

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

National Disability Insurance Scheme Act 2013

National Disability Insurance Scheme (Becoming a Participant) Amendment Rules 2016 (No. 3)

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 the Act to be prescribed or which are necessary or convenient to be prescribed in order to carry out or give effect to the Act.

The *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (the Becoming a Participant Rules) were made pursuant to sections 22, 23, 25, 27 and 209 of the Act. The Becoming a Participant Rules are about becoming a participant and the requirements relating to age, residence and disability or early intervention that must be met for a person to become a participant.

The *National Disability Insurance Scheme (Becoming a Participant) Amendment Rules 2016 (No. 3)* (Amendment Rules) amend the Becoming a Participant Rules. The Amendment Rules are made for the purposes of sections 22, 23(3) and 209 of the Act and give effect to agreements between the Commonwealth and the Northern Territory relating to the transition to full National Disability Insurance Scheme (NDIS) in the Northern Territory. The Amendment Rules set out the additional age and residence requirements for residents of the Northern Territory.

The Minister, in making the Amendment Rules, has had regard to the financial sustainability of the NDIS as required by subsection 209(3) of the Act.

Commencement

The Amendment Rules commence on the day after the instrument is registered.

Consultation

The Amendment Rules are Category B rules for the purposes of section 209 of the Act. Accordingly, as required under subsection 209(5) of the Act, the Commonwealth has consulted closely with the Northern Territory. The Northern Territory have agreed to the form of the Amendment Rules as a result of that consultation. The Commonwealth has also notified other host jurisdictions about the amendments to the Becoming a Participant Rules.

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

Explanation of provisions

Section 1 provides how the Amendment Rules are to be cited, that is, as the *National Disability Insurance Scheme (Becoming a Participant) Amendment Rules 2016 (No. 3)*.

Section 2 provides that the Amendment Rules commence on the day after the instrument is registered.

Section 3 provides that Schedule 1 to the Amendment Rules amends the Becoming a Participant Rules.

Schedule 1 sets out the amendments to the Becoming a Participant Rules.

Schedule 1, item 1 amends paragraph 4.3 to omit the words “or the Northern Territory”. All areas within the Northern Territory are now comprehensively provided for under Schedule A of the Becoming a Participant Rules, alongside all other jurisdictions except Western Australia. Therefore, references to the Northern Territory and the Barkly Region within the Northern Territory have been removed from Part 4 of the Becoming a Participant Rules.

Schedule 1, item 2 and item 3 amend the heading and substance of paragraph 4.6 to omit reference to the Northern Territory or the Barkly Region. The amendments reflect an agreed staggered transition to the full scheme NDIS across the Northern Territory, as provided for in the amended Schedule A of the Becoming a Participant Rules.

Schedule 1, item 4 amends paragraph 4.7 to omit reference to the “Barkly Region”. The effect of paragraph 4.7 is to ensure that, if certain financial or personal hardship requirements are met, persons who move to Perth Hills after 1 July 2014 meet the additional residence requirements.

Schedule 1, item 5 amends paragraph 4.8 to omit reference to the “Barkly Region”. The additional residence requirements for children in the Northern Territory are now provided for under the cooperation of paragraph 4.4 and Schedule A of the Becoming a Participant Rules.

Schedule 1, item 6 and item 7 amend the heading above paragraph 4.9, and the substance of paragraphs 4.9 to 4.11 inclusive. The items remove references to the limited portability arrangements applying to the Northern Territory as the Northern Territory will now be part of the full transition to the NDIS. The portability limitations will now only apply to NDIS participants who move to areas of Western Australia that are not covered by the NDIS.

Schedule 1, item 8 amends Schedule A to the Becoming a Participant Rules to insert additional residence requirements for people residing in regions of the Northern Territory. This amendment reflects the agreed further expansion of the NDIS in the Northern Territory from 1 July 2016.

The effect of this amendment is that people residing in the Northern Territory will progressively satisfy the residence requirements for the NDIS. Schedule A is only concerned with some specific residence requirements, however, and the other access requirements must be also satisfied for Northern Territory residents to become participants in the NDIS.

Once the NDIS is fully operational in the Northern Territory from 1 July 2018, it will be open to all Northern Territory residents up to the age of 65 in accordance with section 22(1)(a) of the Act, if they meet all the access requirements.

Schedule 1, item 12 amends Schedule B to the Becoming a Participant Rules to insert a new table to define the regions in the Northern Territory to which the Becoming a Participant Rules relate and which are defined by reference to local government areas in the Northern Territory.

Statement of Compatibility

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

This 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* (Cth).

Overview

This instrument is made for the purposes of sections 22, 23 and 209 of the *National Disability Insurance Scheme Act 2013* (Cth) (the Act) and deals with amendments to the additional access requirements to facilitate the transition of participants across the Northern Territory into the NDIS.

This instrument amends the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (Becoming a Participant Rules).

Human rights implications

This instrument engages the following human rights:

- The rights of persons with disabilities in the Convention on the Rights of Persons with Disabilities (CRPD), especially Articles 3, 7, 22, and 23.
- The rights of children in the Convention on the Rights of the Child (CRC), especially Articles 2, 9, 18 and 23.
- Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR).
- Article 2 of the International Covenant on Civil and Political Rights (ICCPR).

General Principles underpinning the CRPD

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

The establishment of the NDIS promotes the rights of people with disability in Australia by providing access to nationally consistent funding and support to help them realise their goals and 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 people with disability to be able to participate fully and effectively and be included in society, the need for respect for difference and acceptance of people with disability as part of human diversity and providing people with disability 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 Becoming a Participant Rules in paragraph 1.3 align closely with the CRPD principles. The

objectives and general principles of the Act and Becoming a Participant Rules provide that:

- People with disability should be supported to participate in, and contribute to social and economic life to the extent of their ability;
- People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime; and
- People with disability should be supported to receive reasonable and necessary supports, including early intervention supports.

The Becoming a Participant Rules 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 NDIS also recognise the rights of people with disability to be provided with reasonable and necessary supports and to have certainty that they will receive the lifelong care and support 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 ICESCR, 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.

Progressive implementation of the NDIS and the principle of non-discrimination

The right to equality and non-discrimination is protected by Article 2 of the ICCPR and Article 2 of the CRC which prohibits denying a person or child rights on certain grounds, including on the basis of age or place of residence. This is reinforced in the context of human rights for people with disability by Article 3 (b) of the CRPD which provides that non-discrimination is a general principle in relation to all rights in the CRPD. As noted by the Human Rights Committee in General Comment No. 18 on equivalent rights in the International Covenant on Civil and Political Rights (ICCPR), the rights to equality and non-discrimination in the ICCPR sometimes require nation states 'to take affirmative action in order to diminish or eliminate conditions which cause or help perpetuate discrimination'.

Non-discrimination ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

Accordingly differential treatment will not constitute discrimination if the differences in treatment are aimed at achieving a legitimate purpose and are reasonable and proportionate to this purpose.

Residence Requirements

Both the Becoming a Participant Rules and this instrument impose additional limitations on access to the NDIS on the basis of residence. These restrictions are temporary in nature, and the intent of this limitation is the integrity and financial sustainability of the NDIS during its transition.

Conclusion

This instrument is compatible with human rights because it advances the protection of the rights of people with disability in Australia, consistent with the CRPD. The NDIS creates opportunities for people with disability in Australia to exercise their rights by providing support to enable participation in the social, economic and cultural life of the community. To the extent that this instrument limits human rights in some circumstances, those limitations are temporary, reasonable, proportionate and necessary to ensure the long-term integrity and sustainability of the NDIS and the transition to full scheme.