

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Families, Community Services and
Indigenous Affairs and Minister for Disability Reform

National Disability Insurance Scheme Act 2013

National Disability Insurance Scheme (Plan Management) Rules 2013

Section 209 of the *National Disability Insurance Scheme Act 2013* (the Act) provides that the Minister may, by legislative instrument, prescribe matters required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed in order to carry out or give effect to this Act.

The *National Disability Insurance Scheme (Plan Management) Rules 2013* (the Plan Management Rules) are made for the purposes of sections 35, 40, 44, 45 and 46 of the Act. The Plan Management Rules are about the management of a participant's plan, including rules dealing with how to assess whether it would pose an unreasonable risk for a participant to manage their own plan; how and when NDIS amount are paid; extension of the grace period for temporary absences from Australia; and how supports in a participant's plan are to be specified.

The Minister in making the Plan Management Rules has had regard to the financial sustainability of the National Disability Insurance Scheme (the scheme) as required under subsection 209(3) of the Act.

The Plan Management Rules include Category A rules for the purposes of section 209 of the Act. Accordingly, the Commonwealth and each host jurisdiction have agreed to the making of the Plan Management Rules.

Background

In 2011, the Productivity Commission report, *Disability Care and Support* (Report No. 54), found that 'current disability support arrangements are inequitable, underfunded, fragmented and inefficient, and give people with a disability little choice' (Overview, p. 5), and recommended the establishment of a National Disability Insurance Scheme. People who are participants in the scheme will be assisted to develop a personal, goal-based plan about how they will be provided with general supports and reasonable and necessary supports.

The Act was enacted in March 2013 giving effect to the commitment by the Commonwealth, State and Territory Governments to establish such a scheme, and for its progressive implementation from July 2013. The Act sets out the statutory framework for the scheme, and for the National Disability Insurance Scheme Launch Transition Agency (DisabilityCare Australia) to administer the scheme. The Act is to be supplemented by National Disability Insurance Scheme rules, which address the more detailed operational aspects of the scheme. The Plan Management Rules is one of a number of instruments that comprise these rules.

Commencement

The Plan Management Rules commence on 1 July 2013.

Consultation

The design of the scheme has been a collaborative exercise, relying heavily on substantial contributions from stakeholders, including:

- the COAG Select Council on Disability Reform;
- joint Commonwealth/State/Territory Government working groups at official levels;
- extensive consultation with people with disabilities, their advocates, carers and families;
- the NDIS Advisory Group, comprising people, some of whom live with disability, who have expertise in social insurance principles, disability policy, service provision, performance monitoring, training and curriculum development, academia and research, psychological and intellectual disability, Indigenous disability services, young people and children with disability;
- four Expert Groups, comprising persons with disabilities, their carers, advocates, service providers and other sector experts, focused on:
 - a national approach to control and choice;
 - eligibility and assessment;
 - quality, safeguards and standards; and
 - disability workforce and sector capacity; and
 - the National Disability and Carer Alliance, which undertook public engagements around the country.

The Plan Management Rules is a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Explanation of provisions

The Plan Management Rules has seven Parts:

- **Part 1** explains what the Plan Management Rules are about.
- **Part 2** provides an outline of the Plan Management Rules.
- **Part 3** deals with situations when self-management of funding will pose unreasonable risk to a participant.
- **Part 4** deals with payment of NDIS amounts.
- **Part 5** deals with temporary absences from Australia.
- **Part 6** deals with describing supports in a participant's plan.
- **Part 7** deals with other matters, including interpretation of the Plan Management Rules.

Part 1 – What these Rules are about

Part 1 sets out the context for the Plan Management Rules including identifying relevant objects and principles.

Paragraphs 1.1 to 1.2 are explanatory and contextual.

Part 2 – Outline of these Rules

Part 2 outlines the issue addressed in each Part of the Plan Management Rules beginning with Part 3.

Paragraphs 2.1 to 2.5 are explanatory and contextual.

Part 3 – When self-management of funding will pose unreasonable risk

Part 3 deals with the situations in which it is not appropriate for participants to manage funding for supports under their plan for themselves. In particular, it deals with assessing whether self-management would pose an unreasonable risk to the participant.

Paragraphs 3.1 to 3.6 summarise subsection 33(2) and sections 42, 43 and 44 of the Act.

Unreasonable risk if the participant is a child or is represented by a nominee

Paragraph 3.7 sets out the matters to which the CEO is to have regard when assessing whether there is an unreasonable risk to a participant who is a child represented by a person who has parental responsibility (a child's representative) or a participant represented by a plan nominee, to allow the child's representative or the plan nominee to manage the funding for supports under the participant's plan. The matters to which the CEO is to have regard include:

- the capacity of the child’s representative or the plan management nominee to manage finances;
- whether the child’s representative or plan nominee has an interest that could lead a reasonable person to consider that NDIS amounts within their control might be spent other than in accordance with the participant’s plan;
- whether any risks could be mitigated by any safeguards or strategies DisabilityCare Australia could put in place through the participant’s plan and the extent to which the risks can be mitigated by the safeguards and strategies. The CEO is to consider whether the child’s representative or the plan management nominee could manage the funding subject to safeguards and strategies being put in place.

Unreasonable risk in other cases

Paragraph 3.8 sets out the matters to which the CEO is to have regard when assessing unreasonable risk in relation to a participant. The matters are:

- whether material harm, including material financial harm, to the participant could result if the participant were to manage the funding for supports identified in the participant’s plan, including the nature of the supports identified;
- the vulnerability of the participant to :
 - physical, mental and financial harm;
 - exploitation; or
 - undue influence;
- the ability of the participant to make a decision for him or herself;
- the capacity of the participant to manage his or her finances;
- whether a court or tribunal has made an order (or decision) under Commonwealth, State or Territory law under which the participant’s property (including finances) or affairs are to be managed, wholly or partly, by other person;
- whether any risks could be mitigated by any safeguards or strategies DisabilityCare Australia could put in place through the participant’s plan or the participant’s informal support network and the extent to which the risks can be mitigated by the safeguards and strategies or the participant’s informal support network.

Paragraph 3.9 sets out examples of the types of safeguards that may be appropriate to consider under paragraph 3.8(f)(ii). These include:

- setting a shorter period before the participant’s plan is reviewed;
- setting out regular contacts between the DisabilityCare Australia and the participant;
- providing funding for supports (for example, budgeting training) that would assist the participant to manage their own plan.

Part 4 – Payment of NDIS amounts

Part 4 deals with payment of NDIS amounts (that is, payment under the scheme in respect of reasonable and necessary supports funded under a participant’s plan). In particular, this Part deals with the timing of payment of NDIS amounts, and the manner of paying NDIS amounts.

Paragraphs 4.1 and 4.2 summarise paragraph 33(2)(b) and section 45 of the Act.

Timing for payment of NDIS amounts

Paragraph 4.3 provides that the CEO may pay an NDIS amount in a single payment or by instalments.

Paragraph 4.4 provides that if the CEO is paying NDIS amounts by instalment and the CEO requires the participant to provide information or a document relating to expenditure of previous instalments, the CEO may make further payments only after the information or document has been provided. This is as much as is required by way of acquittal of funds as referred to in section 46 of the Act. The CEO is unlikely to withhold an instalment if the participant has a reasonable reason for not being able to provide the information or document.

Manner of paying NDIS amounts

Paragraph 4.5 provides that a participant must provide the details of an account with a financial institution into which NDIS amounts can be paid.

Paragraph 4.6 provides that the CEO is required to pay NDIS amounts into an account nominated by a participant.

Part 5 – Grace period for temporary absences from Australia

Part 5 deals with temporary absences of participants from Australia. In particular, it deals with extensions of the 6 week grace period for absences from Australia.

Paragraphs 5.1 to 5.4 summarise the effect of section 40 of the Act.

Paragraph 5.5 provides that when deciding to extend the grace period and, if so, by how much, the CEO is to have regard to:

- the general considerations in paragraph 5.8; and
- any relevant specific considerations in paragraphs 5.9 to 5.15.

Paragraph 5.6 sets out that it is expected that the CEO will extend the grace period if the participant is, or is to be, temporarily absent from Australia if the temporary absence is for a period to which one of the specific considerations applies, or for humanitarian purposes (for example, overseas voluntary work in disadvantaged

communities). The boxed note reminds readers that the CEO is not compelled to extend the grace period in any particular instance.

General considerations relating to extending the grace period

Paragraph 5.7 and 5.8 set out the general considerations relating to extending the grace period.

Paragraph 5.7 provides that the general considerations are to be taken into account by the CEO for any participant who is, or is to be, temporarily absent from Australia for more than 6 weeks. This includes holidays of more than 6 weeks duration.

Paragraph 5.8 sets out the general considerations that the CEO is to take into account when deciding whether, and if so by how much, to extend the grace period. These considerations are:

- the proposed length of absence from Australia;
- any previous decision that the grace period should be extended;
- the supports provided to the participant under the plan;
- the participant's ability to continue to access supports while they are absent from Australia;
- DisabilityCare Australia's ability to facilitate the provision of supports to, and maintain a relationship with, the participant while they are absent from Australia;
- whether refusal to extend the grace period would cause undue hardship to the participant.

Specific considerations relating to extending the grace period

Overseas study

Paragraph 5.9 provides that where a participant has to travel outside Australia to complete or undertake an exchange program or course of studies that satisfies either of the following:

- an element of a course that the participant is undertaking at an Australian secondary or tertiary educational institution; or
- part of a recognised program of international exchanges;

the period of the overseas exchange program or course of studies is a specific consideration to which the CEO is to have regard.

Temporary employment

Paragraph 5.10 provides that where the absence from Australia is because the participant, a spouse of the participant, or a family member of the participant is required to travel overseas for employment on a temporary basis, the period of employment is a specific consideration to which the CEO is to have regard.

Reserve forces

Paragraph 5.11 provides that where a participant, is a member of the reserve forces, and is required to be temporarily absent from Australia to fulfil their duties as a member of the reserve forces, the period of deployment is a specific consideration to which the CEO is to have regard.

Paragraph 5.12 provides that where a participant's absence from Australia is because the participant's spouse or a member of the participant's family is a member of the reserve forces, and the spouse or family member is required to be temporarily absent from Australia to fulfil their duties as a member of the reserve forces, the period of deployment is a specific consideration to which the CEO is to have regard.

Paragraph 5.13 sets out that the term "reserve forces", used in paragraphs 5.12 and 5.13, means the Naval, Army and Air Force Reserves as established under their relevant establishment Acts.

Medical treatment or therapy

Paragraph 5.14 provides that where a participant's absence from Australia is so that the participant can receive clinically appropriate medical treatment or therapy that is not available in Australia, the period of treatment, plus a reasonable period for recuperation, is a specific consideration to which the CEO is to have regard.

Participant prevented from returning to Australia

Paragraph 5.15 provides that where a participant is prevented from returning to Australia for a reason that is beyond their control, then a reasonable period to allow the participant to return to Australia is a specific consideration to which the CEO is to have regard.

Paragraph 5.16 sets out examples of reasons that are beyond the participant's control.

Part 6 – Describing supports in a participant's plan

Part 6 deals with how supports are described in a participant's plan.

Paragraphs 6.1 to 6.3 summarise paragraphs 33(2)(a) and (b) and subsections 33(3) and 35(2) and (3) of the Act.

Whether supports should be specifically identified or described generally

It is anticipated that the supports set out in a participant's plan will be described in general terms and the description of each support will be sufficient to identify the purpose of the particular support. For example, where a participant who is employed receives support for mobility that is generally used to get to and from work, the participant may choose to use this funding in a variety of ways to meet their transport needs.

There may also be circumstances where if a participant requires a support which can be clearly identified and described in the participant's plan, the support may be identified specifically in the participant's plan. The participant will have to use the funding to obtain the specified support.

Paragraph 6.4 sets out the considerations to which the CEO is to have regard in deciding whether a support should be described generally or more specifically in a statement of participant's supports.

These considerations are:

- the cost of the support;
- any expected return or saving in costs from providing the support;
- any risks associated with the support such as the need for the support to conform to State or Territory laws;
- whether achievement of other goals in the plan, or the effectiveness of other supports, is contingent on a particular support being procured or used;
- whether a participant's disability requires a specialist, evidence-informed support provided by a qualified person or a particular delivery mode;
- whether the participant accessed the scheme by satisfying the early intervention requirements.

Describing certain supports specifically in a participants plan

Paragraphs 6.5 to 6.8 set out four broad circumstances under which the CEO may consider it appropriate to include specific details in a participant's plan about how a support is to be provided. The circumstances include:

- where it is more cost-effective for DisabilityCare Australia to provide the support;
- where it is most efficient and effective to be provided by a particular provider;
- where the disability requires a particular service provider or delivery mode;
- where the supports have previously been funded or provided by the Commonwealth, a State or a Territory.

Describing supports where more cost-effective for DisabilityCare Australia to provide

Paragraph 6.5 addresses situations where DisabilityCare Australia has been able to obtain a support at a cost-effective price.

The paragraph provides that if the CEO considers that it would be more cost-effective if a support were provided by DisabilityCare Australia, the CEO may set out in the statement of participant's supports that the support will be provided by DisabilityCare Australia.

Describing supports where most efficient and effective to be provided by a particular provider

Paragraph 6.6 addresses situations where DisabilityCare Australia has entered into agreements with particular providers to provide a support and it is more efficient and effective for the support to be provided this way.

The paragraph provides that if the CEO is considering approving a support for a participant and DisabilityCare Australia has entered into a financial agreement with a particular provider to provide the support, and it would be more efficient to supply the support from this provider, and effective for the participant to have the support provided by the provider, the CEO may set out in the statement of participant's supports that the support will be provided by the particular provider.

Describing supports where disability requires particular service provider or delivery mode

Paragraph 6.7 addresses situations where the participant's disability requires that a support is best provided to the participant by a particular service provider or is best provided to the participant through a particular delivery mode.

The paragraph provides that if the CEO considers that:

- a participant's disability requires:
 - specialist evidence-informed support provided by a qualified person; or
 - a support to be provided in a certain delivery mode; and
- the support is most efficiently supplied to the participant by the qualified person or through the delivery mode,

the CEO may set out in the statement of participant's supports that the support will be supplied by the qualified person or in the specified delivery mode.

Describing supports previously provided by the Commonwealth, a State or a Territory

Paragraph 6.8 addresses situations where supports have been provided to a person before they became a participant under a Commonwealth, State or Territory scheme by providers contracted by the Commonwealth, State or Territory.

The paragraph provides that if the participant was being provided with a support by the Commonwealth or a State or Territory before becoming a participant in the scheme and there is a funding agreement in force between the Commonwealth, State or Territory and a service provider to provide the support, the CEO may set out in the statement of the participant's supports that the support will be provided by the service provider in accordance with the funding agreement rather than by DisabilityCare Australia.

Part 7 – Other matters

Citation

Paragraph 7.1 specifies the citation for the Plan Management Rules.

Interpretation

Paragraph 7.2 to 7.4 gives guidance on the interpretation of and definitions for certain terms in the Plan Management Rules.

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

This instrument prescribes criteria and considerations the CEO of DisabilityCare Australia must consider in relation to the management of a participant's plan. These include how to assess whether it would pose an unreasonable risk for a participant to manage their own plan; how and when NDIS amounts are to be paid; considerations to be taken into account when determining whether to extend the grace period for temporary absences from Australia; and how supports in a participant's plan are to be specified.

Human rights implications

The Plan Management Rules engage the following human rights:

- Articles 1, 4 and 12 of the International Covenant on Civil and Political Rights (ICCPR);
- Articles 1 and 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- The rights of persons with disabilities in the Convention on the Rights of Persons with Disabilities (CRPD), especially Articles 3, 4, 7, 9, 12, 16, 18, 19, 20, 22, 23, 24 and 27; and
- The rights of children in the Convention on the Rights of the Child (CRC), especially Articles 3, 5, and 19.

General Principles underpinning the CRPD

The CRPD recognised the barriers that persons with disabilities may face in realising their rights. While the rights under all human rights treaties apply to everyone, including persons with disabilities, the CRPD applies human rights specifically to the context of persons with disabilities.

The establishment of the scheme promotes the rights of people with disabilities in Australia by providing access to nationally consistent funding and support to help them realise their aspirations, and to participate in the social and economic life of the community.

The preamble of the CRPD, and the General Principles set out in Article 3 reflect the need for the respect for the inherent dignity, individual autonomy (including the freedom to make one's own choices and the independence of the person), the need

for persons with disabilities to be able to participate fully and effectively and be included in society, the need for respect for difference and acceptance of persons with disabilities as part of human diversity and providing persons with disabilities the opportunity to be involved actively in decision-making processes about policies and programmes, including those directly concerning them.

The general principles in the Act that have been applied in the Plan Management Rules in paragraph 1.2 align closely with the CRPD principles. The key objective of the Act that is reflected in the Plan Management Rules is that:

- The Act should enable people with disability to exercise choice and control in the pursuit of their goals and planning and delivery of their supports.

This is reinforced by the following general principles contained in the Act and engaged in the Plan Management Rules:

- People with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports
- People with disability have the same right as other members of Australian society to respect for their worth and dignity and to live free from abuse, neglect and exploitation
- People with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise informed choice and engage as equal partners in decisions that will affect their lives, to the full extent of their capacity
- People with disability should be supported in all their dealings and communications with DisabilityCare Australia so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs
- People with disability should be involved in decision making processes that affect them, and where possible make decisions for themselves.

The Plan Management Rules also recognise that contributing to social and economic life to the extent of their ability is integral to participants' sense of belonging and wellbeing in their communities, a right that is promoted in Articles 3 and 19 of the CRPD.

The objects and the guiding principles of the scheme also recognise the rights of persons with disabilities to be provided with reasonable and necessary supports and to have certainty that they will receive the lifelong care and support that they need. The role of carers, families and other significant persons is also recognised and respected. In this way, the Rules promotes Article 10 of IESCR, which requires that the widest possible protection and assistance should be accorded to the family, especially while it is responsible for the care and education of dependent children.

Choice and control in managing funding for supports

Article 1 of the ICCPR and the ICESCR requires states to recognise the protection of all peoples to the right of self-determination and to freely pursue their economic development. This is specifically recognised in Article 3 of the CRPD for people with disability in relation to their inherent dignity, independence and self-autonomy including the freedom to make their own choices. Principle (x) of the Preamble to the CRPD also reminds states of the obligations to ensure the role of families in contributing to the full and equal enjoyment of the rights of persons with disabilities.

Article 12 of the CRPD puts this right in the context of managing funding for supports, by espousing equal recognition before the law for people with disability, including in the right to control their own financial affairs. Article 12 also recognises the need for states to make provision for appropriate and effective safeguards to prevent abuse and for the exercise of legal capacity that respects the rights, wills and preferences of the person, are free of conflict of interest and undue influence, are proportional and tailored to the persons circumstances, apply for the shortest time possible and are subject to regular review by a competent, independent and impartial authority or judicial body. The safeguards shall also be proportional to the degree to which such measures affect the person's rights and interests.

Paragraph 3.2 of the Plan Management Rules stipulates that participants will be able to make a plan management request specifying who the participant wishes to manage the funding for supports under the plan. This may include the participant themselves, a registered plan management provider, DisabilityCare Australia or the plan nominee. In some limited circumstances, the participant may be restricted from self-managing the funding for supports under their plan, such as where the participant is an insolvent under administration or where the CEO is satisfied that this would present an unreasonable risk to the participant.

The provision supports these principles of choice and control but limits it to the extent that the participant's election can be overridden by the CEO's decision that the participant, or a person on their behalf, is incapable of managing the funding for supports.

Such a decision impacts on the ability of a person with disability, and their family and support persons, to have autonomy and independence in an important component of their plan management. The legitimate objective to be achieved by this provision is the protection of the participant from the risk of having funding for supports mismanaged in a way that is not conducive to the participant achieving his or her goals and aspirations set forth in the plan.

To exercise this limitation in a reasonable, necessary and proportionate manner, the CEO is to have regard to certain criteria prescribed in the Plan Management Rules before such a decision is made. These include having regard to whether material harm (including material financial harm) to the participant could result, if the participant were to manage the funding for supports, taking into account the nature

of the supports identified in the plan. It should be noted that the restriction is only to be imposed to the extent necessary.

The CEO is also to consider the vulnerability of the participant, the ability of the participant to make decisions and the capacity of the participant for financial management. This involves a positive engagement of Article 12 of the CRPD which requires states to recognise that persons with disabilities enjoy legal capacity on an equal basis with others in all aspects of life, and enjoins them to take appropriate measures to provide access by persons with disabilities to the support they may require in exercising this.

To preserve this right, the CEO must consider whether there are ways of mitigating the risk to the participant through strategies or safeguards. Paragraph 3.9 of the Plan Management Rules provide some examples of such safeguards which include setting out regular contacts between DisabilityCare Australia and the participant, providing funding for supports (such as budgeting training) that would assist the participant to manage their own plan, or setting a shorter period before the participant's plan is reviewed.

Where the participant is a child or has a plan nominee, the CEO must also consider the capacity of the child's representative or the plan nominee for financial management. Paragraph 3.7 of the Plan Management Rules requires a finding of unreasonable risk to be made where a reasonable person would conclude that they hold an interest that may lead them to spend the NDIS amounts other than in accordance with the participant's plan, and appropriate safeguards and strategies cannot mitigate this risk.

The objective of this rule is the freedom from exploitation, violence and abuse which is protected in Article 16 of the CRPD and Article 19 of CRC in regards to people with disability and children respectively. The requirement on the CEO to consider strategies in mitigating the risk brings the limitation on this right back into line with other requirements posed by, for example, Article 16 of the CRPD, which requires states to take all appropriate measures to prevent forms of exploitation through assistance and support for persons with disabilities and their families and caregivers including through the provision of information and education.

With an emphasis on children, this rule also positively engages with Articles 3 and 5 of CRC in relation to the unreasonable risk potentially posed by a child's representative. Articles 3 and 5 recognise the need to maintain a balance between protecting a child's best interest as a primary consideration whilst respecting the rights and duties of parents, legal guardians and other individuals legally responsible for them. The Plan Management Rules establishes a regime that attempts to balance these interests that, whilst usually compatible, may sometimes be at conflict with one another. The Plan Management Rules assumes that the best interests of the child will be maintained, in line with Article 3 of the CRC and Article 7 of the CRPD, by considering whether their representative poses an unreasonable risk in managing the funding for their supports.

The Plan Management Rules also positively engage the rights promulgated in Article 19 of CRC in that states are instructed to take all appropriate legislative measures to protect the child from all forms of exploitation, and to establish protective measures to provide necessary support for the child and those who have the care of the child to mitigate these risks.

Financial accountability

The Plan Management Rules provides rules in relation to the payment of NDIS amounts, and in particular, the timing of the payment and the manner of paying NDIS amounts. Paragraph 4.3 of the Plan Management Rules provides that the CEO may pay an NDIS amount either as a single payment or by instalments. If the CEO is paying NDIS amounts by instalment and the CEO requires the participant to provide information or a document relating to expenditure of previous instalments, the CEO may make further payments only after the information or document has been provided. This limitation on the right to privacy recognised in Article 22 of the CRPD is reasonable on the basis that requiring information on past expenditure is a positive engagement with Article 15 of the CRPD which requires states to take all appropriate measures to protect persons with disabilities from exploitation.

Paragraph 4.6 of the Plan Management Rules provides that the CEO is required to pay NDIS amounts into an account nominated by a participant, in line with the principles of choice and control recognised in Article 3 (b) of the CRPD.

Freedom of movement to travel abroad for employment, study and other purposes

In recognition of travel as an ordinary part of the lives of many Australians, paragraphs 5.1 to 5.4 of the Plan Management Rules reiterate section 40 of the Act, which allows participants to travel abroad for up to six weeks without it affecting their plan. This period is known as the 'grace period'. The Plan Management Rules positively engage with the rights protected in Article 12 of the ICCPR and Article 18 of the CRPD for liberty of movement and freedom to choose one's own residence.

The positive engagement with these articles is clearly set out in paragraph 5.6 which sets out the expectation that the CEO will ordinarily extend the grace period if the temporary absence is for a period to which one of the specific considerations applies or for humanitarian purposes (for example overseas voluntary work in disadvantaged communities). The specific considerations are set out in paragraphs 5.9 to 5.16.

These rights are further positively engaged with in paragraph 5.7 which sets out the general considerations that the CEO must apply in exercising their discretion in all other cases. Where the discretion is not exercised there is an opportunity for a participant to seek a review of the decision under section 99 of the Act.

Choice and control in describing the supports in a participant's plan

Part 6 of the Plan Management Rules relates to how supports in a plan are to be described; whether specifically or generally, and impacts on the level of flexibility that

can be exercised by the participant in obtaining the support. Supports that are to be specifically identified will have to be purchased in the way described in the plan, in the expectation that this will ensure the outcomes from the supports. The principles underlying this rule endeavour to strike a balance between giving persons with disability choice and control in a way that advances their goals and aspirations, with the need to ensure financial sustainability of the scheme.

Article 3 of the CRPD is positively engaged by Part 6 in expressing the need for states to respect the individual autonomy of persons with disabilities, including the freedom to make one's own choices and independence of such persons. Article 20 of the CRPD is specifically engaged which discusses the need for states to take effective measures to ensure personal mobility with the greatest possible independence for persons with disabilities including by facilitating this in the manner and at the time of their choice, and at an affordable cost.

Although Part 6 may appear to provide a limitation on the ability of persons with disabilities to have choice and control in the manner and time of receiving a particular support, this is justified on the basis that the legitimate objective for doing so is to ensure in some cases the financial sustainability of the scheme, and in others for the need to comply with regulations and standards in terms of safety. It should also be noted that this does not go beyond what is reasonable, necessary and proportionate, by requiring the CEO to have regard to a number of defined criteria in assessing the need to specify a support rather than leaving it open to a general description. When making such a decision, the CEO is to have regard to certain factors that demonstrate the need for the support to be procured in a certain way, due to either the cost of it, the contingent effect it may have on the achievement of goals in the plan or effectiveness of other supports, and expected returns or cost savings.

Paragraphs 6.5 and 6.6 of the Plan Management Rules provides that certain supports can be provided by the scheme, such as where this is more cost effective, or there is a funding agreement in place between the Commonwealth and State Governments. This is a positive engagement of Article 4 of the ICESCR, and Article 4 of the CRPD that encourages states to undertake all appropriate measures for the implementation of the rights recognised in the conventions to the maximum extent of their available resources.

Conclusion

This legislative instrument is compatible with human rights because it advances the protection of the rights of persons and children with disabilities in Australia, consistent with the CRPD, CRC and ICECSR. It creates additional opportunities for persons with disabilities to exercise those rights by providing support to enable participation in the social, economic and cultural life of the community. To the extent that it limits human rights in some circumstances, those limitations are reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the scheme.