

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017

National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018

Purpose

The *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018* (instrument) is made under item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017* (Amendment Act). It is made for the purpose of transitioning certain registered providers of supports to registered NDIS providers, and for other related transitional purposes.

Background

The Amendment Act contains a package of amendments to the *National Disability Insurance Scheme Act 2013* (NDIS Act), implementing much of the NDIS Quality and Safeguards Framework, which was published by the Disability Reform Council on 9 December 2016. The NDIS Quality and Safeguards Commission (Commission), an independent national Commission, is established to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the National Disability Insurance Scheme (NDIS). The Amendment Act also created the office of the Commissioner of the Commission: NDIS Act, section 181C (as amended).

Under Chapter 6A of the NDIS Act (as amended), the Commissioner has responsibility for a registration and reportable incident function (paragraph 181D(1)(b) and section 181F). This function includes the functions conferred on the Commissioner by Division 2 of Part 3A of Chapter 4, about registered NDIS providers. For example, the Commissioner may register a person as a registered NDIS provider if the requirements in section 73E of the NDIS Act (as amended) are met. One of these requirements is that the person will provide supports or services to people with disability in a participating jurisdiction. "Participating jurisdiction" is defined as a host jurisdiction that the Minister has specified, by legislative instrument, as a participating jurisdiction: NDIS Act (as amended), section 10A. Under the *National Disability Insurance Scheme (Participating Jurisdiction) Specification 2018* the Minister has specified that New South Wales and South Australia are participating jurisdictions with effect from 1 July 2018.

Item 81 of Schedule 1 to the Amendment Act comes into effect on 1 July 2018. Sub-item 81(1) enables the Minister to make, by legislative instrument, rules of a transitional nature relating to the amendments or repeals made by Schedule 1, or the enactment of the Amendment Act. Sub-items 81(2) and (3) do not limit the broad

rule-making power under sub-item 81(1). Sub-item 81(2) clarifies that the rules may make provision in relation to, among other things, the transition of a person or entity from a registered provider of supports to a registered NDIS provider. Sub-item 81(3) further clarifies that the rules may provide that the provisions of Schedule 1 are taken to be modified as set out in the rules, and the provisions will have effect as if they were so modified.

From 1 July 2018 when the Amendment Act commences, registered providers of supports (as defined at section 9 of the NDIS Act) will no longer be able to provide supports to, or manage the funding under participants' plans in participating jurisdictions from 1 July 2018: NDIS Act (as amended), paragraph 70(1)(ca). It is therefore necessary to bring those providers into the jurisdiction of the Commissioner to transition those providers to be registered NDIS providers to ensure continuity of supports and services for participants in participating jurisdictions.

The instrument gives effect to this transition process, and implements a range of other transitional measures, including:

- dealing with applications to be a registered provider of supports that have not yet been determined;
- modifying the operation of the Amendment Act in respect of “transitioned providers” (as defined in the instrument); and
- enabling disclosure of information by the National Disability Insurance Scheme Launch Transition Agency (the Agency) to the Commissioner for the purposes of the NDIS Provider Register established under section 73ZS of the NDIS Act (as amended).

This instrument is a legislative instrument for the purposes of the *Legislation Act 2003*.

Commencement

The instrument commences on 1 July 2018.

Consultation

The Minister for Social Services consulted all host jurisdictions in the development of the instrument. The Department of Social Services consulted the Agency on the transition process, the other transitional measures and this instrument.

Regulation Impact Statement (RIS)

A RIS is not required for this instrument (OBPR ID 16842).

Explanation of the provisions

Part 1 - Preliminary

Section 1 provides how the instrument is to be cited, that is, as the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018* (the instrument).

Section 2 provides that the instrument commences on 1 July 2018.

Section 3 provides that the authority for the instrument is, item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017* (Amendment Act).

Subsection 4(1) provides definitions for expressions used in the instrument, including a signpost definition for “transitioned provider”.

Subsection 4(2) provides that expressions used in the NDIS Act have the same meaning when those expressions are used in the instrument.

Part 2 – Transitioning applicants and providers in participating jurisdictions

Section 5 provides that Part 2 is made for the purposes of item 81 of Schedule 1 to the Amendment Act. That is, Part 2 of this instrument is made for the purposes of making rules of a transitional nature relating to the amendments or repeals made by Schedule 1, or the enactment of the Amendment Act.

Section 6 addresses how applications to be a registered provider of supports under section 69 of the NDIS Act that are pending at the transition time are to be handled immediately after the transition time. Subsection 6(1) sets out two criteria that must apply for section 6 to apply. The first criterion is that the host jurisdiction in which the supports will be provided, or the funding for supports will be managed, becomes a participating jurisdiction at a particular time: paragraph 6(1)(a). Paragraph 6(1)(a) also defines the “transition time” for the purposes of section 6 as the time at which the host jurisdiction in which the supports will be provided, or the funding for supports will be managed, becomes a participating jurisdiction. The second criterion is that at the transition time, the application referenced in the chapeau is a pending application: paragraph 6(1)(b).

Subsection 6(2) provides that the application is taken to have been refused by the Chief Executive Officer (CEO) of the Agency immediately after the transition time, to the extent the application (referenced in subsection 6(1)) is to be a registered provider of supports:

- managing the funding of supports under plans for participants in the participating jurisdiction;
- providing supports to participants in the participating jurisdiction; or
- both managing funding of supports or providing supports.

The pending applications are refused by operation of law under subsection 6(2) of the instrument, rather than through the CEO's exercise of discretion. Therefore, these decisions are not reviewable decisions under section 99 of the NDIS Act.

Applicants whose applications are taken to have been refused will need to submit new applications under the section 73C of the NDIS Act (as amended) if they wish to provide supports or services to participants in participating jurisdictions, or manage the funding for supports under participants' plans in participating jurisdictions. Pending applications will not automatically transition to the Commissioner's jurisdiction.

Pending applications are taken to have been refused only to the extent that the application is for either or both: managing the funding of supports under plans for participants in participating jurisdictions, or the provision of supports to participants in participating jurisdictions (subsection 6(2)).

Subsection 6(3) confirms that to the extent that a pending application is not covered by subsection 6(2), it may continue to be dealt with under the NDIS Act. That is, applications related to managing the funding for supports under plans for participants in host jurisdictions that are not participating jurisdictions, or to the provision of supports to participants in host jurisdictions that are not participating jurisdictions may continue to be dealt with by the CEO of the Agency under the NDIS Act: subsection 6(3).

For example, if an applicant is seeking to become a registered provider of supports to participants in both a participating jurisdiction and in a host jurisdiction that is not a participating jurisdiction, the application can proceed (and will not be taken to have been refused) to the extent that it pertains to the host jurisdiction that is not a participating jurisdiction.

Section 7 is about the transition of registered providers of supports to registered NDIS providers. Subsection 7(1) sets out two criteria that must apply for section 7 to apply. The first criterion is that the person or entity is approved as a registered provider of supports, to manage the funding for supports under a participant's plan or to provide supports to a participant: paragraph 7(1)(a). Paragraph 7(1)(a) also defines the "transition time" for the purposes of section 7 as a time at which the person or entity is approved as a registered provider of supports as set out in paragraph 7(1)(a). The second criterion is that at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction: paragraph 7(1)(b).

Paragraph 7(2)(a) provides that immediately after the transition time, the person or entity (under paragraph 7(1)(a)) ceases to be a registered provider of supports to participants in participating jurisdictions. Under paragraph 7(2)(b), the Commissioner is taken to have decided to register the person or entity as a registered NDIS provider under section 73E of the NDIS Act in the relevant participating jurisdiction. Paragraph 7(2)(b) operates so that the person or entity is taken to be registered in relation to the activities, classes of persons and classes of supports in respect of which the person or entity was approved immediately before the transition time.

A legislative note at subsection 7(2) provides that the Commissioner must give the provider a certificate of registration under paragraph 73E(4)(b) of the NDIS Act and the certificate must specify the period for which the registration is in force, under paragraph 73E(5)(e) of the NDIS Act. Further, subsection 7(3) of the instrument modifies the operation of the amendments to the NDIS Act such that subsection 73E(4) of the NDIS Act (as amended) applies to the Commissioner's decision as if paragraph 73E(4)(a) were omitted. As provided in the legislative note at subsection 7(3), this means that the Commissioner is not required to give written notice of the decision to register the person or entity as a registered NDIS provider, nor to provide the reasons for the decision to register.

Subsection 7(4) defines a "transitioned provider" as a person or entity who is taken to be a registered NDIS provider because of paragraph 7(2)(b) of the instrument. Transitioned providers are registered NDIS providers, but are not subject to the same conditions of registration and requirements as other registered NDIS providers. The conditions of registration applicable to transitioned providers are those specified in subsection 73F(2) of the NDIS Act and in the relevant provider's certificate of registration.

Subsection 7(5) clarifies that a person or entity ceases to be a transitioned provider in certain circumstances. These circumstances include:

- where transitioned provider makes an application under section 73C of the NDIS Act and the Commissioner makes a decision under section 73E of the NDIS Act to register, or not to register, the person or entity as a registered NDIS provider: paragraph 7(5)(a). This covers situations in which the registered NDIS provider (as a transitioned provider) seeks to renew his/her/its registration and the Commissioner either decides to register (in effect, renew) or not register the person or entity as a registered NDIS provider. If the Commissioner decides to register (or not to register) the person or entity as a registered NDIS provider following a 'renewal' application, their status as a transitioned provider ends when the Commissioner's decision is made: paragraph 7(5)(a) and section 73K of the NDIS Act.
- where a transitioned provider's registration is revoked under section 73P of the NDIS Act: paragraph 7(5)(b); or
- where the period for registration specified in the transitioned provider's certificate of registration has expired (except where section 73K applies): section 7(5)(c). Section 73K of the NDIS Act provides for a person's registration to continue in force until the Commissioner makes a decision on the person's application under section 73C, where that application is made within 6 months before their existing registration ceases to be in force.

Where section 73K applies, a person or entity would, under paragraph 7(5)(c) of the instrument, continue to be a transitioned provider (and a registered NDIS provider) until the Commissioner makes a decision on their application or their registration is revoked.

Subsection 7(6) provides that the NDIS Act applies in relation to a transitioned provider, subject to the modifications of the NDIS Act set out in section 9 of the instrument.

Subsection 7(7) provides that, to avoid doubt, the registration of a transitioned provider as a registered provider of supports, in a host jurisdiction that is not a participating jurisdiction, is not affected by section 7. Registered providers of supports will continue to be able to provide supports and manage funding for supports in host jurisdictions that are not participating jurisdictions, in accordance with their existing registrations. This means that, until all host jurisdictions have been specified as participating jurisdictions under section 10A of the NDIS Act, there may be providers who operate both as a registered NDIS provider in one or more participating jurisdictions, and as a registered provider of supports in one or more host jurisdictions that are not participating jurisdictions.

Section 8 modifies subsection 33(6) of the NDIS Act (as amended by the Amendment Act). Subsection 8(1) sets the conditions that must apply for section 8 to apply. The first condition is that at a particular time (the “transition time”) the funding for supports under the participant’s plan is managed by the Agency. The second condition is that the participant is being provided with the supports in a participating jurisdiction at the transition time.

Subsection 33(6) of the NDIS Act provides that, to the extent that the funding under a participant’s plan is managed by the Agency, the plan must provide that the supports are to be provided only by:

- (a) where the supports are provided to a participant in a participating jurisdiction—a registered NDIS provider or
- (b) otherwise—a registered provider of supports.

Subsection 8(2) of the instrument modifies subsection 33(6) so that a participant’s plan (that meets the criteria specified in subsection 8(1)) is taken, on and after the transition time, to provide that supports are to be provided only by a registered NDIS provider, for the purposes of subsection 33(6) of the NDIS Act (as amended).

As registered providers of supports will be taken to be registered NDIS providers in participating jurisdictions under section 7 of the instrument, section 8 of the instrument ensures that participants’ plans are also taken to be amended from the transition time

The result is that, where a participant’s plan would have been previously covered by subsection 33(6) (prior to the Amendment Act taking effect), section 8 deems that the participant’s plan complies with new subsection 33(6). This will ensure that the Agency does not need to individually review and amend participants’ plans to specify that the providers providing supports to Agency managed participants in participating jurisdictions must be registered NDIS providers after the transition time.

Section 9 provides for modifications to certain provisions of the NDIS Act (as amended by the Amendment Act) in relation to transitioned providers.

Subsection 9(1) modifies paragraphs 73N(1)(b) and 73P(1)(b) of the NDIS Act. These provisions are taken to be modified, so they have effect in relation to a transitioned provider as if that provider’s application made to the CEO of the Agency under section 69 of the NDIS Act were an application made to the Commissioner under the section 73C of the NDIS Act. Paragraphs 73N(1)(b) and 73P(1)(b) enable

the Commissioner to suspend or revoke, respectively, a registered NDIS provider's registration if the Commissioner reasonably believes that the application for registration contained information that is false or misleading in a material particular. Subsection 9(1) of the instrument will therefore enable the Commissioner to have regard to a provider's application under section 69 of the NDIS Act, when considering whether or not to suspend or revoke a registered NDIS provider's registration, using the powers in section 73N or section 73P, respectively. Since transitioned providers will be registered NDIS providers subject to the Commissioner's jurisdiction (from the applicable transition time), it is important for the Commissioner to be able to exercise the full set of suspension and revocation powers from the transition time.

Subsection 9(2) provides that certain decisions of the Commissioner are not "reviewable decisions" under the NDIS Act. Reviewable decision is defined in section 9 of the NDIS Act as having the meaning given by subsections 99(1) and (2) of the NDIS Act. Relevantly, section 99 sets out a table that indicates that certain decisions made under specified provisions of the NDIS Act are "reviewable decisions". The table also indicates who the relevant decision-maker is for the reviewable decision (that is, the CEO or the Commissioner).

A decision to impose conditions of registration on a registered NDIS provider under section 73G, or to vary, or refuse to vary, the registration of a registered NDIS provider are reviewable decisions: section 99 of the NDIS Act.

Paragraph 9(2)(a) of the instrument modifies section 99 so that a decision under section 73G to impose conditions on the registration of a transitioned provider is not a reviewable decision. This is to ensure an orderly transition of providers to the Commissioner's jurisdiction. The Commissioner will impose conditions of registration on transitioned providers that will require them to apply for registration under section 73C by a date specified in the certificate of registration (i.e. seek renewal of their registration) and undergo a quality audit within certain timeframes, depending on the nature of the supports and services those providers deliver. Transitioned providers who provide higher risk, more complex supports and services will be required to undergo a quality audit, and commence renewal of their registrations earlier than providers of lower risk supports and services.

Since the transitioned providers would become registered NDIS providers in bulk, it is impractical for the conditions of registration to be subject to review.

It is important to note that, where a registered NDIS provider makes a new application under section 73C within 6 months before their registration ceases to be in force, section 73K ensures that the provider's registration will not cease to be in force until the Commissioner makes a decision on that application under section 73E. Therefore, while transitioned providers will not be able to seek review of the decision to impose conditions on their registration, their registrations will not cease, provided they make a new application within the 6 months before their registration is due to cease to be in force (unless the Commissioner otherwise revokes their registration).

Paragraph 9(2)(b) of the instrument provides that a decision under section 73L to vary, or refuse to vary, the registration of a transitioned provider is not a reviewable

decision. This is also to ensure an orderly transition of providers to the Commissioner's jurisdiction. The National Disability Insurance Scheme rules made for the purposes of sections 73H and 73T will create a special class of providers (including providers that are also transitioned providers under this instrument), allowing them a grace period to comply with conditions and requirements imposed under those rules.

Under section 73E, the certificate of registration for transitioned providers will set out when those providers must apply under section 73C for a new registration and undergo a quality audit. These timeframes are closely linked to when those providers will be required to comply in full with the applicable National Disability Insurance Scheme rules. It is impractical for all registered providers of supports to participants in participating jurisdictions to be required to meet all registration criteria (including assessment by an auditor) immediately on transition (1 July 2018 for New South Wales and South Australia).

A phased approach is necessary so that providers and the auditor market have sufficient time to meet the new requirements, and enable a seamless transition of providers. In determining the timeframe within which an NDIS provider will be required to undergo an audit against the requirements of the NDIS rules, the Commissioner will apply a risk-based approach and consider a number of factors, such as audit history, registration groups and provider history as well as market implications.

This risk-based approach to transition could be undermined through applications being made under section 73L to extend the transition period for which the initial registration of a provider is in force, or any conditions of registration to address risk during the transition period. Therefore, decisions to vary, or refuse to vary, the registration of a transitioned provider are not reviewable decisions.

Section 10 enables the transfer of information for the purposes of establishing and maintaining the NDIS Provider Register. Section 73ZS of the NDIS Act (as amended) provides that the Commissioner must establish and maintain a register known as the NDIS Provider Register. The NDIS Provider Register must include the information listed at subsection 73ZS(3) about each person who is a registered NDIS provider, and may include the information listed at subsections 73ZS(4) and (5) about NDIS providers (other than registered NDIS providers) and former NDIS providers, respectively. The Commissioner may also include other information that the Commissioner is satisfied is relevant to the provision of supports or services to people with disability: subsection 73ZS(6).

Section 20 provides that if the Agency held information in relation to the provider at the time the provider became a transitioned provider, the Agency may disclose that information to the Commissioner for the purposes of establishing and maintaining the NDIS Provider Register.

As the Commissioner will assume responsibility for transitioned providers' registrations and renewal applications under section 7 of the instrument, section 20 supports the Commissioner's obligations under section 73ZS of the NDIS Act and ensures that the Commissioner has ready access to important information about registered NDIS providers who have transitioned from the Agency's jurisdiction.

Statement of Compatibility with Human Rights

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

National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018

The 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 of the legislative instrument

The *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018* (instrument) is made under item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017* (Amendment Act). It is made for the purpose of transitioning certain registered providers of supports to registered NDIS providers, and for other related transitional purposes.

Background

The Amendment Act contains a package of amendments to the *National Disability Insurance Scheme Act 2013* (NDIS Act), implementing much of the NDIS Quality and Safeguards Framework, which was published by the Disability Reform Council on 9 December 2016. The NDIS Quality and Safeguards Commission (Commission), an independent national agency, is established to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the National Disability Insurance Scheme (NDIS).

Under Chapter 6A of the NDIS Act (as amended), the Commission has responsibility for a registration and reportable incident function (paragraph 181D(1)(b) and section 181F). This function includes the functions conferred on the Commission by Division 2 of Part 3A of Chapter 4, about registered NDIS providers. For example, the Commission may register a person as a registered NDIS provider if the requirements in section 73E of the NDIS Act (as amended) are met. One of these requirements is that the person will provide supports or services to people with disability in a participating jurisdiction. "Participating jurisdiction" is defined as a host jurisdiction that the Minister has specified, by legislative instrument, as a participating jurisdiction: NDIS Act (as amended), section 10A. Under the *National Disability Insurance Scheme (Participating Jurisdiction) Specification 2018* the Minister has specified that New South Wales and South Australia are participating jurisdictions with effect from 1 July 2018.

From 1 July 2018 when the Amendment Act commences, registered providers of supports (as defined at section 9 of the NDIS Act) will no longer be able to provide supports to, or manage the funding under participants' plans in participating jurisdictions from 1 July 2018: NDIS Act (as amended), paragraph 70(1)(ca). It is therefore necessary to bring those existing registered providers into the jurisdiction

of the Commission to transition to become registered NDIS providers and ensure continuity of supports and services for participants in participating jurisdictions.

The instrument gives effect to this transition process, and implements a range of other transitional measures, in particular:

- deeming all existing registered providers of supports in participating jurisdictions to be registered NDIS providers from the date participation commences;
- dealing with applications to become a registered provider of supports to participants in a participating jurisdiction that were pending immediately before commencement of that jurisdiction. These applications will be taken to have been refused by the CEO of the National Disability Insurance Agency on that day. Providers will have to re-apply for registration with the NDIS Commission, but this will not affect a provider's registration or any pending applications in other States or Territories;
- modify the application of the Amendment Act upon transition to apply offences relating to false statements in an application to become a registered provider with the National Disability Insurance Agency (paragraph 9(1));
- modify the application of the Amendment Act upon transition and until a provider makes an application under section 73C and goes through the quality assessment process outlined in the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*, the following decisions are not reviewable decisions under the NDIS Act as amended:
 - a decision under section 73G to impose conditions on the registration of a transitioned provider (paragraph 9(2)(a));
 - a decision under section 73L to vary, or refuse to vary, the registration of a transitioned provider (paragraph 9(2)(b)); and
- enabling disclosure of information by the National Disability Insurance Scheme Agency to the Commission for the purposes of the NDIS Provider Register established under section 73ZS of the NDIS Act (as amended).

Human rights implications

The Convention on the Rights of Persons with Disabilities (CRPD) contains several human rights (including personal mobility, health, habilitation and rehabilitation), that are engaged, either directly or indirectly by this instrument.

Consistent with Article 26 of the CRPD (health and habitation), the instrument sets out 'appropriate transition arrangements' for the registration of providers of support to facilitate the ongoing provision of supports fostering individual choice and control for people with disability.

- The right to health – encompassing the right to the enjoyment of the highest attainable standard of physical and mental health – is contained in article 12(1) of the International Covenant on Economic and Social and Cultural Rights (ICESCR). The UN Committee on Economic Social and Cultural rights

has stated that health is a fundamental human right indispensable for the exercise of other human rights.

- The right to social security is set out in Article 9 of the ICESCR; Article 28 of the CRPD; and Article 26 of Convention on the Rights of the Child (CRC); and Article 11 of the Convention on the Elimination of all Forms of Discrimination Against Women. Essentially, that right requires that governments, within their maximum available resources, take action to ensure access to a social security scheme that provides a minimum essential level of benefits to all individual and families that will enable them to acquire essential social care.
- The right to an adequate standard of living is specified in Article 11 of the ICESCR, Article 28 of the CRPD and Article 27 of the CRC, which require governments to take appropriate steps to realise this right. The CRPD provides that one step is to ensure access by people with disabilities to appropriate and affordable services, devices and other assistance for disability related needs.

This instrument promotes the right to health; right to social security; and right to an adequate standard of living through helping people with disability continue to access reasonable and necessary supports by ensuring that existing registered providers of supports can operate as registered NDIS providers on transition. This will help people with disability to enjoy the highest attainable standard of physical and mental health, access to essential social welfare measures, and assist that people with disability to enjoy an adequate standard of living.

Right to a fair hearing

The Article 14(1) of the International Covenant on Civil and Political Rights (ICCPR) states that '[i]n the determination of ... rights and obligations in a suit at law, everyone shall be entitled to a fair and public hearing by a competent, independent and impartial tribunal established by law'.

General Comment No. 32 notes that the right to a fair hearing includes the right of access to the courts in cases of determination of rights and obligations in a suit at law. The Comment further states that '[a]ccess to administration of justice must effectively be guaranteed in all such cases to ensure that no individual is deprived of his/her right to claim justice'.

Under section 99, the Amendment Act provides review mechanisms for determinations relating to:

- a decision under section 73G to impose conditions on the registration of a provider; and
- a decision under section 73L to vary, or refuse to vary, the registration of a provider.

Paragraph 9(2) of the instrument may engage the right to a fair hearing as it modifies section 99 so that a decision under section 73G and 73L is not a reviewable decision in relation to a transitioned provider. The legitimate objective is to secure an orderly transition of registered providers into quality audits and full compliance with the

National Disability Insurance Scheme rules, having regard to risk based on classes of supports provided and the previous history of a provider.

Once registered under section 73E, an NDIS provider will be subject to standard conditions of registration, including obligations in relation to the management of complaints and incidents, the Code of Conduct and notification of reportable incidents. Division 2 of Part 6 of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* provides for transitional arrangements for certain providers of supports during transition.

Under section 73E, the certificate of registration for transitioned providers will set out when those providers must apply under section 73C for a new registration and undergo a quality audit. These timeframes are closely linked to when those providers will be required to comply in full with the applicable NDIS rules. It is impractical for all registered providers of supports to participants in participating jurisdictions to be required to meet all registration criteria (including assessment by an auditor) immediately on transition (1 July 2018 for New South Wales and South Australia).

A phased approach is necessary so that providers and the auditor market have sufficient time to meet the new requirements, and enable a seamless transition of providers. In determining the timeframe within which an NDIS provider will be required to undergo an audit against the requirements of the NDIS rules, the Commissioner will apply a risk-based approach and consider a number of factors, such as audit history, registration groups and provider history as well as market implications.

This risk-based approach to transition could be undermined through applications being made under section 73L to extend the transition period for which the initial registration of a provider is in force, or any conditions of registration to address risk during the transition period. Therefore decisions to vary, or refuse to vary, the registration of a transitioned provider are not reviewable decisions.

Conclusion

This instrument is compatible with human rights as it forms part of an overall legislative scheme designed to deliver improved quality and safeguards for people with disability receiving supports or services from registered NDIS providers. To the extent that it may limit human rights, those limitations are reasonable, necessary and proportionate to enable the appropriate and orderly transition of existing registered providers and protect and advance the human rights of people with disability.

The Hon Dan Tehan MP, Minister for Social Services

National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018