



# **National Disability Insurance Scheme Amendment (Improving Supports for At Risk Participants) Act 2021**

**No. 116, 2021**

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

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



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

*[Assented to 28 October 2021]*

The Parliament of Australia enacts:

## **1 Short title**

This Act is the *National Disability Insurance Scheme Amendment  
(Improving Supports for At Risk Participants) Act 2021*.

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*No. 116, 2021*

*National Disability Insurance Scheme Amendment (Improving  
Supports for At Risk Participants) Act 2021*

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## 2 Commencement

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

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Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The day after this Act receives the Royal Assent.	29 October 2021

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Note: This table relates only to the provisions of this Act as originally enacted.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

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

## 3 Schedules

Legislation that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

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## **Schedule 1—Amendments**

### ***National Disability Insurance Scheme Act 2013***

#### **1 Section 9 (definition of *protected Commission information*)**

Repeal the definition, substitute:

***protected Commission information*** means information about a person (including a deceased person) that is or was held in the records of the Commission, but does not include the following:

- (a) if there is publication of the NDIS Provider Register in whole or part as mentioned in paragraph 73ZS(7)(b)—information covered by that publication;
- (b) if there is publication of specified information entered on that Register as mentioned in that paragraph—that information.

#### **2 Paragraph 55A(2)(a)**

After “contravening”, insert “or has contravened”.

#### **3 Paragraph 55A(2)(c)**

After “meeting”, insert “or has met”.

#### **4 Paragraph 55A(2)(d)**

Omit “or a person employed or otherwise engaged by an NDIS provider, is complying”, insert “a person who is or was employed or otherwise engaged by an NDIS provider or a person who is or was a member of the key personnel of an NDIS provider is complying or has complied”.

#### **5 Paragraph 55A(2)(e)**

After “person, is”, insert “or was”.

#### **6 Paragraph 55A(2)(e)**

Omit “whether the person is providing”, substitute “whether the provider or person is providing or has provided”.

**7 Paragraph 60(2)(e)**

Omit “necessary to prevent or lessen a serious threat”, substitute “for the purpose of, or in relation to, preventing or lessening a threat (whether current or future)”.

**8 At the end of subsection 60(2)**

Add:

- ; or (f) the person believes on reasonable grounds that the making of the record, or the disclosure or use of the information, by the person is for the purpose of, or in relation to, reporting a past threat to an individual’s life, health or safety.

**9 At the end of section 60**

Add:

- (4) The CEO or an Agency officer may disclose protected Agency information to the Commissioner or a Commission officer if the disclosure is for, or in connection with, the performance of the Commissioner’s functions or the exercise of the Commissioner’s powers.

**10 After paragraph 67A(1)(d)**

Insert:

- (da) the disclosure of the information by the person is to a State or Territory, or to an authority of a State or Territory, for one or more of the following purposes:
  - (i) the carrying out of an NDIS worker screening check;
  - (ii) any other purpose of an NDIS worker screening law;
  - (iii) the screening of a worker employed or otherwise engaged by a registered NDIS provider, or of a member of the key personnel of a registered NDIS provider, as mentioned in paragraph 73T(3)(d); or
- (db) the disclosure of the information by the person is to a person or body, prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph, for the purpose prescribed by those rules; or



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**11 Paragraph 67A(1)(e)**

Omit “necessary to prevent or lessen a serious threat”, substitute “for the purpose of, or in relation to, preventing or lessening a threat (whether current or future)”.

**12 At the end of subsection 67A(1)**

Add:

- ; or (f) the person reasonably believes that the making of the record, or the disclosure or use of the information, by the person is for the purpose of, or in relation to, reporting a past threat to an individual’s life, health or safety.

**13 At the end of section 67A**

Add:

- (3) The Commissioner or a Commission officer may disclose protected Commission information to the Agency or an Agency officer if the disclosure is for, or in connection with, the performance of the Agency’s or CEO’s functions or the exercise of the Agency’s or CEO’s powers.

**14 Subsection 73B(1)**

Omit “NDIS providers”, substitute “persons”.

**15 At the end of section 73C**

Add:

*Withdrawal of application*

- (6) An applicant for registration may at any time, by writing to the Commissioner, withdraw the application.
- (7) A person’s application is taken to have been withdrawn if the person’s registration is revoked under section 73P while that application is pending.

**16 Paragraph 73P(4)(b)**

Omit “28 days after receiving the notice”, substitute “the period specified in the notice (which must not be less than 28 days)”.

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**17 Paragraph 73P(4)(c)**

Omit “that period”, substitute “the period specified in the notice”.

**18 Paragraph 73P(4)(c)**

Omit “referred to in paragraph (b)”, substitute “specified in the notice”.

**19 Subsection 73P(5)**

Omit “referred to in paragraph (4)(b)”, substitute “specified in the notice”.

**20 At the end of paragraph 73T(3)(d)**

Add “or of members of the key personnel of registered NDIS providers”.

**21 Subsections 73U(2) and (3)**

Repeal the subsections, substitute:

- (2) The Commissioner may do so on request of the person or body.
- (3) If a person or body requests an approval, the Commissioner must:
  - (a) make a decision under subsection (1) to give the approval; or
  - (b) make a decision to refuse to give the approval.
- (4) If the Commissioner refuses to give the approval, the Commissioner must give notice to the person or body of the refusal and of the reasons for the refusal.

*Conditions*

- (5) The Commissioner may make an approval subject to conditions specified in the approval.

*Variation*

- (6) The Commissioner may, in writing, vary an approval given under subsection (1) by imposing new conditions on the approval or varying or removing existing conditions.
- (7) The Commissioner must give notice to the person or body of the variation and of the reasons for the variation. The notice must

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specify the day the variation takes effect (which must not be earlier than the day the notice is given).

*Revocation*

- (8) The Commissioner may, in writing, revoke an approval given under subsection (1).
- (9) The Commissioner must give notice to the person or body of the revocation and of the reasons for the revocation. The notice must specify the day the revocation takes effect (which must not be earlier than the day the notice is given).

*Approval not a legislative instrument*

- (10) An approval given under subsection (1) is not a legislative instrument.

*Publication*

- (11) The Commissioner may publish, on the Commission's website, a list of approved quality auditors.

**22 At the end of paragraph 73V(1)(b)**

Add "or members of the key personnel of NDIS providers".

**23 Subsection 73Z(1)**

Omit "the notification and management of", substitute "registered NDIS providers notifying and managing".

**24 At the end of subsection 73Z(1)**

Add "or in other circumstances prescribed by the National Disability Insurance Scheme rules".

**25 Paragraph 73Z(4)(b)**

Omit "of", substitute "to".

**26 Subparagraph 73ZN(1)(b)(iii)**

After "disability", insert ", having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph".

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**27 Subsection 73ZN(2) (heading)**

Repeal the heading, substitute:

*Banning orders—persons employed or otherwise engaged by NDIS providers or key personnel of NDIS providers*

**28 Subsection 73ZN(2)**

After “employed or otherwise engaged by an NDIS provider”, insert “, or a person who is or was a member of the key personnel of an NDIS provider,”.

**29 Subparagraph 73ZN(2)(a)(iii)**

After “disability”, insert “, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this subparagraph”.

**30 Paragraph 73ZN(2A)(a)**

After “involved”, insert “, having regard to any matters prescribed by the National Disability Insurance Scheme rules for the purposes of this paragraph”.

**31 At the end of subsection 73ZN(2A)**

Add:

; and (d) the person has not previously been a member of the key personnel of an NDIS provider.

**32 At the end of subsection 73ZN(3)**

Add:

; and (c) be made subject to specified conditions.

**33 After subsection 73ZN(5A)**

Insert:

(5B) If a banning order under subsection (2) is made against a person who is a member of the key personnel of an NDIS provider, the continuity of the order is not affected by the person ceasing to be such a member.

**34 Paragraph 73ZN(9)(c)**

After “by an NDIS provider”, insert “or is a member of the key personnel of an NDIS provider”.

**35 Paragraph 73ZN(10)(b)**

After “order”, insert “(including a condition of the order)”.

**36 After subsection 73ZO(2)**

Insert:

(2A) Without limiting subsection (1), a variation of a banning order may involve imposing new conditions on the order or varying or removing existing conditions.

**37 Paragraph 73ZO(6)(b)**

After “by an NDIS provider”, insert “or is a member of the key personnel of an NDIS provider”.

**38 Paragraph 73ZS(3)(j)**

Omit “if a compliance notice is in force in relation to the person”, substitute “if the person is, or was, subject to a compliance notice”.

**39 Subsection 99(1) (after table item 13)**

Insert:

13A	a decision to refuse to approve a person or body as an approved quality auditor	paragraph 73U(3)(b)	Commissioner
13B	a decision to specify conditions in an approval given under subsection 73U(1)	subsection 73U(5)	Commissioner
13C	a decision to vary an approval given under subsection 73U(1)	subsection 73U(6)	Commissioner
13D	a decision to revoke an approval given under subsection 73U(1)	subsection 73U(8)	Commissioner

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**40 Subsection 99(1) (after table item 14)**

Insert:

14A	a decision to vary or revoke a compliance notice	subsection 73ZM(4)	Commissioner
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**41 Subsection 100(5)**

Omit all the words after paragraph (b), substitute:

the decision-maker (the *reviewer*) must review the reviewable decision.

**42 After subsection 100(5)**

Insert:

(5A) The decision-maker cannot review the reviewable decision personally if the decision-maker was involved in making the reviewable decision.

(5B) A delegate of the decision-maker cannot review the reviewable decision if the delegate was involved in making the reviewable decision.

**43 After paragraph 201A(1)(o)**

Insert:

(oa) subparagraphs 73ZN(1)(b)(iii) and (2)(a)(iii) and paragraph 73ZN(2A)(a) (banning orders);

**44 Subsection 209(8) (table item 4, column headed “Description”, after paragraph (ca))**

Insert:

(cb) paragraph 67A(1)(db);

**45 Subsection 209(8) (table item 4, column headed “Description”, after paragraph (q))**

Insert:

(qa) subparagraphs 73ZN(1)(b)(iii) and (2)(a)(iii) and paragraph 73ZN(2A)(a);

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**46 Application provisions—information**

- (1) The amendments of section 55A of the *National Disability Insurance Scheme Act 2013* made by this Schedule apply in relation to a requirement made under subsection 55A(1) of that Act on or after the commencement of this item.
  - (2) The amendment of paragraph 60(2)(e) of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to the making of a record of information, or the disclosure or use of information, on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
  - (3) Paragraph 60(2)(f) of the *National Disability Insurance Scheme Act 2013*, as added by this Schedule, applies in relation to the making of a record of information, or the disclosure or use of information, on or after the commencement of this item:
    - (a) whether the threat occurred before, on or after that commencement; and
    - (b) whether the information was obtained before, on or after that commencement.
  - (4) Subsection 60(4) of the *National Disability Insurance Scheme Act 2013*, as added by this Schedule, applies in relation to the disclosure of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
  - (5) Paragraphs 67A(1)(da) and (db) of the *National Disability Insurance Scheme Act 2013*, as inserted by this Schedule, apply in relation to the disclosure of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
  - (6) The amendment of paragraph 67A(1)(e) of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to the making of a record of information, or the disclosure or use of information, on or after the commencement of this item, whether the information was obtained before, on or after that commencement.
  - (7) Paragraph 67A(1)(f) of the *National Disability Insurance Scheme Act 2013*, as added by this Schedule, applies in relation to the making of a record of information, or the disclosure or use of information, on or after the commencement of this item:
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- (a) whether the threat occurred before, on or after that commencement; and
  - (b) whether the information was obtained before, on or after that commencement.
- (8) Subsection 67A(3) of the *National Disability Insurance Scheme Act 2013*, as added by this Schedule, applies in relation to the disclosure of information on or after the commencement of this item, whether the information was obtained before, on or after that commencement.

#### **47 Application provisions—registration as registered NDIS provider**

- (1) Subsection 73C(6) of the *National Disability Insurance Scheme Act 2013*, as added by this Schedule, applies in relation to the following:
  - (a) an application under subsection 73C(1) of that Act that is made on or after the commencement of this item;
  - (b) an application under subsection 73C(1) of that Act that was made before the commencement of this item but not decided by the Commissioner immediately before that commencement.
- (2) Subsection 73C(7) of the *National Disability Insurance Scheme Act 2013*, as added by this Schedule, applies in relation to a revocation of registration on or after the commencement of this item, whether the application was made before, on or after that commencement.
- (3) The amendments of section 73P of the *National Disability Insurance Scheme Act 2013* made by this Schedule apply in relation to a notice given under subsection 73P(4) of that Act on or after the commencement of this item.

#### **48 Application provisions—approved quality auditors**

- (1) Subsections 73U(2) to (4) of the *National Disability Insurance Scheme Act 2013*, as substituted by this Schedule, apply in relation to requests made on or after the commencement of this item.
- (2) Subsection 73U(5) of the *National Disability Insurance Scheme Act 2013*, as substituted by this Schedule, applies in relation to approvals given on or after the commencement of this item.



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- (3) Subsections 73U(6) to (9) of the *National Disability Insurance Scheme Act 2013*, as substituted by this Schedule, apply in relation to approvals given before, on or after the commencement of this item.
  - (4) Item 13A of the table in subsection 99(1) of the *National Disability Insurance Scheme Act 2013*, as inserted by this Schedule, applies in relation to a refusal that occurs on or after the commencement of this item.
  - (5) Item 13B of the table in subsection 99(1) of the *National Disability Insurance Scheme Act 2013*, as inserted by this Schedule, applies in relation to a decision made on or after the commencement of this item, where the approval is given on or after that commencement.
  - (6) Items 13C and 13D of the table in subsection 99(1) of the *National Disability Insurance Scheme Act 2013*, as inserted by this Schedule, apply in relation to a decision made on or after the commencement of this item, whether the approval was given before, on or after that commencement.
  - (7) The amendment of section 73U of the *National Disability Insurance Scheme Act 2013* made by this Schedule does not affect the continuity of the list published under that section.

#### **49 Application provisions—banning orders**

- (1) The amendments of subsections 73ZN(1), (2), (2A) and (3) of the *National Disability Insurance Scheme Act 2013* made by this Schedule apply in relation to a banning order made on or after the commencement of this item.
  - (2) To the extent that those amendments permit the making of a banning order against a person who is or was a member of the key personnel of an NDIS provider, those amendments apply in relation to a person who is or was such a member before, on or after the commencement of this item, whether conduct to which paragraph 73ZN(2)(a), (b) or (c) of that Act relates occurred before, on or after that commencement.
  - (3) The amendment of subsection 73ZN(10) of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to a breach of a condition of a banning order that occurs on or after the commencement of this item, whether the banning order was made before, on or after that commencement.
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- (4) Subsection 73ZO(2A) of the *National Disability Insurance Scheme Act 2013*, as inserted by this Schedule, applies in relation to a variation made on or after the commencement of this item, whether the banning order was made before, on or after that commencement.

## 50 Application provisions—compliance notices

- (1) The amendment of section 73ZS of the *National Disability Insurance Scheme Act 2013* made by this Schedule applies in relation to a compliance notice given before, on or after the commencement of this item.
- (2) Item 14A of the table in subsection 99(1) of the *National Disability Insurance Scheme Act 2013*, as inserted by this Schedule, applies in relation to a variation or revocation that occurs on or after the commencement of this item, whether the compliance notice was given before, on or after that commencement.

## 51 Application provision—review of decisions

The amendments of section 100 of the *National Disability Insurance Scheme Act 2013* made by this Schedule apply in relation to:

- (a) a request for review that is received on or after the commencement of this item, whether the reviewable decision was made before, on or after that commencement; or
- (b) a reviewable decision taken to have been made as mentioned in paragraph 100(5)(b) of that Act on or after the commencement of this item.

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[Minister's second reading speech made in—  
House of Representatives on 3 June 2021  
Senate on 26 August 2021]

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(67/21)