National Disability Insurance Scheme Legislation AmendmentAct 2013

No. 44, 2013

An Act to amend the *National Disability Insurance Scheme Act 2013*, and for related purposes

Note: An electronic version of this Act is available in ComLaw (http://www.comlaw.gov.au/)

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National Disability Insurance Scheme Legislation AmendmentAct 2013

No. 44, 2013

An Act to amend the *National Disability Insurance Scheme Act 2013*, and for related purposes

[*Assented to 28 May 2013*]

The Parliament of Australia enacts:

1 Short title

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

2 Commencement

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

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
1. Sections 1 to 3 and anything in this Act not elsewhere covered by this table	The day this Act receives the Royal Assent.	28 May 2013
2. Schedule 1, items 1 to 19	Immediately after the commencement of Chapter 3 of the *National Disability Insurance Scheme Act 2013*.	
3. Schedule 1, item 20	The day after this Act receives the Royal Assent.	29 May 2013
4. Schedule 1, items 21 to 26	Immediately after the commencement of Part 4 of Chapter 4 of the *National Disability Insurance Scheme Act 2013*.	
5. Schedule 1, items 27 to 32	The day after this Act receives the Royal Assent.	29 May 2013
6. Schedule 1, item 33	Immediately after the commencement of Chapter 3 of the *National Disability Insurance Scheme Act 2013*.	
7. Schedule 1, items 34to 43	Immediately after the commencement of Part 4 of Chapter 4 of the *National Disability Insurance Scheme Act 2013*.	
8. Schedule 1, items 44 and 45	The day after this Act receives the Royal Assent.	29 May 2013
9. Schedule 1, item 46	Immediately after the commencement of Chapter 5 of the *National Disability Insurance Scheme Act 2013*.	
10. Schedule 1, Parts 3 and 4	The day after this Act receives the Royal Assent.	29 May 2013
11. Schedule 1,	Immediately after the commencement of	

Commencement information		
Column 1	**Column 2**	**Column 3**
Provision(s)	**Commencement**	**Date/Details**
Part 5	Chapter 5 of the *National Disability Insurance Scheme Act 2013*.	
12. Schedule 2, items 1 to 5	The day after this Act receives the Royal Assent.	29 May 2013
13. Schedule 2, items 6 to 26	Immediately after the commencement of Chapter 3 of the *National Disability Insurance Scheme Act 2013*.	
14. Schedule 3	The day this Act receives the Royal Assent.	28 May 2013

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

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

3 Schedule(s)

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

Schedule 1—Amendment of the National Disability Insurance Scheme Act 2013

Part 1—Amendments relating to National Disability Insurance Scheme rules

1 Paragraph 22(1)(b)

Repeal the paragraph, substitute:

(b) the person satisfies any other requirements in relation to age that are prescribed by the National Disability Insurance Scheme rules.

2Paragraph 23(1)(c)

Omit “in relation to residence”.

3 At the end of subsection 23(3)

Add:

; and (d) mayrequire that a person satisfy a prescribed requirement relating to either or both of the following:

(i) the purpose for which the person resides in a particular geographical area;

(ii) exceptional circumstances applying in relation to the person.

4 Subsection 27(1)

Omit “(1)”.

5 Subsection 27(2)

Repeal the subsection.

6 Paragraph 33(5)(d)

Repeal the paragraph, substitute:

(d) apply the National Disability Insurance Scheme rules (if any) made for the purposes of section 35; and

7 Section 34

Before “For”, insert “(1)”.

8 Subparagraph 34(f)(ii)

Omit “disability;”, substitute “disability.”.

9 Paragraphs 34(g) and (h)

Repeal the paragraphs.

10 At the end of section 34

Add:

(2) The National Disability Insurance Scheme rules may prescribe methods or criteria to be applied, or matters to which the CEO is to have regard, in deciding whether or not he or she is satisfied as mentioned in any of paragraphs (1)(a) to (f).

11 Subsection 35(1)

Omit “prescribe”, substitute “make provision in connection with the funding or provision of reasonable and necessary supports or general supports, including but not limited to prescribing”.

12 Paragraph 35(1)(a)

Omit “a method for assessing, or criteria for”, substitute “methods or criteria to be applied, or matters to which the CEO is to have regard, in”.

13 Subsection 35(2)

Omit all the words from and including “methods” (first occurring) to and including “funded” (third occurring), substitute “National Disability Insurance Scheme rules referred to in subsection (1) may relate to the manner in which supports are to be funded or provided and by whom supports”.

14 Subsection 35(3)

Repeal the subsection.

15Subsections 35(4) and (5)

Omit all the words from and including “methods” (first occurring) to and including “relating”, substitute “National Disability Insurance Scheme rules referred to in subsection (1) may relate”.

16 Paragraph 40(2)(b)

Omit “the criteria (if any)”, substitute “any matters and applying any criteria”.

17 After subsection 44(1)

Insert:

(1A) The statement of participant supports in a participant’s plan must not provide that a plan nominee is to manage the funding for supports under the participant’s plan to any extent if the plan nominee is an insolvent under administration.

18After subsection 44(2)

Insert:

(2A) The statement of participant supports in a participant’s plan must not provide that a plan nominee is to manage the funding for supports under the participant’s plan to a particular extent if the CEO is satisfied that management of the plan to that extent would present an unreasonable risk to the participant.

19 Subsection 44(3)

Omit all the words after “prescribe”, substitute “criteria the CEO is to apply and matters to which the CEO is to have regard in considering whether either of the following would present an unreasonable risk to the participant:

(a) a participant managing the funding for supports under the plan;

(b) a plan nominee managing the funding for supports under the plan”.

20At the end of subsection 70(1)

Add:

; and (e) the CEO is satisfied that the applicant is suitable to manage the funding for supports under plans or provide supports under plans, as the case requires, applying any criteria andhaving regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph.

21 Subsection 74(6)

Omit “criteria”, substitute “requirements with which the CEO must comply, criteria that the CEO is to apply or matters”.

22 Subsection 75(4)

Omit “criteria”, substitute “requirements with which the CEO must comply, criteria that the CEO is to apply or matters”.

23 Section 80 (heading)

Repeal the heading, substitute:

80 Duties of nominees to participant etc.

24 At the end of subsection 80(4)

Add:

; or (c) to inform the CEO and the participant if the nominee has, acquires, or is likely to acquire, any interest, pecuniary or otherwise, that conflicts or could conflict with the performance of the nominee’s duties.

25 Paragraph 88(6)(b)

After “criteria”, insert “the CEO is to apply or matters”.

26 Paragraph 93(b)

Before “matters”, insert “criteria the CEO is to apply or”.

27 Subsection 209(2A)

Omit all the words after “provide”, substitute:

for:

(a) the CEO to specify assessment tools; and

(b) the circumstances in which the CEO is to use the tools.

28 National Disability Insurance Scheme rules made before commencement

If, before the commencement of this item, National Disability Insurance Scheme rules were made for the purposes of a provision of the *National Disability Insurance Scheme Act 2013*referred to in an item of this Schedule:

(a) those rules are taken to be, and to have been at all times, as valid as they would have been if the amendments made by this Schedule had been in effect when the rules were made; and

(b) anything done under those rules is taken to have been at all times as valid as it would have been if the amendments made by this Schedule had been in effect when the rules were made.

Part 2—General amendments

29 Paragraphs 3(1)(g) and 4(11)(c) and (13)(c)

Omit “mainstream”.

30 Section 9 (definition of *early intervention supports*)

Repeal the definition.

31 Section 9 (definition of *plan nominee*)

Omit “the plan nominee”, substitute “a plan nominee”.

32 Section 9 (definition of *registered provider of supports*)

After “person”, insert “or entity”.

33 Paragraph 24(1)(d)

Omit “and” (first occurring), substitute “or”.

34 Subsection 74(1A)

Repeal the subsection, substitute:

(1A) If:

(a) a State or Territory Minister; or

(b) the head (however described) of a Department of State of a State or Territory;

has parental responsibility for the child, the CEO must not make a determination under paragraph (1)(b) in relation to the child unless the Minister or the head of the Department, as the case may be, has agreed in writing to the making of the determination.

35 Subsection 75(3A)

Repeal the subsection, substitute:

(3A) If:

(a) a State or Territory Minister; or

(b) the head (however described) of a Department of State of a State or Territory;

has guardianship of the child, the CEO must not make a determination under subsection (2) or (3) in relation to the child

unless the Minister or the head of the Department, as the case may be, has agreed in writing to the making of the determination.

36 Subsection 78(5)

After “doing”, insert “, or being supported to do,”.

37 Subsection 86(1)

Omit “the ***plan nominee***”, substitute “a ***plan nominee***”.

38 At the end of section 86

Add:

(6) To avoid doubt, the CEO may appoint more than one person to be a plan nominee of a participant for the purposes of this Act.

39 Paragraph 90(4)(b)

Before “the nominee”, insert “in response to the notice,”.

40 Paragraph 90(4)(b)

Omit “and is likely to have an effect referred to in paragraph 83(1)(b)”.

41 At the end of subsection 90(4)

Add:

; and (c) having regard to that response, the CEO is satisfied that it is appropriate to do so.

42 Paragraph 99(j)

Omit “74(4)(c)”, substitute “74(5)(c)”.

43 At the end of section 99

Add:

; (r) a decision under section 190 not to write off a debt;

(s) a decision under section 192 that the CEO is not required to waive a debt;

(t) a decision under section 193 not to waive a debt;

(u) a decision under subsection 194(3) or (4) that the CEO is not required to waive a debt;

(v) a decision under section 195 not to waive a debt.

44 Subparagraph 118(1)(a)(iv)

Omit “mainstream”.

45 Section 193

Omit “must”, substitute “may”.

46 Application—compensation in respect of personal injury

(1) Chapter 5 of the NDIS Act, and National Disability Insurance Scheme rules made for the purposes of subsections 35(4) and (5) of that Act, apply in relation toaction that is taken to claim or obtain compensation in respect of a personal injury:

(a) whether the personal injury occurs before, on or after the commencement of Chapter 5 of the NDIS Act; and

(b) whether the action is taken before, on or after that commencement; and

(c) if the action was taken before that commencement—whether or not the action was brought to a conclusion before that commencement.

(2) In this item:

NDIS Act means the *National Disability Insurance Scheme Act 2013*.

Part 3—Minor amendments relating to information

47 Subsection 60(1)

Omit “obtain”, substitute “collect”.

48 Subparagraph 60(2)(d)(iii)

Omit “authorisation”, substitute “consent”.

49 Subsection 60(3)

Omit “obtaining”, substitute “collection”.

50 Paragraph 61(a)

Omit “obtains”, substitute “collects”.

51 Paragraph 61(b)

Omit “obtain”, substitute “collect”.

52 Subparagraph 66(1)(b)(ii)

Repeal the subparagraph, substitute:

(ii) to a person who has the express or implied consent of the person to whom the information relates to collect it; or

Part 4—Amendments relating to actuarial, audit and risk management activities

53 Section 125A

Repeal the section, substitute:

125A Matters to be considered in performing functions

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

(a) relevant actuarial analysis and advice; and

(b) relevant advice and reports provided by the audit committee established and maintained by Board members under section 32 of the CAC Act.

125B Rules about management of risk and performance of Board's functions

The Minister administering the *Insurance Act 1973* may, by legislative instrument, determine rules that:

(a) relate to the management of risks, whether financial or not, that are likely to be faced by the Agency; and

(b) must be complied with by the Board in performing its functions.

54 Subparagraph 180B(1)(a)(iii)

Repeal the subparagraph, substitute:

(iii) on the basis of information held by the Agency, any trends in provision of supports to people with disability;

55 Application

The amendment of paragraph 180B(1)(a) of the *National Disability Insurance Scheme Act 2013* by this Part applies to assessments to be made the first time, and each later time, an annual report on the Agency under section 9 of the *Commonwealth Authorities and Companies Act 1997* is being prepared.

Part 5—Amendments relating to compensation

56 After paragraph 99(o)

Insert:

(oa) a decision under subsection 104(5A) to refuse to extend a period;

(ob) a decision under paragraph 105(4)(a) to take action to claim or obtain compensation;

(oc) a decision under paragraph 105(4)(b) to take over the conduct of a claim;

57 After subsection 104(5)

Insert:

(5A) The CEO may, on application by the participant or prospective participant, extend the specified period.

58 At the end of section 105

Add:

(5) Before taking action to claim or obtain compensation, or taking over the conduct of an existing claim, the CEO must have regard to the following:

(a) the disability of the participant or prospective participant;

(b) the circumstances which give rise to the entitlement or possible entitlement to compensation;

(c) any impediments the CEO may face if the CEO takes the action or takes over the conduct of the claim;

(d) any reasons given by the participant or prospective participant as to why he or she has not claimed or obtained compensation (including in response to a notice under subsection 104(2));

(e) the impact (including any financial impact), of the CEO taking the action or taking over the conduct of the claim, on the participant or prospective participant and his or her family;

(f) any other matter the CEO considers relevant, having regard to the objects and principles set out in Part 2 of Chapter 1 of this Act.

(6) The CEO must not take any action to claim or obtain compensation, or take over the conduct of an existing claim, unless:

(a) the CEO has notified the participant or prospective participant, in writing, that the action is being considered; and

(b) 28 days have passed since the notice was given.

Schedule 2—Amendments of other Acts

Administrative Appeals Tribunal Act 1975

1 After paragraph 19(2)(b)

Insert:

(baaa) National Disability Insurance Scheme Division;

2 Paragraph 19(2)(c)

Omit “and”.

3 After subsection 19(3B)

Insert:

National Disability Insurance Scheme Division

(3C) A member must not be assigned to the National Disability Insurance Scheme Division unless the Minister has consulted with the Minister responsible for administering the *National Disability Insurance Scheme Act 2013* in relation to the assignment of the member.

(3D) A non-presidential member must not be assigned to the National Disability Insurance Scheme Division unless the Minister is satisfied that the non-presidential member:

(a) has training, knowledge or experience relating to disability; or

(b) has other relevant knowledge or experience that will assist the non-presidential member in considering matters relating to the National Disability Insurance Scheme.

Age Discrimination Act 2004

4 After paragraph 41(1)(fb)

Insert:

(fba) the *National Disability Insurance Scheme Act 2013*; or

5 After subsection 41(2B)

Insert:

(2C) This Part does not make unlawful anything done by a person in direct compliance with a regulation, rule or other instrument under the *National Disability Insurance Scheme Act 2013*.

Social Security Act 1991

6 After paragraph 8(8)(jaf)

Insert:

(jag) an NDIS amount;

(jah) any return on a person's NDIS amounts that the person earns, derives or receives;

7 Subsection 9(1)

Insert:

designated NDIS amount means:

(a) an NDIS amount that is deposited in an account with a financial institution; and

(b) any return on the NDIS amount that a person earns, derives or receives.

8 Subsection 9(1) (at the end of the definition of *financial investment*)

Add "or a designated NDIS amount".

9 Subsection 9A(7) (paragraph (e) of the definition of *liquid assets*)

Omit "person.", substitute "person;".

10 Subsection 9A(7) (at the end of the definition of *liquid assets*)

Add:

but does not include the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid.

11 After paragraph 14A(1)(db)

Insert:

(dc) the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid; or

12 Section 19B (at the end of the definition of *liquid assets*)

Add:

; or (i) the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid.

13 Subsection 23(1)

Insert:

NDISamount has the same meaning as in the *National Disability Insurance Scheme Act 2013*.

NDIS participant means a participant within the meaning of the *National Disability Insurance Scheme Act 2013*.

NDIS plan means a plan, for an NDIS participant, within the meaning of the *National Disability Insurance Scheme Act 2013*.

14 After section 1037

Insert:

1038 Mobility allowance not payable when person is NDIS participant

A mobility allowance is not payable to a person if:

(a) the person is an NDIS participant; and

(b) an NDIS plan is in effect for the NDIS participant; and

(c) the NDIS plan contains a statement specifying the reasonable and necessary supports that will be funded under the National Disability Insurance Scheme (within the meaning of the *National Disability Insurance Scheme Act2013*).

15 After paragraph 1118(1)(sa)

Insert:

(sb) if a person has received an NDIS amount—the amount worked out under subsection (1AD);

16 After subsection 1118(1AC)

Insert:

NDIS amounts

(1AD) For the purposes of paragraph (1)(sb), the amount that may be disregarded is the value of the sum of:

(a) the NDIS amounts received by the person; and

(b) any return on those amounts that the person earns, derives or receives;

lessthe sum of the amounts spent by the person in accordance with an NDIS plan(whether in the person's capacity as an NDIS participant or as a person managing the funding under an NDIS plan for an NDIS participant).

17Application—qualification for health care card

(1) This item applies to a person on a day, on or after the commencement of this item, if:

(a) on that day the person is a participant (within the meaning of the *National Disability Insurance Scheme Act 2013*); and

(b) immediately before becoming a participant the person was receiving mobility allowance; and

(c) immediately before becoming a participant the person was qualified for a health care card because of subsection 1061ZK(7) of the *Social Security Act 1991*; and

(d) mobility allowance is not payable to the person because of section 1038 of the *Social Security Act 1991*.

(2) Subsection 1061ZK(7) of the *Social Security Act 1991* continues to apply to the person as if the person were receiving mobility allowance on that day.

Veterans' Entitlements Act 1986

18 Section 5 (index of definitions)

Insert:

NDIS amount	5Q(1)

NDIS participant	5Q(1)
NDIS plan	5Q(1)

19 After paragraph 5H(8)(pab)

Insert:

(paba) an NDIS amount;

(pabb) any return on a person's NDIS amounts;

20 Subsection 5J(1)

Insert:

designated NDIS amount means:

(a) an NDIS amount that is deposited in an account with a financial institution; and

(b) any return on the NDIS amount that a person earns, derives or receives.

21 Subsection 5J(1) (at the end of the definition of *financial investment*)

Add "or a designated NDIS amount".

22 Subsection 5JA(7) (paragraph (e) of the definition of *liquid assets*)

Omit "person.", substitute "person;".

23 Subsection 5JA(7) (at the end of the definition of *liquid assets*)

Add:

but does not include the sum of NDIS amounts paid to the person and any return on those amounts that the person earns, derives or receives, less the sum of amounts spent by the person in accordance with an NDIS plan under which the amounts were paid.

24 Subsection 5Q(1)

Insert:

NDISamount has the same meaning as in the *National Disability Insurance Scheme Act 2013*.

NDIS participant means a participant within the meaning of the *National Disability Insurance Scheme Act 2013*.

NDIS plan means a plan, for an NDIS participant, within the meaning of the *National Disability Insurance Scheme Act 2013*.

25 After paragraph 52(1)(oa)

Insert:

(oaa) if a person has received an NDIS amount—the amount worked out under subsection (1DAA);

26 After subsection 52(1D)

Insert:

NDIS amounts

(1DAA) For the purposes of paragraph (1)(oaa), the amount that may be disregarded is the value of the sum of:

(a) the NDIS amounts received by the person; and

(b) any return on those amounts that the person earns, derives or receives;

less the sum of the amounts spent by the person in accordance with an NDIS plan (whether in the person's capacity as an NDIS participant or as a person managing the funding under an NDIS plan for an NDIS participant).

Schedule 3—Income tax amendments

Income Tax Assessment Act 1997

1 Section 11-15 (after table item headed "life insurance companies")

Insert:

National Disability Insurance Scheme

NDIS amounts..... 52-180

2 Section 12-5 (after table item headed "motor vehicles")

Insert:

National Disability Insurance Scheme

National Disability Insurance Scheme expenditure 26-100

3 At the end of Division 26

Add:

26-100 National Disability Insurance Scheme expenditure

A participant (within the meaning of the *National Disability Insurance Scheme Act 2013*) cannot deduct under this Act a loss or outgoing to the extent the loss or outgoing is funded (including funded by way of reimbursement) by an *NDIS amount the participant *derives.

4 At the end of Subdivision 40-C

Add:

40-235 Adjustment: National Disability Insurance Scheme costs

The *cost of a *depreciating asset does not include an amount to the extent that section 26-100 prevents the amount from being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-100 denies deductions for National Disability Insurance Scheme expenditure.

5 At the end of Subdivision 52-H

Add:

52-180 National Disability Insurance Scheme amounts are exempt

An *NDIS amount *derived by a participant (within the meaning of the *National Disability Insurance Scheme Act 2013*) is exempt from income tax.

6 At the end of section 110-38

Add:

(7) Expenditure does *not* form any part of any element of the ***cost base*** to the extent that section 26-100 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-100 denies deductions for National Disability Insurance Scheme expenditure.

7 After subsection 110-55(9F)

Insert:

(9G) Expenditure does *not* form any part of any element of the ***reduced cost base*** to the extent that section 26-100 prevents it being deducted (even if some other provision also prevents it being deducted).

Note: Section 26-100 denies deductions for National Disability Insurance Scheme expenditure.

8 Subsection 995-1(1)

Insert:

NDIS amount has the meaning given by the *National Disability Insurance Scheme Act 2013*.

9 Application

The amendments made by this Schedule apply to assessments for the 2013-14 income year and later income years.

[*Minister's second reading speech made in—*
House of Representatives on 15 May 2013
Senate on 16 May 2013]

(116/13)