform, these patterns are likely to persist, undermining Scheme integrity, exposing participants to harm and increasing financial losses to the NDIS.

4.2.2 Option 2: Plan management panel

4.2.2.1 Expected impact on NDIS participants

Under this option, plan managed participants would receive more consistent and higher quality services from their plan management provider.

Some participants would continue to access plan management services through their existing plan management provider, if their plan management provider was successfully chosen to be part of the NDIA-commissioned panel. Other participants would be required to transition to a new plan management provider on the NDIA-commissioned panel.

There would be a 6-month transition period for participants after the panel was implemented. During the transition period, participants could continue to access plan

[170] NDIA, Internal analysis to support the 2025-26 Annual Price Review, unpublished. Note: Small providers are defined as those servicing 10 or fewer NDIS participants in the 6 months to 31 December 2025.

[171] NDIA (2026), Supplement E to NDIS Quarterly Report for Quarter 2 of 2025-26, Tables E.115 and E.116

management services from their existing plan management provider, even if the plan management provider was not chosen to be part of the NDIA-commissioned panel.

Some participants could initially react negatively to having to change plan management providers. Participants who are required to transition to a new plan management provider would need to select a new plan management provider from the NDIA-commissioned panel. The NDIA would support these participants to be onboarded to a new plan management provider. It is assumed that transitioning to a new plan management provider would require up to 3 hours of effort per participant. Using the OIA's non-work-related labour cost of $37/hour, the regulatory burden on individuals is $27.8 million.

4.2.2.2 Expected impact on the plan management market

This option would benefit plan management providers who are selected to join the NDIA-commissioned panel. Whilst these providers will benefit, it is to be noted that for selected providers who are a part of the commissioned model, there will be additional regulatory requirements (and associated costs). These providers would likely benefit through:

a. More restrictive market entry conditions, with all plan-managed participants having to choose between a smaller number of plan managers. This would support economies of scale and operational efficiencies.
b. Clearer service offering and performance expectations.

Under this option, there would be significant contraction of the current market of approximately 1,400 are active providers who have made a claim in the most recent financial quarter,[172] many of whom no longer being eligible to provide plan management services.

It is estimated that a number of plan management provider businesses may close as a result of this option. The majority of plan management providers would be expected to exit the plan management market but may continue to deliver other disability services and therefore continue business operations. This would remove conflict There would likely be market consolidation prior to and during the panel's implementation.

Plan management providers on the NDIA panel will be ineligible to provide other NDIS services. This will minimise conflicts of interest and reduce fraud.

The exiting of plan management providers from the market could likely result in job losses for workers at providers who were not selected to be on the NDIA's plan management provider panel. Some workers at plan management providers who exit the market may be able to be employed by other plan management providers on the panel.

[172] NDIA, Quarterly Report to Disability Ministers for Q2 2025-26, pages 68-69

There would also be administrative costs associated with complying with and reporting on aspects of the panel conditions for successful plan managers. This may include attending regular contract management meetings and producing performance and integrity reports. The regulatory burden cost is estimated to be $1.5 million total. These costs would not be passed on to participants as the price for plan management services would continue to be set by the NDIA.

4.2.2.3 Expected impact on NDIS providers

There would be a minor impact for NDIS service providers who would need to send invoices to new plan managers, as participants transition between exiting plan managers and panel members.

Support coordinators and other relevant intermediaries would be expected to support participants to transition from an exiting plan management provider to a provider on the NDIA-commissioned panel. This support is part of their usual service offering.

Plan management functions are distinct and separate from support coordination functions. Currently, a number of providers deliver both plan management and support coordination services. While commissioning of plan management and support coordination services will occur through separate processes, the NDIA would consider synergies where appropriate.

The expected regulatory burden costs of this option are outlined as follows.

FIGURE 14: AVERAGE ANNUAL REGULATORY COSTS (FROM BUSINESS AS USUAL) FOR A COMMISSIONED PLAN MANAGEMENT PANEL MARKET

Change in costs ($ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	$1.5	$0	$27.8	$29.3

4.2.2.4 Expected impact on government

There is an anticipated reduction in Scheme costs under this option. The NDIA expects that total plan management fees could be reduced, as the NDIA would be able to negotiate or set lower prices for panel members who would benefit from greater economies of scale.

Other savings to the Scheme may be achieved through improved integrity and reduction in fraud and error by eliminating unscrupulous and poor-quality plan managers and data sharing intelligence. A higher-quality plan management market would result in greater value of noncompliant claims from being processed by the NDIA. There would be reduced regulatory and compliance enforcement costs for the NDIS Commission due to a smaller plan management market. There would be staffing and administrative costs for the NDIA to implement the plan management panel.

4.2.3 Option 3: Abolish the plan management market

4.2.3.1 Expected impact on participants

Shifting plan management functions to the NDIA is likely to improve participants' experience in receiving a consistent and simplified service. Exploitative and sharp practices from the plan management market and NDIS providers would be reduced significantly. The NDIS Review suggested that this option has the greatest potential to reduce fraud.

Participants would have reduced choice of plan manager. All plan managed participants would have to transition to a plan manager who is on the commissioned panel, or change plan management method to be agency or self-managed. The NDIA would need to invest in significant support to manage this change.

It is assumed that transition activities – similar to those described in Option 2 – would require 3 hours of effort per participant.

4.2.3.2 Expected impact on the plan management market

The impact on the plan management market would be significant. Approximately 1,400 active plan management providers,[173] would no longer be eligible to deliver plan management services.

People currently employed in the provision of plan management services would be impacted, although many of these workers also deliver other NDIS services. Under this option, the NDIA could seek to hire from this cohort as the NDIA scales up in-house plan management services.

4.2.3.3 Expected impact on other NDIS providers

While there would be an initial impact on other NDIS service providers as they adjust to new invoicing processes, they would experience a more consistent and higher quality claiming experience.

Support coordinators and other relevant intermediaries would be expected to support participants to transition from a plan management provider to an NDIA-managed function.

4.2.3.4 Expected impact on government

The NDIS would require significant investment in systems and technology, workforce, change management and legislative change to support the transition of additional

[173] NDIA, Quarterly Report to Disability Ministers for Q2 2025-26, pages 68-69

participants to an Agency managed approach. This cost is unknown but expected to be higher than option 2 in the short-medium term.

Following full implementation, it is expected that longer term costs to government would likely be lower than status quo.

The NDIS would benefit from significant economies of scale, and costs to deliver the plan management function would likely be less than the current fees paid to plan management providers. However, a significant NDIA workforce would likely be required under this option.

Enhanced claim and payment controls would reduce fraud-related leakages from Scheme costs. The NDIS Commission would no longer be required to register or regulate plan management providers.

4.3 Support coordination reforms

4.3.1 Option 1 – Status Quo

4.3.1.1 Expected impact on participants

Some participants would continue to access inconsistent and poor quality support coordination services due to the continuation of issues identified in the current market.[174] The need for effective navigation-type services delivered by support coordinators will increase due to significant system change caused by other disability reforms. This includes the introduction of flexible budgets through NFP reforms and the rollout of Thriving Kids.

These risks are likely to continue and include risks to the wellbeing and safety of people with disability. This may result in participants who experience complex needs and barriers to navigation being disproportionately disadvantaged as NFP reforms roll out. This is due to the high level of choice and self-navigation likely to be required, with variations in participants' capability. This option would have minimal impact on existing challenges people with disability experience when looking for services.

4.3.1.2 Expected impact on the support coordination market

If support coordination is not reformed, the existing provider market would remain difficult to manage, with inconsistent quality and weak safeguards. Unregistered providers would continue operating without clear expectations, accountability or consistent oversight, with high risk of poor practice and variable participant outcomes.

[174] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 100

4.3.1.3 Expected impact on other NDIS providers

There would be minimal impacts on other NDIS providers. In the absence of reforms to increase role clarity, support coordination would likely continue to be poorly understood and inconsistently provided, duplicating other functions and with limited oversight and accountability.

4.3.1.4 Expected impact on Government

This option would not result in any direct savings in the Scheme and fail to address existing service quality and integrity issues. In the absence of changes to existing arrangements, government will need to manage high levels of reform risk and risks to the safety and wellbeing of people with disability.

4.3.2 Option 2 – light touch reform to existing support coordination market

4.3.2.1 Expected impact on participants

Participants may experience an increase in the quality of support coordination services as a result of providers being registered. Some participants may experience service disruption and the need to find new support coordinators if mandatory registration results in some providers exiting the market.

4.3.2.2 Expected impact on the support coordination market

There are approximately 10,000 support coordination providers in the current market.[175] Providers would be required to register, which is a significant change to the current market. This may result in a consolidation of the support coordination market, including some potential provider exits. There would be some improvements in the quality and safety of support coordination services delivered by the market, but key issues around market inefficiency and integrity would not be addressed.

The expected regulatory burden costs of this option are outlined as follows. This includes an estimated $2,738,024 administrative costs, $134,734 in substantive compliance costs and $67,367 in delay costs. A range of assumptions have been incorporated in the estimated regulatory costs in the table above. This includes that proposed changes will have no direct regulatory impact on participants or the community. The model also assumes the reforms will be applied to the existing market, so the impact of regulatory burden changes has been

[175] NDIA (2026), Quarterly Report Supplement E National 2025-26 (Q2), Table E.95

identified for existing providers in the system to become registered using the certification and audit process. Inputs used to model regulatory costs could also change over time.

FIGURE 15: AVERAGE ANNUAL REGULATORY COSTS (FROM BUSINESS AS USUAL) FOR MANDATORY REGISTRATION OF SUPPORT COORDINATION

Change in costs ($ million)	Business	Community organisations	Individuals	Total change in costs
Total, by sector	$2.94	$0	$0	$2.94

4.3.2.3 Expected impact on other NDIS providers

There would be minimal impacts on NDIS service providers. In the absence of reforms to increase role clarity, support coordination would likely continue to be poorly understood and inconsistently provided, duplicating other functions and with limited oversight and accountability.

Plan management functions are distinct and separate from support coordination functions. A number of providers deliver both plan management and support coordination services. While commissioning of plan management and support coordination services will occur through separate processes, the NDIA would consider synergies where appropriate.

4.3.2.4 Expected impact on Government

The Australian Government would likely face calls to increase support coordination prices in response to registration requirements. Should this not occur there may be market exits and reduced support coordination claims and payments (and potential cost savings). While registration would help increase government oversight to improve service quality, it would not fully address underlying market efficiency and integrity issues. In the absence of changes to existing arrangements, it is likely that the Australian Government will need to manage high levels of reform risk and risks to the safety and wellbeing of people with disability.

4.3.3 Option 3 – Commission a new support coordination and connection service with capped program expenditure

4.3.3.1 Expected impact on participants

This option would deliver better user experience and outcomes for participants.

Its anticipated impacts include transition to a new service for many participants. In the near term, it would involve some disruption to participants who currently access support coordination. This includes the potential need for some to find new providers due to providers exiting the market. In the longer term, it is intended to deliver higher quality and

greater consistency of service, particularly for those participants with more intensive coordination and connection needs.

The proposed timing of this option aims to minimise disruption to participants during the transition phase of NFP reform.

A range of decisions about the working model will be required during implementation, and this will shape future-state impacts on participants. For example, the level of support people receive under a new commissioned service to ensure it is matched to their level of need. This will likely involve trade-offs across service intensity and scope so that people with more complex needs receive the right support within the program capped funding constraints. Decisions about trade-offs would be informed by further analysis of commissioning processes, market readiness and cost benefits.

In a future state, the new support coordination and connection service would enable participants to better manage their more flexible budgets introduced under NFP reforms.

4.3.3.2 Expected impact on the support coordination market

This option would create significant change to the support coordination market and functions. A new commissioned service would be established that improves market integrity and oversight, addressing systemic issues with the current market. It is also likely to reshape the support coordination market, including the possibility of new entrants and the exit of a significant number of existing support coordination providers. Providers engaged through the commissioned service may have additional compliance and reporting obligations.

4.3.3.3 Expected impact on other NDIS providers

This option would provide the opportunity to merge duplicative functions currently delivered by support coordinators and partners in the community. This would have implications for how partner services are delivered in the future. Any potential opportunities to reform partner functions, including in the context of support coordination reform, is subject to Australian Government consideration.

4.3.3.4 Expected impact on Government

Implementing a commissioned support coordination and connection service makes it possible to guarantee a reduced funding envelope and commensurate savings for government. Under the current model, payments for support coordination are demand driven and have no cost control mechanisms, apart from the setting and allocation of budgets by the NDIA in the planning process. A commissioned service increases oversight and control of the service budget.

Introduction of a new high quality support coordination and connection service would make it easier for people with disability to find the right supports they need, when they need them.

This option would also support the broader rollout of other disability reforms, including connecting participants to supports deemed effective and beneficial under the clarification of 'reasonable and necessary' and planning supports under more flexible budgets under the NFP. It is likely this direction of reform would involve a higher degree of government control and oversight of market outcomes compared to the current state, including consideration of workforce skills and capability. This option would also incur implementation costs, including resourcing, to implement.

4.3.4 Option 4 – Commission a new support coordination service with a tighter cap on program expenditure

4.3.4.1 Expected impact on participants

This option would deliver better user experience and outcomes for participants. It would involve some disruption to participants who currently access support coordination. This includes the potential need for some to find new providers due to providers exiting the market. Timing of this option would also minimise disruption to participants during the initial transition phase of NFP reform.

The tighter cap on funding to deliver a new commissioned service would require a tradeoff in the number of participants who could access the new service. This would likely result in a significant reduction in the number of participants who can access support coordination services. The resulting unmet need could result in participants experiencing challenges due to lack of adequate support to help manage their flexible budgets. It would also exacerbate broader challenges experienced by people with disability when trying to find services.

4.3.4.2 Expected impact on the support coordination market

This option would create significant change to the support coordination market and functions. A new commissioned service would be established that improves market integrity and oversight, addressing systemic issues in the current market.

This option is likely to result in a consolidation of the support coordination market, including the exit of a significant number of support coordination providers. Providers engaged through the commissioned service may have additional compliance and reporting obligations. The tighter cap on funding available to deliver the new service may raise viability concerns for providers who would be commissioned to deliver this service.

4.3.4.3 Expected impact on other NDIS providers

This option would provide the opportunity to merge duplicative functions currently delivered by support coordinators and partners in the community. This would have implications for how partner services are delivered in the future. Any potential opportunities to reform

partner functions, including in the context of support coordination reform, is subject to Australian Government consideration.

4.3.4.4 Expected impact on Government

This option would provide the greatest savings for government. These savings may be undermined in the long term due to the potential adverse impacts on some participants and sector viability. There may also be some additional costs to government required to implement this option, subject to any further design work and government considerations.

This option would support the rollout of NFP reform. However, significant cost constraints would limit the ability of providers to recruit the skilled workforce required to connect participants to providers of effective and beneficial supports under the new definition of reasonable and necessary. This direction of reform would involve a higher degree of government control and oversight of market outcomes compared to the current state. This option would also incur implementation costs, including resourcing, to implement.

5. Consultation

5.1 Introduction

Extensive consultation with people with disability, their families and the disability community informed the NDIS Review. The review considered 3,976 submissions to provide a set of recommendations to: put people with disability back at the centre of the NDIS; restore trust confidence and pride in the NDIS; and ensure sustainability of the NDIS for future generations. The reforms canvassed in this Impact Analysis relies on consultation from the NDIS Review and the detail below reflects the thoughts and sentiments of the thousands of people who contributed to the Review.

The NDIS Review had an extensive approach to consultation, including a combination of the following:

- Communication platforms and submission process.
- Webinars, roundtables, workshops and small meetings in person, over the phone and online.
- Partnering with organisations to hold workshops, meetings and focus groups.
- Interviews and focus group sessions with sector and technical experts.
- Participatory engagement with people with lived experience.
- Engagement with state and territory governments.

The NDIS Review undertook a multi-stage approach to working with NDIS stakeholders, with a specific focus on ensuring that NDIS participants had opportunities to contribute. The review team spoke to more than 1,000 people with a disability, representing 2,000 hours of direct engagement.[176] Disability Representative Organisations also contributed both their expertise and ensured that systemic barriers to participation were addressed in their engagement with NDIS participants and other people with disabilities. Twenty-six ideas testing sessions followed initial engagement work, to support the design of recommendations. This means that the recommendations of the NDIS Review took into account the views of those consulted and went further to test recommendations with stakeholders. It is difficult, therefore, to articulate how the consultation shaped the final recommendations of the NDIS Review specifically as contested ideas have not been published but resolved as part of the two-stage consultation. Published material from these consultations is referenced in the NDIS Review Final Report as well as in the reporting of consultation feedback by the NDIS Review.

[176] NDIS Review (2023), A guide for people with disability and their families, page 5

The NDIS Review considered the entire disability support eco-system in its scope, and made recommendations based on feedback from the community that the accessibility and appropriateness of supports outside the NDIS was critical to the reform agenda ahead. This Impact Analysis considers a narrower range of reforms to the NDIS, which are interconnected with the broader eco-system development, despite being presented somewhat separately here. Nevertheless, findings and consultation outcomes of the NDIS Review have been considered in the development of these options. So too has the further consultation findings of the NDIA and the Department in the ongoing development of reforms, including consultation on Thriving Kids, intermediary navigation-like supports, and legislative changes for access and supports.

Consultation has also occurred between the Australian Government and the states and territories, resulting in commitments made by National Cabinet. This has included commitments to the *NDIS Financial Sustainability Framework* in 2023 and the 5 to 6 per cent, or lower, annual growth target in 2026.

Reform has also considered findings from other recent consultation processes, where relevant. This includes the parliamentary inquiry into Thriving Kids, which received 404 submissions, 19 supplementary submissions, 1,194 survey responses and held 7 days of public hearings. It also includes findings from the Thriving Kids Advisory Group, which engaged with 68 stakeholders over 6 in-depth workshops as part of their consultation process.

Further consultation will be undertaken to support reform design. This will also include consultation with people with disability and their families, carers and advocates that will be focused on listening to feedback, testing proposed rules and processes, and sharing information about transitions as it becomes available. This ongoing consultation and engagement on NDIS reforms will occur with the:

- Disability Reform Ministerial Council.
- NDIS Reform Advisory Committee.
- Disability Representative Organisations.
- NDIS Evidence Advisory Committee.
- Industry Chief Executive Forum.
- Independent Advisory Council.

The below table provides indicative timeframes of planned consultation for measures in the Securing the NDIS for future generations Bill.

Timeframe	Measure
1 July 2026	Consultation/market readiness testing begins on: • design of a commissioning approach for home and living supports for SIL participants who need 24/7 support to ensure participants receive the best supports and address provider viability challenges • expanding differentiated pricing for unregistered providers • design of the Inclusive Communities Fund and market reforms for social and community participation and capacity building activities to ensure genuinely inclusive activities are available in the market
Early August 2026	Consultation begins on: • updated New Framework Planning rules • new eligibility assessment process to determine access to the Scheme
31 August 2026	Consultation concludes for: • expanding differentiated pricing for unregistered providers • design of the Inclusive Communities Fund
30 September 2026	Consultation concludes for: • updated New Framework Planning rules[177] • new eligibility assessment process to determine access to the Scheme
31 October 2026	Consultation concludes for: • **commissioning SIL** • **market reforms for social and community participation and capacity building activities**

Not all of the measures included in this table are detailed in this Impact Analysis, but have been included for a holistic view of the whole package of proposed reforms. Figures in bold are those detailed in this Impact Analysis.

The consultation feedback below gives a sense of how interconnected NDIS supports and access are to people's experience in communities and with mainstream systems. The

[177] Noting significant consultation on New Framework Planning has already been undertaken.

Government is committed to consulting with the States and disability community on long-term, structural reforms.

5.2 Proposals impacting access

5.2.1 Access changes

The NDIS Review had an action (action 3.9) for the Australian Government to consider updating and clarifying legislation to support a more effective approach to determining access. This included strengthening the operation of the permanence criteria when considering access and eligibility to the Scheme. Submissions to the NDIS review heard that the current process for requesting eligibility is cumbersome, unclear and difficult to navigate. This is in addition to outcomes being inconsistent and inequitable. The review included the following, highlighting these challenges:

> "I have been unable to access the NDIS because the application process is so horrible to engage with... The NDIS needs to serve all disabled people, not just those who can work the system" – person with disability
>
> "Current forms are cumbersome and inefficiently designed, with an emphasis on the requirement for the use of correct phrasing to obtain approvals" – Royal Australian College of General Practitioners
>
> "Specialists are not trained in completing NDIS Access Request Forms... and nor should they have to be…" – carer

Further consultation on the impact of changes to access and eligibility criteria to establish a definition of substantially reduced functional capacity will be undertaken through the establishment of a Technical Advisory Group (TAG).

Consultation on the new eligibility assessment process based on functional capacity will commence from August 2026. The Australian Government will consider the advice and work with state and territory governments in establishing a threshold for substantially reduced functional capacity that will be used to determine eligibility for the Scheme.

Proposals to tighten the assessment of eligibility to the Scheme based on permanence and access to other service systems will be of heightened interest. This is due access being limited for people with conditions and/or access to other systems that some other people have been granted access for prior to implementation of these changes.

5.2.2 Limit access based on other service systems and based on permanence

Limiting access based on access to other service systems, and based on permanence are two separate proposals in this package of reform. These are both proposed to be enacted through the passage of legislation, to become effective from January 2028.

The original report of the Productivity Commission on the establishment of the NDIS envisaged that mainstream service systems, such as health, ageing, state and territory compensation schemes, and other systems would remain playing a key role in supporting people with disability, and that the NDIS would not replace but rather complement these systems. The NDIS review found that participants and providers alike find the interfaces between the NDIS and these other systems confusing and hard to navigate. By limiting access to the NDIS based on access to other service systems (like compensation schemes delivered by the states and territories), participants, providers and the broader disability community in Australia will be clearer on who the NDIS is responsible for supporting.

The supporting analysis of the NDIS review found that the 2022 Federal Court decision in *National Disability Insurance Agency v Davis* is likely to have significant implications for the permanence eligibility criteria. Currently, an applicant is required to have an impairment(s) that is, or is likely to be, permanent. This has led to unclear boundaries between people who are best supported by the NDIS, and those who should be supported by other mainstream service systems, like the health system. The NDIS Review found that the relationship between the NDIS and the health system remains ambiguous.

Under the APTOS, state and territory health systems are currently responsible for early intervention and treatment of chronic health conditions. By clarifying the definition of permanence and ensuring that only people with both significant and permanent disability are eligible for the NDIS, participants (prospective and existing), the disability community, providers and broader community in Australia will become clearer on who is eligible for the NDIS.

This change will not become effective until January 2028, which will allow all stakeholders across the community to prepare for the change.

5.2.3 Access reforms to support the rollout of Thriving Kids

The NDIS Review consulted extensively with people with disability, their families, and the disability community.

The review heard there are limited supports focused on early intervention, prevention or low intensity support needs for people with disability outside the NDIS, including children with emerging developmental concerns.

Consistent with this, the review found that the lack of accessible, affordable foundational supports has turned the NDIS into an “oasis in a desert”, increasing inequity between those inside and outside the Scheme and pushing people to seek NDIS access because there is “nowhere else to go”.

A lack of supports outside the NDIS for children with developmental concerns, or disabilities, was identified by the review as a key gap in the broader disability ecosystem.
The Australian Government has reached agreement with states and territories to invest

$10 billion into foundational supports outside the Scheme. As a first step, states and territories have agreed on the Thriving Kids National Model, which will support children aged 8 and under with developmental delay and/or autism with low to moderate support needs.

To support the rollout of Thriving Kids, the Australian Government and all state and territory governments have agreed in principle to change NDIS access arrangements for children. The details of these arrangements are subject to further agreement between the Australian and state and territory governments.

It should be noted that the NDIS Review explicitly acknowledged that changes to access will be needed to support the rollout of foundational supports stating "Changes to access and budget setting processes for children and young people should only be implemented once widespread foundational supports are in place".[178] The proposed changes to NDIS eligibility to support Thriving Kids are intended to commence on 1 January 2028 once the full rollout of Thriving Kids has been completed – in-line with the review.

5.3 Proposals impacting plan reassessments and budget setting

5.3.1 Limiting unscheduled reassessments

The NDIS Review recommended that reassessments should be scheduled to align with key life transition points where relevant.[179] The 2023 review and other key reviews into the NDIS (for example, the Tune Review) have heard that participants do not want or need to hear from the NDIA unless they are requiring support, or need a change to the supports they are receiving. A more consistently applied reassessment process will assist in addressing issues observed by the NDIS Review in relation to the planning cycle and resource allocation:

> People also do not trust the NDIA to respond in a timely or adequate way if circumstances change.[180]

Confidence in plan reassessments being available for significant change is one component. The link between unscheduled reassessments and plan inflation also contributes to rising budgets. Overall, the use of reassessments to increase plan values is expected to reduce. It is

[178] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 41

[179] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 93

[180] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 31

important that this change is clearly articulated and that the NDIA continues to support participants and manage individual risks and changes of circumstances as they arise.

5.3.2 Resetting budgets in old framework plans (SCCP and CBDA)

This level of support does not always correspond with better outcomes, and has led to community programs funded outside of the NDIS becoming less available.

The reforms announced in the 2026-27 Budget include a decision to reduce the funding levels of two categories of support, SCCP and CBDA, as well as an investment of $200 million to build community capability in inclusion. This is proposed in response to the need to reduce the volume of supports in order to preserve the sustainability of the NDIS. It also responds to the concern expressed by the NDIS Review that:

> Community supports for all people with disability, as originally proposed, have not been delivered. As a result, the NDIS has become an oasis in the desert. This has had a significant impact on the cost of the scheme. It has also left people who are not in the NDIS without support. This is deeply unfair.[181]

Focusing on what is reasonable and necessary to expect the NDIS to fund connects with repeated concerns that the idea of NDIS as an 'oasis in the desert'. The review found that the inconsistency of application of reasonable and necessary was causing inconsistent planning decisions, which in turn have seen SCCP and CBDA funding be provided at much greater volumes than would be considered reasonable.

Resetting participant's support budgets in old framework plans is likely to cause a high level of concern amongst the disability community. It is important that the mitigating effect of plan utilisation on budget reductions is communicated, as well as the misalignment with other social care systems where evidence based benchmarking exists.[182]

This measure should not be considered to have undergone specific consultation to date.

5.3.3 Reasonable and necessary changes

Consultation conducted throughout the NDIS Review found that participants found it difficult to understand what supports are considered reasonable and necessary or how the NDIA applies it when making decisions for old framework planning.

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[181] NDIS Review (2023), What we have heard: Moving from defining problems to designing solutions to build a better NDIS, page 3

[182] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 262

> "Arbitrary rules - what is reasonable and necessary to me is not the same as it is to my planner… Being told a service is not reasonable and necessary by your planner but knowing someone (whom is in the exact same situation) else's planner has approved it." – Participant [183]

Greater clarity for participants and planners about the definition of reasonable and necessary will create more consistent decisions on the type and amount of supports that the NDIS will provide. While providing greater clarity on what is considered to be a reasonable and necessary supports was a recommendation of the NDIS Review[184], this measure was not the topic of specific consultation.

5.4 Commissioning plan management, support coordination and home and living supports

Plan management and support coordination reform has been informed by findings from the NDIS Review, including recommendations 4 and 10. It was also informed by the following consultations and reviews:

- The NDIS Quality and Safeguards Commission own motion inquiry into support coordination and plan management (2023).
- The Disability Royal Commission final report (2023) including recommendations 9.4, 10.2, 10.3 & 10.4.
- The Tier 2 Tipping Point research report (2022).
- The IAC supporting LACs to be LACs (2021).
- The Tune Review (2019) including recommendations 3 & 16.
- The IAC Support coordination paper (2018).

As part of these processes, the Australian Government conducted intensive engagement with the disability sector.

5.4.1 Addressing quality, integrity and fraud

Recent reviews and consultations have highlighted issues with integrity of the plan management and support coordination markets. This includes issues around service quality, sharp practice, fraudulent behaviour and conflicts of interest. The NDIS Quality and

[183] NDIS Review (2023), What we have heard: Moving from defining problems to designing solutions to build a better NDIS, page 10-11

[184] NDIS Review (2023), Final Report - Working together to deliver the NDIS, page 92

Safeguards Commission's Own Motion Inquiry in 2023 identified the need to strengthen regulatory action and market stewardship to respond to poor quality plan management and support coordination services. In the context of the NDIS, market stewardship is the role of government in shaping and overseeing how markets operate to ensure they deliver good public outcomes over time, such as access, quality, equity and sustainability and in responding when markets are not working as intended.

The Disability Royal Commission recommended making it clearer that it is not appropriate for support coordination providers to be the provider of any other funded supports in a participant's plan. It also recommended work be undertaken to improve the quality and consistency of support coordination services, with a specific focus on participants with intersectional and complex needs. For example, participants living in remote and very remote locations, First Nations and Culturally and Linguistically Diverse people with disability, and people with disability experiencing housing insecurity or homelessness.

These findings informed direction on opportunities to improve government oversight of the plan management and support coordination markets to address quality and integrity issues. Findings will also continue to inform detailed design of plan management and support coordination reform, including how commissioning approaches can ensure service quality and minimise conflicts of interest. It will also inform how detailed service design will better meet the needs of participants with intersectional and complex needs.

5.4.2 Plan management reform

Recent reviews have identified quality concerns related to smaller plan management providers. The NDIS Review and the NDIS Commission's Own Motion Inquiry into Support Coordination and Plan Management found:

- Inconsistent quality and standards of plan management services and systems
- Low barriers to entry and insufficient oversight, resulting in conflicts of interests
- Fraud and poor governance
- Inconsistent provider integrity in supporting participants

Other recommended actions from recent reviews and inquiries have been implemented or could be implemented in the future. Consistent with the actions arising from the NDIS Commission's Own Motion Inquiry, plan managers have been required to register with the NDIS Commission. This has established a baseline of consistent practice. However, the size of the plan management market has limited the capacity of the NDIS Commission to effectively oversee this market segment.

The NDIS Review noted that transitioning to fully electronic payments would effectively remove the need for a plan management market. However, this would require significant investment and additional time to implement fully. System improvements have commenced

under Crack Down on Fraud Phase 1 and further improvements are proposed under Phase 2 investments.

The NDIS Review also recommended a clear transition path for existing plan managers. The NDIS Review noted the value of quality plan managers in supporting prevention, detection and response to non-compliance, sharp practice and fraud. The NDIS Review recommended signalling changes to the market to minimise disruptions, which the preferred reform model captures.

Finally, NDIA consumer surveys in 2024 identified that participants prioritise plan managers delivering process-related supports (processing invoices and providing budget support) and place less emphasis on plan managers delivering personalised services. Respondents considered that personalised services were beyond the scope of the plan manager's role and were the responsibility of other intermediaries (i.e. support coordinators and partners in the community).

Taken together, these findings suggest improving quality controls at the cost of personalisation would be acceptable to the plan management market.

5.4.3 Improving support coordination as a navigation-like service

The NDIS Review recommended supporting people with disability to better navigate mainstream and disability supports through commissioning a navigator function.

Subsequently the NDIA has undertaken a series of initial stakeholder engagement activities. In late 2024, a number of workshops occurred with intermediaries to identify current challenges with navigation-like services they deliver. From July 2025 to December 2025, the NDIA led a dedicated consultation and engagement process with over 370 stakeholders across more than 20 activities. This included co-design focus groups with participants, and workshops and consultations with disability sector organisations, peak bodies, advocacy groups and service providers.

Findings from recent reviews and consultations identified clear themes across the current state for support coordination and other intermediary navigation-like services. This included:

- Concerns about service complexity.
- Duplication and gaps in existing roles.
- Workforce challenges – particularly in regional, rural and remote areas.
- Provider exits driven by reform ambiguity.
- Challenges with service flexibility and responsiveness.

These co-design and engagement activities also enabled the NDIA to test initial ideas for reforming support coordination and other navigation-like intermediary functions. This included testing community and sector views on:

- Choice and control in a potential commissioned model.

- The value of geographically local versus a specialist workforce.
- Supported decision making and capacity building.
- Participant safeguarding.
- Dedicated pathways for First Nations peoples and children.

Initial engagement conducted by the NDIA also identified tensions between stakeholder expectations on workforce skills and capabilities, how the service could be delivered, and the overall scope of a reformed support coordination function (and other potential future intermediary functions delivering navigation-like support).

5.4.4 Commissioning home and living supports

The NDIS Review found that home and living decisions are inconsistent, inequitable and opaque. It reported that many participants with home and living supports have limited choice in where, how, or with whom they live. In addition to this, home and living supports are a high cost to the Scheme, and there are market challenges with some providers reporting that they are unable to remain viable.

Consultation on commissioning home and living supports will begin in July 2026. Consultation will seek to understand SIL market challenges faced by both participants and providers. Targeted consultation will hear from participants using SIL, their families and carers, SIL providers and industry representatives (including peak bodies and union representatives). Consultation will focus on the most effective model that balances participant needs and provider viability.

Consultation and design of SIL commissioning model will consider the impact of the commissioning of plan management and support coordination to ensure consistency.

6. Preferred options and implementation

Many of the options considered in this Impact Analysis are linked to the need for legislative reform. The passage of legislation introduced in the Winter Sitting will enable these proposed options to be implemented. This assumption underpins all the options considered and assessed.

6.1 Eligibility and support reforms

The preferred option for eligibility and support reforms is Option 2: A balanced approach of eligibility and support changes for the NDIS.

Option 2 is preferred as it is considered the most effective option with regard to meeting the objectives of the reforms, as outlined in Section 2 and rated in Section 4.

Option 2 would more effectively moderate annual Scheme cost growth than options 1, 3 and 4. The cost of the NDIS is determined by the number of participants in the Scheme and the cost per participant. Taking no action, as per option 1, would not moderate annual Scheme cost growth and would not assist in returning the Scheme to its original intent. Seeking to address only one of these cost determinants, as per options 3 and 4, would have a positive impact on moderating annual Scheme cost growth. However, by only focusing on eligibility or supports, options 3 and 4 would require reform that goes beyond returning the Scheme to its original intent to meet the growth target, and therefore have too great a negative impact on NDIS participants, as well as NDIS providers and the NDIS market.

The balanced approach of option 2 is considered optimal. It will most effectively moderate annual Scheme cost growth in line with returning the Scheme to its original intent. Importantly, it would do this without any additional adverse impact on NDIS participants or NDIS providers and the NDIS market in comparison to option 3 and 4.

Option 2 is therefore considered, on balance, to be the preferred option.

Option 2 presents an implementation risk as reform elements are subject to the passage of legislation through Parliament. The potential for amendments could delay or alter implementation. Some elements require work with states and territories to design Rules. It would also require changes to NDIA operational practices, which may impact implementation timeframes.

The Department will work with states and territories, the NDIA and the NDIS Quality and Safeguards Commission to set up monitoring and governance arrangements for implementation of the NDIS reforms announced in the 2026-27 Budget. This will need to include monitoring the implementation of individual elements, but also the reform package

as a whole. This will assist risks to not be realised, or their impact to be mitigated, where possible.

The table below includes an implementation timeline for all reforms included in the NDIS Reforms package announced in the 2026-27 Budget.

Implementation Timeline	Measure
7 days after Royal Assent of NDIS Amendment (Securing the NDIS for Future Generations) Bill	• **Tighter criteria for unscheduled plan reassessments begins** • Participants and providers have new requirements to retain records relating to NDIS claims • NDIA will have stronger compliance, enforcement and information-gathering powers to tackle fraud and non-compliance and respond faster to suspicious behaviour • The Minister for Disability and the NDIS will become the decision-maker on NDIS pricing
Mid-June 2026	• Technical Advisory Group established to provide advice on new eligibility assessment process based on functional capacity
1 July 2026	• Rollout of mandatory registration requirement begins for SIL and platform providers
1 October 2026	• Phased rollout of Thriving Kids supports begins, with children aged 8 and under with development delay and/or autism with low to moderate support needs and their families able to access supports outside the NDIS. • **Participant support budgets for social, civic and community participation supports and capacity building daily activities are progressively reset as plans are reassessed or renewed**
1 February 2027	• **Changes to plan rollovers begin for all participants** • **Tighter assessment of reasonable and necessary support for new entrants begins**
1 April 2027	• Participants start to transition to New Framework Planning
1 July 2027	• Rollout of expanded mandatory registration requirements for providers of higher risk activities like personal care, daily living supports, and supports provided in closed settings begins, with all providers in scope to be registered by December 2030

	• Rollout of new enrolment system with a minimum basic level of identifiable information on most NDIS providers begins, with all providers in scope to be enrolled by December 2027
1 October 2027	• **New panel of plan managers begins with 6-month transition period**

1 January 2028	• Access changes begin for new applicants with existing participants reassessed over 3 years:
	  ○ Eligibility determined based on a new standardised, evidence-based assessment of functional capacity as informed by the Technical Advisory Group
	  ○ More consistent assessment of permanence and whether an impairment can be alleviated or treated
	  ○ More consistent assessment of access to other compensation schemes.
	• Thriving Kids services are fully operational nationally.
	• Access changes for new applicants aged 0-8 eligible for Thriving Kids begin.

1 July 2028	• **New support coordination and connection function with commissioned services begins**
31 December 2030	• New Framework Planning transition period ends. All participants will have been transitioned to new framework plans

Not all of the measures included in this table are detailed in this Impact Analysis, but have been included for a holistic view of the whole package of proposed reforms. Measures in bold are those detailed in this Impact Analysis.

6.2 Plan management reforms

The preferred option for plan management reforms is Option 2 – establishing a commissioned panel of plan management providers.

The preferred option would have the greatest immediate benefits for NDIS participants, other NDIS service providers and government. It would improve the quality and consistency of plan management services, reduce the cost paid for plan management services, and exit poor and unscrupulous providers efficiently.

The preferred option would result in greater government savings over the short- to medium-term, and at a lower short-term cost, which aligns with the Australian Government's priority to ensure the sustainability of the NDIS.

The preferred option aligns with the NDIS Review's recommendation that work to enhance plan management providers' responsibility in protecting NDIS integrity should start immediately. The NDIS Review stated this work should then be refined as the NDIA's digital infrastructure and capability evolves.

Continuing with the status quo (Option 1) would result in continued Scheme losses due to fraudulent practices and payment integrity failures, which are driven by unscrupulous or poor-quality plan managers. This would negatively impact the Australian Government's priority to ensure the sustainability of the NDIS.

Option 3 could give the NDIA full control and oversight of all claims and payments to providers, and eliminate fees paid to plan management providers. However, the NDIA does not currently have the capacity or capability to onboard all plan managed participants. This would likely disrupt the service delivery of plan management services, leaving plan managed participants without support.

Option 3 would require significant investment in systems, technology, workforce, change management and legislative change in the short-medium term. While some of this investment is ongoing through the uplift of NDIS claims and payment systems, the initial cost to government would likely be higher than under the preferred option, and savings would unlikely be realised for 3-5 years. This option could be considered further once enhancements to NDIS claims and payments have been implemented.

6.3. Support coordination reform

The preferred option for support coordination reform is Option 3: commission a new support coordination service with capped funding. Option 3 is preferred as it has been assessed as having the greatest net benefits for NDIS participants, the sector and the Australian Government. This includes by addressing key issues around service quality, integrity and efficiency raised by the NDIS Review and other recent consultations. This would help achieve the intended objectives of collective NDIS reform outlined in Section 2.

Market readiness testing is required to inform the implementation design of a new support coordination and connection service. This, alongside insights from recent engagement with participants, the disability community and sector, would inform analysis of potential trade-offs across service intensity and scope so that people with more complex needs receive the right support within the program capped funding constraints. Detailed service design and implementation may have additional implications for the expected impacts of the new service. Any additional implications would be considered by the Australian Government, where appropriate, as part of the design and implementation process.

Under Option 3, the greatest number of participants would have access to high quality support coordination and connection services. This is because it would address key existing issues around service quality and integrity. This is unlike Options 1 and 2 (*do nothing* and

light touch reform), which do not address key issues and are likely to exacerbate current risks to the wellbeing and safety of participants as a result. Option 3 is expected to directly contribute to improving access to quality intermediary services for people with disability, a key objective of collective NDIS reform. By doing so, it is anticipated that Option 3 will help restore confidence in the Scheme and the services it delivers.

While Option 4 (*commission a new service with a tighter funding cap*) would address existing service issues, it is likely to significantly limit the number of participants who could access support coordination services in the future. This would undermine outcomes for participants who are unable to access support to find services or navigate their plan under NFP reform as a result. This, in turn, would likely impede key objectives of collective NDIS reform, including to ensure people with disability can access the supports they need.

Option 3 (and Option 4) would lead to the most significant change in the support coordination market. However, it is also expected to result in the greatest improvements to service quality and integrity by improving government oversight and control of services. This would help drive a more effective and efficient market. The current support coordination market (10,903 active providers as at 31 December 2025) would be consolidated as a result of reform. A competitive merit-based commissioning process would ensure the best organisations are selected to deliver this new service, who demonstrate the capability and capacity to deliver high quality services. The number of providers in a commissioned market would be influenced by detailed service design. Any opportunities to merge duplicative functions across other intermediary roles into a single, new service is subject to Australian Government consideration.

Option 1 would not result in any changes to the market, which would result in a continuation of current market issues including poor quality and unscrupulous providers. Option 2 may result in some improvement to service quality as a result of mandatory registration, however other systemic issues are likely to continue.

Option 3 would provide the greatest long-term savings to government through the delivery of a more effective, efficient support coordination and connection service. The cap on funding for the program's delivery would be a key driver of service efficiency. This is expected to support Scheme sustainability in the long-term by reducing growth in costs seen in current support coordination services.

Comparatively, Option 4 could provide greater savings in the short-term by implementing a greater funding cap on the new service. However, these savings are likely to be undermined in the medium to long-term due to the unmet need it would cause among participants. When people with disability cannot find and access the services they need, this can lead to poor outcomes. In some cases, this may include exacerbation of the challenges a person is experiencing and a need to access more intensive, higher cost supports in the long-term.

Options 1 and 2 would only result in minimal savings for government and fail to address key market issues that impact the wellbeing and safety of participants. As such, these options would have minimal to no contribution to key objectives of collective NDIS reform. This includes the objective to improve Scheme sustainability so the NDIS can support future generations.

7. Evaluation

7.1 Evaluation approach

The Department is developing an evaluation plan for the NDIS reforms announced in the 2026-27 Budget. This will include, but not be limited to, the reforms this Impact Analysis is focused on.

Given the degree of interdependence of its elements, evaluation of this package should not be confined to assessing individual reforms in isolation. Instead, it needs to consider the combined effects of the reforms operating together. Evaluation activity should focus on whether the reforms, taken as a whole, are achieving their shared objectives and managing trade-offs effectively.

The specific objectives of this reform package should be the central focus of evaluation in totality.

As outlined in Section 2, the objective of the reforms is consistent with the commitments made by National Cabinet on 30 January 2026. National Cabinet:

- "…acknowledged the need for continuing reforms to secure the future of the NDIS, ensuring it is sustainable and can continue to provide life changing support to future generations of Australians with disability."
- Agreed to "…undertake necessary reforms to achieve annual cost of 5 to 6 per cent, or lower".[185]

Specific reform objectives include:

- Slowing the growth of Scheme costs to a sustainable level (5 to 6 per cent, or lower).
- Ensuring the NDIS remains available to those with significant and permanent disability.
- Making eligibility requirements for the NDIS clearer, more consistent and equitable.
- Ensuring participants funding goes towards the supports they need most.
- Delivering quality services and support to participants.
- Ensuring intermediary functions consistently provide high-quality services to NDIS participants and other people with disability.
- Restoring confidence in the Scheme.

[185] Heads of Agreement on the National Health Reform Agreement, National Disability Insurance Scheme reforms and Foundational Supports

Success of the reforms will be determined by:

- Whether these measures directly and positively contribute toward meeting the annual growth target of the Scheme of 5 to 6 per cent, or lower.
- The consistency and accuracy of eligibility decisions.
- The quality of supports and services provided to participants.
- Improved integrity of the Scheme.
- Community support for the Scheme.

As noted in Section 2, the reforms included in this Impact Analysis are a subset of the NDIS reforms announced in the 2026-27 Budget. Measuring success therefore needs to look at the impact of the reforms as a whole in achieving the stated objectives.

To ensure successful and complete evaluation occurs, the Department will commence developing the evaluation approach and framework following announcement of the reforms in Budget 2026-27. This would assist in identifying data that needs to collected early in the reform timeline to establish a baseline, and put in place any measures necessary to collect this data. This would enable a more rigorous evaluation at the time it is conducted. The Department also intends to seek the advice of the Australian Centre for Evaluation as part of developing the evaluation approach.

7.2 Responsibilities, data collection and future decision points

The NDIA, as the Australian Government agency with administrative responsibility for the NDIS, is responsible for the delivery of this package of reforms and managing Scheme sustainability.

DHDA, as the Australian Government agency with policy lead for the NDIS, is responsible for policy development, legislation and engagement with states and territories.

The Department considers a full evaluation of the NDIS reforms announced in the 2026-27 Budget should be undertaken in the 2030-31 financial year, with an interim evaluation undertaken in 2028-29. The role of states and territories in the evaluation will need to be considered, along with whether the engagement of a third party to lead the evaluation is appropriate. The Department intends to seek the advice of the Australian Centre for Evaluation as part of formalising the evaluation approach.

Existing Scheme reporting and monitoring can be leveraged for evaluative purposes. The NDIS Act establishes the NDIA and confers statutory functions that require it to manage, monitor and report on the financial sustainability and operation of the Scheme, as well as collect and publish Scheme data.

In practice, this includes annual reporting, regular public reporting, and the publication of performance and outcomes data, including quarterly reporting to disability ministers.

These obligations are reinforced through the NDIA's status as an Australian Government entity under the Public Governance, Performance and Accountability Act 2013 (PGPA Act), which imposes mandatory planning, performance and accountability requirements to Parliament including annual reporting and budget-related accountability through Portfolio Budget Statements.

Some of the success determinants can be measured, at least in part, by proxies using existing data collection, surveys and reporting. This includes annual growth in the cost of the Scheme as published in or able to be derived from AFSR's and Budget publications, rates of participant employment and social and community participation, the characteristics of the cohort of eligible Scheme participants, participant satisfaction surveys, participant complaints, and regulatory data. Changes to social and community participation and capacity building budget levels can be measured through ongoing monitoring of average budget amounts, and through the utilisation rate of these supports.

The NDIS reforms announced in the 2026-27 Budget include strengthening the NDIA's investigative and enforcement capabilities, as well as improving how information is collected and monitored.

Other success measures require approaches more sensitive to sentiment. Proxy measures may be employed. Community support for the Scheme is a societal metric. It reflects whether the Scheme retains public confidence, legitimacy and social license. It goes beyond formal reporting frameworks and is inferred through several signals including complaints, appeals, media scrutiny and major reviews.

Evidence collected on the determinants of success will be used to inform the need for any further reforms to policy or operations, as well as inform an evaluation(s).

Australian Government
Department of Health, Disability and Ageing

Mandatory Registration of all National Disability Insurance Scheme (NDIS) Providers

Impact Analysis Equivalent

Prepared by the Department of Health, Disability and Ageing

Purpose of this document

This Supplementary Impact Analysis has been prepared by the Department of Health, Disability and Ageing (the department) to inform Australian Government decision-making on the **Mandatory Registration of National Disability Insurance Scheme (NDIS) Providers based on a risk proportionate model**.

This supplementary analysis complements the analysis undertaken by the *Independent Review into the National Disability Insurance Scheme* (NDIS Review), *the Provider and Worker Registration Taskforce Advice* (the Taskforce) and the recent '*Delivering quality care more efficiently'* Productivity Commission report.

The department is proposing the design and implementation of a **Graduated Risk-Proportionate Regulatory Model (GRPRM), excluding an in-house audit function for the NDIS Quality and Safeguards Commission** but to maintain the current externally approved quality auditors currently in place.

This report addresses the following aspects of the Impact Analysis Framework:

- Question 3: What policy options are you considering?
    - Explanation of cost-recovery licencing and regulatory framework elements.
- Question 4: What is the likely net benefit of each option?
    - Explanation of the net benefits in the cost-recovery licencing and regulatory framework elements.
- Question 5: Who did you consult and how did you incorporate their feedback?
- Question 6: What is the best option from those you have considered and how will it be implemented?
- Question 7: How will you evaluate your chosen option against the success metrics?

Background

The National Disability Insurance Scheme (NDIS or 'the Scheme') funds eligible people with disability to support greater independence and an improved quality of life.

Participants of the scheme (NDIS participants) use their funds to engage supports and services from NDIS providers. NDIS providers are therefore a critical point of contact for participants, alongside the National Disability Insurance Agency (NDIA) who administer the Scheme and the NDIS Quality and Safeguards Commission (NDIS Commission), who are the system regulator of the Scheme.

All NDIS providers are obliged to comply with the NDIS Code of Conduct. The NDIS Commission has the regulatory powers to intervene when providers breach their regulatory obligations. In the current regulatory framework, provider registration is only mandatory for the delivery of a few categories of support. While a number of NDIS providers have chosen to register with the NDIS Commission, the vast majority of providers have opted to provide services without undergoing registration. This has resulted in the NDIS Commission having limited visibility of the services delivered across many categories of support.

At present, only 7 per cent of over 260,000 NDIS providers are registered with the NDIS Commission,[186] meaning that the NDIS Commission does not have effective visibility of the market. It is unrealistic to expect a future provider registration model to encompass all 260,000 NDIS providers, as the vast majority of unregistered providers (under the current definition of NDIS provider in the NDIS Act) provide low cost, low risk and often one-off services. The NDIS Commission has incomplete visibility of providers of some higher risk supports, such as Supported Independent Living (SIL), though the Commission will move to require registration for providers of SIL from 1 July 2026. Other supports are delivered by a mix of registered and unregistered providers.

A registered provider has:

- applied for registration with the NDIS Commission
- been audited against the relevant NDIS Practice Standards and assessed as meeting them
- undergone a suitability assessment by the NDIS Commission (of both the provider and its key personnel),

[186] NDIA Quarterly report to disability ministers Q2 2025-26 Appendices Table D.20 , p.107

- been audited against the relevant NDIS Practice Standards and assessed as compliant, and
- been issued a certificate of registration.

Provider registration is a mechanism that provides the Australian Government via the NDIS Commission visibility of the NDIS provider market. NDIS providers are generally registered for three years. Details of registered NDIS providers are published on the NDIS Provider Register. By contrast, the details of unregistered providers are often not available to government, beyond the information available through reimbursement and payment data from the NDIA.

The *Independent Review into the NDIS* (NDIS Review) recommended government "*develop and deliver a risk-proportionate model for the visibility and regulation of all providers and workers and strengthen the regulatory response to long-standing and emerging quality and safeguards issues*."[187]

The NDIS Provider and Worker Registration Taskforce (the Taskforce) was established in February 2024 to provide advice on the design and implementation of a new Graduated Risk Proportionate Regulatory Model (GRPRM) proposed by the NDIS Review, in consultation with the disability community.

The Taskforce made 11 recommendations and 10 Implementation Actions for consideration by Government about how a regulatory model for NDIS provider registration might be designed, with consideration to these concerns and the ideas and feedback heard during consultation. This included recommendations to change the definition of an NDIS provider in the *National Disability Insurance Scheme Act 2013* (NDIS Act) and registering providers under risk-based categories. This is known as the **Graduated Risk-Proportionate Regulatory Model** and serves as the core element of our proposed solution for mandatory registration of all NDIS providers.

The options outlined in this policy proposal build upon the foundations of consultation and advice of the NDIS review, the NDIS Provider and Worker Registration Taskforce, as well as other reports such as the Disability Royal Commission final report.

[187] Independent Review into the NDIS (NDIS Review), p. 215

3. Policy Options

3.1 Option 1 – Graduated Risk-Proportionate Regulatory Model

This policy option would deliver a mandatory provider registration model building on the recommendations of the NDIS Provider and Worker Registration Taskforce.

There are five core elements to this model:

1. Design and delivery of three graduated risk-proportionate registration categories:
    - Advanced
    - General
    - Self-directed
2. Amendments to the definition of a NDIS Provider in the NDIS Act
3. Implementation of a regulatory framework
4. Cost-recovery mechanism embedded into provider registration fees and an agreed Charging Framework with the Department of Finance at a later date
5. A self-directed supports pilot program.

The implementation of a new risk-proportionate regulatory model, including mandatory registration for NDIS providers was one of the more publicised recommendations of the NDIS Review when it was made in December 2023. The NDIS Review proposed a new risk-based registration approach applying regulatory obligations to the highest risks supports and services while releasing lower risk supports and services from burdensome regulation.

This model was referred to the NDIS Provider and Worker Registration Taskforce which consulted widely to provide recommendations on how a new regulatory model could be implemented in a way which also upholds the rights of NDIS participants to choice and control. The model in this proposal is based on the Taskforce Advice, which was made public in August 2024. The Taskforce stated the framework provided in the NDIS Review was a useful framework for understanding risk, however recommended the addition of a self-directed supports registration category and amending the definition of a provider to refine its scope removing the need to enrol the large number of remaining unregistered providers. Instead, visibility of these providers would be made available through an improved payment system for NDIS supports.

Amending the definition would address the current issue as outlined in the status quo section above where low-risk mainstream organisations are considered NDIS providers, regardless of their awareness or lack thereof. NDIS participants would still be able to use

funds to purchase supports from these providers and they would continue to be covered by consumer law and other regulatory protections.

The inclusion of a self-directed supports category, as indicated by the Taskforce, is critical to affording choice and control for participants who directly employ their supports to continue to use unregistered providers should they wish to do so under the new model (within safeguarding parameters).

Despite utilising a risk-proportionate approach to minimise unnecessary burden on providers offering lower-risk supports, some regulatory obligations would still be imposed on currently unregistered providers under this preferred policy option. The sector is already aware of this, and the government will continue to engage with the public to ensure appropriate transition arrangements are made to manage market exits and prevent disruption for participants.

3.2 Option 2 (Preferred) – Mandatory Registration of NDIS providers delivering the highest-risk supports in an advanced registration category.

Option 2 would see the expansion of mandatory registration to highest risk supports only. This builds on the MYEFO 25-26 decision of government to require mandatory registration of supported independent living and digital platform providers commencing 1 July 2026. This would focus regulatory effort on those providers in the highest risk categories. Existing registered providers would expand their registration for these categories at their next review cycle.

This would continue the NDIS Commission's current regulatory transition of the highest risk categories of support to mandatory registration, where providers are not only assessed at the point of entry their ongoing adherence to practice standards, worker screening and participant safety requirements are enforced through mandatory reporting and ongoing engagement with the Commission. This ongoing visibility and enforcement through the Commission will enable early detection of risk of harm for participants and would provide a mechanism to prevent poor quality operators from providing services to NDIS participants.

Under this option, the NDIS Commission would apply a risk-based approach to enforcement action, using advanced risk analytics to detect poor provider behaviour and targeting regulation at the highest risk providers in the market. A cost recovery process for registration applications applies to this option.

3.3 Option 3: Status Quo

While the NDIS Commission has the regulatory power to intervene when the rights of a participants are not upheld, it cannot effectively monitor unregistered providers who are subject to the NDIS Code of Conduct (CoC) or proactively intervene to prevent harm.

Under current arrangements, not all NDIS providers, as currently defined in the NDIS Act, are required to be registered. Some categories of high-risk support including Specialist Disability Accommodation (SDA), Specialist Behaviour Support Services and supports where there is a likely need to use a regulated restrictive practice. NDIS participants who have their plan budget managed by the NDIA (Agency Managed) must also only use registered NDIS providers.

In December 2025, Senator the Hon Jenny McAllister, Minister for the NDIS announced that mandatory registration for disability service providers in Supported Independent Living (SIL), as well as Digital Platform Providers, will commence from July 2026. The NDIS Commission is currently working to implement these requirements for providers of these supports.

For all other NDIS providers, registration is not mandatory. NDIS participants have no assurance that their services will be delivered with appropriate safeguards. If problems occur, there is limited ability for the NDIS Commission to intervene to prevent these providers from offering their services to other participants. The largest concern, as emphasised throughout the DRC, the NDIS Review and the Taskforce Advice is that there is a higher risk that participants' human rights are violated when the government has no oversight of the market than when the government **does**.

As outlined above, while there are over 260,000 NDIS providers, it is unrealistic and burdensome to expect all providers (as currently defined) to register. Such an expectation itself would arguably be counter to the objective of the Scheme, as it would unreasonably constrain NDIS participants from choosing to spend their budgets on supports which suit them. Under the current definition[188], mainstream organisations such as Bunnings, JB Hi-

[188] NDIS provider is currently defined in the NDIS Act as (a) a person (other than the Agency) who receives:

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

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

(b) a person or entity:

Fi, local tradespeople, supermarkets and multiple franchisees are automatically considered providers if a participant uses their plan funding to purchase assistive equipment or one-off home modification services. Therefore these businesses are by default subject to the CoC regardless of the service they provide and whether they are aware of this obligation or not.

There is little evidence that defining these organisations as NDIS providers, let alone requiring these providers to register, would improve support standards. This is because these are often one-off supports, or off the shelf assistive technology which are covered by other regulatory frameworks and regulators. Including these retailers and mainstream supports in a definition could, on the other hand, provide an avenue for discrimination against NDIS participants out of fear of unknown regulatory burden (regardless of whether that fear is substantiated).

The current registration process is costly and increases administrative burden. Specifically, the cost of audits, which are currently required to be undertaken by third party Approved Quality Auditors (AQA) have been cited as a barrier by smaller providers and sole traders from being able to register. This has also been cited by regional providers, as AQA's will often charge a higher rate for travel, if required.

Preservation of the status quo is not consistent with DRC, NDIS Review, Taskforce or Productivity Commission reviews. Additional reforms are required to achieve quality and safety uplift across the sector and demonstrate the government's commitment to harmonisation across the broader care and support economy.

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

(ii) who is prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph. (Chapter 1, Part 4 Section 9 of the National Disability Insurance Scheme Act 2013

4. What is the likely net benefit of each option?

This impact analysis is based on findings as demonstrated in the NDIS Review, Taskforce Advice, Productivity Commission report and recent department consultations.

A multi-criteria analysis (MCA) is used in **Figure 1** to assist in creating a quantitative net-benefit for supporting comparison between the considered options. The MCA uses a sliding scale for scoring with largely adverse impacts to stakeholders being rated as -3 and largely beneficial impacts to stakeholders being rated as +3:

- -3 largely adverse
- -2 moderately adverse
- -1 slightly adverse
- 0 neutral
- +1 slightly beneficial
- +2 moderately beneficial
- +3 largely beneficial

Each of the options is evaluated in the table below.

Choice and Control: Options 1 and 2 are assessed as being moderately beneficial for choice and control, as while the available choices may slightly decrease, the information available to participants before making that choice would increase. Option 3 would preserve the ability for all NDIS participants to use unregistered providers under the current model.

Improvement in quality of supports: Options 1 and 2 are both assessed as being moderately beneficial to quality as high risk supports (option 2) or all supports would be subject to more rigorous quality standards. This would provide a baseline of quality for all providers in these support classes.

Proceeding with the status quo (option 3) would continue to see the prevalence of poor-quality providers competing with providers of higher quality and skill.

Administrative ease: Option 1 would be more complex for the vast majority of participants, as they would be required to use registered providers for a far greater array of support types. Registering providers delivering the highest risk providers only would improve the ease of administration, as the providers of higher risk supports are generally larger and would be able to accommodate additional participants. The status quo would be negative for administrative ease as, in the absence of provider registration, more NDIS participants would be subject to fraudulent providers. This means a higher likelihood that NDIS participants would have to make complaints to the NDIS Commission, and undergo more

work to respond to the NDIA's compliance teams in the absence of provider verification and registration.

Competitive consistency refers to the regulatory burden on firms who compete in the same market. The status quo scores a negative result, as the current regulatory framework has more obligations for registered providers than unregistered providers. This puts registered providers at a competitive disadvantage. Options 1 and 2 have mandatory registration for high value high risk supports, levelling the playing field for competitors.

Obligations – option 1 would provide a small benefit for provider obligations as there would be increased compliance costs for a large number of providers in a broad array of support types. These obligations would contribute to a fuller picture of the quality of NDIS supports, but at a high cost to both providers and the NDIS Commission. Option 2 would provide a similar level of information for the NDIS Commission, but for a lower cost as the obligations would only be targeted at high-risk providers. This is why it is assessed as more beneficial. Option 3 would continue the current inconsistent obligations between registered and unregistered providers and is least beneficial.

Incentives to improve service have likewise been assessed in terms of the compliance and regulatory cost vs the expected benefit. Therefore option 1 has a marginal improvement in incentives, while option 2 (through better targeting) provides a similar benefit at a lower cost. Option 3 would not provide an incentive, and service quality would likely suffer as a result.

For workers, option 1 is the preferred option, as it would lift professional standards for the whole sector, not just those supports which are seen as high risk. The benefits for workforce mobility and employment standards are assessed as identical due to the increased scrutiny of the NDIS Commission, and providers being subject to audits. Option 3 would have nil impact on workforce mobility, and a negative impact on employment and professional standards as the number of unregistered providers would likely grow.

FIGURE 1: MCA RATINGS OF OPTIONS

Stakeholder	Impact	Option 1: GRPRM	Option 2: providersdelivering highest risk supports only:	Option 3: Status Quo
NDIS participants	Choice and Control	2	2	3

and their families or nominees	Improvement in quality of supports	2	2	-2
	Administrative ease	-1	+1	-2
NDIS providers	Competitive consistency	2	2	-3
	Obligations	1	3	-1
	Incentive to improve service	1	2	-2
NDIS Workers	Workforce mobility	2	2	0
	Employment standards	2	2	-2
	Professional standards	3	2	-2
Total rating		14	17	-11

5. Who did you consult and how did you incorporate their feedback?

Participant feedback obtained from an extensive consultation led by the Taskforce, which included real-world implications and impacts on participant choice and control (which is a human right outlined in the United Nations Convention on the Rights for People with Disability). These insights informed the Taskforce's recommendations on the four registration categories which includes a separate category to register NDIS participants who self-directed supports, as well as an amending the NDIS Act to exclude mainstream retailers.

Under option 1 and option 2, the definition of NDIS provider would be amended in the National Disability Insurance Scheme Act 2013 (NDIS Act), to clarify that the provision of mainstream, unmodified NDIS supports does not automatically make an entity an NDIS provider. Mainstream retailers who are covered by regulation in other sectors would continue to be visible through separate measures to improve payment visibility even though they would be excluded from the definition. This will not only improve the targeting of regulation, but will also remove the inferred expectation that those providers should be subject to additional regulatory oversight because an NDIS participant chose to spend plan funds at their business.

While option 1 may be preferred in an unconstrained fiscal environment, there are benefits to a targeted rollout of increased provider regulation, with the option for government to consider expansion at a later date. Option 2 therefore gives more time to actively consider the intersections between lower risk categories of support and provider registration, to ensure the preservation of choice and control for NDIS participants. It also enables the regulator to gradually scale up its activities, to ensure minimal disruption to existing arrangements. This addresses a key concern heard throughout consultation for both the NDIS Review and the NDIS Provider and Worker Registration Taskforce – that ill-defined and extensive regulatory overhaul could cause risk through disruption.

If policy option 2 is selected, this approach would solidify the government's public commitment to taking appropriate steps in response to the identified serious and entrenched abuse, neglect, and exploitation. Requiring all providers delivering the highest risk supports to register under an amended definition of a provider ensures NDIS participants are not only protected, but their rights to choose their own providers are upheld.

6. What is the best option from those you have considered and how will it be implemented?

The best option to achieve mandatory registration of NDIS providers in a risk proportionate way is to start with providers of the highest risk supports. While the implementation of a comprehensive model of NDIS provider registration has been proposed by the NDIS Review and the NDIS Provider and Worker Registration Taskforce, an initial model which prioritises high risk supports will provide higher visibility for a smaller regulatory burden.

Option 2 balances a comprehensive, measured regulatory response and associated quality and safeguarding benefits which build on the Taskforce Advice with appropriate investment by the government to address the complex challenges present in the provider market and corresponding service delivery. It provides an opportunity for government to separately consider other registration categories once the foundations have been laid for high risk supports. This ensures supports which have been identified across the disability sector to require registration become registered by default to address regulatory, safety, and integrity challenges faced by the Scheme. This option would also put government in a position to consider alignment and parity with provider requirements across the care and support economy (noting both Aged Care and the NDIS have worked together closely, and continue to do so, to align respective regulatory ecosystems) in a future state. It also allows the NDIS Commission opportunity to adjust to increasing workflows and the third-party auditor market to scale to meet demand.

The rollout of the model proposed by the Taskforce (Option 1) would have increased implementation risk due to the scale of adjacent reforms in the sector. Proceeding with registration of the highest risk supports only reduces this implementation risk considerably and provides an opportunity for government to consider further expansion of categories in the future.

Continuing with the status quo (Option 3) is not sustainable due to the significant risk of abuse, neglect and exploitation occurring unseen by the regulator, constraining the government’s ability to proactively intervene and prevent such things from occurring.

Implementation

Option 2 will be implemented in a staged approach over four years from July 2027, supported by market education and transition activities. Implementation focuses on:

- Providing clear milestones, information, and market signals to NDIS providers and people with disability and their supporters through the implementation of a regulatory framework for high-risk NDIS providers
- A careful, staged approach focusing on registering highest risk providers who are currently unregistered and services first to minimise risk to people with disability and the Scheme as a matter of priority
- Grandfathering arrangements for existing registered providers, allowing time for transition to new arrangements over time as their registration is renewed.
- Integration with broader NDIS reforms, including legislative reforms, the new planning framework, and commissioning approaches
- Implementation of a cost-recovery mechanism to ensure providers delivering the highest risk supports NDIS providers who gain value from access to the market contribute to the cost of maintaining that benefit.

This sequencing ensures time for any refinement to obligations for self-directed participants and that the NDIS Commission can smoothly onboard the increased volume of suitability assessments for all providers.

Implementation of the mandatory registration of high-risk providers will commence from 1 July 2027 once the supporting amendments to the NDIS Act are in place, including a new definition of NDIS provider.

The proposed sequence to providers into universal registration is as follows:

- From July 2027, advanced and general categories of registration are introduced for highest risk supports where people with disability are at most risk (e.g. personal care, home and living supports).

New market entrants (i.e. currently unregistered providers) would be required to meet the relevant obligations within 12 months of the commencement date for the category. Existing registered providers would be picked up under their new risk category at their next audit, until all providers are progressively incorporated into the new regulatory model.

7. How will you evaluate your chosen option against the success metrics?

The implementation of this measure will be evaluated against the following success metrics demonstrated in Figure 2 below.

FIGURE 4: SUCCESS METRICS OF GRPRM

Success looks like	It will be measured by	How often	How this data will be used
100 per cent of NDIS providers delivering high risk supports to NDIS participants are registered with the NDIS Quality and Safeguards Commission	Numbers of registered providers active in relevant categories in the NDIS marketplace (NDIS Commission and NDIA payment data) Numbers of claims rejected by the NDIA due to the provider being unregistered	Quarterly from implementation (NDIS Commission quarterly report)	Track success of the measure: Track market thickness across categories of support and geographical location Track market entry attempts without registration Assist with targeting of NDIS Commission effort
Proportionate reduction in fraudulent activity and funds leakage once risk proportionate registration is fully implemented	Numbers and AUD amounts of fraud activity from implementation of each registration category proportionate to numbers and AUD amounts of fraud activity in the 12 months prior to implementation (NDIS Commission	Annually from implementation	Track success of the measure Determine proportionate reduction in funds misuse over time following implementation Assist with targeting of NDIS Commission effort

	and NDIA payment data)		
Proportionate reduction in abuse and neglect of people with disability once risk proportionate registration is fully implemented	Violence, abuse, neglect, and exploitation from implementation of each registration category proportionate to numbers of violence, abuse, neglect, and exploitation extant prior to implementation (NDIS Commission DART data) NDIS participant survey (baseline – prior to implementation)	Annually from implementation	Track success of the measure Reporting on Disability Royal Commission recommendations Identifying focus of compliance and enforcement activity Assist with targeting of NDIS Commission effort Commonwealth reporting on Australia's Disability Strategy Tracking trends in complaint, serious incidents and compliance concerns
Proportionate increase in numbers of compliance, enforcement and investigation activity undertaken against registered NDIS providers once risk proportionate registration is fully implemented	Numbers of compliance, enforcement, and investigation activity undertaken by the NDIS Commission proportionate to numbers of compliance, enforcement, and investigation activity undertaken prior to implementation (NDIS Commission	Annually from implementation	Track success of the measure Assist with targeting of NDIS Commission effort Identifying focus of compliance and enforcement activity Commonwealth reporting on Australia's Disability Strategy

	DART data, Federal Court outcomes, fine amounts)		
Provider and participant satisfaction with new model	Survey	Annually from implementation	Identify opportunities for ongoing continuous improvement of registration model Test temperature of sector in relation to registration outcomes