



National Disability Insurance Scheme Amendment (Streamlined Governance) Act 2019

No. 113, 2019

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

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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No. 113, 2019

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

[Assented to 9 December 2019]

The Parliament of Australia enacts:

1 Short title

This Act is the *National Disability Insurance Scheme Amendment (Streamlined Governance) Act 2019*.

No. 113, 2019

*National Disability Insurance Scheme Amendment (Streamlined
Governance) Act 2019*

1

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
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	10 December 2019

Note: This table relates only to the provisions of this Act as originally enacted.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 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

National Disability Insurance Scheme Act 2013

1 Section 9

Insert:

host jurisdiction Minister for a host jurisdiction means a Minister of the host jurisdiction who is a member of the Ministerial Council.

2 After subsection 120(4)

Insert:

Process for seeking agreement

(4A) The Minister must:

- (a) give a notice (the *original notice*) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the making of the instrument and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
- (b) provide a copy of the proposed instrument to that host jurisdiction Minister.

(4B) If, immediately before the end of that 28-day period:

- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the instrument; and
- (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (4C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the making of the instrument.

(4C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the making of the instrument:

- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
- (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the instrument, then, at the end of that period, that host jurisdiction is taken to have so agreed.

Fee must not amount to taxation

3 After subsection 121(3)

Insert:

Process for seeking agreement

(3A) The Minister must:

- (a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the giving of the direction and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
- (b) provide a copy of the proposed direction to that host jurisdiction Minister.

(3B) If, immediately before the end of that 28-day period:

- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the giving of the direction; and
- (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (3C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the giving of the direction.

(3C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the giving of the direction:

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- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the giving of the direction, then, at the end of that period, that host jurisdiction is taken to have so agreed.

Agency must comply with direction

4 After subsection 125(3)

Insert:

Process for seeking agreement

(3A) The Minister must:

- (a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the giving of the statement and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
- (b) provide a copy of the proposed statement to that host jurisdiction Minister.

(3B) If, immediately before the end of that 28-day period:

- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the giving of the statement; and
- (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (3C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the giving of the statement.

(3C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the giving of the statement:

- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
- (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the giving of the statement, then, at the end of that period, that host jurisdiction is taken to have so agreed.

Board must have regard to statement

5 Before subsection 125(5)

Insert:

Statement not a legislative instrument

6 Subsection 127(3)

Omit “States and Territories”, substitute “host jurisdictions”.

7 Subsections 127(4) and (4A)

Repeal the subsections, substitute:

- (4) Before the Minister appoints a Board member other than the Chair, the Minister must:
 - (a) seek the support of all the host jurisdictions for the appointment; and
 - (b) be satisfied that the appointment is supported by:
 - (i) the Commonwealth; and
 - (ii) a majority of the group consisting of the Commonwealth and the host jurisdictions.
- (4A) The Minister must give a notice (the *original notice*) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the appointment covered by subsection (4) and requesting the agreement be given before the end of 28 days beginning on the day the notice is given.
- (4B) If, immediately before the end of that 28-day period:

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- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the appointment; and
 - (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (4C);
- then, at the end of that period, that host jurisdiction is taken to have agreed to the appointment.
- (4C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the appointment:
- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the appointment, then, at the end of that period, that host jurisdiction is taken to have so agreed.
- (4D) Despite subsection (4), the Minister may appoint a person as a Board member other than the Chair if:
- (a) the appointment is not supported by a majority of the group consisting of the Commonwealth and the host jurisdictions; and
 - (b) the period of 90 days beginning on the day the first notice was given under subsection (4A) in relation to that appointment has ended.

8 After subsection 134(4)

Insert:

- (4A) The Minister must give a notice (the *original notice*) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the termination covered by subsection (4) and requesting the agreement be given before the end of 28 days beginning on the day the notice is given.
- (4B) If, immediately before the end of that 28-day period:

- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the termination; and
 - (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (4C);
- then, at the end of that period, that host jurisdiction is taken to have agreed to the termination.
- (4C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the termination:
- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the termination, then, at the end of that period, that host jurisdiction is taken to have so agreed.

9 Subsection 134(5)

Omit “Subsections (3) and (4) are taken to apply in relation to the termination of the appointment of the Chair”, substitute “Subsections (3) to (4C) are taken to apply in relation to the termination of the appointment of a Board member”.

10 At the end of section 135

Add:

Process for seeking agreement

- (3) The Minister must:
 - (a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the terms and conditions and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
 - (b) provide a copy of the proposed terms and conditions to that host jurisdiction Minister.

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- (4) If, immediately before the end of that 28-day period:
- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the terms and conditions; and
 - (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (5);
- then, at the end of that period, that host jurisdiction is taken to have agreed to the terms and conditions.
- (5) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the terms and conditions:
- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the terms and conditions, then, at the end of that period, that host jurisdiction is taken to have so agreed.

11 Subsections 147(2) to (3A)

Repeal the subsections, substitute:

Consultation

- (2) The Minister must consult the host jurisdictions about the appointment of each member of the Advisory Council.

12 Subsections 155(3) and (4)

Repeal the subsections, substitute:

Consultation

- (3) The Minister must consult the host jurisdictions about the termination of the appointment of a member of the Advisory Council.

13 Subsection 156(2)

Repeal the subsection, substitute:

Consultation

- (2) Before the Minister determines terms and conditions on which a member of the Advisory Council holds office, the Minister must consult the host jurisdictions about the terms and conditions.

14 At the end of section 172

Add:

- (7) The Minister must:
- (a) give a notice (the *original notice*) in writing to each member of the Ministerial Council who is a Minister of a State or Territory seeking the agreement of that member to the making of the instrument and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
 - (b) provide a copy of the proposed instrument to that member.
- (8) If, immediately before the end of that 28-day period, that member:
- (a) has not informed the Minister whether that member agrees to the making of the instrument; and
 - (b) has not made a request under subsection (9);
- then, at the end of that period, that member is taken to have agreed to the making of the instrument.
- (9) If, before the end of that 28-day period, that member gives a notice in writing to the Minister requesting a longer period within which that member may agree to the making of the instrument:
- (a) that member may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, that member has not informed the Minister whether that member agrees to the making of the instrument, then, at the end of that period, that member is taken to have so agreed.

15 Subsection 173(2)

Omit “Minister of a host jurisdiction”, substitute “host jurisdiction Minister”.

16 After subsection 174(4)

Insert:

(4A) The Minister must:

- (a) give a notice (the *original notice*) in writing to each member of the Ministerial Council who is a Minister of a State or Territory seeking the agreement of that member to the making of the instrument and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
- (b) provide a copy of the proposed instrument to that member.

(4B) If, immediately before the end of that 28-day period, that member:

- (a) has not informed the Minister whether that member agrees to the making of the instrument; and
- (b) has not made a request under subsection (4C);

then, at the end of that period, that member is taken to have agreed to the making of the instrument.

(4C) If, before the end of that 28-day period, that member gives a notice in writing to the Minister requesting a longer period within which that member may agree to the making of the instrument:

- (a) that member may give that agreement before the end of 90 days beginning on the day the original notice was given; and
- (b) if, immediately before the end of that 90-day period, that member has not informed the Minister whether that member agrees to the making of the instrument, then, at the end of that period, that member is taken to have so agreed.

17 After subsection 201(2)

Insert:

Process for seeking agreement

(2A) The Minister must:

- (a) give a notice (the *original notice*) in writing to one host jurisdiction Minister for each host jurisdiction seeking the agreement of that host jurisdiction to the delegation and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
 - (b) provide a copy of the proposed instrument of delegation to that host jurisdiction Minister.
- (2B) If, immediately before the end of that 28-day period:
 - (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the delegation; and
 - (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (2C);then, at the end of that period, that host jurisdiction is taken to have agreed to the delegation.
- (2C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the delegation:
 - (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the delegation, then, at the end of that period, that host jurisdiction is taken to have so agreed.

CEO must comply with Ministerial directions

18 Before subsection 201(4)

Insert:

Limit on delegation

19 Subsection 209(8) (cell at table item 1, column headed "Description", paragraphs (f) and (g))

Repeal the paragraphs.

20 Subsection 209(8) (cell at table item 3, column headed “Description”)

Omit “any”, substitute “either”.

21 Subsection 209(8) (cell at table item 3, column headed “Description”, paragraph (b))

Repeal the paragraph.

22 Subsection 209(8) (cell at table item 4, column headed “Description”, after paragraph (b))

Insert:

(ba) section 45;

23 Subsection 209(8) (cell at table item 4, column headed “Description”, after paragraph (c))

Insert:

(ca) section 67;

24 After subsection 209(8)

Insert:

(8A) In seeking the agreement of a host jurisdiction to the making of rules under this section, the Minister must:

- (a) give a notice (the *original notice*) in writing to one host jurisdiction Minister for that host jurisdiction seeking the agreement of that host jurisdiction to the making of the rules and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
- (b) provide a copy of the proposed rules to that host jurisdiction Minister.

(8B) If, immediately before the end of that 28-day period:

- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the rules; and
- (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (8C);

then, at the end of that period, that host jurisdiction is taken to have agreed to the making of the rules.

- (8C) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the making of the rules:
- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the rules, then, at the end of that period, that host jurisdiction is taken to have so agreed.

25 At the end of section 210

Add:

Process for seeking agreement of host jurisdiction

- (3) In seeking the agreement of a host jurisdiction to the making of regulations under this section, the Minister must:
- (a) give a notice (the ***original notice***) in writing to one host jurisdiction Minister for that host jurisdiction seeking the agreement of that host jurisdiction to the making of the regulations and requesting the agreement be given before the end of 28 days beginning on the day the notice is given; and
 - (b) provide a copy of the proposed regulations to that host jurisdiction Minister.
- (4) If, immediately before the end of that 28-day period:
- (a) no host jurisdiction Minister for a host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the regulations; and
 - (b) no host jurisdiction Minister for that host jurisdiction has made a request under subsection (5);
- then, at the end of that period, that host jurisdiction is taken to have agreed to the making of the regulations.

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- (5) If, before the end of that 28-day period, a host jurisdiction Minister for a host jurisdiction gives a notice in writing to the Minister requesting a longer period within which that host jurisdiction may agree to the making of the regulations:
- (a) that host jurisdiction may give that agreement before the end of 90 days beginning on the day the original notice was given; and
 - (b) if, immediately before the end of that 90-day period, no host jurisdiction Minister for that host jurisdiction has informed the Minister whether that host jurisdiction agrees to the making of the regulations, then, at the end of that period, that host jurisdiction is taken to have so agreed.

26 Application provisions

- (1) The amendment of section 120 of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to an instrument made on or after the commencement of this item.
 - (2) The amendment of section 121 of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to a direction given on or after the commencement of this item.
 - (3) Subsections 125(3A) to (3C) of the *National Disability Insurance Scheme Act 2013*, as inserted by this Schedule, apply in relation to a statement given on or after the commencement of this item.
 - (4) Subsections 127(4) to (4D) of the *National Disability Insurance Scheme Act 2013*, as substituted by this Schedule, apply in relation to an appointment made on or after the commencement of this item.
 - (5) The amendments of section 134 of the *National Disability Insurance Scheme Act 2013* made by this Schedule apply in relation to a termination made on or after the commencement of this item.
 - (6) The amendment of section 135 of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to terms and conditions determined on or after the commencement of this item.
 - (7) The amendment of section 147 of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to an appointment made on or after the commencement of this item.
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- (8) The amendment of section 155 of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to a termination made on or after the commencement of this item.
- (9) The amendment of section 156 of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to terms and conditions determined on or after the commencement of this item.
- (10) The amendments of sections 172 and 174 of the *National Disability Insurance Scheme Act 2013* made by this Schedule apply in relation to an instrument made on or after the commencement of this item.
- (11) The amendment of section 201 of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to an instrument of delegation made on or after the commencement of this item.
- (12) The amendments of section 209 of the *National Disability Insurance Scheme Act 2013* made by this Schedule apply in relation to rules made on or after the commencement of this item.
- (13) The amendment of section 210 of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to regulations made on or after the commencement of this item.

Schedule 2—Other amendments

National Disability Insurance Scheme Act 2013

1 At the end of section 66

Add:

(4) If:

- (a) the CEO or an Agency officer is served with a summons or notice, or is otherwise subject to a requirement, under the *Royal Commissions Act 1902*; and
- (b) in order to comply with the summons, notice or requirement, the CEO or Agency officer would be required to disclose information that is protected Agency information;

then, despite sections 62 and 67G of this Act, the CEO or Agency officer must, subject to the *Royal Commissions Act 1902*, disclose that information. The information is taken to have been disclosed for the purposes of the *Royal Commissions Act 1902* and of the Royal Commission concerned.

2 At the end of section 67E

Add:

(4) If:

- (a) the Commissioner or a Commission officer is served with a summons or notice, or is otherwise subject to a requirement, under the *Royal Commissions Act 1902*; and
- (b) in order to comply with the summons, notice or requirement, the Commissioner or Commission officer would be required to disclose information that is protected Commission information;

then, despite sections 67B and 67G of this Act, the Commissioner or Commission officer must, subject to the *Royal Commissions Act 1902*, disclose that information. The information is taken to have been disclosed for the purposes of the *Royal Commissions Act 1902* and of the Royal Commission concerned.

3 Section 67G

After “except for the purposes of this Act”, insert “or the *Royal Commissions Act 1902*”.

4 Application provision

The amendments of sections 66 and 67E of the *National Disability Insurance Scheme Act 2013* made by this Schedule apply in relation to a summons or notice served, or a requirement made, on or after the commencement of this item (whether the protected Agency information or protected Commission information came into existence before, on or after that commencement).

[Minister’s second reading speech made in—
Senate on 25 July 2019
House of Representatives on 27 November 2019]

(128/19)
