

EXPLANATORY STATEMENT

Issued by the authority of the Minister for the National Disability Insurance Scheme

National Disability Insurance Scheme Act 2013

National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Amendment Rules 2020

Purpose

Section 209 of the *National Disability Insurance Scheme Act 2013* (the Act) provides that the Minister may, by legislative instrument, make rules prescribing 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. Section 73H of the Act provides that the National Disability Insurance Scheme (NDIS) rules may determine the conditions of registration for NDIS providers. Section 201A of the Act allows the Minister to delegate powers under section 209 to the Commissioner of the NDIS Quality and Safeguards Commission (the Commissioner), and the Minister has so delegated. Accordingly, the Commissioner makes this instrument for the purposes of section 73H of the Act.

The *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Rule 2018* (the SDA Conditions Rules) were made under section 209 of the Act. The SDA Conditions Rules were made for the purposes of section 73H, and prescribe the obligations imposed on registered NDIS providers who provide specialist disability accommodation in participating jurisdictions.

The *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Amendment Rules 2020* (the instrument) amends the SDA Conditions Rules. The instrument is made under section 73H and section 209 of the Act.

In addition to the power to make this instrument under the Act, subsection 33(3) of the *Acts Interpretation Act 1901* provides that where an Act confers a power to make, grant or issue any instrument of a legislative or administrative character (including rules, regulations or by-laws), the power shall be construed as including a power exercisable in the like manner and subject to the like conditions (if any) to repeal, rescind, revoke, amend, or vary any such instrument.

Background

The National Disability Insurance Scheme (NDIS) is designed to provide people with disability with the reasonable and necessary supports that they need to live their lives and achieve their goals. Ensuring that supports are safe and of high quality is important to the everyday quality of life of people with disability receiving supports or services under the NDIS.

Specialist Disability Accommodation (SDA) is a support that may be funded for participants who have an extreme functional impairment or very high support needs. It refers to accommodation for people who require specialist housing solutions, including to assist with the delivery of supports that cater for their extreme functional impairment or very high support needs. Provision of SDA refers to the provision of the dwelling itself, and not the supports or services (such as Supported Independent Living), which may be delivered in the dwelling. Such supports and services are assessed and funded separately by the National Disability Insurance Agency (NDIA).

“Participating jurisdiction” is defined in section 10A of the *National Disability Insurance Scheme Act 2013* (NDIS Act) as a host jurisdiction that the Minister has specified, by legislative instrument, as a participating jurisdiction. 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. All other jurisdictions with the exception of Western Australia are participating jurisdictions with effect from 1 July 2019.

A person or entity who is registered in a participating jurisdiction is registered by the Commissioner or delegate under section 73E of the NDIS Act and is known as a registered NDIS provider. A person or entity who is registered in a host jurisdiction that is not a participating jurisdiction is approved for such registration by the CEO of the NDIA, or delegate, under section 70 of the NDIS Act and is known as a registered provider of supports.

During the NDIS transition period, the NDIA had responsibility for the enrolment of SDA dwellings provided by registered providers of supports in host jurisdictions. The NDIS Quality and Safeguards Commission had responsibility for enrolment of SDA dwellings provided by registered NDIS providers in participating jurisdictions. This was to ensure the enrolment and registration functions operated in parallel.

However, as the SDA market has matured it has become evident that the NDIA is better placed to assess the suitability of dwellings to be enrolled. The NDIA administers the SDA Design Standards and has responsibility for decisions about SDA eligibility and funding.

This instrument makes consequential amendments to the SDA Conditions Rules, in parallel with the *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* (SDA Rules 2020) to give effect to a Council of Australian Governments’ (COAG) Disability Reform Council (DRC) commitment to transfer the responsibility to enrol SDA dwellings provided by registered NDIS providers from the NDIS Quality and Safeguards Commission to the NDIA.

The changes are administrative in nature, to facilitate the streamlined enrolment of SDA dwellings. The changes will not have an adverse impact on service providers and participants will not be impacted.

This is a legislative instrument for the purposes of the *Legislation Act 2003* and is an NDIS Rule for the purposes of the Act.

Commencement

The instrument commences at the later of the day after the instrument is registered, and immediately after the commencement of the SDA Rules 2020. The instrument will not commence at all if the SDA Rules 2020 do not commence.

Consultation

This instrument is a Category A rule for the purposes of section 209 of the Act. Accordingly, as required under subsection 209(4) of the Act, the Commonwealth and each host jurisdiction have agreed to the making of this instrument. Each host jurisdiction has had the opportunity to review this instrument and provide comments and feedback. Each host jurisdiction has agreed to the form of this instrument as a result of that consultation.

The Commonwealth has also undertaken a targeted consultation process with the SDA Reference Group which includes peak bodies representing people with disability and carers, providers of services for people with disability and SDA providers.

Regulation Impact Statement (RIS)

A RIS is not required for this instrument (OBPR ID 25204).

Explanation of the provisions

Section 1 – Name

Section 1 provides how the instrument is to be cited, that is, as the *National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Amendment Rules 2020*.

Section 2 – Commencement

Section 2 provides that the instrument commences at the later of the day after the instrument is registered, and immediately after the commencement of the SDA Rules 2020. The instrument will not commence at all if the SDA Rules 2020 do not commence.

Section 3 – Authority

Section 3 provides that the instrument is made under the *National Disability Insurance Scheme Act 2013*.

Section 4 – Schedules

Section 4 provides that each instrument that is specified in a Schedule is amended or repealed as set out in that Schedule, and any other item in a Schedule to the instrument has effect according to its terms.

Schedule 1 – Amendments

Item 1 – Section 4 (note to heading)

Item 1 contains consequential amendments to the note to the heading at section 4 of the SDA Conditions Rules. Item 1 repeals the note and substitutes it with a new note. The note provides that a number of expressions are used in the instrument which are defined in section 9 of the Act, including ‘Commissioner’, ‘participant’ and ‘registered NDIS provider’. The note reflects the removal of references to these terms due to the amendments to the SDA Conditions Rules contained at Items 6, 7 and 8.

Item 2 – Section 4 (definitions of *building authority* and *complex home modification*)

Item 2 repeals the definition of ‘building authority’ and ‘complex home modification’ under section 4 of the SDA Conditions Rules. The amendment reflects the amendment at Item 6, which repeals section 7 of the SDA Conditions Rules.

Item 3 – Section 4

Item 3 introduces a definition of ‘enrolled’ to section 4 of the SDA Conditions Rules to reflect Part 3, Division 3 of the SDA Rules 2020 in relation to the enrolment of dwellings to provide SDA. The definition provides that the definition of ‘enrolled’, in relation to a dwelling, means a dwelling enrolled to provide SDA under the SDA Rules 2020. The amendment also reflects the amendment to sections 6 and 7 of the SDA Conditions Rules contained at Item 6.

Item 4 – Section 4

Item 4 repeals definitions to the following terms contained in section 4 of the SDA Conditions Rules:

- definition of ‘existing stock’;
- definition of ‘intentional community’;
- definition of ‘legacy stock’;
- definition of ‘long term accommodation’;
- definition of ‘new build’;
- definition of ‘permanent dwellings’;
- definition of ‘SDA building type’;
- definition of ‘SDA design category’;
- definition of ‘SDA type’;
- definition of ‘single parcel of land’.

This amendment reflects the amendments to the SDA Conditions Rules contained in Items 6, 7 and 8. These amendments repeal sections 6, 7, 12 and 13, and Parts 3, 4 and 5 of the SDA Conditions Rules which contain the only references to these terms.

Item 5 – Section 4 (definition of *specialist disability accommodation*)

Item 5 repeals the definition of ‘specialist disability accommodation’ in section 4 of the SDA Conditions Rules and replaces it with a new definition. The new definition provides that ‘specialist disability accommodation’ means accommodation for a person who requires specialist housing solutions, including to assist with the delivery of supports that cater for the person’s extreme functional impairment or very high support needs. The definition makes clear that specialist disability accommodation does not include supports delivered to the person while the person is living in the accommodation. Item 5 reflects the definition of ‘specialist disability accommodation’ contained in section 5 of the SDA Rules 2020.

Item 6 – Sections 6 and 7

Item 6 repeals sections 6 and 7 of the SDA Conditions Rules and replaces it with a new section 6. The new section provides that the registration of a specialist disability accommodation provider is subject to certain conditions, including that the provider does not provide SDA in a dwelling, unless that dwelling is enrolled; the provider does not apply to enrol a dwelling unless the dwelling meets the requirements contained in section 25(4) of the SDA Rules 2020; and the provider ensures that all of the provider’s enrolled dwellings continue to meet those requirements. Item 6 reflects the enrolment criteria for dwellings at section 26 of the SDA Rules 2020.

Item 7 – Sections 12 and 13

Item 7 repeals sections 12 and 13 of the SDA Conditions Rules. These conditions are now conditions of enrolment of a dwelling, provided for by sections 28 and 29 of the SDA Rules 2020.

Item 8 – Parts 3, 4 and 5

Item 8 repeals Parts 3, 4 and 5 of the SDA Conditions Rules and substitutes the Parts with a new Part 3, providing application and transitional provisions. Part 3 provides that the amendments made by the instrument to the SDA Conditions Rules apply in relation to the registration of a specialist disability accommodation provider whether the registration occurred before, on or after the commencement the section. Part 5 of the SDA Rules 2020 provides for transition of dwellings enrolled by the Commissioner to enrolment by the CEO, so that no current provider is adversely affected by these amendments. The conditions imposed by this Rule together with the SDA Rules 2020 include all conditions previously applying to providers, both in a participating jurisdiction or not.

Statement of Compatibility with Human Rights

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

National Disability Insurance Scheme (Specialist Disability Accommodation Conditions) Amendment Rule 2020

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*.

Overview of the legislative instrument

The instrument is made for the purposes of prescribing the obligations imposed on registered NDIS providers who provide specialist disability accommodation in participating jurisdictions.

This instrument also transfers the responsibility to enrol SDA dwellings provided by registered NDIS providers from the NDIS Quality and Safeguards Commission to the National Disability Insurance Agency (NDIA). The NDIA is best placed to assess the suitability of dwellings as the NDIA has responsibility for decisions about SDA eligibility and funding.

The *National Disability Insurance Scheme (Specialist Disability Accommodation) Rules 2020* (SDA Rules 2020) outline the obligations imposed on registered providers operating in host jurisdictions. This instrument will only come into effect when the SDA Rules 2020 are registered and commence.

The changes are administrative in nature, to facilitate the streamlined enrolment of SDA dwellings. The changes will not have an adverse impact on service providers and participants will not be impacted.

Human rights implications

This instrument does not engage any of the applicable rights or freedoms.

The changes are administrative in nature, to facilitate the streamlined enrolment of SDA dwellings. The changes will not have an adverse impact on service providers and participants will not be impacted.

Conclusion

The instrument is compatible with human rights as the amendments do not raise any human rights issues.

Graeme Head, Commissioner of the NDIS Quality and Safeguards Commission