



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

I, Stuart Robert, Minister for the National Disability Insurance Scheme, make the following rules.

Dated 30 November 2020

Stuart Robert
Minister for the National Disability Insurance Scheme

Contents

1	Name.....	1
2	Commencement	1
3	Authority.....	1
4	Schedules.....	1
Schedule 1—Amendments		2
Part 1—Main amendments		2
<i>National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018</i>		2
Part 2—Other amendments		5
<i>National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018</i>		5
<i>National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018</i>		7
<i>National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018</i>		8
Part 3—Technical corrections		11
<i>National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018</i>		11

1 Name

This instrument is the *National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 2020*.

2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	Immediately after the commencement of the <i>National Disability Insurance Scheme (Practice Standards—Worker Screening) Amendment (Miscellaneous Measures) Rules 2020</i> .	1 December 2020

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

3 Authority

This instrument is made under the following:

- (a) item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*;
- (b) the *National Disability Insurance Scheme Act 2013*.

4 Schedules

Each instrument that is specified in a Schedule to this instrument is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this instrument has effect according to its terms.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

1 Subsection 4(1)

Insert:

residential care has the same meaning as in the *Aged Care Act 1997*.

transitioned RAC provider: see subsection 12(4).

2 At the end of the instrument

Add:

Part 3—Transitioning certain residential aged care providers

11 Purpose of this Part

This Part is made for the purposes of item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*.

12 Certain residential aged care providers are taken to be registered NDIS providers

Providers to whom this section applies

- (1) This section applies to a person or entity if, on 1 December 2020:
 - (a) the person or entity is an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
 - (b) the person or entity is providing residential care on a permanent basis to a participant; and
 - (c) the participant is approved as a recipient of residential care under Part 2.3 of the *Aged Care Act 1997*; and
 - (d) the person or entity is neither a registered NDIS provider nor a registered provider of supports.

Transition of residential aged care providers to registered NDIS providers

- (2) On 1 December 2020, the Commissioner is taken to have decided to register the person or entity as a registered NDIS provider under section 73E of the Act in respect of providing assistance with daily life tasks in a group or shared living arrangement under participants' plans.

Note 1: Assistance with daily life tasks in a group or shared living arrangement is the class of support referred to in item 15 of the table in subsection 20(3) of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Note 2: The Commissioner must give a certificate of registration to the provider (see paragraph 73E(4)(b) of the Act). The certificate must specify the period for which the registration is in force (see paragraph 73E(5)(e) of the Act).

- (3) Subsection 73E(4) of the Act applies to the decision as if paragraph (a) of that subsection were omitted.

Note: This means that the Commissioner is not required to give written notice of the decision to register, nor to provide reasons for the decision.

- (4) A person or entity who is a registered NDIS provider under the Act because of subsection (2) of this section is a **transitioned RAC provider**.
- (5) To avoid doubt, the person or entity ceases to be a transitioned RAC provider if:
- (a) on or after 1 December 2020:
 - (i) the person or entity makes an application under section 73C of the Act to be a registered NDIS provider; and
 - (ii) the Commissioner makes a decision under section 73E of the Act to register, or not to register, the person or entity as a registered NDIS provider; or
 - (b) the registration of the provider is revoked under section 73P of the Act; or
 - (c) unless section 73K of the Act applies—the period specified for the purposes of paragraph 73E(5)(e) of the Act expires.

13 Applications for registration pending immediately before 1 December 2020—providing multiple supports

- (1) This section applies if:
- (a) before 1 December 2020, a person or entity to which section 12 of this instrument applies has made an application under section 73C of the Act to be a registered NDIS provider; and
 - (b) the application relates to providing supports other than, or in addition to, the supports mentioned in subsection 12(2) (providing assistance with daily life tasks in a group or shared living arrangement under participants' plans); and
 - (c) the application is pending immediately before 1 December 2020.
- (2) The application has effect, on and after 1 December 2020, as if it were an application made under section 73M of the Act, and in compliance with subsection (2) of that section, for a variation to the person or entity's registration as a registered NDIS provider.

14 Applications for registration pending immediately before 1 December 2020—applications relating solely to providing assistance with daily life tasks

- (1) This section applies if:
- (a) before 1 December 2020, a person or entity to which section 12 of this instrument applies has made an application under section 73C of the Act to be a registered NDIS provider; and

Schedule 1 Amendments
Part 1 Main amendments

- (b) the application is only to provide the supports mentioned in subsection 12(2) (providing assistance with daily life tasks in a group or shared living arrangement under participants' plans); and
 - (c) the application is pending immediately before 1 December 2020.
- (2) The application is taken to have been withdrawn on 1 December 2020.

Note: The applicant is taken to be a registered NDIS provider under subsection 12(2).

Part 2—Other amendments

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

3 Section 5

Insert:

aged care provider check has the meaning given by subsections 29B(5) and (6).

4 Paragraph 14A(2)(a)

After “acceptable NSW check”, insert “or an acceptable aged care provider check”.

5 Paragraph 14A(2)(b)

After “acceptable SA check”, insert “or an acceptable aged care provider check”.

6 At the end of paragraphs 14A(2)(c) to (h)

Add “or an acceptable aged care check”.

7 Before section 30

Insert:

29B Application—special arrangement for residential aged care providers

- (1) This section applies to a person or entity on a day if, on that day:
 - (a) the person or entity is an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
 - (b) the person or entity is providing residential care (within the meaning of the *Aged Care Act 1997*) to a participant; and
 - (c) the participant is a resident of the person or entity’s residential facility; and
 - (d) the person or entity is a registered NDIS provider; and
 - (e) the person or entity is providing supports or services to the participant in a participating jurisdiction.
- (2) A registered NDIS provider is complying with the transitional arrangements when delivering supports or services in a participating jurisdiction if that provider complies with this section.

Transitional arrangements

- (3) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if:
 - (a) the registered NDIS provider is an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
 - (b) the person is:
 - (i) a staff member of the approved provider; or
 - (ii) a volunteer for the approved provider; or
 - (iii) one of the approved provider’s key personnel (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and

- (c) the person has an acceptable aged care provider check; and
 - (d) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not come into effect.
- (4) A registered NDIS provider may allow a person to engage in a risk assessed role at a time when the person does not have a clearance if the person is:
- (a) a secondary school student on a formal work experience placement with the registered NDIS provider; and
 - (b) directly supervised by a person who meets the requirements of paragraphs (3)(b) and (c); and
 - (c) a notice (if any) issued to the provider by the Commissioner pursuant to subsection (7) has not yet come into effect.

Acceptable aged care provider checks—recognition of checks under the Accountability Principles 2014

- (5) A person has an **acceptable aged care provider check** if:
- (a) the person is either:
 - (i) a staff member of the approved provider; or
 - (ii) a volunteer for the approved provider; and
 - (b) the requirements under Part 6 of the *Accountability Principles 2014* have been complied with in relation to the person, including the requirement that the person has been issued with a police certificate (within the meaning of those Principles) within the last 3 years; and
 - (c) the police certificate is issued before 1 February 2021.
- (6) A person has an **acceptable aged care provider check** if:
- (a) the person is one of the approved provider’s key personnel (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
 - (b) the person is not covered by subsection (5); and
 - (c) the requirements under Part 7A of the *Accountability Principles 2014* have been complied with in relation to the person, including the requirement that the provider has obtained a police certificate (within the meaning of those Principles) for the person; and
 - (d) the police certificate is issued before 1 February 2021.

Notice

- (7) The Commissioner may give a written notice to a registered NDIS provider that paragraph 14(1)(b) or (2)(b) no longer applies to the provider from the day specified in the notice (which must be at least 14 days after the notice is given).

Concurrent operation

- (8) To avoid doubt, this section is intended to operate concurrently with sections 23 to 29A.

Definitions

- (9) In this section:

staff member, of an approved provider, has the same meaning as in the *Accountability Principles 2014*.

volunteer, for an approved provider, has the same meaning as in the *Accountability Principles 2014*.

Sunset

(10) This section ceases to have effect at the end of 1 February 2024.

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

8 Section 4

Insert:

transitioned RAC provider has the same meaning as in the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

9 At the end of paragraph 13B(7)(c)

Add “or a transitioned RAC provider”.

10 Subsection 19(2) (note 3)

Omit “Division 2 contains”, substitute “Divisions 2 and 3 contain”.

11 Division 2 of Part 6 (heading)

Repeal the heading, substitute:

Division 2—Transitional arrangements relating to transitioned providers

12 At the end of subsection 25(2)

Add:

Note: Similar modifications apply in relation to transitioned RAC providers, see Division 3.

13 At the end of Part 6

Add:

Division 3—Transitional arrangements relating to transitioned residential aged care providers

29A Purpose of this Division

- (1) This Division is made for the purposes of section 73T of the Act.
- (2) It modifies the application of the NDIS Practice Standards in Division 1 of this Part for a limited period in relation to transitioned RAC providers.

29B Transitional arrangements for transitioned residential aged care providers

- (1) This section applies to person or entity if the person or entity is a transitioned RAC provider.

Note: A transitioned RAC provider is deemed to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) Despite sections 20 and 22, to remain a registered NDIS provider during the transition period for the provider, the provider must comply with the standards specified in clauses 2 to 7, 14, 15, 20 and 24 of Schedule 1.
- (3) For the purposes of subsection (2), the **transition period** for the provider:
 - (a) starts at the start of 1 December 2020; and
 - (b) ends at the earliest of the following:
 - (i) if the Commissioner gives a written notice to the provider that this subsection no longer applies to the provider—the start of the day specified in the notice (which must be at least 14 days after the notice is given);
 - (ii) if, on or after 1 December 2020, the provider makes an application under section 73C of the Act and the Commissioner makes a decision under section 73E of the Act to register, or not to register, the provider as a registered NDIS provider—the start of the day after the day the decision is made;
 - (iii) if the registration of the provider is revoked under section 73P of the Act—the start of the day the revocation takes effect;
 - (iv) unless section 73K of the Act applies—the expiry of the period specified for the purposes of paragraph 73E(5)(e) of the Act.

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

14 Section 5

Insert:

transitioned RAC provider has the same meaning as in the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

15 Before section 25A

Insert:

Division 1—Preliminary

16 Before section 26

Insert:

Division 2—Special arrangements for transitioned providers

17 Section 26 (heading)

Omit “Special arrangements—use”, substitute “Use of”.

18 Section 27 (heading)

Omit “Special arrangements—use”, substitute “Use of”.

19 Subparagraph 27(1)(a)(i)

After “registered NDIS provider”, insert “(other than a transitioned RAC provider)”.

20 Section 28 (heading)

Omit “Special arrangements—use”, substitute “Use of”.

21 Paragraph 28(1)(a)(i)

After “registered NDIS provider”, insert “(other than a transitioned RAC provider)”.

22 Section 29 (heading)

Omit “Special arrangements—specialist”, substitute “Specialist”.

23 At the end of Part 4

Add:

Division 3—Special arrangements for transitioned residential aged care providers

30 Use of regulated restrictive practice where either no authorisation or behaviour support plan

- (1) This section applies to a person or entity if, on 1 December 2020:
- (a) the person or entity is a transitioned RAC provider; and
 - (b) the person or entity is providing supports or services to a participant; and
 - (c) the provision of supports or services involves the use of a regulated restrictive practice; and
 - (d) either:
 - (i) the use of the regulated restrictive practice is not in accordance with a behaviour support plan for the participant; or
 - (ii) the person or entity does not have an authorisation (however described) in relation to the use of the regulated restrictive practice (whether or not there is an authorisation process for such practices in the State or Territory in which the supports or services are provided).

Note: A transitioned RAC provider is deemed to be a registered NDIS provider in accordance with the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

- (2) The person or entity is not required to comply with sections 9 to 15 in relation to the participant and the use of the regulated restrictive practice during the period:
- (a) starting on 1 December 2020; and
 - (b) ending at the earliest of the following:
 - (i) 1 December 2021;
 - (ii) if, on 1 December 2020, the person or entity does not have a behaviour support plan for the participant—the day an interim behaviour support plan, or a comprehensive behaviour support plan, for the participant is lodged with the Commissioner;
 - (iii) if the person or entity does not comply with subsection (3) by the day required by that subsection—the end of that day;

(iv) if the Commissioner gives a written notice to the person or entity that this subsection no longer applies to the person or entity—the day specified in the notice (which must be at least 14 days after the notice is given).

(3) The person or entity must:

- (a) notify the Commissioner of the regulated restrictive practice used by the person or entity in the form approved by the Commissioner; and
- (b) do so by:
 - (i) 1 January 2021; or
 - (ii) if the Commissioner allows a later day—such later day.

Note: If the use of the regulated restrictive practice is also a reportable incident, it must also be reported in accordance with Part 3 of the *National Disability Insurance Scheme (Incident Management and Reportable Incidents) Rules 2018*.

(4) The registration of the person or entity as a registered NDIS provider is subject to the following conditions:

- (a) the person or entity must comply with subsection (3);
- (b) if:
 - (i) there is an authorisation process in the State or Territory in which the supports or services are provided for the use of the regulated restrictive practice in relation to the participant; and
 - (ii) on 1 December 2020, the person or entity is not authorised in accordance with that authorisation process;by 1 March 2021, the person or entity must take all reasonable steps to obtain such authorisation;
- (c) if, on 1 December 2020, the person or entity does not have a behaviour support plan for the participant:
 - (i) by 1 March 2021, the person or entity 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; and
 - (ii) by 1 June 2021, the person must take all reasonable steps to facilitate the development of a comprehensive behaviour support plan for the participant that meets the requirements of Division 2 of Part 3.

(5) 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.

Note: Part 7.4 of the *Criminal Code* provides offences in relation to false or misleading statements, information and documents.

Part 3—Technical corrections

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

24 Section 25A (heading)

Repeal the heading, substitute:

25A Simplified outline of this Part

25 Subsection 28(2)

Omit “section 9 to 15”, substitute “sections 9 to 15”.

26 Paragraph 28(4)(c)

Omit “Division 2 or Part 3”, substitute “Division 2 of Part 3”.