

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

National Disability Insurance Scheme Act 2013

*National Disability Insurance Scheme (Protection and Disclosure of Information)
Amendment Rules 2016*

Subsection 209(1) of the *National Disability Insurance Scheme Act 2013* (the Act) provides that the Minister may, by legislative instrument, make rules, called National Disability Insurance Scheme Rules (NDIS rules), prescribing 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 the Act.

Paragraph 3.2 of the *National Disability Insurance Scheme (Protection and Disclosure of Information) Rules 2013* (the Information Rules) contains the general rule that nothing in a State or Territory law excuses a person from complying with the requirements in the Act to give information or evidence or produce documents to the Agency. Paragraph 3.2 is a summary of subsection 58(1) of the Act.

Paragraph 3.3 of the Information Rules provides a list of State and Territory laws that are exceptions to the general rule in paragraph 3.2.

The *National Disability Insurance Scheme (Protection and Disclosure of Information) Amendment Rules 2016* (the Amendment Rules) are made for the purposes of section 58 of the Act and amend paragraph 3.3 of the Information Rules to include the Queensland laws that are exceptions to the general rule in paragraph 3.2.

The Minister, in making these Amendment Rules, has had regard to the need to ensure the financial sustainability of the National Disability Insurance Scheme as required under subsection 209(3).

The Amendment Rules are Category B NDIS rules for the purposes of subsection 209(8) of the Act. The State of Queensland has agreed to the making of the Amendment Rules, as required under subsection 209(5) of the Act.

The Amendment Rules are a legislative instrument for the purposes of the *Legislative Instruments Act 2003*.

Consultation

The Commonwealth has consulted with the Queensland Government in making the Amendment Rules. The Commonwealth has also notified the Governments of other States and Territories of the amendments.

The Queensland Government consulted with Queensland Government agencies to identify State laws to be included in subparagraph 3.3(b) of the Information Rules.

Explanation of provisions

Paragraph 1 states the name of the Amendment Rules.

Paragraph 2 provides that the Amendment Rules commence on the day after they are registered on the Federal Register of Legislation.

Paragraph 3 provides that Schedule 1 amends the Information Rules.

Schedule 1 sets out the amendments to the Information Rules.

Item 1 inserts a list of Queensland laws into sub-paragraph 3.3(b) of the Information Rules, which contains a list of applicable laws of other States and Territories. This list of Queensland laws was not included at the time the Information Rules were made as Queensland was not a National Disability Insurance Scheme host jurisdiction at that time.

A person is not required to give information, produce a document or give evidence to the Agency for the purposes of the Act if the person would be prevented from doing so under one of the State or Territory laws prescribed in subparagraph 3.3(b) of the Information Rules.

STATEMENT OF COMPATIBILITY

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

The Amendment Rules are compatible with the human rights and freedoms recognised or declared in the international instruments listed in the definition of human rights in subsection 3(1) of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview

The purpose of the Amendment Rules is to deal with the circumstances in which a Queensland law may prevent the disclosure of information or a document by a person under the Act.

Human rights implications

The Amendment Rules engage the following rights:

- the rights of persons with disabilities recognised in the Convention on the Rights of Persons with Disabilities (CRPD), especially those rights in Articles 3 and 22;
- the rights of the child recognised in the Convention on the Rights of the Child (CRC), especially those rights in Articles 7 and 16; and
- the rights recognised in Articles 14 and 17 of the International Covenant on Civil and Political Rights (ICCPR).

General principles underpinning the CRPD

The CRPD recognises 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 National Disability Insurance Scheme promotes the rights of people with disabilities in Australia by providing access to nationally consistent funding and support to help them achieve their goals and aspirations, and supporting their independence and social and economic participation.

The preamble of the CRPD, and the General Principles set out in Article 3 reflect the need for the respect for the inherent dignity (and worth) of the human person, the importance for persons with disabilities of their 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 with the opportunity to be involved actively in decision-making processes about policies and programmes, including those directly concerning them.

Paragraph 1.3 of the Information Rules contains two particularly relevant principles established under the Act which also align closely with the CRPD principles. These are that:

- 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; and
- people with disability should have their privacy and dignity respected.

Respect for privacy

Article 22 of the CRPD provides that no person with disabilities, regardless of place of residence or living arrangements, is to be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication, or to unlawful attacks on his or her honour and reputation. It also provides that the privacy of personal, health and rehabilitation information of persons with disabilities should be protected on an equal basis with others. This Article contains similar protections to those in Article 17 of the ICCPR and Article 16 of the CRC.

Information collected by the Agency under the Act is considered to be 'protected information'. The Act provides limited circumstances in which 'protected information' can be disclosed. The details in which these limited circumstances would arise are set out in more detail in the Information Rules. This is a positive engagement with Article 22 of the CRPD as the provisions are specific and require certain criteria to be met before discretion can be exercised. This satisfies the requirement for any interference with privacy to be both lawful and non-arbitrary.

Under the Act, there are circumstances in which a person may be required to give information, produce a document, or give evidence to the Agency for the purposes of the Act.

Subparagraph 3.3 (b) of the Information Rules limits the ambit of the operation of the Act by prescribing State or Territory laws as exceptions. A person is not required to give information, produce a document, or give evidence, to the National Disability Insurance Agency if these State or Territory laws apply to that person. The Amendment Rules add applicable Queensland laws to this list. This is a positive engagement of the right to privacy by providing a precise exception to the general requirement to provide information, give a document or give evidence.

Conclusion

The Amendment Rules are compatible with human rights because they advance the privacy and dignity of persons with disabilities in Australia, consistent with the CRPD, CRC and ICCPR.