
National Disability Insurance Scheme (Supports for Participants) Rules 2013

FRLI: F2013L01063

Portfolio: Social Services

Tabled: House of Representatives and Senate, 20 June 2013

PJCHR comments: First Report of 44th Parliament, tabled 10 December 2013

Response dated: 3 February 2014

Information sought by the committee

3.79 The committee reiterated the concerns of its predecessor committee about the adequacy of assistance 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, and sought further information from the Minister on this issue.

3.80 The committee's concerns were referred to the Assistant Minister for Social Services as the matters fall within his portfolio responsibilities. The response appears as part of the overall response to the concerns raised by the committee in relation to the National Disability Insurance Scheme Legislation Amendment Bill 2013, the DisabilityCare Australia Fund Bill 2013 (and related bills) and a number of other legislative instruments relating to the NDIS. The relevant extract from the Assistant Minister's response is attached.¹

Committee's response

3.81 The Assistant Minister's response notes that the government has provided funding to the Department of Social Services to assist individuals with disability who may wish to request a review of a National Disability Insurance Agency decision. The response refers to the designated NDIS division of the Administrative Appeals Tribunal (AAT), a fee waiver for applicants, and support services. These support services may include 'assistance from a skilled disability advocate to navigate the process of AAT review and legal services in cases determined by the Department of Social Services to be complex or novel'.

3.82 The committee takes notes of these forms of assistance and procedures for review. While it appreciates that these may assist many persons with disability to exercise their right to seek review, it remains concerned that limiting the provision of legal services to cases that are complex or novel, while generally appropriate, may

1 Letter from Senator the Hon Mitch Fifield, Assistant Minister for Social Services, to Senator Dean Smith, Chair PJCHR, 3 February 2014, Attachment, p 12.

not be sufficient to ensure that all persons with disability get access to the legal support that they need to exercise their right to seek review of adverse decisions.

3.83 The committee recommends that the Department closely monitor the issues with a view to assessing whether the restrictive test for the provision of legal services is appropriate to ensure the exercise by persons with disability of their right to effective independent review of decisions that adversely affect them.

National Disability Insurance Scheme (Supports for Participants) Rules 2013

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.

The Australian Government has provided funding to the Department of Social Services to assist individuals with disability who may wish to request a review of a National Disability Insurance Agency (NDIA) decision. Under the External Merits Review system a number of measures have been established. These include a designated National Disability Insurance Scheme (NDIS) division of the Administrative Appeals Tribunal (AAT), which acts as the external merits review body for the NDIS, a fee waiver for applicants seeking a review of NDIA decisions, and support services. The type of support services that may be provided include assistance from a skilled disability advocate to navigate the process of AAT review, and legal services in cases determined by the Department of Social Services to be complex or novel.

National Disability Insurance Scheme Legislation Amendment Bill 2013 and DisabilityCare Australia Fund Bill 2013 and eleven related bills

3.26 The committee intends to seek clarification from the Minister as to whether the government had considered this option [temporary or otherwise limited exemptions to the *Age Discrimination Act 2004*] and if so, why it was not considered suitable.

The Australian Government supports the protections provided by the federal anti-discrimination legislation and understands the concern of the Parliamentary Joint Committee in relation to the breadth of a general exemption from the *Age Discrimination Act 2004*. As the previous Government advised the Committee, a number of alternatives, including limited exemptions, were considered but it was concluded that these alternatives were not able to adequately achieve the policy objectives of the Government.

Without a general exemption from the *Age Discrimination Act*, any new temporary age-based restrictions in trial sites could constitute unlawful age discrimination. New trial sites have been negotiated since the commencement of the trials and the flexibility created by the legislation has allowed those negotiations to take place. The Government will continue to require this flexibility in the context of continuing negotiations with State and Territory governments about trials leading to transition and full implementation, until the point that the scheme has been fully implemented.

The Australian Government does not envisage undertaking any additional acts which would fall within the exemption in the *Age Discrimination Act*, except those analogous to the existing exemptions in establishing trial sites. The Government notes that the general exemption from the *Age Discrimination Act* only applies to acts done in direct compliance with the *NDIS Act*. Any other acts of unlawful discrimination carried out through the course of administering the scheme and Act, and which are not in direct compliance with the Act itself, are still prohibited under the *Age Discrimination Act*.

