

## National Disability Insurance Scheme (Registered Providers of Supports) Rules 2013

*FRLI: F2013L01009*

*Portfolio: Social Services*

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

### Summary of committee concerns

2.199 The committee seeks further clarification as to what safeguards will apply to manage the impact on NDIS participants of a revocation of approval of a registered provider of supports.

### Overview

2.200 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.<sup>140</sup> The NDIS Act provides for the making of participant plans, which will, among other things, set out the supports that will be funded for the participant and for each participant, someone will be identified as managing the funding for such supports. Funding can be managed by the participant, the Agency, a plan nominee or a registered plan management provider. According to the explanatory statement, '[w]hen the National Disability Insurance Scheme Transition Agency (DisabilityCare Australia) manages the funding of supports under a participant's plan, only registered providers can provide the supports'.<sup>141</sup> The NDIS Act provides that the NDIS rules may prescribe further matters in relation to registered providers of supports.<sup>142</sup>

2.201 This instrument sets out the criteria for approval of registered providers of supports, requirements with which registered providers must comply and circumstances in which a provider's registration may be revoked by the Chief Operating Officer of DisabilityCare Australia (the CEO).

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

141 Explanatory Statement, p 1.

142 NDIS Act 2013, s 70-73.

## **Compatibility with human rights**

### **Statement of compatibility**

2.202 The statement of compatibility accompanying the instrument states that the instrument engages the rights of people with disabilities,<sup>143</sup> the right to health,<sup>144</sup> the right to social security,<sup>145</sup> the right to an adequate standard of living,<sup>146</sup> and the right to work and rights in work.<sup>147</sup>

2.203 The statement concludes that the instrument is compatible with human rights because it 'forms part of an overall legislative scheme designed to deliver improved health, social security and living standards to people with disability ... and contains safeguards to protect people who provide services in accordance with the legislative framework.'<sup>148</sup> The statement states that the instrument does not limit any human rights.

### **Committee view on compatibility**

2.204 Section 72(1) of the NDIS Act sets out the grounds on which the CEO may revoke the approval of a person or entity as a registered provider of supports. These grounds include that a circumstance prescribed in the NDIS Rules exists and that circumstance presents an unreasonable risk to one or more participants. Paragraph 5.2 of the instrument sets out the circumstances for the purpose of the NDIS Act. It is not clear from the instrument whether the CEO is required to give consideration to how to manage the impact of revocation of approval on NDIS participants. Nor do the rules specify whether and how a registered provider may seek review, including review on the merits, of a decision to revoke its status as a registered provider.

**2.205 The committee intends to write to the Minister for Social Services to seek further clarification as to:**

- **what safeguards will apply to manage the impact on NDIS participants of a revocation of approval of a registered provider; and**
- **what rights of review are available to a registered provider whose registration has been revoked.**

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143 Notably article 26 of the Convention on the Rights of Persons with Disabilities, which requires State parties to take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

144 Article 12 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).

145 Article 9 of the ICESCR.

146 Article 11 of the ICESCR.

147 Articles 6 and 7 of the ICESCR.

148 Statement of compatibility, p 9.