

National Disability Insurance Scheme (Protection and Disclosure of Information) Rules 2013

FRLI: F2013L01008

Portfolio: Social Services

Tabled: House of Representatives, 18 June 2013 and Senate, 19 June 2013

Summary of committee concerns

2.188 The committee seeks further information whether the rules relating to the protection and disclosure of information under the NDIS are compatible with the right to privacy.

Overview

2.189 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.¹³³ The NDIS Act provides for the circumstances in which information may be disclosed and in doing so, provides that the NDIS rules may prescribe rules relating to the protection and disclosure of information.¹³⁴

2.190 These rules set out the rules relating to the circumstances in which a State or Territory law may prevent the disclosure of information or a document by a person to DisabilityCare Australia, and the ability of the CEO to disclose information in the public interest or to a Commonwealth, State or Territory Department or authority.

Compatibility with human rights

Statement of compatibility

2.191 The statement of compatibility that accompanies the instrument states that the instrument engages the rights of people with disabilities in the Convention on the Rights of Persons with Disabilities (CRPD) (including the right to privacy of persons with a disability),¹³⁵ the rights of children in the Convention on the Rights of the Child (CRC) (including children's right to privacy), and the right to a fair trial and the right to privacy in the International Covenant on Civil and Political Rights (ICCPR).¹³⁶

2.192 The statement concludes that the instrument is compatible with human rights because the instrument advances the protection of privacy rights of persons with disabilities. It also concludes that to the extent that the instrument limits rights,

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

134 NDIS Acr 2013, s 58(2) and s 67.

135 Articles 3 and 22 of the CRPD.

136 Article 14 and article 17 of the ICCPR.

these limitations are reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the scheme.

Committee view on compatibility

Right to privacy

2.193 In its consideration of the National Disability Insurance Scheme Bill 2012, the predecessor to this committee (the former committee) noted provisions in the bill under which a person may obtain, use or disclose protected information if the CEO of the Agency has reasonable grounds for believing that it is 'reasonably necessary' for:

- research matters relevant to the NDIS;
- actuarial analysis of matters relevant to the NDIS; or
- policy development.¹³⁷

2.194 The former committee noted the statement in the Explanatory Memorandum to the bill that DisabilityCare Australia would acquire a large amount of personal information through the operation of the NDIS. The committee expressed concern that there did not appear to be any requirement in the bill for steps to be taken to de-identify personal information nor to obtain the person's consent before releasing personal information for these purposes.

2.195 The statement of compatibility that accompanies this instrument states that information collected under the Act and stored in DisabilityCare Australia's records is considered to be 'protected information' and that the Act provides for limited circumstances in which such information can be provided. The rules provide guidance regarding specific circumstances in which the CEO may exercise a discretionary power to disclose 'protected information' in the public interest for the purposes of section 66(1)(a) of the Act.

2.196 It is not clear to the committee how the power of the CEO to disclose information in section 66(1)(a) of the Act relates to the power to disclose information in section 60 of the Act (disclosure for the purposes of the Act). In particular, it is not clear whether the power in section 66(1)(a) includes the power to disclose information for the purposes set out in section 60(3) (that is, research, actuarial analysis or policy development). The committee notes that the Rules do not appear to provide guidance on the form and process by which personal information may be released for research, analysis or policy development purposes.

2.197 The committee also notes that the statement of compatibility indicates that the instrument engages the right of a child to be registered immediately after birth¹³⁸ and the right to a fair trial.¹³⁹ However, these rights are not addressed in the

137 National Disability Insurance Scheme Bill 2012, clause 60(3).

138 Article 7 of the CRC.

139 Article 14 of the ICCPR.

statement and it is not clear to the committee how these rights are engaged by the instrument.

2.198 The committee intends to write to the Minister for Social Services to seek clarification as to:

- **the interaction between these provisions and whether provision should be made in the rules for the de-identification of personal information or to obtain a person's consent prior to its release for research, analysis or policy development; and**
- **how the instrument engages the right of a child to be registered immediately after birth and the right to a fair trial.**

