

## **EXPLANATORY STATEMENT**

Issued by the authority of the Commissioner of the NDIS Quality and Safeguards  
Commission

*National Disability Insurance Scheme Act 2013*

*National Disability Insurance Scheme (NDIS Provider Definition) Amendment Rules  
2021*

### **Purpose**

The National Disability Insurance Scheme (NDIS Provider Definition) Amendment Rules 2021 (the Instrument) are made under section 209 of the National Disability Insurance Scheme Act 2013 (the Act) for the purposes of paragraph (b) of the definition of NDIS provider in section 9 of the Act.

The Instrument amends the National Disability Insurance Scheme (NDIS Provider Definition) Rule 2018 (the Rule).

The Rule forms part of the framework to support the safe delivery of services and supports to people with disability under the National Disability Insurance Scheme (NDIS).

The Instrument makes amendments for the purposes of ensuring the Act continues to apply to providers delivering services and supports under the Commonwealth Continuity of Support (CoS) program, which is already specified in the Rule. The Instrument makes amendments to ensure, notwithstanding an administrative change to CoS programs commencing on 1 July 2021, these providers continue to be regarded as NDIS Providers for the purposes of the Act.

The Instrument ensures the Commissioner's uninterrupted coverage of existing CoS providers as they are transitioned from the CoS Program to the Disability Support for Older Australians (DSOA) Program, which will commence from 1 July 2021. To ensure there is no disruption to the Commissioner's jurisdiction in relation to NDIS providers funded under this new arrangement, the amendment also commences from 1 July 2021.

### **Background**

The Instrument is made under section 209 of the Act construed in accordance with section 33(3) of the Acts Interpretation Act 1901.

Section 209 of the Act provides that the Minister may, by legislative instrument, make rules (NDIS rules) that prescribe matters required or permitted by this Act to be prescribed or which are necessary or convenient to be prescribed in order to carry out or give effect to the Act. The Commissioner has been delegated the powers of the Minister under section 201(A) of the Act to make NDIS rules for the purposes of paragraph (b) of the definition of NDIS provider in section 9 of the Act.

Section 9 of the Act defines NDIS Provider. The Instrument amends the Rule to recognise providers delivering services under the DSOA program as NDIS Providers for the purposes of the Act.

The NDIS Quality and Safeguards Commission (NDIS Commission) currently regulates NDIS providers delivering continuity of support to NDIS participants under the CoS program.

The CoS program delivers on a Council of Australian Governments (COAG) commitment for the Commonwealth to continue to support older people who were accessing state-managed disability services and were ineligible for the National Disability Insurance Scheme (NDIS).

The DSOA program commences from 1 July 2021, with existing CoS providers to transition to the DSOA program from this date. This Instrument ensures the NDIS Commission continues to have regulatory oversight of CoS providers from 1 July 2021, irrespective of the date they transfer to DSOA.

The Instrument is a legislative instrument for the purposes of the Legislation Act 2003.

## **Commencement**

This instrument commences on 1 July 2021.

## **Consultation**

Section 209 of the Act prescribes that NDIS rules fall into four categories. Item 4 of the table that is part of section 209(8) prescribes certain categories of NDIS rules to be 'Category D' rules. Rules made pursuant to paragraph (b) of the definition of NDIS provider in section 9 are stipulated as being a Category D Rule.

Under subsection 209(7), Category D rules cannot be made unless each host jurisdiction has been consulted in relation to the making of the rules. In compliance with this requirement, the Commissioner (as the Minister's delegate) consulted with Ministers from New South Wales, South Australia, Victoria, Queensland, Tasmania, the Australian Capital Territory, the Northern Territory and Western Australia.

## **Regulation Impact Statement (RIS)**

A RIS is not required for this instrument (OBPR ID 42829).

## **Explanation of the provisions**

### Section 1 – Name

The Instrument is titled the *National Disability Insurance Scheme (NDIS Provider Definition) Amendment Rules 2021*.

### Section 2 – Commencement

The Instrument commences on 1 July 2021

### Section 3 – Authority

The Instrument is made under the *National Disability Insurance Scheme Act 2013*.

### ”Schedule 1 – Amendments

This Schedule amends the National Disability Insurance Scheme (NDIS Provider Definition) Rule 2018.

**Item 1** amends the preamble to provide that a NDIS provider also includes a person or entity who is providing supports or services to older people with disability under the Commonwealth Disability Support for Older Australians program.

**Item 2** amends section 5 to repeal the existing prescription of an NDIS provider, and replaces it to provide that a NDIS provider includes a person or entity who is providing supports or services to older people with disability under either the Commonwealth Disability Support for Older Australians program or the Commonwealth Continuity of Support Program.