

COMMENT BY: TWEED VALLEY EARLY CHILDHOOD INTERVENTION SERVICE INC. ON NDIS BILL 2012

MANAGEMENT COMMITTEE REVIEW

CHAPTER 1 – INTRODUCTION

Clause #	3(1)(c)	Clause detail	Provide reasonable and necessary supports, including early intervention supports, for participants in the NDIS launch
Comment	<ul style="list-style-type: none"> • What are the supports deemed ‘reasonable’ and ‘necessary’ for children aged 0-8 years of age? 		

Clause #	3(1)(f)	Clause detail	Promote the provision of high quality and innovative supports to people with disability
Comment	<ul style="list-style-type: none"> • How will support and funding continue for existing innovative programs and practices delivered at a local level? • Will the services who currently deliver these programs be fairly considered as a registered provider, particularly given larger, regionally-based services are already starting to receive additional state funding to replicate these innovative programs? This will result in the demise of small early intervention services that work at a community level. 		

Clause #	3(2)(a)	Clause detail	Providing the foundation for governments to work together to develop and implement the NDIS launch
Comment	<ul style="list-style-type: none"> • What is the funding timeline for contribution by other states to ensure the financial viability of the NDIS during the trial, at full implementation nationally, and post-implementation? • What is the funding contribution amount from the remaining states and territories as budgeted for during the trial, at full implementation nationally, and post-implementation? • How will states and territories ensure the viability and sustainability of current services delivering programs and supports at community level given the funneling of existing funds to become an NDIS contribution? This places small early intervention services and supports in jeopardy due to potentially reduced funding from July 2014. • After the trial period, where a state or territory fails to contribute to the NDIS, has consideration been given to cross-border funding and service issues? For the purpose of an example, say funds are not contributed by the Queensland Government but Queensland residents continue to access services and supports that are provided in NSW and funded by the NSW Government such as ADHC. Access to these services by Queensland residents will place further strain on services that are more likely to see a 		

	severe reduction in funding due to the redirection of funds to the NDIS to cover other states and territories receiving the benefits of the NDIS, but not contributing financially to its operation.
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Clause #	5(b)	Clause detail	People with disability should be encouraged to engage in the life of the community
Comment	<ul style="list-style-type: none"> Throughout the NDIS, there is much reliance on the capacity and capability of communities to facilitate the engagement of people with disability. There is an assumption that there are existing resources and networks within communities presently, where in fact these areas are lacking, or operating at capacity already without additional reliance and no increase in funding. This is particularly true of remote and regional areas. How will the NDIS seek to support the capacity and capabilities of a community given this increased dependency? 		

Clause #	5(c)	Clause detail	The judgements and decisions that people with disability would have made for themselves should be taken into account
Comment	<ul style="list-style-type: none"> There needs to be clarification on the determination of 'would have', and its relevance and application to children aged 6 years of age and under. 		

Clause #	6(1)	Clause detail	The Agency may provide support and assistance (including financial assistance) to prospective participants and participants in relation to doing things or meeting obligations under, or for the purposes of, this Act
Comment	<ul style="list-style-type: none"> As support will only be provided to assist participants meet their obligations under this Act, is there a list of the 'supports' that may attract financial assistance and can this be made available? 		

Clause #	7(2)	Clause detail	An explanation given under subsection (1) must be given both orally and in writing if reasonably practicable
Comment	<ul style="list-style-type: none"> The definition and application of 'reasonably practicable' may not meet the needs of the participant and/or their nominee, and could result in non-acceptance of the participant's application, or the revocation of participant status. 		

Clause #	10	Clause detail	<p>Definitions</p> <p><i>Developmental delay</i> – (c) results in the need for a combination and sequence of special interdisciplinary or generic care, treatment or other services that are of extended duration and are individually planned and coordinated</p>
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Comment	<ul style="list-style-type: none"> • What period of time is deemed to be an ‘extended duration’? • Though one must recognise the exceptional roles parents and carers play in the lives of children with disabilities, what extraordinary capacities and knowledge must they possess to enable them to, in addition to their parenting and caring roles, coordinate the development of supports and services as specified in this clause? The onus on a parent and carer already operating at capacity to then research, coordinate and manage their child’s or children’s plans will see many reach breaking point. What supports for parents and carers will be implemented in fulfilling this requirement, and will these supports be offered at no cost, given this is an obligation under the Act?
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Clause #	12	Clause detail	Ministerial Council functions etc.
Comment	<ul style="list-style-type: none"> • Will a change in federal government impact on the Ministerial Council functions, and indeed the NDIS? 		

CHAPTER 2 – ASSISTANCE FOR PEOPLE WITH DISABILITY AND OTHERS

Clause #	13(1)	Clause detail	The Agency may provide general supports to, or in relation to, people with disability who are not participants
Comment	<ul style="list-style-type: none"> • How will provision of general supports to people with disability, who are not participants and are currently accessing cross-border and interstate service be determined, managed and funded? • Will the person with a disability or their parent/carer in the case of a child, have the ability to choose from non-NDIS registered providers and supports whom they are currently accessing, or will they be directed to access NDIS registered providers only? If they are being directed, does this remove the much touted 'choice and control' offered by the NDIS? 		

Clause #	14(a)(i)	Clause detail	For the purpose of enabling those persons or entities to assist people with disability to (i) realise their potential for physical, social, emotional and intellectual development
Comment	<ul style="list-style-type: none"> • How is 'potential' determined, and by whom (i.e. parent/carer, specialist, CEO), in its application to children aged 6 years and under? • What are the funding options specified for an individual, and what is criteria to determine this, and by whom (i.e. parent/carer, specialist, CEO)? • What are the funding options specified for an entity, and what is criteria to determine this, and by whom (i.e. parent/carer, specialist, CEO)? 		

Clause #	17	Clause detail	The National Disability Insurance Scheme rules may prescribe matters for and in relation to this Chapter
Comment	<ul style="list-style-type: none"> • Will the NDIS Agency consult on matters relating to rules, and will any consultations be made with external parties, such as registered providers, or will amendments to rules, or inclusion of new rules, be placed open for comment? 		

CHAPTER 3 – PARTICIPANTS AND THEIR PLANS

Clause #	Chapter 3 - Background	Clause detail	Each participant will work with local Agency support to identify their goals, aspirations and their individual circumstances, including living arrangements, informal cares and environmental and personal factors
Comment	<ul style="list-style-type: none"> Who are these local Agencies? Are they yet to be established or have contracts been entered in to 		

Clause #	19(1)	Clause detail	<p>An access request must:</p> <ul style="list-style-type: none"> (a) be in the form (if any) approved by the CEO; (b) include any information, and be accompanied by any documents, required by the CEO; and (c) certify that it includes all the information, and is accompanied by all the documents, required as mentioned in paragraph (b) that are in the possession or control of the person
Comment	<ul style="list-style-type: none"> What information is required by the CEO and in what form will this information need to be provided? i.e. is there a checklist of required information, acceptable formats and submission methods? What are the processes/procedures to be undertaken by the participant and the Agency in the submission and review of an access request? i.e. provide a step-by-step procedure. Concerns are that an access request will require attendance to an in-person interview which is difficult in remote and regional areas, and that parents/carers of children aged 6 years and under will be required to existing documentation updated by specialists/services etc. which may cause further strain on parents/carers in terms of time, access, transport, finances, work commitments etc. What is the impact to an access request if a parent/carer of a child aged 6 and under, is unable to fulfil the requirement for all information due to these constraints? Can existing diagnoses and/or assessments be submitted, particularly if they were issued or undertaken over 12 months ago, or will the CEO require re-testing and re-diagnosis? 		

Clause #	19(1)(a)	Clause detail	Matters relating to access requests “An access request must be in the form (if any) approved by the CEO’
Comment	<ul style="list-style-type: none"> Clarify the form to be used by the CEO 		

Clause #	19(2)(b)	Clause detail	The CEO decides that the person does not meet the access criteria, or is taken to have so decided because of subsection 21 (3)
Comment	<ul style="list-style-type: none"> What is the list of eligibility criteria? Does this refer to ICF? Does this refer 		

	to DSMV?
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Clause #	20(a)	Clause detail	CEO must consider and decide access requests "The CEO must within 21 days decide: whether or not the prospective participant meets the access criteria"
Comment	<ul style="list-style-type: none"> If a person (prospective participant) does not meet all of the criteria what does this mean for the person (prospective participant) and what type of alternative support are they entitled to and is there a limit to the number of times a prospective participant can apply to enter into the scheme? Does the same person that grants the access requests also review disputes concerning the granting of such requests (IE appeals process) or is this an independent body separate to the CEO and if separate who? 		

Clause #	20(c)	Clause detail	If the person becomes a participant, the person would not be entitled to receive the supports referred to in paragraph (b) or equivalent supports
Comment	<ul style="list-style-type: none"> Define equivalent supports 		

Clause #	21(2)	Clause detail	(b) the person: (i)(ii)(iii) received supports...prescribed by the NDIS rules for the purpose of this subparagraph (c) if the person becomes a participant, the person would not be entitled to receive the supports referred to in paragraph (b), or equivalent supports
Comment	<ul style="list-style-type: none"> This is of concern as it would see participants forced to leave services currently being accessed where relationships have been formed both formally and informally that benefit the participant. Where the participant is accepted, clarification is required as to whether clause 21(2)(c) would be enforced if the service currently accessed by the participant is also an NDIS registered provider. 		

Clause #	21(2)(b)	Clause detail	May prescribe different ages and different dates in relation to different areas of Australia
Comment	<ul style="list-style-type: none"> Why does this differ? – what are the differences? And what are the defined "different areas" of Australia? State? Regional? – clarify this. And who defines this? And on what evidence based statistical data? 		

Clause #	21(3)	Clause detail	The CEO is taken to have decided that the prospective participant does not meet the access criteria if: (a) the CEO does not do a thing referred to in paragraph 20(a) or (b) within the 21-day period
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			referred to in section 20; or (b) if subsection 26(2) applies – the CEO does not do one of the thing referred to in that subsection within the 14-day period referred to in that subsection
Comment	<ul style="list-style-type: none"> Both written and oral notifications of non-acceptance are to be provided by the CEO as a matter of respect for person and process. 		

Clause #	24(1)(a)	Clause detail	A person meets the disability requirements if: The person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory, or physical impairments or to one or more impairments attributable to a psychiatric condition;
Comment	<ul style="list-style-type: none"> Define impairments 		

Clause #	24(1)(a)	Clause detail	The person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition
Comment	<ul style="list-style-type: none"> The ‘intellectual disability’ criterion needs to include ‘<i>presentation or risk of presentation of global developmental delay or developmental delay in children aged 6 years and under</i>’. As with early intervention requirements, criteria should include ‘<i>a child who has a developmental delay</i>’ 		

Clause #	24(1)(b)	Clause detail	The impairment or impairments are , or are likely to be, permanent
Comment	<ul style="list-style-type: none"> Provision of a definition of ‘impairment’ has been included in clause 9, however what are the classifications of impairments? Will these be referenced from the ICF and/or DSMV? How is the matter of ‘permanency’ assessed for children aged 6 years and under? 		

Clause #	24(1)(c)	Clause detail	The impairment or impairments result in substantially reduced functional capacity to undertake, or psychosocial functioning in undertaking one or more of the following activities...
Comment	<ul style="list-style-type: none"> How will ‘substantially reduced’ be defined and determined? What are the parameters, and how will this be assessed for children aged 6 years and under? Are there various parameters under each area of impairment i.e. cognitive, intellectual etc.? 		

Clause #	25(1)(a)	Clause detail	The person has a disability that is attributable to one or more intellectual, cognitive, neurological, sensory or physical impairments or to one or more impairments attributable to a psychiatric condition
Comment	<ul style="list-style-type: none"> The 'intellectual disability' criterion needs to include '<i>presentation or risk of presentation of global developmental delay or developmental delay in children aged 6 years and under</i>'. 		

Clause #	25(1)(a)(ii)	Clause detail	Early Intervention Requirements " Is a child who has developmental delay"
Comment	<ul style="list-style-type: none"> Define age specifications for "child" 0-6? 0-8? Or 0-18? Define "developmental Delay" 		

Clause #	25(1)(b)	Clause detail	The CEO is satisfied that provision of early intervention supports for the person is likely to reduce the person's future needs for supports in relation to disability
Comment	<ul style="list-style-type: none"> How will this be assessed for children aged 6 years and under? 		

Clause #	25(1)(b)	Clause detail	The CEO is satisfied that the provision of Early Intervention supports for the person is likely to reduce the person's future needs for supports in relation to disability
Comment	<ul style="list-style-type: none"> Define "supports". Also does this explanation not contradict the entry requirements of the scheme as specified in clause 24 (1) (b) and 24 (1) (e) 		

Clause #	25(1)(c)	Clause detail	The CEO is satisfied that provision of early intervention supports for the person is likely to: <ul style="list-style-type: none"> (i) mitigate, alleviate or prevent the deterioration of the functional capacity of the person to undertake communication, social interaction, learning, mobility, self-care or self-management
Comment	How will this be assessed for children aged 6 years and under, and for the parents/carers of children aged 6 years and under?		

Clause #	25(1)(c)	Clause detail	The CEO is satisfied that provision of early intervention supports for the person is likely to: <ul style="list-style-type: none"> (ii) strengthen the sustainability of the information supports available to the person, including through building the capacity of the person's carer
Comment	<ul style="list-style-type: none"> How will this be assessed in respect of parents/carers of children aged 6 		

	<p>years and under?</p> <ul style="list-style-type: none"> • What methods will be undertaken and resources made available to build the capacity of parents/carers of children aged 6 years and under? Will familial constraints in terms of parenting and caring for a young child or children with disabilities be considered?
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Clause #	25(1)(c)(ii)	Clause detail	Strengthen the sustainability of the informal supports available to the person, including through building the capacity of the persons carer
Comment	<ul style="list-style-type: none"> • Define informal supports 		

Clause #	30(1)(a)	Clause detail	Revocation of participation status “ The CEO may revoke a person’s status as a participant in the NDIS Launch if: (a) the person does not meet the residence requirements (see section 23)
Comment	<ul style="list-style-type: none"> • What happens in the case of change of state or region i.e. moving from Tweed Heads (NSW) to Coolangatta (QLD) literally on the NSW/QLD border? Will the participation rules differ per state/territory/region or will they be a steadfast set of rules that are federal? Who determines this? 		

Clause #	31(b)(c)	Clause detail	Principles relating to plans “the preparation, review and replacement of participants plan, and the management of the funding for supports under the participants plan, should be so far as reasonably practical”: (b) Directed by the participant and (c) where relevant consider the role of family, carers, and other persons who are significant in the life of the participant
Comment	<ul style="list-style-type: none"> • Define “where relevant” – who decides this? What are that persons qualifications and experience? 		

Clause #	31(e)	Clause detail	Consider the availability to the participant of informal support and other support services generally available to any person in the community
Comment	<ul style="list-style-type: none"> • Define informal support and other support services generally available to any person in the community – does this mean free community services? Professional services?? If not free, who will fund these supports for the person if they are fee for service? Who determines this? How? 		

Clause #	31(f)	Clause detail	Support Communities to respond to the individual goals and needs of the participant
Comment	<ul style="list-style-type: none"> • Define how this will occur and at the cost of whom? 		

Clause #	33(6)	Clause detail	To the extent that the funding for supports under a participant’s plan is managed by the Agency, the plan must provide that the supports are to be provided only by a registered provider of supports
Comment	<ul style="list-style-type: none"> Where funding for supports is managed by the Agency, restricting provision of services to registered providers of supports will force participants currently accessing supports through non-registered providers to access a new registered provider thus reducing their ‘choice and control’. Where such a provider is not registered then that support may also be lost. Is there a cost associated with an application to be a registered provider? 		

Clause #	34 (c)	Clause detail	Reasonable and necessary supports: “ (c) The support 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;”
Comment	<ul style="list-style-type: none"> Define “value for money” and “reasonable and relative” – who determines this and on what professional evidence? 		

Clause #	34 (d)	Clause detail	The support will be, or is likely to be, effective and beneficial for the participant, having regard to current good practice
Comment	<ul style="list-style-type: none"> Who determines “current good practice” and how is this determined and on what statistical evidence? 		

Clause #	34 (g)	Clause detail	The support is not prescribed by the NDIS rules as a support that will not be funded or provided under the NDIS
Comment	<ul style="list-style-type: none"> What supports will NOT be funded? Who determines this? And on what basis? 		

Clause #	35(4)(a)	Clause detail	The methods or criteria prescribed by the NDIS rules for assessing or deciding the reasonable and necessary supports that will be funded under the NDIS may include methods or criteria relating to how to take into account: (a) lump sum compensation payments that specifically include an amount for the cost of supports;
Comment	<ul style="list-style-type: none"> Does this mean that a person with a disability that has received a compensation payout is ineligible to become a participant of the NDIS? If so why? And how does this adhere to the Disability Discrimination act? 		

Clause #	36(2)(b)(i)	Clause detail	Information and reports for the purpose of preparing and approving a participant’s plan (2) The requests the CEO may make are as follows: (b) (1) Undergo an
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			assessment and provide to the CEO the report, in the approved form, of the person who conducts the examination
Comment			<ul style="list-style-type: none"> Will regard be given to previous professional reports that the potential participant has already from previous assessments? Will there be a time frame that these previous reports become null and void? If so why? What will be the assessments required? Who will conduct them? And who will fund this? What is the approved form? How does this point (1) differ from point 36 (ii)? Is the “assessment” referred to in point 36 (i) different to those referred to in 36 (ii) and if so define the difference

Clause #	36(3)	Clause detail	The CEO may prepare the statement of participation supports, or decide whether to approve a statement of participation supports, before all the information and reports requested under subsection (2) are received by the CEO, but must give the participant a reasonable opportunity to provide them
Comment			<ul style="list-style-type: none"> How can the CEO make an informed decision without all of the requested information? And define “reasonable opportunity” in terms of a time frame and how this will be communicated to the potential participant?

Clause #	37 (2)	Clause detail	A participants plan cannot be varied after it comes into effect, but can be replaced under division 4.
Comment			<ul style="list-style-type: none"> Why can a plan not be varied? If a plan is replaced does the “start date for entry into the NDIS” also get replaced i.e. if original plan was in June 2014 and the Replacement is in June 2015 does this entry into the NDIS scheme date then change? What happens to the records of the old plan? Can this old plan be referenced for professional report data in the new plan or do new assessments have to take place under clause 36 (i) and 36 (ii)?

Clause #	40(1)(a)(b)	Clause detail	Effect of temporary absence on plans (1) A participant for whom a plan is in effect may be temporarily absent from Australia for the grace period for the absence without affecting the participants plan (a) 6 weeks beginning when the participant leaves Australia and (b) If the CEO is satisfied that it is appropriate for the grace period to be longer than 6 weeks – such longer period as the CEO decides, having regard to the criteria (if any) prescribed by the NDIS rules for the purpose of this paragraph
Comment			<ul style="list-style-type: none"> What if the person’s disability is so rare that the only available medical intervention is based overseas? Will the NDIS fund this? If not – why not and how does this refusal comply with the Disability discrimination act? Also why is the CEO able to deem what absent periods are appropriate and the length of such absences and on what basis is this determination made? What is the full criteria (if any) prescribed by the NDIS for the purpose of this paragraph?

Clause #	41 (c)	Clause detail	Suspension of plans (c) The participant is not entitled to request a review of the plan under subsection 48(1)
Comment	<ul style="list-style-type: none"> Why would to participant not be entitled to request a review? Does this not contravene the rights of the individual under the disability discrimination act? 		

Clause #	42 (2) (a) (b) (c) (d)	Clause detail	For the purposes of the statement of participation supports in a participant’s plan, in specifying the management of funding for supports under the plan as mentioned in paragraph 33 (2) (d), the plan must specify that such funding is to be wholly managed by (a) the participant (b) a registered plan management provider (c) the agency (d) the plan nominee
Comment	<ul style="list-style-type: none"> How is the funding amount determined? What is the minimum and maximum funding amount? How is this granted? i.e. is it in the form of a debit card? Bank account? Similar to the current FACHSIA funding? In the case of children who manages these funds? How is this determined and do parents then become what is termed in 42 (d) as a “nominee”? also - who are the full list of “Registered plan management providers”(b) how is this registration obtained and approved by whom and based on what criteria? 		

Clause #	43(1)(a)	Clause detail	Choice for the participant in relation to plan management (a) that he or she manage the funding for supports under the plan wholly, or to the extent specified in the request
Comment	<ul style="list-style-type: none"> Define exactly how will this be managed? Will funds be paid into a participant’s bank account? Will they be given a type of credit/debit card? What if the participant is a child? 		

Clause #	43(b)	Clause detail	That the funding for supports under the plan be managed wholly, or to the extent specified in the request, by a registered plan management provider he or she nominates
Comment	<ul style="list-style-type: none"> Please clarify who these “registered plan management providers” will be. Names of current or potential organisations 		

Clause #	43(3)(a)	Clause detail	If the participant is prevented from managing the funding for supports under the plan wholly, or to a specified extent, by section 44, the statement of participant supports in the plan must provide that: (a) the funding for supports under the plan is to be managed in accordance with the plan management request, to the extent that the participant is not
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			prevented from managing it;
Comment	<ul style="list-style-type: none"> The statement in 43 (3) contradicts that made in 43 (a) please clarify 		

Clause #	43 (4) (a) (b)	Clause detail	If a participant does not make a plan management request, the statement of participant supports in the plan must provide that the funding for supports under the plan be managed by: (a) a registered plan management provider specified by the agency or (b) The agency
Comment	<ul style="list-style-type: none"> How will the participant know they are entitled to make a request? Who grants such request? If this request is not granted – does this mean a participant cannot self-direct the funds for their own supports? 		

Clause #	44 (2) (b)	Clause detail	The statement of supports in a participants plan must not provide that the participant is to manage the funding for supports under his or her plan to a particular extent if the CEO is satisfied that management of the plan to the extent would: (b) permit the participant to manage matters that are prescribed by the National Disability Insurance Scheme rules as being matters that must not be managed by the participant
Comment	<ul style="list-style-type: none"> Clarify what “matters that must not be managed by the participant” are? 		

Clause #	46 (1)	Clause detail	Acquittal of NDIS Amounts: (1) A participant that receives an NDIS amount, or a person that receives an NDIS amount on behalf of a participant, must spend the money in accordance with the participant’s plan
Comment	<ul style="list-style-type: none"> How will this be monitored to ensure transparency and funds are not mismanaged/misused? By whom will this be monitored and how? 		

Clause #	46 (2)	Clause detail	The NDIS rules may make provision for and in relation to the retention of records of NDIS amounts paid to participants and other persons, including requiring that prescribed records be retained for a prescribed period
Comment	<ul style="list-style-type: none"> Who will be retaining these records? For what time frame? And in what form? And can the participant or their nominee hire a tax agent to keep these records and can such a tax agent also be paid as a support under their plan? Who then audits/monitors the tax agent? If funds are managed by “the Agency” who then audits “the agency” 		

Clause #	47 (2)	Clause detail	Participant may change participant’s statement of goals and aspirations at any time (2) If a participant gives a changed version of the participants statement of goals
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			and aspirations to the CEO, the plan is taken to be replaced by a new plan
Comment			<ul style="list-style-type: none"> Does the participant have to attend an office in person in order to submit a changed statement of goals and aspirations? What if this is physically impossible?

Clause #	48(1)(2)	Clause detail	Review of participants plan: (1) A participant may request that the CEO conduct a review of the participant's plan at any time (2) The CEO must decide whether or not to conduct the review within 14 days after receiving the request. If the CEO does not make a decision within that period, he or she is taken to have decided not to conduct the review
Comment			<ul style="list-style-type: none"> Why does the CEO get ultimate power over this? Why are they taken to have decided not to conduct a review if they have not decided within 14days? How is the participant notified of the decision? Does this account for all literacy levels, hearing impediments, visual impediments, languages?

Clause #	50 (3)	Clause detail	Information and reports for the purpose of reviewing a participants plan: (3) The CEO may review a participant's plan before all the information and reports requested under subsection (2) are received by the CEO, but must give the participant a reasonable opportunity to provide them
Comment			<ul style="list-style-type: none"> How can the CEO make an informed decision BEFORE all reports are received?

CHAPTER 4 – ADMINISTRATION

Clause #	51(1)	Clause detail	A participant or a prospective participant must notify the CEO if: <ul style="list-style-type: none"> (a) an event or change of circumstances happens that affects, or might affect, his or her access request, status as a participant or plan; or (b) the participant or prospective participant becomes aware that such an event or change of circumstances is likely to happen
Comment	<ul style="list-style-type: none"> • Could a list of potential circumstances that would be applicable under this clause be made available? 		

Clause #	51(2)(a)	Clause detail	In the manner set out in a written notice given to him or her under section 52
Clause #	52(2)	Clause detail	The CEO must, by written notice, notify the participant or prospective participant of the approved manner of notification
Comment	<ul style="list-style-type: none"> • Could the manner of notification be made available to determine if and where supports are required to assist a participant or nominee obtain, complete and submit this notification, for example language, level of literacy, and comprehension of the document? • For participants or parents/carers unsuited to written correspondence (such as visual impairments, illiterate, CALD) oral correspondence will need to be included as a method of response. 		

Clause #	53(1)	Clause detail	If the CEO has reasonable grounds to believe that a participant or prospective participant has information, or has custody or control of a document, that may be relevant to one or more matters mentioned in subsection (2), the CEO may require the participant or prospective participant to give the information, or produce the document, to the Agency
Clause #	55	Clause detail	If the CEO has reasonable grounds to believe that a person other than the participant or prospective participant has information, or has custody or control of a document, that may be relevant to one or more matters mentioned in subsection (2), the CEO may require the person to give the information, or produce the document, to the Agency
Comment	<ul style="list-style-type: none"> • Definition of the 'reasonable grounds' to be applied made available 		

Clause #	56(5)	Clause detail	If the notice requires the person to appear before an
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			officer, the notice must specify time and place at which the person is to appear. The time must be at least 14 days after the notice is given
Comment			<ul style="list-style-type: none"> • Has consideration been given to logistics and accessibility in terms of transport availability, distance from home, cost of transport, time away from work, and other financial costs incurred to meet with an officer, particularly in remote and regional areas? • Has consideration been given to parents/carers of children with disabilities aged 6 years and under, regarding their ability to meet with an officer in terms of maintaining care for their child with a disability for the duration of the travel time and meeting time, childcare for other siblings if applicable, transport accessibility and cost, distance travelled etc.?

Clause #	60(2)(e)	Clause detail	The person believes on reasonable grounds that the making of the record, or the disclosure or use of the information, by the person is necessary to prevent or lessen a serious threat to an individual's life, health or safety
Comment			<ul style="list-style-type: none"> • In relation to parents/carers of children aged 6 and under, particularly with current custodial court orders in place or where custody is in dispute, what mechanisms are in place to ensure that information is not obtained for the purpose malice or harm to a person or person(s) including the child?

Clause #	66(1)(a)	Clause detail	If the CEO certifies that it is necessary in the public interest to do so in a particular case or class of cases – disclose information acquired by a person in the performance of his or her functions of duties in the exercise of his or her powers under this Act to such persons and for such purposes as the CEO determines
Comment			<ul style="list-style-type: none"> • Is there an external body or agency to which the CEO must provide justification of release of such information? What measures are in place to ensure the CEO does not exercise error in judgement pertaining to the release of such information?

Clause #	69(1)	Clause detail	A person or entity may apply in writing to the CEO to be a registered provider of supports...
Comment			<ul style="list-style-type: none"> • Is there a fee or charge associated with the submission of an application to become a registered provider? • Is there any annual registration fees etc. to be incurred by registered providers?

Clause #	70(3)	Clause detail	The instrument may specify that the person or entity is a registered provide of supports in respect of: (a) a class of supports specified in the instrument;
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			or (b) a class of person specified in the instrument
Comment	<ul style="list-style-type: none"> • What measures are in place to review the quality of a service supports in relation to family-centred, strength-based services that are innovative and driven in terms of outcomes? • Can the class of supports and class of person be made available? • Against what criteria will registered providers need to report in the efficacy of their service supports in terms of outcomes, reach, interagency collaboration, capacity building for the participant and family etc.? 		

Clause #	73(1)	Clause detail	<p>The NDIS rule may make provision in connection with the approval of persons or entities as registered providers of supports including by prescribing criteria relating to:</p> <ul style="list-style-type: none"> (a) compliance with prescribed safeguards; (b) compliance with prescribed quality assurance standards and procedures; and (c) qualifications of persons or entities or employees of persons or entities
Comment	<ul style="list-style-type: none"> • There appears to be no criteria under the rules regarding management fees. Will the management of funds attract an administration fee? • If so, is there a prescribed fee schedule for registered providers? 		

Clause #	74(6)	Clause detail	<p>The NDIS rules may prescribe criteria to which the CEO is to have regard in deciding the following:</p> <ul style="list-style-type: none"> (a) whether to make a determination under paragraph (1)(b); (b) whether a person managing the funding for supports under a participant's plan would present an unreasonable risk to the participant as mentioned in paragraph (4)(b); (c) whether a child is capable of making decision for himself or herself as mention in paragraph (5) (a); (d) whether it is appropriate for subsection (1) and (2) apply to a child as mentioned in paragraph (5)(b)
Comment	<ul style="list-style-type: none"> • There is anxiety and fear amongst parents/carers with a mild disability that their own 'impairments' may render them as 'not appropriate' to be the person who has, or jointly has, parental responsibility for their child. How will this be considered? • Can a list of 'unreasonable risks' be made available? • What qualifications and experience will be required to ensure that the CEO (or representative of the CEO) is capable, fit and proper to assess and determine a child's capabilities to make decisions that are informed, relevant 		

	and in the best interest in regards to positive outcomes for the child?
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Clause #	76(1)	Clause detail	It is the duty of a person who may do a thing because of section 74 to ascertain the wishes of the child concerned and to act in a manner that promotes the person and social wellbeing of that child.
Comment	<ul style="list-style-type: none"> The wishes of a child aged 6 years and under may not be in the best interests of the child. The clause should stipulate that <i>“it is the duty of a person who may do a thing because of section 74 to ascertain and consider the wishes of the child concerned, to then act in a manner that promotes the person and social wellbeing of that child.”</i> 		

Clause #	78(1)	Clause detail	Any act that may be done by a participant under, or for the purposes of, this Act that relates to: <ul style="list-style-type: none"> (a) the preparation, review or replacement of the participant’s plan; or (b) the management of the funding for supports under the participant’s plan may be done by the participant’s plan nominee, other than to the extent specified in the instrument of appointment of the plan nominee.
Comment	<ul style="list-style-type: none"> What supports and resources are available to the plan nominee to assist the management of the participant’s plan and funding for supports? At what cost to the participant or nominee (parent/carer where parental responsibility is assumed) are these supports provided? Who is responsible and involved in assessing the extent to which a plan nominee can act? Are any measures or descriptors available against which this assessment can be made? 		

Clause #	78(5)	Clause detail	If the participant’s plan nominee was appointed on the initiative of the CEO, the plan nominee may only do an act in relation to: <ul style="list-style-type: none"> (a) the preparation, review or replacement of the participant’s plan; or (b) the management of the funding for supports under the participant’s plan if the nominee considers that the participant is not capable of doing the act.
Comment	<ul style="list-style-type: none"> What is the reason for the variation is extent to which a plan nominee can act if they were to be appointed by the CEO rather than through, say parental responsibility? 		

Clause #	79(4)	Clause detail	If, under this Act, the CEO gives a notice to a participant who has a correspondence nominee, subsection (1) does
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			not extend to an act that is required by the notice to be done by the participant personally
Comment			<ul style="list-style-type: none"> What considerations have been given where the participant is a child? Will the parent/carer undertaken parental responsibility override this subsection to enable them to act on behalf of their child?

Clause #	80(1)	Clause detail	It is the duty of a nominee of a participant to ascertain the wishes of the participant and to act in a manner that promotes the personal and social wellbeing of the participant.
Comment			<ul style="list-style-type: none"> The wishes of a child aged 6 years and under may not be in the best interests of the child. The clause should stipulate that <i>“it is the duty of a nominee of a participant to ascertain and consider the wishes of the child concerned, to then act in a manner that promotes the person and social wellbeing of that child.”</i>

Clause #	80(4)	Clause detail	The NDIS rules may prescribe other duties of a nominee, including duties requiring the nominee: <ul style="list-style-type: none"> (a) to support decision-making by the participant personally; or (b) have regard to, and give appropriate weight to, the views of the participant
Comment			<ul style="list-style-type: none"> This clause should not be applied to the parents/carers acting a nominee under the assumption of parental responsibility, for children with disabilities aged 6 and under

Clause #	82(1)(b)	Clause detail	Any requirement made of the participant to: <ul style="list-style-type: none"> (a) inform the CEO of a matter; or (b) given information, or produce a document, to an officer; may be satisfied by the correspondence nominee
Comment			<ul style="list-style-type: none"> Has consideration been given to logistics and accessibility in terms of response including transport availability, distance from home, cost of transport, time away from work, and other financial costs incurred to meet with an officer, particularly in remote and regional areas? Has consideration been given to parents/carers of children with disabilities aged 6 years and under, regarding their ability to meet with an officer in terms of maintaining care for their child with a disability for the duration of the travel time and meeting time, childcare for other siblings if applicable, transport accessibility and cost, distance travelled etc.?

Clause #	82(1)(d)	Clause detail	If the correspondence nominee fails to satisfy such a requirement, the participant is taken, for the purposes
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			of this Act, to have failed to comply with the requirement
	82(3)	Clause detail	To avoid doubt, for the purposes of this Act, the participant is taken not have complied with a requirement if: <ul style="list-style-type: none"> (a) the requirement imposes and obligation on the participant to inform the CEO of a matter; or give information, or produce a document, within a specified time; and (b) the correspondence nominee does not do so within that period.
Comment	<ul style="list-style-type: none"> • What supports for parents/carers assuming parental responsibility, will be made available to enable them to fulfil this requirement and not fail to comply. Will these supports be offered at no cost given this is an obligation under the Act? How will these be offered in remote and regional areas? 		

Clause #	83(1)(b)	Clause detail	The event of change of circumstances is likely to affect: <ul style="list-style-type: none"> (i) the ability of the nominee to act as plan nominee or correspondence nominee of the participant; or (ii) the ability of the CEO gives notice to the nominee under this Act; or (iii) the ability of the nominee to comply with notices given to the nominee by the CEO under this Act
Comment	<ul style="list-style-type: none"> • What supports for parents/carers assuming parental responsibility, will be made available to enable them to fulfil this requirement and not fail to comply with notices. Will these supports be offered at no cost given this is an obligation under the Act? How will these be offered in remote and regional areas? • There is anxiety and fear amongst parents/carers with a mild disability that their own 'impairments' may unfairly prejudice their ability as judged by the CEO. How will this be considered? 		

Clause #	84(2)	Clause detail	A notice under subsection (1): <ul style="list-style-type: none"> (a) must specify how the plan nominee is to give the statement to the Agency
Comment	<ul style="list-style-type: none"> • Can a list of methods of provision be made available? Do these methods consider the constraints of persons residing in the remote or regional locations? 		

Clause #	84(5)	Clause detail	A statement given in response to a notice under subsection (1) must be in accordance with a form approved by the CEO
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Comment	<ul style="list-style-type: none"> Can the contents and requirements of this 'form' be made available?
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Clause #	84(7)	Clause detail	Subsection (6) does not apply if the person has a reasonable excuse
Comment	<ul style="list-style-type: none"> Can a list of 'reasonable excuses' to be accepted by the CEO be made available? 		

Clause #	85(1)	Clause detail	<p>If:</p> <ul style="list-style-type: none"> (a) under this Act, the CEO makes a request of a participant who has a nominee; and (b) the request is that the participant undergo an assessment or a medical psychiatric or psychological examination <p>the nominee may accompany the participant while the assessment of examination is being conducted:</p> <ul style="list-style-type: none"> (c) if the participants so wishes; and (d) to the extent that the person conducting the assessment or examination
Comment	<ul style="list-style-type: none"> Has consideration been given to the age of the participant (i.e. a child aged 6 years or under) in the application of this clause? This clause should recognise that all children are to be accompanied by their nominee 		

Clause #	86(2)/ 87(2)	Clause detail	<p>An appointment may be made:</p> <ul style="list-style-type: none"> (a) at the request of the participant; or (b) on the initiative of the CEO
Comment	<ul style="list-style-type: none"> Will the parent/carer of a child assuming the parental responsibility be appointed by default as the nominee as subsection (a) will not be applicable? Or will all decisions in the matter of appointment of nominees for children aged 6 years and under, be made by the CEO? 		

Clause #	88(6)	Clause detail	<p>THE NDIS rules may prescribe:</p> <ul style="list-style-type: none"> (a) persons who must not be appointed as nominees; and (b) criteria to which the CEO is to have regard in considering the appointment of a nominee
Comment	<ul style="list-style-type: none"> Can the criteria defining unsuitability as a nominee, be made available? Can the criteria considered in regard to the appointment of a nominee, be made available? 		

Clause #	89	Clause detail	Circumstances in which the CEO must cancel
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			appointment of nominees – at the request of the participant
Comment			<ul style="list-style-type: none"> This clause and subsection should not applicable to a child

Clause #	90	Clause detail	General circumstances in which the CEO may cancel or suspend appointment of nominees – at the request of the participant
Comment			<ul style="list-style-type: none"> This clause and subsection should not applicable to a child

Clause #	91(1)	Clause detail	The CEO may, by written instrument, suspend the appointment of a person as a nominee of a participant if the CEO has reasonable grounds to believe that the person has caused, or is likely to cause, severe physical, mental or financial harm to the participant
Comment			<ul style="list-style-type: none"> Can the criteria applied as ‘reasonable grounds’ to determine the suspension of a nominee by the CEO, be made available?

Clause #	95	Clause detail	Nothing in this Part is intended in any way to affect the CEO’s powers under other provision of this Act to give notice to, or make requirements of, a participant who has a nominee
Comment			<ul style="list-style-type: none"> This clause needs to include “that are reasonable and practicable” for the nominee

Clause #	99 (d)	Clause detail	Each of the following decisions of the CEO is a reviewable decision: a decision under subsection 33(2) to approve the statement of a participant supports in a participant’s plan
Comment			<ul style="list-style-type: none"> Why should the approval of the statement of a participants supports under their plan be a reviewable decision? Once approved, that should mean that it meets the requirements - end of story! Who then can trigger this review of an approved statement of a participant’s supports?

Clause #	99 (j)	Clause detail	A decision under paragraph 74 (4) (c) not to make a determination that subsections 74 (1) and (2) do not apply to a child
Comment			<ul style="list-style-type: none"> Clause 74 (4) (c) does not even exist. Clause 74 (2) (b) refers to a registered plan management provider. Who is this? Who appoints them? What do they do? Is the cost of this an allowable expense under the NDIS?

Clause #	99 (l)	Clause detail	A decision under section 86 to appoint a plan nominee
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Comment	<ul style="list-style-type: none"> Under clause 86 (2) (b) states on the initiative of the CEO! What does this mean and what impact could this have should the nominee be the rightful Parent/carer and the CEO takes issue with this?
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CHAPTER 5 – COMPENSATION

Not applicable to the children attending this service.

CHAPTER 6 - NATIONAL DISABILITY INSURANCE SCHEME LAUNCH TRANSITION AGENCY

Clause #	118 (1) (b) (ii)	Clause detail	The Agency has the following functions, to manage and to advise and report on, the financial sustainability of the NDIS by: identifying and managing risks and issues relevant to the financial sustainability of the NDIS
Comment	<ul style="list-style-type: none"> Sound risk management practice but implications –what if NDIS deemed financial unsustainable? What are the implications/impacts on funding for the disabled? Where does one go from here, when this is the predominant vehicle? 		

Clause #	118 (1) (c)	Clause detail	To develop and enhance the disability sector, including by facilitating innovation, research and contemporary best practice in the sector
Comment	<ul style="list-style-type: none"> How will the Agency achieve these expectations? Innovation usually driven by university research, clinicians, psychologists, parents/carers....will the Agency be predominantly staffed by such resources? If we assume Centrelink, as a body, is an example of what can be expected then one would seriously question such expectations. 		

Clause #	119 (1) & (2)	Clause detail	The Agency has power to do all things necessary or convenient to be done for or in connection with the performance of its functions. The Agency powers include, the power to accept gifts, devises, bequests and assignments
Comment	<ul style="list-style-type: none"> What happens if a task/event/situation is not convenient? What will the Agency do then? The Agency should be required to keep a register of such gifts etc., for disclosure and transparency purposes – similar to what politicians and many businesses have to do now! What does the word ‘assignments’ mean in this context? 		

Clause #	124 (2)	Clause detail	The Board has the power to do all things necessary or convenient to be done for or in connection with the performance of its functions
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Comment	<ul style="list-style-type: none"> • What happens if a task/event/situation is not convenient? What will the Board do then?
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Clause #	127 (1) & (2)	Clause detail	Board members are appointed by the Minister, by written instrument, on a part-time basis A person is eligible for appointment as a Board member only if the Minister is satisfied that the person has the skills, experience or knowledge in at least one of the following fields: disability services.....
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Comment	<ul style="list-style-type: none"> • Where is the independence from government regarding board appointments? Given this lack of government independence, what is to stop a Minister's individual bias from playing out with Board appointments, even though states and territories need to support decision?
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Clause #	127 (3)	Clause detail	The Minister must consult the host jurisdictions about the appointment of the Chair
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Comment	<ul style="list-style-type: none"> • The Minister is solely responsible for this appointment, although consults! Where are the necessary checks and balances here?
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Clause #	129 (3)	Clause detail	The Minister may by written instrument appoint a person to act as a Board member during any period, or during all periods when a Board member is absent or unable to perform the duties of the office
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Comment	<ul style="list-style-type: none"> • Because of the short term nature of this appointment, the Minister may appoint without host jurisdiction involvement
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Clause #	134 (3)	Clause detail	The Minister must consult the host jurisdictions about the termination of the appointment of the Chair
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Comment	<ul style="list-style-type: none"> • The Minister is solely responsible for termination, although consults! Where are the necessary checks and balances here?
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Clause #	144 (1) (c)	Clause detail	The Advisory Council's function is to provide, advice to the Board about the way in which the Agency, provides reasonable and necessary supports, including early intervention supports, for participants in the NDIS launch
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Comment	<ul style="list-style-type: none"> • What is deemed to be 'reasonable' in this clause?
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Clause #	144 (1) (f)	Clause detail	Promotes the provision of high quality and innovative supports to people with a disability
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Comment	<ul style="list-style-type: none"> • How will it facilitate or do this in actuality, when it is simply advisory in
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	nature?
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Clause #	144 (1) (g)	Clause detail	Facilitates greater community inclusion of people with disability
Comment	<ul style="list-style-type: none"> How will it facilitate or do this in actuality, when it is simply advisory in nature? 		

Clause #	145	Clause detail	If the Advisory Council provides advice to the Board, the Board must have regard to the advice, give the Ministerial Council a copy of the advice, a statement about what has been done, or is to be done in response to the advice
Comment	<ul style="list-style-type: none"> The advice provided does not have to be followed, ever! 		

Clause #	147 (1) & (3)	Clause detail	Members of the Advisory Council are appointed by the Minister, by written instrument, on a part time basis
Comment	<ul style="list-style-type: none"> Minister seeks support from host jurisdictions, but could still influence outcomes? 		

Clause #	147 (2)	Clause detail	Minister must consult the host jurisdictions about the appointment of the Principal Member
Comment	<ul style="list-style-type: none"> The Minister is solely responsible for this appointment, although consults! Where are the necessary checks and balances here? 		

Clause #	149 (3)	Clause detail	The Minister may by written instrument appoint a person to act as a member of the Advisory Council during any period, or during all periods when a member of the Advisory Council is absent or unable to perform the duties of the office
Comment	<ul style="list-style-type: none"> Because of the short term nature of this appointment, the Minister may appoint without host jurisdiction involvement 		

Clause #	155 (3)	Clause detail	The Minister must consult the host jurisdictions about the termination of the appointment of the Principal Member
Comment	<ul style="list-style-type: none"> The Minister is solely responsible for termination, although consults! Where are the necessary checks and balances here? 		

Clause #	159 (2)	Clause detail	The CEO has the power to do all things necessary or
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			convenient to be done for or in connection with the performance of his or her duties
Comment	<ul style="list-style-type: none"> • What happens if a task/event/situation is not convenient? What will the CEO do then? 		

Clause #	160 (1), (6)	Clause detail	CEO appointed by the Board, except the first CEO who is appointed by the Minister
Comment	<ul style="list-style-type: none"> • The Minister is solely responsible for the first appointment, although consults! Where are the necessary checks and balances here? 		

Clause #	179	Clause detail	The Agency may receive money paid to it by a host jurisdiction for the purpose of funding reasonable and necessary supports for the participants in the NDIS launch who are in the host jurisdiction
Comment	<ul style="list-style-type: none"> • What is deemed to be 'reasonable' and 'necessary' in this clause? Who determines this? On what basis is such determination made? 		

CHAPTER 7 – OTHER MATTERS

Clause #	182 (1) (b) and (2) (a) (b) (i) (ii) (c)	Clause detail	<p>Debts due to the agency</p> <ul style="list-style-type: none"> • (1) (B) The person is not entitled for any reason to payment of the NDIS amount; the amount of the payment is a debt due to the agency by the person and the debt is taken to arise when the person receives the payment • (2) Without limiting paragraph (1) (b), a person is taken not to have been entitled to the payments of an NDIS amount if the payment should not have been made for one or more of the following reasons: <ul style="list-style-type: none"> • (a) The payment was made as a result of a computer error or an administrative error; • (b) The payment was made as a result of: <ul style="list-style-type: none"> • (i) a contravention of this act, the regulations or the NDIS rules • (ii) a false or misleading statement or misrepresentation; • (C) The participant died before the payment was made <p>(3) If a person does not comply with subsection 46(1) in relation to NDIS amount, an equal amount is a debt due to the agency by the person</p> <p>(4) The NDIS rules may provide that, if records are not retained for the period prescribed as mentioned in subsection 46 (2) in relation to an NDIS amount, an equal or lesser amount is a debt due to the agency by the person</p>
Comment	<ul style="list-style-type: none"> • 182 (b) This is very concerning. Statement is too open. Who determines this? • 182 (4) Prescribed payments for a perceived period of time - who determines what is prescribed? What impact does this have on the participant's requirements (if any) to retain records? This is too admin intensive. 		

Clause #	201	Clause detail	<p>Delegations by the Minister</p> <p>(1) The Minister may, in writing, delegate to the CEO, his or her powers under section 209</p>
Comment	<ul style="list-style-type: none"> • How will the application of 'convenient' be determined under section 209(1) (b) and to whom or what is the convenience related? • Under 209(7) the Minister is required to only consult with each host jurisdiction in relation to the making of a Category D NDIS rules rather than undertaking a process of approval. There is not the appropriate checks and 		

	balances in place.
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