

EXPOSURE DRAFT



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National Disability Insurance Scheme (Management of Funding) Rules 2024

I, Bill Shorten, Minister for the National Disability Insurance Scheme, make the following rules.

Dated 2024

Bill Shorten [**DRAFT ONLY—NOT FOR SIGNATURE**]

Minister for the National Disability Insurance Scheme

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Preliminary **Part 1**

Section 1

Part 1—Preliminary

1 Name

This instrument is the *National Disability Insurance Scheme (Management of Funding) Rules 2024*.

2 Commencement

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

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made.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

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

3 Authority

This instrument is made under the *National Disability Insurance Scheme Act 2013*.

4 Definitions

Note: A number of expressions used in this instrument are defined in the Act, including the following:

- (a) funding component amount;
- (b) participant;
- (c) plan;
- (d) supports;
- (e) total funding amount.

In this instrument:

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

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Part 2 Compliance with section 46 of the Act

Section 5

Part 2—Compliance with section 46 of the Act

5 Considering whether section 46 of the Act unlikely to be complied with

- (1) This section is made for the purposes of subsections 44(5) and 74(6) of the Act.

Matters to which the CEO must have regard

- (2) The following are matters to which the CEO must have regard in considering, for the purposes of sections 44 and 74 of the Act, whether section 46 of the Act would be unlikely to be complied with if a particular person were to manage the funding for supports under a plan to any extent:
- (a) the person's history of compliance with section 46 of the Act in relation to the management of the funding for particular supports under a participant's plan while the person was responsible for managing the funding for those supports;
 - (b) the person's history of compliance with requests or requirements made under the Act to give or produce information or documents and, if the person has refused or failed to comply with such a request or requirement:
 - (i) whether the person has a reasonable excuse for that refusal or failure; and
 - (ii) whether the person took reasonable steps to comply with the request or requirement, including after the time by which the request or requirement needed to be complied with;
 - (c) whether the person has engaged in any conduct involving fraud or the mismanagement or misapplication of funds or other assets;
 - (d) whether the person has been the subject of exploitation or undue influence in the management of legal or financial affairs;
 - (e) the person's ability or capacity to make decisions or to appropriately manage finances, taking into account any support or assistance the person is likely to receive to do so;
 - (f) any matters raised by the following that the CEO considers relevant:
 - (i) the person;
 - (ii) if the person is not the participant—the participant;
 - (g) any other matters that the CEO considers relevant.

Matters to which the CEO must not have regard

- (3) However, the following are matters to which the CEO must not have regard:
- (a) the nature of any of the participant's impairments;
 - (b) any total funding amount or funding component amount under the plan;
 - (c) if applicable, the fact that the amount of funding provided under a plan for the participant for a funding period was less than the amount that could have been provided for that period;
 - (d) any bankruptcy of the person under the *Bankruptcy Act 1966* from which the person has been discharged.

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Compliance with section 46 of the Act **Part 2**

Section 5

- (4) Subsection (3) applies despite subsection (2) to the extent that subsection (2) would otherwise have the effect of requiring the CEO to have regard to a matter that is mentioned in subsection (3).

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