

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 Legislation Amendment (Transitioning Aged Care Providers) Rules 2020

Purpose

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

The National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 2020 (the 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* (Quality and Safeguards Act) and the NDIS Act.

All residential aged care (RAC) providers who are providing supports to a National Disability Insurance Scheme (NDIS) participant who is an approved recipient of residential aged care are exempt from the mandatory NDIS registration requirements until 30 November 2020. This instrument provides that when the exemption from NDIS registration lapses, those RAC providers who are providing permanent residential care are registered NDIS providers.

As a result, all affected RAC providers must comply with the mandatory NDIS registration requirements from 1 December 2020. This instrument ensures these RAC providers are registered with the NDIS Quality and Safeguards Commission (the Commission) and facilitates their transition to the full obligations of NDIS registration.

Background

Subsections 7(1) to 7(3) of the National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 (Practice Standards Rules) require a person to be registered under section 73E of the NDIS Act in order to provide support services.

The National Disability Insurance Scheme Amendment (Provider Registration – Extension of Exemption) Rules 2020, which commenced 27 June 2020, extended the NDIS registration exemption applying to RAC providers under subsection 7(4) of the Practice Standards Rules. The exemption was extended from 30 June 2020 until 30 November 2020 to provide additional time for providers to transition to NDIS registration given the impacts of the COVID-19 pandemic.

There are currently a number of aged care providers who are supporting NDIS participants whose residential care is included in their NDIS plan. This support may also include a restrictive practice or behaviour support. These providers are currently exempt under subsection 7(4) of the Practice Standards Rules and have never been registered as registered NDIS providers. These providers are currently regulated by the Aged Care Quality and Safety Commission under the *Aged Care Quality and Safety Commission Act 2018*. They are also subject to the NDIS Code of Conduct and NDIS Quality and Safeguards Commission complaints mechanisms where the support relates to an NDIS participant.

All relevant RAC providers will need to be registered with the NDIS Quality and Safeguards Commission by 1 December 2020 as the exemption ceases on 30 November 2020. Should the exemption lapse without appropriate transitional registration arrangements in place, there is a risk that some RAC providers would be in breach of their NDIS registration obligations or may cease supporting residents who are NDIS participants.

This instrument registers the relevant RAC providers for the purposes of the NDIS Act to minimise the acute administrative burdens and time pressures that would have been placed on the Commission, and the RAC providers, if the RAC providers were required to make an application for registration under section 73C of the NDIS Act before the expiry of the exemption.

Commencement

This instrument commences immediately after the commencement of the National Disability Insurance Scheme (Practice Standards – Worker Screening) Amendment (Miscellaneous Measures) Rules 2020.

Consultation

This instrument is a Category B rule for the purposes of section 209 of the NDIS Act. Accordingly, as required under subsection 209(7) of the NDIS Act, the Commonwealth has consulted each host jurisdiction in relation to the making of this instrument. Each host jurisdiction has had the opportunity to review this instrument and provide comments and feedback.

Consultation has also been undertaken with the Department of Health, the Aged Care Quality and Safety Commission, the National Disability Insurance Agency and the Commission on the making of this instrument. Feedback from the Younger People in Residential Aged Care (YPIRAC) Stakeholder Reference Group, comprising various stakeholder organisations, was also sought on the instrument.

Regulation Impact Statement (RIS)

A RIS is not required for this instrument (OBPR ID 26358).

Explanation of the provisions

Preliminary

Section 1 – Name

Section 1 provides this instrument is titled the National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 2020.

Section 2 - Commencement

Section 2 provides that this instrument commences immediately after the commencement of the National Disability Insurance Scheme (Practice Standards – Worker Screening) Amendment (Miscellaneous Measures) Rules 2020.

Section 3 – Authority

Section 3 provides that this instrument is made under Item 81 of Schedule 1 to the Quality and Safeguards Act and the NDIS Act.

Section 4 – Schedules

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

Schedule 1 – Amendments

Part 1 – Main Amendments

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

Item 1

This amendment inserts a reference to the expression ‘transitioned RAC provider’ into subsection 4(1) of the Quality and Safeguards Transitional Rules. The expression is defined in section 12(4) of the Quality and Safeguards Transitional Rules.

Item 2

This amendment provides that ‘Part 3 – Transitioning certain residential aged care providers’ is added into the end of the Quality and Safeguards Transitional Rules. Part 3 of the Quality and Safeguards Transitional Rules is the substantive legislation that identifies and registers the relevant person or entity as an NDIS provider under section 73E of the NDIS Act.

Part 3 of the Quality and Safeguards Transitional Rules ensures that providers who are currently exempt from NDIS registration under the Practice Standards Rules would not be in breach of their registration conditions once the registration exemption lapses at the end of 30 November 2020. As such, these providers will not need to make a formal application for registration to become an NDIS provider as would otherwise be required by section 73E of the NDIS Act. This part further addresses what happens where a person or entity identified as a transitioned RAC provider has an application for registration under section 73C of the NDIS Act pending at 1 December 2020.

Once this instrument registers the transitioned RAC providers, they will enter a transition period with adjusted regulatory requirements as detailed in Part 2 of this instrument. The Commissioner can still otherwise take routine regulatory action against a person or entity who becomes a registered NDIS provider because of this instrument.

Section 11 sets out that Part 3 is made for the purposes of item 81 of Schedule 1 to the Quality and Safeguards Act.

Section 12 prescribes the RAC providers that the Commissioner will be taken to have registered as NDIS providers. Subsection 12(1) stipulates that this section will apply to a person or entity that is, on 1 December 2020, an approved provider under the *Aged Care Quality and Safety Commission Act 2018* and who is providing residential care within the meaning of the *Aged Care Act 1997* (Aged Care Act) on a permanent basis to a participant. This section is not intended to apply to providers who are providing supports on a temporary basis to a participant, such as respite care and transition care, or to other forms of care such as flexible care. To provide clarity, this section intends to apply to residential aged care providers and multipurpose services (MPS) that provide residential care to an NDIS participant on a permanent basis. The participant must be approved as a recipient of residential care under Part 2.3 of the Aged Care Act, and the person or entity must not be a registered NDIS provider nor a registered provider of supports.

Subsection 12(2) provides that on 1 December 2020, the Commissioner is taken to have decided to register a person or entity, as described in subsection 12(1), as being a registered NDIS provider under section 73E of the NDIS Act, in respect of providing assistance with daily life tasks in a group or shared living arrangement under participants' plans. The Commissioner must give a certificate of registration to the provider that specifies the period for which the registration is in force.

Assistance with daily life tasks in a group or shared living arrangement is a class of supports prescribed in item 15 to subsection 20(3) of the Practice Standards Rules to which a provider can be registered under the NDIS Act to provide. Assistance with daily life tasks are supports that help a participant with a variety of day-to-day tasks that the participant may require assistance with on a routine basis, and can include preparing meals, showering, brushing teeth and other such activities. These supports are not exhaustive and can vary depending on the particular participant.

Subsection 12(3) provides that subsection 73E(4) of the NDIS Act applies to the decision to register as if paragraph 73E(4)(a) were omitted. This means that the

Commissioner is not required to give written notice of the decision to register, nor to provide reasons for the decision.

Subsection 12(4) defines the expression ‘transitioned RAC provider’ as being a person or entity who is a registered NDIS provider because of subsection 12(2). Subsection 12(5) prescribes the circumstances where a person or entity ceases to be a transitioned RAC provider.

Section 13 provides that where there is a pending application for registration in relation to providing supports other than, or in addition to those mentioned in subsection 12(2), the application from 1 December 2020 is taken to be an application to vary the person or entity’s registration as a registered NDIS Provider.

Section 14 provides that where there is a pending application which relates solely to providing assistance with daily life tasks, from 1 December 2020 the application is taken to have been withdrawn, and the applicant is registered in accordance with subsection 12(2).

Part 2 – Other amendments

National Disability Insurance Scheme (Practice Standards – Worker Screening) Rules 2018 (Worker Screening Rules).

Item 3

This amendment creates a reference to the definition of ‘aged care provider check’ for the purpose of the Worker Screening Rules as is defined at subsections 29B(5) and (6).

Items 4 - 6

These amendments prescribe that an NDIS provider in the relevant jurisdiction set out therein may allow a person to engage in a risk assessed role without a worker screening clearance if they have an acceptable aged care provider check. This will apply until the expiry of the current aged care provider check.

Item 7

This amendment changes the Worker Screening Rules to create a special worker screening arrangement for the transitioned providers, whereby the substantive worker screening requirements are adjusted during the transition period.

Section 29B enables transitioned RAC providers to allow certain persons to engage in a risk assessed role without a formal NDIS worker screening clearance if that person has an acceptable aged care provider check. This section requires the person be a staff member of the provider, a volunteer of the provider, or one of the provider’s key personnel within the meaning of the *Aged Care Quality and Safety Commission Act 2018* (key personnel), to be eligible to use the adjusted requirements.

Subsection 29B(1) stipulates the providers to which the worker screening special arrangement applies.

Subsection 29B(2) provides that a registered NDIS provider is complying with the transitional arrangements under the substantive Worker Screening Rules when delivering supports or services in a participating jurisdiction if that provider complies with section 29B.

Subsection 29B(3) provides the circumstances in which a registered NDIS provider, as an approved provider under the *Aged Care Quality and Safety Commission Act 2018*, may allow a relevant person to engage in a risk assessed role at a time when the person does not have a clearance. Subsection 29B(3) prescribes the person must have an acceptable aged care check, and that there must not be a notice from the Commissioner pursuant to subsection 29B(7) in effect.

Subsection 29B(4) provides a registered NDIS Provider may allow a person who is a secondary school student to engage in a risk assessed role at a time when the person does not have a clearance if the person is a secondary school student on a formal work experience placement, and where a person specified in paragraphs 29B(3)(b)-(c) directly supervises the student. The provider must not allow a person to engage in a risk assessed role without a clearance if a notice issued to the provider by the Commissioner pursuant to subsection 29B(7) has come into effect.

Subsection 29B(5) stipulates that a staff member or volunteer of the provider has an acceptable aged care provider check if the person has complied with the requirements under Part 6 of the Accountability Principles 2014, including the requirement that the person has been issued with a police certificate within the last 3 years, and the police certificate is issued before 1 February 2021.

Subsection 29B(6) stipulates that a person who is one of the provider's key personnel has an acceptable aged care provider check if the person is not a staff member or volunteer of the provider under subsection 29B(5) and that person complies with Part 7A of the Accountability Principles 2014. Compliance with the Accountability Principles 2014 includes the requirement that the provider has obtained a police certificate for that person, and that certificate was issued before 1 February 2021.

Subsection 29B(7) provides that the Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or 14(2)(b) no longer applies to the provider from the date specified in the notice. The date specified on any notice issued to the provider under this provision must be at least 14 days after the notice is given.

Subsection 29B(8) confirms that section 29B is intended to operate concurrently with sections 23 to 29A. This means that the special arrangements prescribed in sections 23 to 29A will still operate where relevant despite the operation of section 29B.

Subsection 29B(9) provides that, for the purposes of section 29B, 'staff member' and 'volunteer' of an approved provider has the same meaning as in the Accountability Principles 2014.

Subsection 29B(10) confirms the section ceases at the end of 1 February 2024.

National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 (Practice Standards Rules)

Item 8

This amendment inserts a reference to the expression ‘transitioned RAC provider’ into the Practice Standards Rules, providing that the term has the same meaning as in the Quality and Safeguards Transitional Rules. A transitioned RAC provider is defined in the Quality and Safeguards Transitional Rules as being a person or entity who is, on 1 December 2020, registered because of subsection 12(2) of those rules.

Item 9

This amendment adds ‘transitioned RAC provider’ to the end of paragraph 13B(7)(c) of the Practice Standards Rules. As such, transitioned RAC providers are not required to undergo audits in accordance with that section. Ordinarily, this section would require a provider to undergo audits carried out by an approved quality auditor, commencing no later than 18 months after the beginning of the period for which the provider’s registration is in force.

Item 10

This amendment changes note 3 to subsection 19(2) of the Practice Standards Rules, to indicate that both Division 2 and Division 3 contain special rules that apply instead of, or as well as, some of the rules in Division 1.

Item 11

This amendment creates a new title for Division 2 that clarifies the transitional arrangements in Division 2 will apply to transitioned providers, as distinct from transitioned RAC providers which are addressed in Division 3.

Item 12

This amendment adds a note that directs readers to Division 3 which has similar modifications which apply in relation to transitioned RAC providers.

Item 13

This amendment inserts ‘Division 3 – Transitional arrangements for transitioned residential aged care providers’ at the end of Part 6 of the Practice Standards Rules. Division 3 contains modified transitional arrangements that apply to the transitioned RAC providers.

Section 29A of Division 3 addresses that this new Division is made for the purposes of section 73T of the NDIS Act. It further prescribes that the application of the NDIS Practice Standards in Division 1 of Part 6 of the Practice Standard Rules is modified for a limited period in relation to transitioned RAC providers.

Section 29B prescribes the transitional arrangements for transitioned RAC providers. Subsection 29B(1) specifies the person or entity who are consider a transitioned RAC provider for the purposes of section 29.

Subsection 29B(2) specifies that, despite those practice standards requirements found in section 20 and 22 of the Practice Standards Rules, a transitioned RAC provider only needs to comply with standards specified in clauses 2, 3, 4, 5, 6, 7, 14, 15, 20 and 24 of Schedule 1 to the Practice Standards Rules.

Subsection 29B(3) prescribes the transition period for transitioned RAC providers, which includes the amount of time a provider will be required to comply with the transition adjustments specified in Division 3.

The transition period commences on 1 December 2020 and will end on the earliest of when one of the events specified in paragraph 29B(3)(b) occurs.

National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 (Behaviour Support Rules).

Items 14 and 15

These amendments divide Part 4 of the Behaviour Support Rules into two divisions. Item 14 prescribes that 'Division 1 – Preliminary' contains section 25A and section 25. Item 15 provides 'Division 2 – Special arrangements for transitioned providers' is comprised of sections 26 – 29.

Items 16 - 18

These amendments amend the headings in sections 26 - 28 to omit 'Special arrangements – use' from the heading and substitute with 'Use of', to simplify the title of the provision. The headings now read 'Use of regulated restrictive practice with a behaviour support plan and in accordance with an authorisation process'.

Item 19

This amendment amends the heading in section 29 to omit 'Special arrangements – specialist' from the heading and substitute with 'Specialist', to simplify the title of the provision. The heading now reads 'Specialist behaviour support service providers'.

Item 20

Item 20 inserts Division 3 into the end of Part 4 of the Behaviour Support Rules. Division 3 is comprised of section 30, which provides modified requirements for transitioned RAC providers who are providing services or supports that involve the use of a regulated restrictive practice without an authorisation or a behaviour support plan. For the purpose of this section, an 'authorisation process' is intended to be an authorisation process (however described) for the purpose of authorising restrictive practices in the State or Territory in which the regulated restrictive practice is to be used.

Subsection 30(1) provides that section 30 applies to transitioned RAC providers who after 1 December 2020 are providing supports or services to a participant, and the provision of supports or services involve the use of a regulated restrictive practice. This provision only applies where either the use of the regulated restrictive practice is not in accordance with a behaviour support plan for the participant; or the person or entity does not have an authorisation (however described) in relation to the use of the regulated restrictive practice. This applies regardless of whether or not there is an authorisation process for such practices in the State or Territory where the supports or services are being provided to the participant.

Subsection 30(2) prescribes that transitioned RAC providers are not required to comply with sections 9 to 15 of the Behaviour Support Rules in relation to the participant and the use of the regulated restrictive practice for the period from 1 December 2020 until the earliest date of one of the dates specified in paragraph 30(2)(b).

Subsection 30(3) requires the transitioned RAC provider must notify the Commissioner of the regulated restrictive practice used by the transitioned RAC provider. This notice to the Commissioner must be in the form approved by the Commission and be provided by 1 January 2021, or, a later date, if the Commissioner allows a later date.

Subsection 30(4) provides that the registration of a transitioned RAC provider as a registered NDIS provider will be subject to conditions, including that the transitioned RAC provider comply with subsection 30(3) and provide the relevant notice to the Commissioner by 1 January 2021, unless a later date is allowed. Paragraph 30(4)(b) requires that, if there is an authorisation process in the State or Territory in which the restrictive practice supports or services are provided to the participant, and the person or entity is not authorised in accordance with that process, the transitioned RAC provider must take all reasonable steps to obtain such an authorisation by 1 March 2021.

Paragraph 30(4)(c) requires that if the transitioned RAC provider does not have a behaviour support plan for the participant, the person must take all reasonable steps to facilitate the development of an interim behaviour support plan for the participant that meets the requirements of Division 2 of Part 3 by 1 March 2021. The person or entity must also take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the participant that meets the requirements under Division 2 of Part 3, by 1 June 2021.

Subsection 30(5) prescribes that the registration of the person or entity as a registered NDIS provider is also subject to the condition that the person or entity agrees to demonstrate compliance with paragraphs 4(b) and (c) if required to do so by the Commissioner.

A note is provided in relation to Part 7.4 of the *Criminal Code*, which provides offences in relation to false or misleading statements, information and documents. The offences provisions ensure fraud control across the Commonwealth.

Part 3 – Technical Corrections

National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018

Items 21 – 23

These amendments have been included in this instrument to update minor drafting errors in the Behaviour Support Rules.

Item 21 amends the heading of section 25A to remove a typographical error.

Item 22 amends a typographical error so that the provision correctly refers to sections 9 to 15, rather than section 9 to 15.

Item 23 also amends a reference error to clarify that it is Division 2 of Part 3.

Statement of Compatibility with Human Rights

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

National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 2020

The National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 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

Residential aged care (RAC) providers who are providing supports to a National Disability Insurance Scheme (NDIS) participant who is an approved recipient of residential care are exempt from the mandatory NDIS registration requirements until 30 November 2020. This instrument registers those providers who are providing permanent residential care as registered NDIS providers ('transitioned RAC providers') from 1 December 2020 and provides for transitional registration arrangements to apply to them.

This instrument balances the need for NDIS participants in residential aged care to receive the same level of regulatory protection as NDIS participants in other settings with the need to support the orderly transition of residential aged care providers to NDIS registration.

This instrument covers multiple areas of transition: modified NDIS Practice Standards obligations for a transitional period; valid aged care checks to be recognised and transition over time to NDIS Worker Screening Checks; and transitional arrangements relating to behaviour support. This instrument rule amends: the NDIS (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018, National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018, National Disability Insurance Scheme

(Provider Registration and Practice Standards) Rules 2018, and the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018.

These amendments also prescribe how a person or entity ceases to be a transitioned RAC provider, and at what time the adjusted transitional arrangements will cease.

If, on or after 1 December 2020, a transitioned RAC provider makes an application under section 73C of the NDIS Act to be a registered NDIS provider, and the Commissioner makes a decision to register or not register that person or entity as a NDIS provider, that person or entity will cease to be a transitioned RAC provider. A person may also cease to be a transitioned RAC provider if the registration of that provider is revoked under section 73P of the NDIS Act, or, unless section 73K of the NDIS Act applies, the period specified for the purposes of paragraph 73E(5)(e) of the Act expires.

The amendments to the Practice Standards Rules specify that the adjusted NDIS practice standards requirements for transitioned RAC providers will commence and expire in line with the 'transition period' as prescribed in the amendments. Subsection 29B(3) of the Practice Standards Rules outlines that the transition period commences 1 December 2020, and ends in accordance with that subsection. The transition period for the adjusted NDIS practice standards will cease at the earliest of the events prescribed in that section, which include if the Commissioner gives written notice to the provider outlining subsection 29B(3) no longer applies to them, or if the Commissioner makes a decision to register, or not register, a provider in accordance with an application made by the provider under section 73C of the NDIS Act. The transition period can also cease if the registration of the provider is revoked under section 73P of the Act, at the start of the day the revocation takes effect. The transition period can cease in accordance with the expiry of the period specified for the purposes of paragraph 73E(5)(e) of the Act (unless section 73K of the Act applies).

The adjusted arrangements for the Behaviour Support Rules will commence on 1 December 2020, and will end at the earliest of the dates specified in paragraph 30(2)(b), being a date specified by the Commissioner, the end of the day specified in subsection 30(3), a day as specified in subparagraph 30(2)(b)(ii) or 1 December 2021.

The adjusted worker screening arrangements for transitioned RAC providers will cease to have effect at the end of 1 February 2024.

Human rights implications

This instrument engages the following rights under international human rights law:

- the rights of people with disabilities, as articulated in the Convention on the Rights of Persons with Disabilities (CRPD);
- protection from and prevention of exploitation, violence and abuse, as covered in the CRPD;
- protection against torture and other cruel, inhuman or degrading treatment or punishment, covered in the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), the International Covenant on Civil and Political Rights (ICCPR), and the CRPD;

- the right to an adequate standard of living and accessibility to health and other supports and services, covered in both the CRPD and the International Covenant on Economic, Social and Cultural Rights (ICESCR); and
- the right to liberty and security of the person, covered in the ICCPR.

Rights of people with disabilities

The CRPD contains several human rights relevant to NDIS quality and safeguards regulation. Notably, Article 26 of the CRPD requires governments to take effective and appropriate measures to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life.

This Instrument, in ensuring the NDIS registration of RAC providers supporting NDIS participants, relates to several human rights set out in the CRPD (including personal mobility, health and rehabilitation), and promotes respect for the dignity of people with disabilities. Consistent with Article 26 of the CRPD (health and habitation), the registration of RAC providers supporting NDIS participants will facilitate the provision of high quality supports and foster individual choice and control for people with disability.

Freedom from exploitation, violence and abuse, and protection against torture and other cruel, inhuman or degrading treatment or punishment

NDIS participants in residential aged care are currently protected from exploitation, violence and abuse by both the aged care regulatory framework (*Aged Care Act 1997, Aged Care Quality and Safety Commission Act 2018*, and associated regulation) and the NDIS regulatory framework (*National Disability Insurance Scheme Act 2013* and associated regulation). This includes the application of the NDIS Code of Conduct to RAC providers who are not NDIS registered, which helps to prevent exploitation, violence and abuse by NDIS providers and workers.

This instrument, by registering RAC providers supporting NDIS participants as registered NDIS providers, ensures the full protection of NDIS quality and safeguards regulation to prevent NDIS participants living in residential aged care experiencing harm arising from poor quality or unsafe supports or services.

In particular, RAC providers supporting NDIS participants will become subject to NDIS regulation of the use of restrictive practices, as specified in the National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018, as well as the NDIS (Incident Management and Reportable Incidents) Rules 2018. This ensures appropriate oversight over the use of restrictive practices, which affords protection from exploitation, violence and abuse, as well as against torture and other cruel, inhuman or degrading treatment or punishment. It also promotes the right to liberty and security of the person, as per Article 9 of the ICCPR.

The amendment to transition over time to NDIS Worker Screening Checks for a person engaged in a risk assessed role is also an important element to minimise the risk of harm to people with disability from the people who work closely with them. Worker screening also has a corrective effect in prohibiting those persons who pose an unacceptable risk or are proven to have harmed vulnerable people from having more than incidental contact with people with disability when working for a registered NDIS provider.

Right to adequate standard of living and accessibility to health and other supports and services

This instrument promotes the right to health and an adequate standard of living through the registration of RAC providers supporting NDIS participants, providing the same level of quality and safeguard protections to NDIS participants in residential aged care as those in other settings. In doing so, this instrument also supports the right of NDIS participants to access necessary personal assistance (Article 19 of the CRPD), and an adequate standard of living and social protection (Article 28 of the CRPD).

Conclusion

This instrument is compatible with human rights as it promotes appropriate protections for NDIS participants living in residential aged care as part of an overall legislative scheme designed to deliver improved quality and safeguards for all NDIS participants.

[Circulated by the authority of the Minister for the National Disability Insurance Scheme, the Hon Stuart Robert MP]