

National Disability Insurance Scheme (Supports for Participants – Accounting for Compensation) Rules 2013 [F2013L01414]

Portfolio: Social Services

Authorising legislation: National Disability Insurance Scheme Act 2013

Last day to disallow: 4 March 2014 (Senate)

Purpose

2.34 The *National Disability Insurance Scheme Act 2013* provides that the NDIS rules may prescribe the criteria to be applied or the matters to be taken into account, when deciding whether to provide or fund specific supports for NDIS participants.

2.35 The National Disability Insurance Scheme (Supports for Participants – Accounting for Compensation) Rules 2013 sets out how compensation payments for personal injury suffered by an NDIS participant are to be taken into account in determining the reasonable and necessary support that will be funded or provided under the NDIS.

Background

2.36 The committee reported on the instrument in its *First and Third Reports of the 44th Parliament*.

Committee view on compatibility

Right to an adequate standard of living

Suspension of NDIS support

2.37 The committee sought clarification from the Assistant Minister for Social Services in relation to:

- why it is not appropriate to impose a duty on the CEO under rule 3.10 to take into account financial hardship to ensure that supports are not reduced or withdrawn if that may lead to a participant falling below the minimum level of enjoyment of the right to an adequate standard of living; and
- why it is necessary to suspend the provision of supports to a participant pending the resolution of a dispute over whether it is reasonable for the participant not to seek compensation under another law or scheme and how this is compatible with the obligation to ensure the right to an adequate standard of living.

Assistant Minister's response

Under Rule 3.10 the CEO is provided with the discretion to ignore the whole or part of a compensation reduction amount if it is appropriate in the special circumstances of the case. The committee is correct to point out that this does not impose a duty upon the CEO. A duty is imposed on the CEO under section 104(3) of the National Disability Insurance Scheme Act (the NDIS Act). Under this subsection the CEO must, when considering whether a person should be required to take action to obtain compensation under section 104, consider the impact (including any financial impact) on the participant or prospective participant and his or her family that would have occurred if the claim for compensation had been pursued or continued.

[...]

There was concern at the time of drafting the Bill that, without suspension provisions in relation to compensation, a participant with a good claim for compensation would be free to decide not to take action for compensation, instead relying on the NDIS for all of his or her supports. Given the importance of establishing a financially sustainable scheme, the drafters sought to introduce a sanction to ensure that people who could pursue compensation would pursue compensation.

The only sanctions available in such a case were seen to be suspension or cancellation of the participant's plan, or revocation of access to the scheme. Of these, suspension was regarded as the least punitive. Once a suspension ceases the participant is paid all NDIS amounts that were withheld during the suspension. Suspension applies only where the compensation scheme is an administrative scheme run by a Commonwealth, state or territory government. Applications to these schemes are purely administrative actions requiring the completion of forms and going through relevant medical examinations. It requires no personal expenditure and only a minor inconvenience on the part of the participant.¹

Committee response

2.38 The committee thanks the Assistant Minister for Social Services for his response and has concluded its examination of this instrument.

1 See Appendix 2, Letter from Senator the Hon Mitch Fifield, Assistant Minister for Social Services, to Senator Dean Smith, 19 March 2013, Attachment pp 2-3.