

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the National Disability Insurance Scheme

National Disability Insurance Scheme Act 2013

National Disability Insurance Scheme Amendment (Management of Funding and Plan Management) Rules 2025

Purpose

The *National Disability Insurance Scheme Amendment (Management of Funding and Plan Management) Rules 2025* (the Instrument) is made for the purposes of subsection 44(3) of the *National Disability Insurance Scheme Act 2013* (NDIS Act). It amends the *National Disability Insurance Scheme (Management of Funding) Rules 2024* (Management of Funding Rules) and the *National Disability Insurance Scheme (Plan Management) Rules 2013* (Plan Management Rules) to ensure there is a single set of rules containing all matters relevant to decisions about plan management.

The Instrument achieves this by:

- including considerations in the Management of Funding Rules, being matters to which the Chief Executive Officer (CEO) of the National Disability Insurance Agency (NDIA, Agency) must and must not have regard when considering whether a particular plan management arrangement will present an ‘unreasonable risk’,
- removing those same considerations from the Plan Management Rules, and
- renaming the Plan Management Rules to avoid confusion, as they will no longer relate to management of funding for supports (generally known as ‘plan management’).

Background

Management of funding for supports

Participants in the National Disability Insurance Scheme (NDIS) receive funding for supports through a participant plan. The participant plan is developed by the CEO with the participant and includes the participant’s statement of goals and aspirations and the statement of participant supports. The statement of participant supports includes a number of matters, including the supports that will be funded or provided for the participant and the management of the funding for supports under the plan. This means the CEO must make a decision on how the funding for supports will be managed in a participant’s plan as part of their decision to approve the statement of participant supports.

Managing funding for supports under the participant’s plan is defined in subsection 42(1) of the NDIS Act to be doing one or more of the following:

- purchasing the supports identified in the plan (including paying any applicable indirect costs, such as taxes, associated with the supports);
- receiving any funding provided by the Agency;
- managing any funding provided by the Agency;
- acquitting any funding provided by the Agency.

Subsection 42(2) of the NDIS Act provides that funding for supports under a participant's plan can be managed by:

- the participant; or
- a registered plan management provider; or
- the Agency; or
- the plan nominee.

Where the participant is a child, subsection 74(1) of the NDIS Act provides that a thing that is otherwise to be done by the participant (such as managing funding for supports under a plan) is to be done by their representative.

A participant can make a 'plan management request' under subsection 43(1), which is a request that funding for supports under their plan be managed wholly, or to a particular extent, by the participant themselves ('self-managed'), a registered plan management provider ('plan-managed'), or the NDIA ('Agency-managed'). A plan nominee can also manage funding for supports if their terms of appointment deal with this ('nominee-managed'; see subsection 43(5)). If the participant is a child, the child's representative may make a plan management request under subsection 74(2). This includes the same options, being that the funding for supports under the plan will be self-managed, plan-managed, or Agency-managed.

Generally, the NDIA must give effect to a participant's request: subsections 43(2) and 74(3). This is in line with the Objects and Principles in Part 2 of the NDIS Act and promotes choice and control for people with disability. However, this is subject to some exceptions which are outlined in subsections 43(2A) to (6) and section 44 for adult participants, and subsections 74(3A) to (5) for children. The relevant exceptions for the purpose of the Instrument are discussed further below.

A plan management decision is taken afresh by the CEO at each plan reassessment based on the participant's plan management request and current participant circumstances. In the same way that supports funded or provided for a participant may change over time, a participant's plan management arrangements may change when each new statement of participant supports is approved. Participants are entitled to make a fresh plan management request as part of any plan reassessment and will be provided an opportunity to explain why they have made such a request if it is different to their previous arrangements. Additionally, the NDIS Act permits a variation of plan management type in a participant's plan. This means that a participant's plan management type can be changed while the plan remains in effect

if there is a change in their circumstances supporting it (for example, a risk that was previously impacting the participant is no longer present).

Where the plan management request of the person or participant is not approved by the CEO, the reasons for this will be explained and participants will be able to seek review of this decision as it forms part of the decision to approve the participant's statement of participant supports (which is a reviewable decision under section 99 of the NDIS Act – see item 4 of the table to subsection 99(1)). Nothing in this instrument impacts on a participant's review rights in any way.

Power to make the Instrument

The Instrument is made under subsection 209(1) of the NDIS Act. That subsection relevantly provides that the Minister may, by legislative instrument, prescribe matters required or permitted by this Act to be prescribed by NDIS rules.

Subsection 44(3) of the NDIS Act provides that the National Disability Insurance Scheme rules may prescribe criteria that the CEO must apply when considering whether a particular plan management arrangement would present an unreasonable risk to the participant. This includes self-management of funding as well as management by a plan nominee or registered plan management provider.

Subsection 74(6) of the NDIS Act provides that NDIS rules may make provision for determining any matter for the purposes of section 74, including but not limited to requirements with which the CEO must comply, methods or criteria that the CEO is to apply, and matters that the CEO may, must or must not take into account. Section 74 includes a requirement that the CEO must not give effect to a plan management request if the plan management arrangement would present an unreasonable risk to the participant. This means rules made under subsection 74(6) can prescribe matters the CEO must take into account in considering whether the requested plan management arrangement would present an unreasonable risk to the participant.

All NDIS rules and other instruments made under the NDIS Act are exempt from sunseting (see changes to the *Legislation (Exemptions and Other Matters) Regulation 2015* (LEOMR) made by item 123 of the *National Disability Insurance Scheme Amendment (Getting the NDIS Back on Track No. 1) Act 2024*). The Instrument is therefore exempt from sunseting, but is still subject to disallowance under section 42 of the *Legislation Act 2003* (Legislation Act).

The Legislation Act establishes a comprehensive regime for the publication of Commonwealth Acts and instruments. Section 62 of the Legislation Act provides that the Governor-General may make regulations prescribing matters required or permitted by the Legislation Act to be prescribed, or necessary or convenient to be prescribed, for carrying out or giving effect to the Legislation Act.

Part 4 of Chapter 3 of the Legislation Act provides for the sunseting of legislative instruments. Sunseting is the process by which instruments are automatically repealed 10 years after they are made unless steps are taken to preserve their operation, or the instruments are exempt from sunseting. As set out in section 49 of the Legislation Act, the purpose of sunseting is to ensure that legislative instruments continue to be fit-for-purpose and are kept up to date through regular review.

Section 54 of the Legislation Act provides for instruments to which the sunseting regime in Part 4 of Chapter 3 does not apply. Instruments that are prescribed by regulations made for the purposes of paragraph 54(2)(b) of the Legislation Act are exempt from sunseting.

The LEOMR prescribes instruments that are exempt from sunseting. The LEOMR prescribes classes of legislative instruments (at section 11) and particular instruments (at section 12) that are exempt from sunseting under paragraph 54(2)(b) of the Act. In this way, the LEOMR serves as a central source of sunseting exemptions, facilitating whole-of-government management and ensuring that accurate sunseting information can be readily provided to Australian Government agencies, the Parliament and the general public.

Section 12 of the LEOMR provides that NDIS rules and any other instrument made under the Act are exempt from sunseting. This includes the Instrument.

It is appropriate for the Instrument and other legislative instruments made under the NDIS Act to be exempt from sunseting as they form part of an intergovernmental scheme. This is consistent with the Attorney-General's Department's *Guide to managing sunseting of legislative instruments*.

The Instrument is one of a number of legislative instruments made under the NDIS Act that operationalise the NDIS, which is an intergovernmental scheme involving the Commonwealth and all States and Territories. As a result, the Instrument forms an integral part of an intergovernmental scheme.

The Instrument is a Category A NDIS rule, which means it cannot be made without agreement from all states and territories. The Instrument can similarly not be varied or repealed without agreement from all states and territories, consistent with the requirements of section 209 of the NDIS Act.

This results in a situation where, if the Instrument was not exempt from sunseting, it could not be made, amended or repealed without direct involvement of States and Territories except in the case of sunseting where the instruments will be automatically repealed by operation of a Commonwealth law. This is inconsistent with the consultation and agreement requirements for NDIS rules specifically, and with the operation of the NDIS and the Act more broadly. A sunseting exemption is appropriate, and ensures the same consultation and agreement requirements apply to an instrument being repealed as those that apply to the instrument being made, consistent with the intergovernmental nature of the NDIS.

Outline of instrument

Sections 43, 44 and 74 of the NDIS Act set out circumstances in which a particular person must not manage funding for supports under a participant's plan. Such circumstances include where the requested plan management arrangement would present an unreasonable risk to the participant.

The Instrument amends the Management of Funding Rules to include a range of matters that the CEO must consider in assessing whether a particular plan management request will present an unreasonable risk to a participant. This includes

management of funding by the participant, a registered plan management provider, plan nominee, or child representatives. The rules also include matters to which the CEO must not have regard in making this assessment.

The Instrument does not provide any specific decision-making power itself, and does not in and of itself allow or require the CEO to refuse to give effect to a participant's plan management request. The circumstances in which the CEO can or must refuse to give effect to a participant's plan management request are, and will continue to be, outlined in the NDIS Act. To the extent that the provisions of the NDIS Act may be seen to limit a participant's choice and control by not giving effect to the participant's chosen plan management type, the Instrument seeks to mitigate this limit by ensuring a broad range of factors are considered as part of any decision that is made.

The Instrument will ensure there is transparency in what matters the CEO will, and will not, consider when assessing if there is unreasonable risk associated with a particular plan management type. This includes considerations for participants who are adults and participants who are children in a single place, for simplicity. These considerations have been included in the Management of Funding Rules to ensure all relevant matters for a decision about plan management are included in the same set of rules.

Consequent on these changes, the Instrument also makes changes to what is currently known as the Plan Management Rules. Those rules currently include some considerations relevant to assessing 'unreasonable risk', which have been used as the basis for the considerations inserted in the Management of Funding Rules. This means these considerations no longer need to be included in the Plan Management Rules, and for this reason the Instrument repeals the Part in which they sit. The Instrument also renames these rules, as without considerations about unreasonable risk the rules are no longer relevant to plan management decisions.

Commencement

The Instrument commences the day after it is registered on the Federal Register of Legislation.

Consultation

The design of the Back on Track Act has been a collaborative exercise, relying heavily on substantial contributions made by the disability community throughout the NDIS Review and following the introduction and commencement of the Back on Track Act.

The NDIS Review found that NDIS processes should be fair, clear and easier for people with disability and their families to understand. Participants should know and understand how decisions about the way the funding in their NDIS plans will be managed are made. The way NDIS plans are developed should support participants to have opportunities to build capacity to manage their plan funding while providing safeguards where required to protect against potential coercion and fraudulent activity. Everyone should be confident that the NDIS is managed well. The Australian community should see the NDIS is fair and supports participants to achieve their

goals, participate in the community and have similar opportunities to other Australians.

The Back on Track Act requires the NDIA improve its approach to determining the management of a participant's plan, with consideration for physical, mental and financial risks. The expansion of the s44(3) rule supports a more proactive and consistent approach to identifying risks, applying appropriate safeguards and supporting informed delegate decision-making when determining the plan management decision.

The unreasonable risk rules regarding how plans are managed are made for the purposes of the following:

- Criteria to be applied and matters to which the CEO is to have regard, or is no, to have regard in considering whether any of the following represent unreasonable risk – Subsection 43(3) and 74(6).

From July to September 2024, the NDIA held external engagement sessions with participants, nominees, child representatives and members of Disability Representative and Carer Organisations (DRCOs). The sessions covered how decisions are made about the management of funding for supports in a participant's plan and how supports and safeguards can be used to reduce the risk of inappropriate spending and the risk of harm due to a participant's circumstances.

Further targeted engagement sessions related to plan management decisions occurred with members of:

- Independent Advisory Council (IAC)
- DRCOs
- Participant Reference Group
- Participant First representatives
- Self-Management Working Group
- Better Planning Reform for Outcomes co-design group.

Across the period 11 – 25 November 2024 the NDIA facilitated additional targeted consultation to consider the implementation of NDIS rules regarding unreasonable risk in relation to how NDIS participant plans are managed. The sessions focused on the intent of policy underpinning the proposed rules and how they will be operationalised.

Ten sessions were facilitated with key stakeholders to consult and discuss the rules related to unreasonable risk with regards to the plan management type, these included the:

- Independent Advisory Council
- Disability Representative and Carer Organisations
- Implementation Steering Committee
- Participant Safeguarding co-design Group

- Participant Reference Group
- National Mental Health Sector Reference Group
- Assessment and Budgeting Working Group
- First Nations stakeholders
- Integrity Working Group
- Neurodegenerative, Palliative Care and Rare Diseases Advisory Group.

Feedback was provided on a number of themes regarding unreasonable risk from the disability community including on:

Definitions and clarity

- There is greater need for definitions to support key terms used in rules, this would support participants to avoid misinterpretation.
- NDIS participants require greater clarity around what constitutes 'unreasonable risk' when compared to 'reasonable risk'.

Decision-Making and Evidence

- Addressing concerns that alternative plan managers should be considered prior to resorting to enforcement of Agency management for plan funding.
- Participant concern that NDIA delegates hold significant power in decision-making. This should be addressed and supported operationally by increased workforce training, supervisions, skills and experience.
- Concerns of participants around the 'types of evidence' that may be used by the NDIA to make decisions about financial competency.
- NDIS participants feel there should be minimal weight attributed to previous history of non-compliance, in favour of a presumption of good faith.
- What considerations differentiate an unsubstantiated claim of mismanagement, compared to genuine non-deliberate mismanagement.
- Greater transparency to be provided by delegates, addressing the reasons for decisions.
- Participants are concerned that delegates in making a plan-management decision are limiting a person's right to choose how they want their plan managed.

Participant-Centered Approach

- Principles around the need for participant-led (human-centered/person-centered) assessment of risk and safeguards are critical for determining decisions and when a crisis response may be needed.
- Individual participant's perception of risk should be central to decision-making.

- Appropriate support for decision-making must be made available to participants so they can be directly involved in conversations about risk.
- Ensuring formal risk assessment processes and mechanisms consider intersectional factors such as gender-based violence, people in segregated settings, and people without informal supporters.
- Greater emphasis on the production of accessible information so participants can meaningfully engage in the risk assessment process (examples provided include easy read and videos).
- Consideration of dignity of risk when weighing up unreasonable risk of plan management. It is important to acknowledge dignity of risk and supporting capacity for people to learn from mistakes.
- Acknowledgement of the cultural significance of kinship and how this intersects with participant's informal supports. Recognition that there may be a number of people involved in supporting participant with decision making, not necessarily just the plan nominee.

Safeguards and Support

- Introducing formal safeguards to support financial decision making - reliance on informal supports is not always appropriate and can be the source of risk at times.
- Safeguarding so that changes to agency management do not result in further risk such as the introduction of restrictive practices by registered providers.
- The NDIS has a responsibility to help participants succeed and should actively support them to build the capacity they need to manage their plan.
- Safeguards can be used to build capacity and confidence – not just in response to risk or as a punitive measure.
- Safeguards need to be a proportionate response to the identified risks, and removal of self-management or the use of a plan management provider should be a last resort.
- Ensuring the application of transitional rules is not retrospectively applied and considered by delegates.
- Recognition that risk to participants exists across the whole disability sector, acknowledging that the NDIA or NDIS Commission should be actively managing these risks, before controlling the risk that sits within the participant's responsibility.
- Mitigation strategies required to prevent unconscious bias of decision makers/ delegates (for example, assuming nominees are deliberately misspending when it could be due to external factors impacting nominee decision making).

Continuity and Frameworks

- Importance of continuity with the Agency's frameworks, including the existing supported decision-making framework.
- The importance of continuity of support should be taken into consideration when weighing up risk.
- NDIS participants consulted were in favour of the co-designed self-management guidance being used as a starting point for this rule.
- Ensure capability building for self-management to avoid mistakes in the first place.

Risk and Socioeconomic Factors

- Concerns were raised that an individual's socioeconomic status could mean that participants and supporters are disproportionately deemed as at unreasonable risk.
- Risks and benefits of plan management decisions should be weighed up.
- Concerns that participants in thin markets don't have the flexibility to choose between providers and this will be limited even further if changed to Agency-managed.
- Concerns that participants who prefer unregistered providers will be required to only use registered providers.

Education and Capacity Building

- Need for chances to identify errors (like debt provisions currently for lower amounts) and focus on capacity building and education. Take an educative approach.
- Plan managers could be a communication channel to support participant understanding of this new rule.
- Communicate that this rule will be at a case-by-case level and not at a cohort level (noting there are other rules that cover specific cohorts).
- Suggest that the communication about this rule begin before implementation.
- Need for clear information that this function already exists for self-management and that this rule is extending that to plan management arrangements as well.
- Need to consult on communication of this new rule with people with lived experience to avoid impacts on mental health

General Insights

In addition to direct engagement with the disability community, there has been consultation with States and Territories utilising established governance arrangements under the Disability Reform Ministerial Council.

All feedback has formed a key part of the input into the Amendment Rules and how they will be implemented and operationalised by the NDIA. Feedback was consistent with the rule intent to outline all matters to be considered and not considered when the NDIA decides whether a particular type of plan management would result in unreasonable risk to a participant.

These rules support an improved participant experience, promote transparency, and allow participants to understand how decisions are made about the plan management type for their plan funding. The NDIA remains committed to providing capacity building supports and including strategies in NDIS plans to support participants to have the plan management type they prefer where possible. The rules focus on a participant centred approach to risk that complements management of risk through appropriate regulation of providers.

Feedback provided has also informed the way the NDIA will operationalise the Instrument including staff training and how the new rule will be communicated with the disability community.

Regulation Impact Analysis (RIA)

The Office of Impact Analysis has agreed to the use of the Final Report of the Independent Review of the NDIS delivered to Governments in December 2023 as an Impact Analysis Equivalent. A link to the report can be found on the NDIS Review website here - <https://www.ndisreview.gov.au/resources/reports/working-together-deliver-ndis>.

Explanation of the provisions

Section 1 – Name

This instrument is the *National Disability Insurance Scheme Amendment (Management of Funding and Plan Management) Rules 2025*.

Section 2 – Commencement

This instrument commences the day after it is registered on the Federal Register of Legislation.

Section 3 – Authority

This instrument is made under the NDIS Act.

Specifically, the Instrument is an NDIS rule made under subsection 209(1) for the purpose of subsections 44(3) and 74(6) of the NDIS Act.

Section 4 – Definitions

The Instrument provides definitions for terms used in the Instrument. This includes defining the NDIS Act, along with a note to advise the reader that a number of expressions used in this instrument are defined in the NDIS Act. Those expressions include the following:

- (a) CEO
- (b) child;
- (c) funding amount;
- (d) funding component amount;
- (e) funding period;
- (f) managing the funding for supports;
- (g) participant;
- (h) plan;
- (i) plan management request;
- (j) statement of participant supports;
- (k) supports;
- (l) total funding amount

Section 5 – Schedules

Section 5 sets out the operation of the Schedules to the Instrument, and specifically provides that any instrument specified in a Schedule to the Instrument is amended or repealed according to the terms of the relevant Schedule.

Schedule 1 – Amendments

National Disability Insurance Scheme (Management of Funding) Rules 2024

Item 1 amends the *National Disability Insurance Scheme (Management of Funding) Rules 2024* by inserting new Part 3—Unreasonable risk. New Part 3 consists of a single section, being section 6, and follows directly on from existing Part 2—Compliance with section 46 of the Act. This will create a single set of rules that includes all prescribed considerations relevant to a decision about management of funding for supports under a participant’s plan.

Section 6 – Considering whether there is an unreasonable risk to the participant – matters to which the CEO must, and must not, have regard

Subsection 6(1) sets out that this section is made for the purposes of subsections 44(3) and 74(6) of the NDIS Act. Subsections 44(3) and 74(6) of the NDIS Act both relevantly allow NDIS rules to prescribe matters that the CEO must, and must not, have regard to in considering whether a particular plan management arrangement will present an unreasonable risk to a participant.

The specific matters to which the CEO must, and must not, have regard are outlined in subsections (2), (3), (4), and (5). The applicable subsection depends on the participant's circumstances and the plan management request they have made, for example subsection (2) will apply where the participant has requested self-management of their plan while subsection (4) will apply if the participant has a plan nominee. The matters to which the CEO must not have regard in subsection (6) apply to all decisions.

It is important to note that subsections (2), (3), (4) and (5) only set out matters to which the CEO must have regard. This means that the CEO must consider each of the matters in making their decision, but that consideration will not necessarily lead to any particular outcome. Rather, the CEO will need to consider each matter as it relates to the relevant person (if at all) and decide whether that weighs or does not weigh in favour of a conclusion that the particular plan management arrangement would present an unreasonable risk to the participant. Any previous behaviour or circumstances will not automatically lead to a particular outcome, as it is simply one of a number of matters the individual decision-maker must consider as part of their overarching decision about whether the relevant plan management arrangement will present an unreasonable risk to the participant. It will be a matter for the particular decision-maker to decide whether past behaviour or circumstance supports, or does not support, a conclusion that the plan management arrangement will present an unreasonable risk to the participant at the current time.

In considering each of the listed matters, the CEO will only have regard to suitable information and evidence that is available to them at the time of their decision. There will be no change to the information gathering process currently in place as part of the planning process where information is provided by the participant during planning conversations. Where issues arise, for example if the participant disclosed a history of being financially exploited by their plan nominee who would otherwise be responsible for managing their funding, the CEO may ask for further information from the participant or nominee.

If a decision is made on the basis of available information but further information subsequently becomes available to suggest a different decision is more appropriate, the CEO is able to vary a participant's plan to change their plan management type. This will allow participants and other relevant persons further time to gather any required information while still accessing supports, where further information is necessary. It will also enable time for participants to put in place informal arrangements that will mitigate any identified risks, with the CEO then varying the plan once those arrangements are in place.

Matters to which the CEO must have regard – participant

Subsection 6(2) prescribes matters to which the CEO must have regard in considering, for the purposes of subsection 44(1) of the Act, whether a participant's management of their own funding for supports would present an unreasonable risk to them as a participant. A participant's management of their own funding is commonly known as 'self-management' of funding.

Each of the matters prescribed by subsection 6(2) must be considered by the CEO when assessing whether there would be an unreasonable risk if a participant's plan is self-managed in whole or in part.

Paragraph (a) requires the CEO to consider whether any identified risk could be mitigated by supports, safeguards or other strategies that are or will be included in the statement of participant supports to which the plan management request relates. The CEO must also consider any informal, community or mainstream supports that the participant has in place.

These are critical elements of protecting a participant from harm while also recognising the dignity of risk and allowing participants to self-manage unless the risks they face are 'unreasonable' and cannot be mitigated by appropriate supports.

The CEO will be considering the participant's plan management request at the time of either approving or varying the participant's plan. This allows the CEO to consider supports that are already in the participant's plan, as well as supports that will be included in the participant's statement of participant supports after it is approved. The CEO may choose to include additional supports that were not initially anticipated if those supports would allow the participant's plan to be plan managed. The CEO may also consider a participant's informal supports, either alone or in conjunction with supports that are funded under their plan.

For example, a participant who has recently finished school and is still learning about managing finances may wish to self-manage their plan as part of this learning and their growing independence. The participant's lack of experience in making decisions about NDIS supports and understanding financial management may create a risk the participant will purchase supports that don't assist them to work towards their goals and achieve outcomes without realising. This is likely to result in the participant being left without funding for necessary supports for a period of their plan.

When preparing the participant's statement of participant supports, the CEO has regard to the supports that are intended to be included as well as the participant's informal supports. The CEO is satisfied that including additional capacity building supports that are focused on financial management will, in conjunction with the participant's supportive parents, be sufficient to mitigate the risks that the participant's inexperience would otherwise cause. On this basis, the CEO decides that this risk is not 'unreasonable' and should not prevent the participant from self-managing their funding.

Paragraph (b) requires the CEO to consider whether, and the extent to which, any identified risk has been mitigated in the past by particular supports, safeguards or strategies that were included in the participant's statement of participant supports. The CEO must also consider any informal, community or mainstream supports that the participant had in place.

This allows the CEO to consider past supports, safeguards and strategies that may have been successful as well as those that were not, which is an important factor for the CEO to consider and be aware of when considering what supports, strategies and safeguards may be useful in the future. Where particular supports, strategies

and safeguards have shown to be successful in the past this may suggest the same supports, strategies or safeguards should be put in place as part of the planning decision the CEO is currently making. Alternatively, it may suggest that no further supports, strategies or safeguards are necessary as the participant is already able to manage any identified risks and prevent them from becoming unreasonable.

On the other hand, particular supports, strategies and safeguards that have been shown to be unsuccessful, the CEO will need to consider whether there are alternatives that could be put in place and if not this may suggest an identified risk is unreasonable and cannot be mitigated.

Paragraph (c) requires the CEO to consider the nature of supports that are, or will be, included in the participant's plan to which the plan management request relates. As the CEO's decision about plan management forms part of the statement of participant supports, the CEO will be aware of the supports that are, or will be, included in that statement at the time they are considering the participant's plan management request.

The nature of supports that are, or will be included in the participant's plan is an important part of understanding the risks associated with any plan management type.

This consideration may be relevant when the nature of the particular supports included in the participant's plan are of a kind, such as specialist supports, that may present an unreasonable risk to the participant if the supports are not provided in the manner anticipated by the plan.

For example, if a participant requested self-management but was engaging supports not in line with policy or service standards, and they did not wish to cease engaging these supports, this may create an unreasonable risk. This could be where a participant has a positive behaviour support plan detailing restrictive practices that may be used where required when supporting the participant, but the participant is engaging nonregistered providers to deliver these supports. In this case, the CEO would discuss this with the participant and explain that any provider delivering supports including restrictive practices are required to be registered providers. If the participant does not wish to alter the arrangement, and the service provider does not wish to register as a provider, it may be appropriate for the CEO to implement different plan management arrangements for some elements of the plan.

Paragraph (d) requires the CEO to consider whether, and the extent to which the participant is at risk of experiencing physical, mental or financial harm, or exploitation or undue influence. It is important for the CEO to consider both whether the participant is at risk of these types of harm, and additionally the severity or degree of this risk, which will then inform a decision about whether self-management of funding may make an existing risk unreasonable in nature.

This is an important consideration for the purpose of safeguarding participants who are at an increased risk of harm because of their personal circumstances. It is important to note that a participant having risk present in their life is not in and of itself sufficient for a finding that self-management will present an unreasonable risk

to the participant. However, it is important for the CEO to consider whether a participant is at an increased risk of experiencing harm so that an assessment can be made of whether that risk is unreasonable, or is of a kind that the participant can manage (i.e. is not an unreasonable risk).

For example, if a participant has been previously manipulated to draw down self-managed funds which were then misused by another party, this is an indication they may be at risk of exploitation in the future even if they are no longer in contact with the other person. This may be an unreasonable risk, depending on the extent of the previous manipulation and other factors such as when it occurred and what has (or has not) changed since then.

Paragraph (e) requires the CEO to consider the participant's ability or capacity to make decisions or to appropriately manage finances including where they are being supported to do so. This is a relevant consideration to identify whether a participant may be at unreasonable risk by self-managing their funding, as a participant who is not able to make appropriate decisions about finances may spend too much of their funding on a support that is not necessary, leaving them without sufficient funding for important and necessary supports.

It is important to note the CEO will not be undertaking a formal capacity assessment, but will consider evidence available related to the person's ability or capacity to make decisions or manage finances. As part of this consideration the CEO will consider supported decision making supports available or that can be provided for the participant in the plan under consideration in line with the NDIS Supported Decision Making Policy, noting that a participant with appropriate decision-making supports may be assessed as able to make decisions they would not be able to make without those supports.

For example, a participant with impaired cognitive function who has no informal or formal decision -making supports may find it difficult to decide what supports funded under their plan are necessary or important and may make poor choices that will leave them without access to those necessary or important supports.

While the CEO must not consider the nature of the participant's impairments (per subsection 6(5)), this does not prevent the CEO from considering the *impact* of a participant's impairment on their functional capacity where relevant. The impact of the impaired cognitive function in the above example may mean that self-management would present an unreasonable risk for the participant, but if the same participant was being supported to make decisions they may be able to make appropriate decisions about the supports they purchase which would remove or mitigate any risk.

Paragraph (f) requires the CEO to consider whether a court or tribunal has ordered another person to wholly or in part manage the property or finances of the participant. This is another important consideration, as a previous finding by a court or tribunal about the participant's ability to manage their finances may mean they have made poor financial decisions in the past and are at risk of making similar decisions in the future (leaving them without access to important and necessary supports). However, there are many different reasons why a court or tribunal would

have made this decision and some of those reasons may have no bearing on the participant's ability to self-manage their plan in a way that does not place them at unreasonable risk. The CEO will consider the particular circumstances that led to the decision being made as well as the content of the decision itself in assessing whether it has any impact on the degree of risk a participant will face by self-managing their funding. The CEO will also consider how long ago the order was made and whether the order has been discharged when making their decision.

Paragraph (g) requires the CEO to consider any relevant matters raised by the participant. This will ensure participants can bring matters to the attention of the decision-maker who is considering their plan management request, and provide supporting evidence or information if they would like to do so. Matters that are raised will only be considered where they are relevant to the decision the CEO is making, which is whether self-management of funding will present an unreasonable risk to the participant.

The participant may raise other relevant matters at any point during the planning process, including in support of a request to vary their plan. As part of the usual planning process, the CEO ensures participants have an opportunity to share any other relevant detail they wish to. Once the plan is approved, participants can raise any concerns or matters related to their plan management method through their preferred contact method with their My NDIS Contact or through the NDIS call centre. The My NDIS Contact will consider the information and if needed can commence or request a plan variation to change the plan management method. The CEO will consider and weigh these matters based on the individual personal circumstances of the participant.

Paragraph (h) requires the CEO to consider any other matters the CEO considers relevant. This ensures that all relevant matters to a participant's unique circumstances can be taken into account. Matters will only be considered where they are relevant to the decision the CEO is making, which is whether self-management of funding will present an unreasonable risk to the participant. It is important to note that the CEO cannot consider any of the matters listed in subsection (6), even if the CEO considers the matter would be relevant under this paragraph.

Matters to which the CEO must have regard – registered plan management provider

Subsection 6(3) prescribes matters to which the CEO must have regard in considering, for the purposes of subsections 44(2) and 74(4A) of the NDIS Act, whether management of funding by a registered plan management provider presents an unreasonable risk to a participant. Management of funding by a registered plan management provider is generally known as 'plan management'.

Paragraph (a) requires the CEO to consider whether any identified risk could be mitigated by supports, safeguards or other strategies that are or will be included in the statement of participant supports to which the plan management request relates. The CEO must also consider any informal, community or mainstream supports that the participant has in place.

These are critical elements of protecting a participant from harm while also recognising the dignity of risk and allowing participants to access a registered plan management provider unless the risks they face are 'unreasonable' and cannot be mitigated by appropriate supports.

The CEO will be considering the participant's plan management request at the time of either approving or varying the participant's plan. This allows the CEO to consider supports that are already in the participant's plan, as well as supports that will be included in the participant's statement of participant supports after it is approved. The CEO may choose to include additional supports that were not initially anticipated if those supports would allow the participant's plan to be plan managed.

For example, if a participant who requested their plan be managed by a registered plan management provider does not have access to the internet, they will be unable to review and approve invoices sent for payment to the plan manager. This may delay payments and put supports at risk if providers are not paid in a timely manner. The longer the delay between the invoice being provided and the payment being made, the greater the risk to the participant as providers will become increasingly likely to withdraw services with the passage of time. The CEO will consider whether additional supports can be included in the participant's plan that will assist them to access the internet. The CEO will also consider whether there are any informal supports, such as family members or neighbours, that can provide internet access to the participant. If the CEO is satisfied that these arrangements will allow the participant to access the internet to approve their invoices with sufficient regularity, the identified risk of payments not being made will be mitigated and will not be an unreasonable risk. On this basis, the participant's lack of access to the internet would not be an unreasonable risk that would prevent a plan manager from managing funding for supports under their plan.

Paragraph (b) requires the CEO to consider whether, and the extent to which, any identified risk has been mitigated in the past by particular supports, safeguards or strategies that were included in the participant's statement of participant supports. The CEO must also consider any informal, community or mainstream supports that the participant had in place.

This allows the CEO to consider past supports, safeguards and strategies that may have been successful as well as those that were not, which is an important factor for the CEO to consider and be aware of when considering what supports, strategies and safeguards may be useful in the future. Where particular supports, strategies and safeguards have shown to be successful in the past this may suggest the same supports, strategies or safeguards should be put in place as part of the planning decision the CEO is currently making. Alternatively, it may suggest that no further supports, strategies or safeguards are necessary as the participant is already able to manage any identified risks and prevent them from becoming unreasonable.

On the other hand, particular supports, strategies and safeguards that have been shown to be unsuccessful, the CEO will need to consider whether there are alternatives that could be put in place and if not this may suggest an identified risk is unreasonable and cannot be mitigated.

Paragraph (c) provides that the CEO must consider whether, and the extent to which the participant is at risk of experiencing physical, mental or financial harm, or exploitation or undue influence. It is important for the CEO to consider both whether the participant is at risk of these types of harm and the severity or degree of this risk, as this will then inform a decision about whether plan management of funding may make an existing risk unreasonable in nature.

This is an important consideration for the purpose of safeguarding participants who are at an increased risk of harm because of their personal circumstances. For example, when considering whether a registered plan manager would pose an unreasonable risk to the participant, the CEO may consider whether a plan manager could exploit a participant or cause financial harm to them in the management of their plan.

A participant may be at risk of exploitation due to their unique circumstances and previous history. If the extent of this risk is quite high, then the risk of the participant being financially exploited by a plan manager may be an unreasonable risk that supports the plan instead being Agency managed. On the other hand, for a participant who is at a low risk of experiencing financial exploitation, any risk of exploitation associated with a plan manager is unlikely to be an unreasonable risk and is more likely to be a risk that can be managed by the participant in line with the dignity of risk.

For example, a participant who has previously experienced abuse and neglect from an unregistered provider may be at risk of continuing to experience poor treatment from the same or other providers if appropriate steps are not taken. The CEO will consider strategies that could be put in place to manage identified risks but the risk to the participant's safety may still be an unreasonable risk. In this instance, it may be more appropriate for their plan to be Agency managed so that only registered providers (who are subject to stricter controls and regulation) can be used.

Paragraph (d) provides that the CEO must consider any other matters raised by the person making the plan management request. This may be the participant, or their plan nominee / child representative.

This enables a broader consideration of a participant's circumstances that may not be captured entirely by these rules. This will ensure participants and their representatives can bring matters to the attention of the decision-maker who is making a plan management decision, and provide supporting evidence or information if they would like to do so. Matters that are raised will only be considered where they are relevant to the decision the CEO is making, which is whether plan management of funding will present an unreasonable risk to the participant.

The participant or their representative may raise other relevant matters at any point during the planning process, including in support of a request to vary their plan. As part of the usual planning process, the CEO ensures participants have an opportunity to share any other relevant detail they wish to. Once the plan is approved, participants can raise any concerns or matters related to their plan management method through their preferred contact method with their My NDIS Contact or through the NDIS call centre. The My NDIS Contact will consider the information and if needed can commence or request a plan variation to change the

plan management method. The CEO will consider and weigh these matters based on the individual personal circumstances of the participant.

Paragraph (e) provides that the CEO may have consideration of any other relevant matters. This ensures that all relevant matters to a participant's unique circumstances can be taken into account. Matters will only be considered where they are relevant to the decision the CEO is making, which is whether plan management of funding will present an unreasonable risk to the participant. It is important to note that the CEO cannot consider any of the matters listed in subsection (6), even if the CEO considers the matter would be relevant under this paragraph.

It is important to be aware that all plan management providers must be registered with the NDIS Quality and Safeguards Commission. Where issues have been identified with compliance of a specific registered plan management provider this will be addressed through the NDIS Quality and Safeguards Commission. A participant will not be disadvantaged in their plan management choice due to the non-compliance of a specific plan management provider as they will have the option to nominate a different plan management provider if needed. Considerations in subsection 6(3) are not intended to negatively impact on the plan management choice of the participant.

Matters to which the CEO must have regard – plan nominee

Subsection 6(4) prescribes matters to which the CEO must have regard in considering, for the purposes of subsection 44(2A) of the Act, whether a plan nominee's management of a participant's funding would present an unreasonable risk to the participant. A nominee's management of funding is commonly known as 'nominee management' of funding. This occurs when the participant has a plan nominee and the terms of the nominee's appointment deals with management of funding for supports under the plan. However, a nominee cannot manage funding for supports if this would present an unreasonable risk to the participant.

Each of the matters prescribed by subsection 6(4) must be considered by the CEO when assessing whether there would be an unreasonable risk if a participant's plan is nominee managed in whole or in part.

Paragraph (a) provides that the CEO must consider whether any identified risk could be mitigated by supports, safeguards or other strategies that are or will be included in the participant's plan. The CEO must also consider any additional informal, community or mainstream supports the participant or plan nominee has in place.

These are critical elements of protecting a participant from harm while also recognising the dignity of risk and allowing participants to have funding managed by their nominee unless the risks they face are 'unreasonable' and cannot be mitigated by appropriate supports.

The CEO will be considering whether the plan nominee can manage funding for supports under the plan at the time of either approving or varying the participant's plan. This allows the CEO to consider supports that are already in the participant's plan, as well as supports that will be included in the participant's statement of participant supports after it is approved. The CEO may choose to include additional

supports that were not initially anticipated if those supports would allow the participant's plan to be plan managed.

For example, a participant has recently appointed their brother to be their plan nominee and the terms of the nominee's appointment include management of funding for supports. The newly appointed plan nominee is not familiar with the NDIS. The nominee wants to manage the funding for supports but is concerned about the amount of time required and their lack of knowledge about the tasks involved. They are also concerned they will not be able to identify provider behaviour that may place their sibling at risk. The CEO explores the supports the participant is accessing and confirms that the participant's therapeutic supports are provided by an unregistered provider, with the remainder of the supports being provided by providers that are registered. This means that Agency management of funding is not a suitable option for therapeutic supports, as the participant will not be able to access their supports with Agency-managed funding. The CEO may decide in this circumstance that the risks associated with the nominee managing funding for therapeutic supports is not an unreasonable risk, because these are delivered by an allied health professional registered with their professional body which will minimise risks to the participant related to fraudulent or unprofessional provider behaviour. The remainder of the plan could be set up to be Agency-managed to allow oversight of provider billing and service delivery. Over time, as the nominee becomes more confident with managing that aspect of the participant's funding they may take on more responsibility until they are managing all funding for supports.

Paragraph (b) requires the CEO to consider whether, and the extent to which, any identified risk has been mitigated in the past by particular supports, safeguards or strategies that were included in the participant's statement of participant supports. The CEO must also consider any informal, community or mainstream supports that the participant or their nominee had in place.

This allows the CEO to consider past supports, safeguards and strategies that may have been successful as well as those that were not, which is an important factor for the CEO to consider and be aware of when considering what supports, strategies and safeguards may be useful in the future. Where particular supports, strategies and safeguards have shown to be successful in the past this may suggest the same supports, strategies or safeguards should be put in place as part of the planning decision the CEO is currently making. Alternatively, it may suggest that no further supports, strategies or safeguards are necessary as the participant and their nominee are already able to manage any identified risks and prevent them from becoming unreasonable.

On the other hand, particular supports, strategies and safeguards that have been shown to be unsuccessful, the CEO will need to consider whether there are alternatives that could be put in place and if not this may suggest an identified risk is unreasonable and cannot be mitigated.

Paragraph (c) requires the CEO to consider the nature of supports that are, or will be, included in the participant's plan in relation to which the plan management decision is being made. As the CEO's decision about plan management forms part of the statement of participant supports, the CEO will be aware of the supports that

are, or will be, included in that statement at the time they are considering the participant's plan management request.

This is an important consideration, and will mostly be relevant when the nature of the particular supports included in the participant's plan are of a kind that may present an unreasonable risk to the participant if the supports are not provided in the manner anticipated by the plan.

For example, if there are particular supports within a participant's plan that are essential, life-sustaining supports (such as the supply of oxygen tanks or self-care supports that assist the participant with key daily activities such as eating or hygiene), there would be an unreasonable risk to the participant if those supports are no longer available.

With any nominee management arrangement there is a risk that funding for supports will be used to purchase supports different to those that the plan was intended to fund. This may often be a simple mistake or misunderstanding, or may be a case of the nominee choosing to prioritise some supports over others. This will not necessarily result in the plan nominee failing to comply with the provisions of the NDIS Act, however it will result in funding for specific supports being unavailable. Where the plan contains life-sustaining supports, this risk may be an unreasonable risk due to the severe consequences if funding is not available for those supports.

In this example, even if the CEO is satisfied that the plan nominee managing funding for these life-sustaining supports in the plan would present an unreasonable risk to the participant, that would not necessarily prevent the plan nominee from managing funding for other low-risk supports if that is appropriate.

Paragraph (d) requires the CEO to consider whether, and the extent to which the participant is at risk of experiencing physical, mental or financial harm, or exploitation or undue influence. It is important for the CEO to consider both whether the participant is at risk of these types of harm and the extent of this risk.

This is an important consideration for the purpose of safeguarding participants who are at an increased risk of harm because of their personal circumstances. It is important to note that a participant having risk present in their life is not in and of itself sufficient for a finding that nominee management will present an unreasonable risk to the participant. However, it is important for the CEO to consider whether a participant is at an increased risk of experiencing harm so that an assessment can be made of whether nominee management would mean that risk is unreasonable, or is of a kind that the participant can manage (i.e. is not an unreasonable risk).

For example, if a participant had a close friend who sometimes helped them go to the post office to pay bills and withdraw money, and the friend had previously convinced the participant to withdraw self-managed funds to pay for the friend to join them on a holiday which was not part of any support plan, this may indicate the participant is vulnerable to exploitation or undue influence. Even if the participant had cut ties with the friend, this is still an indication that they may be at risk of exploitation from others, including nominees, in the future. The CEO would consider whether this is an unreasonable risk, depending on who the nominee is, the extent of the previous

exploitation, and other factors such as when it occurred and what has (or has not) changed since then.

Paragraph (e) requires the CEO to consider the person's ability or capacity to make decisions or to appropriately manage finances including where they are being supported to do so. The CEO must also take into account any informal or formal support or assistance that the plan nominee is likely to receive in this area.

This is to ensure that participants are not placed at unreasonable risk as a result of a plan nominee with poor decision-making skills managing the supports in their plan. A plan nominee who has a demonstrated history of inability to manage finances may present an unreasonable risk to a participant, as mismanaging funding under the participant's plan may leave the participant without access to key supports.

Paragraph (f) requires the CEO to consider whether a court or tribunal has ordered another person to wholly or in part manage the property or finances of the plan nominee. This can include a decision made by a court in relation to the financial management of the plan nominee's accounts or assets.

This is another important consideration, as a previous finding by a court or tribunal about the nominee's ability to manage their finances may mean they have made poor financial decisions in the past and are at risk of making similar decisions in the future (leaving the participant without access to important and necessary supports). However, there are many different reasons why a court or tribunal would have made this decision and some of those reasons may have no bearing on the nominee's ability to manage the participant's plan in a way that does not place them at unreasonable risk. The CEO will consider the particular circumstances that led to the decision being made as well as the content of the decision itself in assessing whether it has any impact on the degree of risk a participant will face by their nominee managing funding under the plan.

Paragraph (g) requires the CEO to consider any relevant matters raised by the participant or the plan nominee. This will ensure participants and plan nominees can bring matters to the attention of the decision-maker who is considering how funding for supports should be managed, and provide supporting evidence or information if they would like to do so. Matters that are raised will only be considered where they are relevant to the decision the CEO is making, which is whether nominee management of funding will present an unreasonable risk to the participant.

The participant or plan nominee may raise other relevant matters at any point during the planning process, including in support of a request to vary their plan. As part of the usual planning process, the CEO ensures participants and plan nominees have an opportunity to share any other relevant detail they wish to. Once the plan is approved, participants and plan nominees can raise any concerns or matters related to their plan management method through their preferred contact method with their My NDIS Contact or through the NDIS call centre. The My NDIS Contact will consider the information and if needed can commence or request a plan variation to change the plan management method. The CEO will consider and weigh these matters based on the individual personal circumstances of the participant.

Paragraph (h) requires the CEO to consider any other matters the CEO considers relevant. This ensures that all relevant matters to a participant's unique circumstances can be taken into account. Matters will only be considered where they are relevant to the decision the CEO is making, which is whether nominee management of funding will present an unreasonable risk to the participant. It is important to note that the CEO cannot consider any of the matters listed in subsection (6), even if the CEO considers the matter would be relevant under this paragraph.

Matters to which the CEO must have regard – child representative

Subsection 6(5) prescribes matters to which the CEO must have regard in considering, for the purposes of subsection 74(4) of the Act, whether management of the funding for supports under a plan to a particular extent by a person mentioned in subsection 74(1) would present an unreasonable risk to a participant who is a child. A person mentioned in subsection 74(1) is generally known as a 'child representative'.

A note to the end of subsection (5) explains the reference to subsection 74(1), as follows:

Subsection 74(1) provides that if this Act requires or permits a thing to be done by or in relation to a child, the thing is to be done by or in relation to:

- (a) the person who has, or the persons who jointly have, parental responsibility for the child; or
- (b) if the CEO is satisfied that this is not appropriate—a person determined in writing by the CEO.

Each of the matters prescribed by subsection 6(5) must be considered by the CEO when assessing whether there would be an unreasonable risk to a child participant if their representative were to manage funding under their plan wholly or in part.

Paragraph (a) provides that the CEO must consider whether, and the extent to which, any identified risk could be mitigated by supports, safeguards or other strategies that are or will be included in the child's statement of participant supports to which the plan management request relates. The CEO must also consider any additional informal, community or mainstream supports available to the child representative and the child outside of the child representative themselves.

These are critical elements of protecting a participant from harm while also recognising the dignity of risk and allowing child participants to have funding managed by their parent or other representative unless the risks they face are 'unreasonable' and cannot be mitigated by appropriate supports.

The CEO will be considering the child representative's plan management request at the time of either approving or varying the participant's plan. This allows the CEO to consider supports that are already in the participant's plan, as well as supports that will be included in the participant's statement of participant supports after it is approved. The CEO may choose to include additional supports that were not initially

anticipated if those supports would allow the participant's plan to be managed by their representative.

Paragraph (b) requires the CEO to consider whether, and the extent to which, any identified risk has been mitigated in the past by particular supports, safeguards or strategies that were included in the participant's statement of participant supports. The CEO must also consider any informal, community or mainstream supports that the participant or their representative had in place.

This allows the CEO to consider past supports, safeguards and strategies that may have been successful as well as those that were not, which is an important factor for the CEO to consider and be aware of when considering what supports, strategies and safeguards may be useful in the future. Where particular supports, strategies and safeguards have shown to be successful in the past this may suggest the same supports, strategies or safeguards should be put in place as part of the planning decision the CEO is currently making. Alternatively, it may suggest that no further supports, strategies or safeguards are necessary as the participant and their representative are already able to manage any identified risks and prevent them from becoming unreasonable.

On the other hand, particular supports, strategies and safeguards that have been shown to be unsuccessful, the CEO will need to consider whether there are alternatives that could be put in place and if not this may suggest an identified risk is unreasonable and cannot be mitigated.

Paragraph (c) requires the CEO to consider the nature of supports that are, or will be, included in the child's plan to which the plan management request relates. As the CEO's decision about plan management forms part of the statement of participant supports, the CEO will be aware of the supports that are, or will be, included in that statement at the time they are considering the child representative's plan management request.

This is an important consideration, and will mostly be relevant when the nature of the particular supports included in the participant's plan are of a kind that may present an unreasonable risk to the participant if the supports are not provided in the manner anticipated by the plan.

For example, if there are particular supports within a child's plan that are essential, life-sustaining supports (such as the supply of oxygen tanks or self-care supports that assist the participant with key daily activities such as eating or hygiene), there would be an unreasonable risk to the participant if those supports are no longer available.

With any arrangement where a child representative is managing funding for supports, there is a risk that funding for supports will be used to purchase supports different to those that the plan was intended to fund. This may often be a simple mistake or misunderstanding, or may be a case of the representative choosing to prioritise some supports over others. This will not necessarily result in the child representative failing to comply with the provisions of the NDIS Act, however it will result in funding for specific supports being unavailable. Where the plan contains life-

sustaining supports, this risk may be an unreasonable risk due to the severe consequences if funding is not available for those supports.

In this example, even if the CEO is satisfied that the child representative managing funding for these life-sustaining supports in the plan would present an unreasonable risk to the participant, that would not necessarily prevent the representative from managing funding for other low-risk supports if that is appropriate.

Paragraph (d) requires the CEO to consider whether, and the extent to which the participant is at risk of experiencing physical, mental or financial harm, or exploitation or undue influence. It is important for the CEO to consider both whether the participant is at risk of these types of harm, and additionally the severity or degree of this risk, which will then inform a decision about whether their representative's management of funding may make an existing risk unreasonable in nature.

This is an important consideration for the purpose of safeguarding participants who are at an increased risk of harm because of their personal circumstances. It is important to note that a participant having risk present in their life is not in and of itself sufficient for a finding that self-management will present an unreasonable risk to the participant. However, it is important for the CEO to consider whether a participant is at an increased risk of experiencing harm so that an assessment can be made of whether that risk is unreasonable, or is of a kind that the participant can manage (i.e. is not an unreasonable risk).

For example, a child participant may live in a shared care arrangement with parents that are engaged in legal proceedings and have a negative relationship with each other. Both parents would likely satisfy the requirements of subsection 74(1), meaning either parent could request to manage funding for supports under the child's plan. However, due to the nature of the relationship between the parents the child is likely to be at risk of exploitation or harm if one parent wishes to manage funding but the other parent does not agree to this. If the CEO considers the circumstances and identifies significant and ongoing conflict between the child's parents, including a history of using the child to manipulate or exploit a particular outcome, this may be a circumstance in which one parent managing funding for supports will present an unreasonable risk to the child participant. This circumstance may also escalate existing family conflict, placing the child at risk of emotional and physical harm depending on the circumstance. That is likely to constitute an unreasonable risk for this purpose.

Paragraph (e) requires the CEO to consider the child representative's ability or capacity to make decisions or to appropriately manage finances, taking into account any support or assistance they are likely to receive to do so. This support or assistance could include other family members or informal supports as well as more formal supports.

This is a relevant consideration to identify whether a child participant may be at unreasonable risk by having their representative manage their funding, as a child representative who is not able to make appropriate decisions about finances may spend too much of the participant's funding on a support that is not necessary, leaving them without sufficient funding for important and necessary supports.

Paragraph (f) requires the CEO to consider whether a court or tribunal has ordered another person to wholly or in part manage the property or finances of the child representative. This is another important consideration, as a previous finding by a court or tribunal about the representative's ability to manage their finances may mean they have made poor financial decisions in the past and are at risk of making similar decisions in the future (leaving the participant without access to important and necessary supports). However, there are many different reasons why a court or tribunal would have made this decision and some of those reasons may have no bearing on the representative's ability to manage funding under the child's plan in a way that does not place them at unreasonable risk. The CEO will consider the particular circumstances that led to the decision being made as well as the content of the decision itself in assessing whether it has any impact on the degree of risk a child participant will face by their representative managing their funding.

Paragraph (g) requires the CEO to consider any relevant matters raised by the child or their representative. This will ensure representatives can bring matters to the attention of the decision-maker who is considering their plan management request, and provide supporting evidence or information if they would like to do so. Participants who are children should also be able to raise matters for consideration if there are any, although for young children in particular this is unlikely to occur. Matters that are raised will only be considered where they are relevant to the decision the CEO is making, which is whether the child representative managing funding under the plan will present an unreasonable risk to the participant.

The child or their representative may raise other relevant matters at any point during the planning process, including in support of a request to vary the child's plan. As part of the usual planning process, the CEO ensures child representatives have an opportunity to share any other relevant detail they wish to. Once the plan is approved, representatives can raise any concerns or matters related to their plan management method through their preferred contact method with their My NDIS Contact or through the NDIS call centre. The My NDIS Contact will consider the information and if needed can commence or request a plan variation to change the plan management method. The CEO will consider and weigh these matters based on the individual personal circumstances of the participant.

Paragraph (h) requires the CEO to consider any other matters the CEO considers relevant. This ensures that all relevant matters to a participant's unique circumstances can be taken into account. Matters will only be considered where they are relevant to the decision the CEO is making, which is whether self-management of funding will present an unreasonable risk to the participant. It is important to note that the CEO cannot consider any of the matters listed in subsection (6), even if the CEO considers the matter would be relevant under this paragraph.

Matters to which the CEO must not have regard – all decisions

Subsection 6(6) provides a number of matters to which the CEO must not have regard when making a decision relating to the management of funding by a participant, registered plan management provider, plan nominee or child representative. This applies despite the earlier subsections, meaning the CEO must

not consider a matter that falls within subsection 6(6) even if it also falls within subsections 6(2) to (5).

Paragraph (a) provides that the CEO must not consider the nature of any of the participant's impairments. This is because the nature of a participant's impairment is not itself a relevant factor, as a particular impairment will not in and of itself be the reason why a participant is at unreasonable risk.

This does not prevent the CEO from considering the impact of a participant's impairment where that is relevant, for example a participant with a significant physical impairment may have difficulty using a computer and processing all their invoices for supports. This difficulty using a computer may result in invoices going unpaid and lead to supports being withdrawn, which would place the participant at an unreasonable risk and would be relevant to consider under subsection 6(2) above. However, the fact that the participant has a physical impairment is not a relevant factor itself; rather the relevant factor is that the participant has difficulty using a computer (regardless of the reason why that is the case). Note that in this example, the participant's inability to use a computer will not necessarily mean they are at an unreasonable risk if they were to self-manage their plan. Their difficulties in paying invoices is simply one factor the CEO will consider in making the plan management decision, but the cause of those difficulties (being the participant's impairment) is something the CEO is unable to consider at all.

Paragraph (b) provides that the CEO must not consider the total funding amount or any funding component amount under the participant's plan.

This means that the CEO is not able to consider the total value of the plan or value of certain supports, even when taking into consideration the nature of the supports and the ability of the participant, plan manager or plan nominee to manage the funding. This prevents the CEO from making decisions based only on the monetary value of the plan, which is not a risk factor in and of itself. There are many circumstances in which a participant with a high value plan is not at any risk by their plan management request being granted, while other circumstances in which a participant may have a low value plan but would be at an unreasonable risk if their plan management request was granted.

Paragraph (c) requires the CEO to not consider the fact that the amount of funding provided under a plan for a funding period was less than the amount that could have been provided for that relevant funding period. This ensures that a participant or other representative of the participant are not to be placed at unreasonable risk simply because they did not use all the funding available in their previous plan.

Subsection 6(7) provides that subsection (6) applies regardless of subsections (2), (3), (4) and (5), to the extent that those subsections would otherwise require the CEO to have regard to a matter mentioned in subsection (6). This ensures that the CEO cannot consider something that falls within subsection (6), even if it would otherwise be something the CEO must consider under subsections (2) to (5).

National Disability Insurance Scheme (Plan Management) Rules 2013

Item 2 repeals Part 3 of the *National Disability Insurance Scheme (Plan Management) Rules 2013*, which includes considerations for deciding whether there would be an unreasonable risk to the participant if the participant (or the participant's plan nominee or child's representative) were to manage the funding for supports to the extent proposed. The repeal of this Part is consequent on the changes made by **item 1** above.

The considerations currently included in Part 3 have been used as the basis for those inserted into the *National Disability Insurance Scheme (Management of Funding) Rules 2024* by item 1. As such the changes made by item 1 will effectively replicate and supersede the content of Part 3, making it unnecessary and appropriate to be repealed.

Item 3 amends paragraph 7.1 of the *National Disability Insurance Scheme (Plan Management) Rules 2013*, which is the provision that specifies the name of those rules. Specifically, paragraph 7.1 is repealed and substituted with a new paragraph that advises these rules may be cited as the *National Disability Insurance Scheme (Plan Administration) Rules 2013*. This has the effect of renaming the rules.

This change is consequent on the change made by item 2 above, which removes all content relating to management of funding for supports from these rules. The phrases 'plan management' and 'management of funding for supports' are generally used interchangeably, and once Part 3 is repealed these rules will no longer have any content relevant to plan management or management of funding for supports. For this reason, the name of the rules is being amended to avoid confusion and ensure it is clear which rules are applicable in particular circumstances.

National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020

Item 4 amends section 5 of the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020*, which is the section that includes definitions for the purpose of those rules. This item amends the definition of *in-kind support* to replace the reference to the Plan Management Rules with a reference to the Plan Administration Rules.

This amendment is consequent on the changes made by **item 3** above, and has no substantive effect beyond updating the name of what will now be known as the Plan Administration Rules.

National Disability Insurance Scheme (Supports for Participants) Rules 2013

Item 5 amends paragraph 2.5 of the *National Disability Insurance Scheme (Supports for Participants) Rules 2013*, which includes the following text:

There are a number of other sets of rules made under the Act that are relevant to have regard to in the context of these Rules—see in particular the National Disability Insurance Scheme (Plan Management) Rules 2013 and the National Disability Insurance Scheme (Supports for Participants—Accounting for Compensation) Rules 2013.

This item will replace the reference to the Plan Management Rules with a reference to the Plan Administration Rules. Again, this amendment is consequent on the changes made by item 3 above, and has no substantive effect beyond updating the name of what will now be known as the Plan Administration Rules.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

National Disability Insurance Scheme Amendment (Management of Funding and Plan Management) Rules 2025

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of legislative instrument

The *National Disability Insurance Scheme Amendment (Management of Funding and Plan Management) Rules 2025* (the Instrument) is made for the purposes of subsection 44(3) of the National Disability Insurance Scheme Act 2013 (NDIS Act). It amends the *National Disability Insurance Scheme (Management of Funding) Rules 2024 (Management of Funding Rules)* and the *National Disability Insurance Scheme (Plan Management) Rules 2013 (Plan Management Rules)* to ensure there is a single set of rules containing all matters relevant to decisions about plan management.

The Instrument amends the Management of Funding Rules to include a range of matters that the CEO must consider in assessing whether a particular plan management request will present an unreasonable risk to a participant. This includes management of funding by the participant, a registered plan management provider, plan nominee, or child representatives. The rules also include matters to which the CEO must not have regard in making this assessment.

The Instrument will ensure there is transparency in what matters the CEO will, and will not, consider when assessing if there is unreasonable risk associated with a particular plan management type.

As a consequence of these changes, the Instrument also makes changes to what is currently known as the Plan Management Rules. Those rules currently include some considerations relevant to assessing 'unreasonable risk', which have been used as the basis for the considerations inserted in the Management of Funding Rules. This means these considerations no longer need to be included in the Plan Management Rules, and for this reason the Instrument repeals the Part in which they sit. The Instrument also renames these rules, as without considerations about unreasonable risk the rules are no longer relevant to plan management decisions.

Human rights implications

The Instrument engages the following human rights:

- Right of people with disability – Articles 3, 4, 5 and 12 of the *Convention on the Rights of Persons with Disabilities* (CRPD) and Articles 2, 16, 24 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR).

- Right for all people to self-determination and to freely pursue economic, social and cultural development – Article 1 of the ICCPR and the *International Covenant on Economic, Social and Cultural Rights* (ICESCR).

Right to equality and non-discrimination – Articles 3, 4, 5, 12 of the CRPD and Articles 2, 16, 24 and 26 of the ICCPR

Article 3 of the CRPD reflects the need for respect of the inherent dignity, individual autonomy (including the freedom to make one's own choices and the independence of the person), non-discrimination, full and effective participation and inclusion in society, the need for respect for difference, acceptance of persons with disability, equality of opportunity, accessibility, gender equality and respect for the evolving capacities of children with disability including their right to preserve their identities.

These rights are reinforced by Article 2 of the ICCPR which states that all steps must be taken to respect and ensure that all individuals have their rights recognised free of distinction of any kind such as, race, colour, sex, language, religion, political, or other opinion, national or social origin, property, birth or other status. This is enforced further by Article 12 of the CRPD and Article 26 of the ICCPR, ensuring that all persons are equal before the law without discrimination.

The Instrument ensures that participants have clarity over what is being considered by the CEO when considering whether a particular plan management type would present an unreasonable risk to the participant. It is critical to the effective functioning of the NDIS that all participants are made aware of the processes for decisions being made about their plans. It is the intention of this Instrument to carefully consider a range of factors before making a decision on the management of funding under a plan. The Instrument clearly sets out matters that the CEO must, and must not, have regard to when considering if there is unreasonable risk.

Article 4 of the CRPD outlines the need for ensuring the full realisation of all human rights and fundamental freedoms for persons with disability, free of discrimination of any kind on the basis of disability. Article 5 of the CRPD supports Article 2 of the ICCPR by acknowledging all persons as equal under the law and entitled, without discrimination to equal benefit of the law. However, Article 5 of the CRPD recognises the inherent vulnerability of people with disability stating they must be free of discrimination on this basis.

The Instrument specifically sets out matters to which the CEO must not have regard, which includes the nature of a participant's impairments. This empowers participants to manage their funding if appropriate to do so without any discrimination of their equal benefit under the law.

Non-discrimination is an integral part of the principle of equality, it ensures that no one is denied their rights because of factors identified by the Instrument. It is important to acknowledge that the circumstances of some people in a scheme such as the NDIS can make it difficult for them to enjoy their full rights without support.

Further, the CEO must not consider the total funding amount or funding component amount within a participant's plan. This is to ensure that participants are free from discrimination on the basis of their economic status. This strengthens the application

of the right to be free from discrimination as participants can be assured that only the matters set out at section 5 of the Rule are considered.

Right for all people to self-determination and to freely pursue economic, social and cultural development - Article 1 ICESCR

As provided for under Article 1 of the ICESCR, all people have the right to self-determination and to freely pursue their economic, social and cultural development. Paramount to the Instrument is the clear setting out of factors that the CEO must, or must not, take into account when considering whether there is an unreasonable risk to the participant of a particular plan management type. These considerations take into account a diverse range of matters and ensure participants are given the opportunity to manage their own funding without unreasonable risk.

The Instrument ensures that there has been consideration of any supports, safeguards or strategies in place to mitigate this potential risk. This promotes greater economic development, by ensuring that broader factors surrounding a participant's circumstances are considered.

To the extent that there is a limitation upon a participant's right to self-determination, this is reasonable and proportionate to achieving a legitimate aim. In the circumstance that a participant is not able to manage their own funding due to there being an unreasonable risk associated with matters set out in these rules, options of plan management or Agency management ensures that a participant continues to have access to NDIS supports, for the duration of the plan. This additionally pursues a legitimate aim of ensuring the long-term sustainability of the NDIS so it remains available to support Australians with disability for many years to come.

The Instrument promotes these rights by clearly setting out factors that a decision-maker must consider when considering a plan management request and determining the plan management type. Further, when considering unreasonable risk, a decision-maker must take into account matters including whether the participant is at risk of experiencing fraud or financial exploitation. This promotes greater economic development, by ensuring that broader factors surrounding a participant's circumstance are considered when deciding how NDIS funding is managed.

Further, a decision-maker must have regard to whether the participant has appropriate decision-making supports. This provides assurance that a participant's individual supports have been taken into consideration, thus promoting the right to economic development and freedom.

Conclusion

This legislative instrument is compatible with human rights as it advances the protection of the rights of people with disability in Australia, consistent with the CRPD, ICESCR and ICCPR. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the NDIS, for the benefit of all persons with disability who have access to the NDIS.