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DISABILITY SERVICES ACT 1993

DISABILITY SERVICES AMENDMENT REGULATIONS 2014

Disability Services Act 1993

Disability Services Amendment Regulations 2014

Made by the Governor in Executive Council.

1. Citation

These regulations are the *Disability Services Amendment Regulations 2014*.

2. Commencement

These regulations come into operation on the day on which the *Disability Services Amendment Act 2014* section 4 comes into operation.

3. Regulations amended

These regulations amend the *Disability Services Regulations 2004*.

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4. Part 1 heading inserted

Before regulation 1 insert:

Part 1 — General**5. Regulation 4A replaced**

Delete regulation 4A and insert:

4A. Disability Service Standards (s. 12)

The following Disability Service Standards, endorsed and published by the Commission in 2014 are prescribed for the purposes of section 12(1)(i) of the Act —

- (a) Rights;
- (b) Participation and Inclusion;
- (c) Individual Outcomes;
- (d) Feedback and Complaints;
- (e) Service Access;
- (f) Service Management.

6. Regulation 11 deleted

Delete regulation 11.

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7. Part 2 inserted

Before Schedule 1 insert:

Part 2 — Trial of disability services model

Division 1 — General

11. Terms used

In this Part —

child means a person who has not reached 18 years of age;

Cockburn-Kwinana area means the area constituted as at 1 July 2014 by the local government districts of Cockburn and Kwinana;

Lower South West area means the area constituted as at 1 July 2014 by the local government districts of Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, Busselton, Donnybrook-Balingup, Manjimup and Nannup;

NDIS Act has the meaning given in section 26E of the Act;

participant has the meaning given in section 26E of the Act;

plan, in relation to a participant, has the meaning given in section 26I(1) of the Act;

support has the meaning given in section 26I(1) of the Act;

trial has the meaning given in section 26E of the Act.

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12. Trial areas and periods (s. 26G)

- (1) For the purposes of section 26G(1) of the Act, the Lower South West area and the Cockburn-Kwinana area are prescribed.
- (2) For the purposes of section 26G(3) of the Act, the trial period for the Lower South West area begins on 1 July 2014 and ends on 30 June 2016.
- (3) For the purposes of section 26G(3) of the Act, the trial period for the Cockburn-Kwinana area begins on 1 July 2015 and ends on 30 June 2016.

13. Disclosure of information (s. 52)

The disclosure of information to a person for the purpose of the performance of a function of the Agency as defined in the NDIS Act section 9 is prescribed for the purposes of section 52(1)(e) of the Act.

Division 2 — Becoming a participant**Subdivision 1 — General****14. References in regulation headings to comparable Commonwealth rules**

Without limiting the *Interpretation Act 1984* section 32(2), a reference to “NDIS rule” followed by a rule designation in the heading to a regulation in this Division is a reference to the rule of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2013* (Commonwealth) with which the regulation in this Division is comparable.

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r. 7**Subdivision 2 — Residence requirements****15. Qualifying residence requirement to be met (NDIS rule 4.1)**

For the purposes of section 26H(1)(d) of the Act, a person must meet the qualifying residence requirement set out in regulation 16.

16. Qualifying residence requirement (NDIS rules 4.6 - 4.8)

- (1) A person meets the qualifying residence requirement if —
 - (a) on 1 July 2014 the person resides in the Lower South West area; or
 - (b) on 1 July 2015 the person resides in the Cockburn-Kwinana area.
- (2) A person also meets the qualifying residence requirement if —
 - (a) either —
 - (i) the person starts to reside in the Lower South West area at any time after 1 July 2014; or
 - (ii) the person starts to reside in the Cockburn-Kwinana area at any time after 1 July 2015;
 - and
 - (b) the person starts to reside in that area for the dominant purpose of accessing supports not provided under the Act (for example, education, employment, health care or family support); and

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- (c) exceptional circumstances apply — for example, the person would suffer significant financial or personal hardship, which could reasonably be expected to significantly undermine the person's wellbeing or social or economic participation, by reason of not being a participant.
- (3) A child also meets the qualifying residence requirement if —
 - (a) the child is born after 1 July 2014, and at least one of the child's birth parents who cares for that child resides in the Lower South West area on the day the child is born; or
 - (b) the child is born after 1 July 2015, and at least one of the child's birth parents who cares for that child resides in the Cockburn-Kwinana area on the day the child is born; or
 - (c) at a time after 1 July 2014, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in the Lower South West area since 1 July 2014, and this will be the child's place of residence; or
 - (d) at a time after 1 July 2015, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in the Cockburn-Kwinana area since 1 July 2015, and this will be the child's place of residence; or

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- (e) in the case of a child whose parents are separated and who spends time with each parent —
- (i) at least one of the child's parents meets the qualifying residence requirement in subregulation (1); or
 - (ii) the following apply —
 - (I) at least one of the child's parents started to reside in the Lower South West area after 1 July 2014, or in the Cockburn-Kwinana area after 1 July 2015, for the dominant purpose of the child accessing supports that are not provided under the Act (for example, education, employment, health care or family support);
 - (II) exceptional circumstances apply — for example, the child would suffer significant personal hardship (including because of financial hardship to the parent), which could reasonably be expected to significantly undermine their wellbeing or social or economic participation, by reason of not being a participant.

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17. Ongoing residence requirement to be met (NDIS rules 4.1 and 4.2)

The Commission must ensure that a person does not continue to participate in a trial unless the person satisfies the ongoing residence requirement set out in regulation 18.

18. Ongoing residence requirement (NDIS rules 4.9 - 4.11)

- (1) A person meets the ongoing residence requirement at a particular time if, at that time, the person resides in an area mentioned in regulation 12(1) (a *trial area*).
- (2) If a person who is a participant stops residing in a trial area, the person continues to satisfy the ongoing residence requirement for a period of 12 months.
- (3) In the case of a child whose parents are separated and who spends time with each parent, the child meets the ongoing residence requirement —
 - (a) at a particular time if, at that time, at least one of the child's parents resides in a trial area; and
 - (b) for a period of 12 months if the child is a participant and both the child's parents stop residing in a trial area.

Subdivision 3 — Disability requirements**19. Disability requirement — permanent impairment (NDIS rules 5.4 - 5.7)**

- (1) For the purposes of section 26H(1)(c)(i) of the Act, the Commission must apply the criteria set out in this regulation in deciding whether a person meets the disability requirement in the NDIS Act section 24(b).

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- (2) An impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.
- (3) An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the impairment on the person's functional capacity, including their psychosocial functioning, may improve.
- (4) An impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).
- (5) If an impairment is of a degenerative nature, the impairment is, or is likely to be, permanent if medical or other treatment would not, or would be unlikely to, improve it.

20. Disability requirement — substantially reduced functional capacity (NDIS rule 5.8)

- (1) For the purposes of section 26H(1)(c)(i) of the Act, the Commission must apply the criteria set out in this regulation in deciding whether a person meets the disability requirement in the NDIS Act section 24(c).
- (2) An impairment results in substantially reduced functional capacity to undertake an activity if its result is that —
 - (a) the person is unable to participate effectively or completely in the activity, or to perform tasks or actions required to undertake or participate effectively or completely in the activity,

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without assistive technology, equipment (other than commonly used items such as glasses) or home modifications; or

- (b) the person usually requires assistance (including physical assistance, guidance, supervision or prompting) from other people to participate in the activity or to perform tasks or actions required to undertake or participate in the activity; or
- (c) the person is unable to participate in the activity or to perform tasks or actions required to undertake or participate in the activity, even with assistive technology, equipment, home modifications or assistance from another person.

Subdivision 4 — Early intervention requirements**21. Early intervention requirement — permanent impairment (NDIS rules 6.4 - 6.7)**

- (1) For the purposes of section 26H(1)(c)(ii) of the Act, the Commission must apply the criteria set out in this regulation in deciding whether a person meets the disability requirements in the NDIS Act section 25(1)(a)(i) and (ii).
- (2) An impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.
- (3) An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the impairment on the person's functional capacity may improve.

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- (4) An impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).
- (5) If an impairment is of a degenerative nature, the impairment is, or is likely to be, permanent if medical or other treatment would not, or would be unlikely to, improve it.

22. Early intervention requirement — supports to benefit person (NDIS rules 6.9 and 6.10)

- (1) For the purposes of section 26H(1)(c)(ii) of the Act, the Commission must apply the criteria set out in this regulation in deciding whether a person meets the disability requirements in the NDIS Act section 25(1)(b) and (c).
- (2) In deciding whether provision of early intervention supports is likely to benefit the person the Commission may consider —
 - (a) the likely trajectory and impact of the person's impairment over time; and
 - (b) the potential benefits of early intervention on the impact of the impairment on the person's functional capacity and in reducing their future needs for supports; and
 - (c) evidence from a range of sources, such as expert opinion and information provided by the person with disability or their family members or carers.
- (3) The Commission is taken to be satisfied that provision of early intervention supports for a child under the age of 6 is likely to benefit the child if one or more of the

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child's impairments is a mental or physical impairment which, by itself or in combination with other mental or physical impairments, results in developmental delay.

- (4) In subregulation (3) —
developmental delay has the meaning given in the NDIS Act section 9.

Subdivision 5 — Assessment tools**23. Assessment tools may be used (NDIS rule 7.1)**

- (1) In this regulation —
operational policy means a policy made under section 12(1)(b) of the Act as published by the Commission and amended from time to time.
- (2) In deciding whether a prospective participant meets the disability requirements or the early intervention requirements, the Commission may, if the Commission considers it appropriate, conduct an assessment using an assessment tool specified in an operational policy.

Division 3 — Supports for participants**Subdivision 1 — General****24. References in regulation headings to comparable Commonwealth rules**

Without limiting the *Interpretation Act 1984* section 32(2), a reference to “NDIS rule” followed by a rule designation in the heading to a regulation in this Division is a reference to the rule of the *National Disability Insurance Scheme (Supports for Participants) Rules 2013* (Commonwealth) with which the regulation in this Division is comparable.

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r. 7**Subdivision 2 — Assessing proposed supports****25. Value for money (NDIS rule 3.1)**

In deciding whether a support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support, the Commission must consider the following matters —

- (a) whether there are comparable supports which would achieve the same outcome at a substantially lower cost;
- (b) whether there is evidence that the support will substantially improve the life stage outcomes for, and be of long-term benefit to, the participant;
- (c) whether funding or provision of the support is likely to reduce the cost of the funding of supports for the participant in the long-term (for example, some early intervention supports may be value for money given their potential to avoid or delay reliance on more costly supports);
- (d) for supports that involve the provision of equipment or modifications —
 - (i) the comparative cost of purchasing or leasing the equipment or modifications; and
 - (ii) whether there are any expected changes in technology or the participant's circumstances in the short-term that would make it inappropriate to fund the equipment or modifications;

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- (e) whether the cost of the support is comparable to the cost of supports of the same kind that are provided in the area in which the participant resides;
- (f) whether the support will increase the participant's independence and reduce the participant's need for other kinds of supports (for example, some home modifications may reduce a participant's need for home care).

26. Effective and beneficial and current good practice (NDIS rules 3.2 and 3.3)

- (1) In deciding whether a support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice, the Commission must consider the available evidence of the effectiveness of the support for others in like circumstances, for example —
 - (a) published and peer-reviewed literature and any consensus of expert opinion; or
 - (b) the experience of the participant or their carers; or
 - (c) anything the Commission has learned through conducting a trial under section 26G(1) of the Act.
- (2) In deciding whether a support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice, the Commission must take into account and, if necessary seek, expert opinion.

27. Reasonable family, carer and other support (NDIS rule 3.4)

In deciding whether funding or provision of a support takes account of what it is reasonable to expect

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families, carers, informal networks and the community to provide, the Commission must consider the following matters —

- (a) for a participant who is a child —
 - (i) that it is normal for parents to provide substantial care and support for children; and
 - (ii) whether, because of the child's disability, the child's care needs are substantially greater than those of other children of a similar age; and
 - (iii) the extent of any risks to the wellbeing of the participant's family members or carers; and
 - (iv) whether the funding or provision of the support for a family would improve the child's capacity or future capacity, or would reduce any risk to the child's wellbeing;
- (b) for other participants —
 - (i) the extent of any risks to the wellbeing of the participant arising from the participant's reliance on the support of family members, carers, informal networks and the community; and
 - (ii) the suitability of family members, carers, informal networks and the community to provide the supports that the participant requires, including such factors as —
 - (I) the age and capacity of the participant's family members and carers, including the extent to which family and

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community supports are available to sustain them in their caring role; and

- (II) the intensity and type of support that is required and whether it is age and gender appropriate for a particular family member or carer to be providing that support; and
- (III) the extent of any risks to the long-term wellbeing of any of the family members or carers (for example, a child should not be expected to provide care for their parents, siblings or other relatives or be required to limit their educational opportunities);

and

- (iii) the extent to which informal supports contribute to or reduce a participant's level of independence and other outcomes;
- (c) for all participants — the desirability of supporting and developing the potential contributions of informal supports and networks within their communities.

Subdivision 3 — Criteria for supports**28. General criteria for supports (NDIS rules 5.1 - 5.3)**

- (1) A support will not be provided or funded under the Act if —
 - (a) it is likely to cause harm to the participant or pose a risk to others; or

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- (b) it is not related to the participant's disability; or
 - (c) it duplicates other supports provided to the participant; or
 - (d) it relates to day-to-day living costs (for example, rent, groceries and utility fees) that are not attributable to a participant's disability support needs; or
 - (e) the provision of the support would be contrary to a law of the Commonwealth or of this State; or
 - (f) the support consists of income replacement.
- (2) The day-to-day living costs mentioned in subregulation (1)(d) do not include the following —
- (a) additional living costs that are incurred by a participant solely and directly as a result of their disability support needs;
 - (b) costs that are ancillary to another support that is funded or provided under the participant's plan, and which the participant would not otherwise incur.

Division 4 — Supports for participants — accounting for compensation**Subdivision 1 — General****29. Terms used**

In this Division —

Commission component, of an amount of compensation under a judgment or settlement, means the component that relates to the provision of supports of a kind that may be funded or provided by the Commission under the Act after the date of the

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judgment or settlement, and may include a component that consists of periodic payments;

compensation reduction amount means an amount worked out under Subdivision 4;

trial actuary means the person appointed by the Commission to be the actuary for a trial under section 26G(1) of the Act.

30. References in regulation headings to comparable Commonwealth rules

Without limiting the *Interpretation Act 1984* section 32(2), a reference to “NDIS rule” followed by a rule designation in the heading to a regulation in this Division is a reference to the rule of the *National Disability Insurance Scheme (Supports for Participants — Accounting for Compensation) Rules 2013* (Commonwealth) with which the regulation in this Division is comparable.

Subdivision 2 — Compensation**31. Application of Division (NDIS rules 3.1 and 3.2)**

- (1) This Division applies in relation to a person who is a participant, or who later becomes a participant, if the person’s disability was caused to any extent by a personal injury, and one of the following cases applies —
 - (a) the person received compensation under a judgment or settlement in respect of the injury in which —
 - (i) it is possible to identify the Commission component of the amount of compensation; and

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- (ii) the component is either fixed by a non-consent judgment or is objectively identifiable (for example, commutation of benefits under a statutory scheme);
- (b) the person received compensation under a judgment or settlement in respect of the injury that —
 - (i) does not satisfy paragraph (a); and
 - (ii) fixes an amount of compensation in respect of the injury;
- (c) the person is receiving compensation under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme;
- (d) the person —
 - (i) entered into an agreement to give up a right to compensation in respect of the injury; and
 - (ii) because of that agreement, there are amounts that the person did not receive by way of a compensation payment (even if the person received other amounts by way of compensation payment in respect of the injury); and
 - (iii) the Commission is not satisfied that it was reasonable, in the circumstances, for the person to have entered into the agreement.

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- (2) For the purposes of subregulation (1)(d)(iii), in considering whether the person's entry into the agreement was reasonable, the Commission must have regard to the following matters —
- (a) the disability of the participant or prospective participant, including whether the disability affected his or her ability to reasonably assess the terms of the agreement;
 - (b) the circumstances which gave rise to the entitlement or possible entitlement to compensation;
 - (c) any reasons given by the participant or prospective participant as to why he or she entered into the agreement;
 - (d) the impact (including any financial impact) on the participant or prospective participant and his or her family that would have occurred if the claim for compensation had been pursued or continued;
 - (e) any other matter the Commission considers relevant, having regard to the principles and objects set out in Schedules 1 and 2 of the Act.

32. Periodic payments (NDIS rule 3.3)

For the purposes of this Division, if the Commission component of compensation under a judgment or settlement includes an element that consists of periodic payments, the amount attributable to that element is taken to be —

- (a) if the amount is specified in a judgment — that amount; or

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- (b) if the amount is not specified in a judgment, but the Commission is satisfied that a specified amount was paid by the defendant to ensure the provision of the periodic payments — that amount; or
- (c) otherwise — the value of the periodic payments as assessed in accordance with accepted actuarial standards, in consultation with the trial actuary.

Subdivision 3 — Compensation, or foregone compensation, to be taken into account**33. Funding to be reduced by compensation reduction amount (NDIS rules 3.5 and 3.6)**

- (1) In considering whether or not to approve a plan for a participant, the Commission must take account of any compensation mentioned in regulation 31(1) by reducing the funding for reasonable and necessary supports that would otherwise be approved by the appropriate compensation reduction amount.
- (2) To avoid doubt, a compensation reduction amount may arise in relation to each amount of compensation fixed or foregone in respect of injury, including amounts to which different paragraphs of regulation 31(1) apply — in this case, more than one compensation reduction amount may apply for the purposes of subregulation (1).

34. Reduction may be amortised (NDIS rule 3.7)

The reduction in respect of —

- (a) an amount of compensation under a judgment, settlement or agreement mentioned in regulation 31(1)(a), (b) or (d); or

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- (b) a lump sum received as compensation under a scheme mentioned in regulation 31(1)(c),

may be amortised over a period no longer than the remainder of the participant's expected lifetime in accordance with accepted actuarial standards, in consultation with the trial actuary.

35. Commission may advise person as to likely compensation reduction amount (NDIS rule 3.8)

If requested to do so by a person who has suffered an injury and is considering a settlement or other agreement that might result in the application of this Part, the Commission may advise the person in relation to the likely compensation reduction amount, or elements of the likely compensation reduction amount, that would apply in relation to the settlement or agreement.

36. Special circumstances (NDIS rule 3.10)

For the purposes of regulation 33(1), the Commission may ignore the whole or part of a compensation reduction amount that would otherwise arise under this Division if the Commission thinks it appropriate to do so in the special circumstances of the case (which may include financial hardship suffered by the participant).

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r. 7**Subdivision 4 — Compensation reduction amount**

- 37. Compensation reduction amount — support component objectively identified (NDIS rules 3.11 and 3.12)**
- (1) In the case of a judgment or settlement mentioned in regulation 31(1)(a), the Commission must identify the compensation reduction amount as follows —
 - (a) identify the Commission component of the amount of compensation;
 - (b) subtract an amount that the Commission considers equivalent to the total of the amounts that were paid by the participant for supports of that kind after the date of the judgment or settlement and before becoming a participant;
 - (c) subtract the amount of any reduction in funding under regulation 33(1) that occurred in relation to a previous plan of the participant.
 - (2) If, by subtracting a particular amount under subregulation (1), the compensation reduction amount would be reduced to nil or less than nil, the Commission must subtract only so much of the amount that would reduce the compensation reduction amount to nil.
- 38. Compensation reduction amount — other circumstances (NDIS rules 3.13 - 3.16)**
- (1) In the case of a judgment or settlement mentioned in regulation 31(1)(b), the Commission must identify the compensation reduction amount as follows —
 - (a) calculate the amount of compensation fixed under the judgment or settlement;

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- (b) subtract the sum of the amounts (if any) payable in respect of the amount of compensation under the following —
- (i) the *Health and Other Services (Compensation) Act 1995* (Commonwealth);
 - (ii) the *Health and Other Services (Compensation) Care Charges Act 1995* (Commonwealth);
 - (iii) Part 3.14 of the *Social Security Act 1991* (Commonwealth);
 - (iv) a law of the Commonwealth, a State or a Territory, prescribed by the National Disability Insurance Scheme rules as defined in the NDIS Act section 9;
- (c) subtract an amount that the Commission considers reflects the value of any period of preclusion —
- (i) that arises from a Commonwealth, State or Territory statutory scheme of entitlements (for example, the *Social Security Act 1991*) (Commonwealth); and
 - (ii) that is in respect of the injury;
- (d) if no preclusion period has arisen for the purposes of paragraph (c) and the Commission is satisfied that —
- (i) the participant claimed damages in relation to lost earnings or lost capacity to earn; and

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- (ii) the amount of compensation fixed under the judgment or settlement included an amount in respect of those damages, subtract 50% of the amount of compensation;
 - (e) if the amount after applying paragraphs (a) to (d) is greater than the value of the reasonable and necessary supports that the Commission considers would have been provided to the participant and funded under the Act over the participant's expected lifetime, had the participant been a participant from the time of the compensable event — replace the amount by that value;
 - (f) subtract an amount that the Commission considers equivalent to the total of the amounts that were paid by the participant for supports, being supports of a kind funded under the Act, after the compensable event and before becoming a participant;
 - (g) subtract the amount of any reduction in funding under regulation 33(1) that occurred in relation to a previous plan of the participant.
- (2) For the purposes of subregulation (1)(e), the calculation must be in accordance with any applicable actuarial model published by the Commission and in effect at the time the calculation is undertaken.
- (3) If a compensation reduction amount has also been identified in respect of the injury under regulation 37(1), subregulation (1) is to be applied with the following modifications —
- (a) reduce from the amount to be subtracted under subregulation (1)(f) any amount subtracted in respect of the injury under regulation 37(1)(b);

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- (b) reduce from the amount to be subtracted under subregulation (1)(g) any amount subtracted in respect of the injury under subregulation (1)(c).
 - (4) If, by subtracting a particular amount under subregulation (1), the compensation reduction amount would be reduced to nil or less than nil, the Commission must subtract only so much of the amount that would reduce the compensation reduction amount to nil.
- 39. Compensation reduction amount — participant in a Commonwealth, State or Territory statutory insurance scheme (NDIS rules 3.17 and 3.18)**
- (1) In the case of compensation mentioned in regulation 31(1)(c), the Commission must identify the compensation reduction amount by identifying the total value of the care and support expected to be provided to the participant under the scheme until the participant's plan is required to be reviewed in accordance with applicable operational policies.
 - (2) For the purposes of subregulation (1), the identification must be —
 - (a) in accordance with any applicable actuarial model published by the Commission and in effect at the time the calculation is undertaken; and
 - (b) done in consultation with the person or entity that administers the scheme.

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- 40. Compensation reduction amount — agreement to give up compensation (NDIS rules 3.19 - 3.21)**
- (1) In the case of an agreement mentioned in regulation 31(1)(d), the Commission must identify the compensation reduction amount as follows —
- (a) assess the likely amount of the Commission component of compensation that the participant would have received under a judgment (other than a consent judgment) had the participant made a claim for compensation in respect of the personal injury;
 - (b) subtract the amount of any reduction in funding under regulation 33(1) that occurred in relation to a previous plan of the participant;
 - (c) subtract an amount that the Commission considers equivalent to the total of the amounts that were paid by the participant for supports, being supports of a kind funded under the Act, after incurring the injury and before becoming a participant.
- (2) If a compensation reduction amount has also been identified in respect of the injury under regulation 37(1) or 38(1), subregulation (1) is to be applied with the following modifications —
- (a) between the steps in subregulation (1)(a) and (b), subtract the compensation reduction amounts identified under regulation 37(1) or 38(1);
 - (b) reduce from the amount to be subtracted under subregulation (1)(b) any amount subtracted in respect of the injury under regulation 37(1)(c) or 38(1)(g);

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- (c) reduce from the amount to be subtracted under subregulation (1)(c) any amount subtracted in respect of the injury under regulation 37(1)(b) or 38(1)(f).
- (3) If, by subtracting a particular amount under subregulation (1), the compensation reduction amount would be reduced to nil or less than nil, the Commission must subtract only so much of the amount that would reduce the compensation reduction amount to nil.

N. HAGLEY, Clerk of the Executive Council.
