

National Disability Insurance Scheme (Supports for Participants) Rules 2013

FRLI: F2013L01063

Portfolio: Social Services

Tabled: House of Representatives and Senate, 20 June 2013

Summary of committee concerns

2.220 The committee seeks information about the assistance available to support individuals with disability to exercise their rights of review effectively.

Overview

2.221 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.¹⁵⁸ The NDIS Act provides for the making of participant plans, including the supports to be provided and allows for the NDIS rules to prescribe additional matters or methods or criteria to be applied in relation to making decisions about supports.¹⁵⁹

2.222 This instrument sets out the criteria and considerations the Chief Executive Officer of DisabilityCare Australia (the CEO) is to use, in addition to considerations set out in the Act,¹⁶⁰ when assessing and determining reasonable and necessary supports that will be funded or provided under the NDIS.

Compatibility with human rights

Statement of compatibility

2.223 The statement of compatibility accompanying the instrument states that the instrument engages the right to self-determination,¹⁶¹ the right to liberty,¹⁶² the prohibition against national, racial or religious hatred,¹⁶³ the rights of people with disabilities in the Convention on the Rights of Persons with Disabilities (CRPD)¹⁶⁴ and the rights of the child in the Convention on the Rights of the Child (CRC).¹⁶⁵

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

159 NDIS Act 2013, s 33 and 34.

160 NDIS Act 2013, s 34

161 Article 1 of the ICCPR and article 1 of the ICESCR.

162 Article 9 of the ICCPR.

163 Article 20 of the ICCPR.

164 Especially articles 4, 9, 16, 19, 20, 23, 24, 25 and 28 of the CRPD.

165 Especially articles 3, 5, 18, 19, 24 and 26 of the CRC.

2.224 The statement concludes that the instrument is compatible with human rights. It states that to the extent that it limits human rights in some circumstances, these limitations are reasonable, necessary and proportionate to ensure the integrity of the scheme.

Committee view on compatibility

Right to self-determination

2.225 The committee does not consider that the instrument engages the right to self-determination as this is a collective right that applies to peoples rather than individuals. However, the concept of an individual right to self-determination is reflected in the principles set out in article 3 of the CRPD, which include respect for the inherent dignity, individual autonomy including the freedom to make one's own choices and independence of persons, as well as other articles of the CRPD and other treaties.

Limitations on rights

2.226 As noted above, the explanatory statement states that to the extent that the instrument limits human rights in some circumstances, those limitations are 'reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the scheme'. However, there is no indication in the statement of compatibility of the specific rights that are referred to here, and accordingly it is not possible for the committee to assess whether any limitations on those rights are permissible.

Access to rights of review

2.227 The approval of a statement of participant supports is a reviewable decision under the Act.¹⁶⁶ The Act provides that the CEO is to give a written notice of a reviewable decision to each person directly affected by the decision advising them of their right of review. In its consideration of the National Disability Services Bill 2012, the predecessor to this committee (the former committee) expressed concern that the statement of compatibility to the bill did not provide any information about the provision of assistance to individuals with disability who may request review of a decision or to seek a further review before the Administrative Appeals Tribunal. The former committee noted that, '[g]iven that some disabilities may limit the ability of a person to effectively exercise such rights, it may be appropriate to ensure that some form of assistance is available to ensure that these rights of review can be exercised effectively in practice.'¹⁶⁷

2.228 As this instrument also relates to the making of such decisions by the CEO, the committee re-iterates its previous concerns that appropriate assistance be

166 NDIS Act 2013, ss 99(d).

167 Parliamentary Joint Committee on Human Rights, First Report of 2013, p 43.

provided to individuals with disability who may wish to request a review of a decision in order to ensure they are able to exercise their rights of review effectively.

2.229 The committee re-iterates the concerns expressed by the Parliamentary Joint Committee on Human Rights in the 43rd Parliament and intends to write to the Minister for Social Services to seek information about the provision of assistance to individuals with disability who may wish to request a review of a decision to exercise their rights of review effectively.

