

National Disability Insurance Scheme (Nominees) Rules 2013

FRLI: F2013L01062

Portfolio: Social Services

Tabled: House of Representatives and Senate, 20 June 2013

Summary of committee concerns

2.164 The committee seeks further information whether a more explicit statement could be provided in the NDIS Rules to reflect the desirability that the appointment of a nominee should be for the shortest time possible and seeks information about the assistance available to support individuals with disability to exercise their rights of review effectively.

Overview

2.165 The *National Disability Insurance Scheme Act 2013* (NDIS Act) makes provision for various matters, including 'significant policy matters', to be covered by the NDIS rules, which are to be made as disallowable legislative instruments.¹¹⁵ The NDIS Act provides for the appointment of nominees to manage the affairs of persons with a disability who are participating in the scheme and provides for the further prescription of criteria to be applied or matters to be taken into account in the appointment of nominees in the NDIS rules.¹¹⁶

2.166 This instrument sets out the requirements relating to whether a nominee should be appointed, who should be appointed as a nominee, the duties of nominees, and the cancellation and suspension of nominees.

Compatibility with human rights

Statement of compatibility

2.167 The statement of compatibility accompanying the instrument states that the instrument engages the rights of persons with disabilities in the Convention on the Rights of Persons with Disabilities (CRPD).¹¹⁷

2.168 The statement of compatibility states that the instrument promotes the general principles recognised in the CRPD, in particular respect for the inherent dignity, individual autonomy including the freedom to make one's own choices and independence of persons¹¹⁸ and the right to exercise legal capacity in all aspects of

115 Explanatory memorandum to the National Disability Insurance Scheme Bill 2012, p 75.

116 NDIS Act 2013, s 80, 88 and 93.

117 Articles 3 and 12 of the CRPD.

118 Article 3 of the CRPD.

life.¹¹⁹ The statement of compatibility recognises that allowing for the appointment of nominees to undertake the decision-making function may limit the rights of persons with a disability to exercise their legal capacity. However, the statement states that the instrument prescribes matters intended to provide appropriate and effective safeguards to prevent abuse, for example through requiring consultation with the participant when appointing a nominee.¹²⁰

2.169 The statement concludes that the instrument is compatible with human rights because it advances the protection of the rights of persons with disabilities by providing support through nominees to participate in the social, economic and cultural life of the community. The statement also concludes that to the extent that it limits rights in some circumstances, these limitations are reasonable necessary and proportionate to ensure the long-term integrity and sustainability of the scheme.

Committee view on compatibility

The right to exercise legal capacity

2.170 The NDIS Act provides for a nominee to be appointed indefinitely or for a specified term.¹²¹ In describing the effect of the nominee regime under the Act and the safeguards prescribed by this instrument, the statement of compatibility states that '[i]t should also be borne in mind that these provisions have at their heart that the appointment of a nominee is a last resort and where possible a temporary measure'.¹²²

2.171 Under article 12(4) of the CRPD, States must ensure that all measures that relate to the exercise of legal capacity provide for appropriate and effective safeguards to prevent abuse, including ensuring that measures apply for the shortest time possible and are subject to regular review. It is not clear to the committee that guidance to this effect is explicitly provided in the instrument. The instrument is limited to providing examples of when the CEO might decide that an appointment for a specified term is appropriate. It does not, for example, prescribe any presumption that a nominee should be appointed for a specified period of time, rather than indefinitely.

2.172 The committee also notes that the implications of article 12 of the CRPD are currently being examined by the UN Committee on the Rights of Persons with Disabilities. The committee has recently adopted a *Draft General comment on Article 12 – on Equal Recognition before the Law*. The committee considers that these matters set out in the Draft General comment may be of assistance in refining these rules and their implementation.

119 Article 12 of the CRPD.

120 Consistent with article 12(4) of the CRPD.

121 NDIS Act 2013, s 86(4), (5).

122 Statement of compatibility, p 10.

2.173 The committee intends to write to the Minister for Social Services to inquire whether a more explicit statement could be provided in the NDIS Rules to reflect the desirability that the appointment of a nominee should be for the shortest time possible and subject to regular review by a competent, independent and impartial authority as provided for in the CRPD.

