

## **Statement of Compatibility with Human Rights**

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

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

The *National Disability Insurance Scheme (NDIS Provider Definition) Amendment Rules 2021* (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 Instrument amends the *National Disability Insurance Scheme (NDIS Provider Definition) Rule 2018* which prescribes certain persons and entities to be NDIS providers for the purposes of section 9 of the *National Disability Insurance Scheme Act 2013* (the NDIS Act).

This Instrument amends the existing prescription to address administrative changes to the Commonwealth Continuity of Support (CoS) program that will come into effect on 1 July 2021. From 1 July 2021, existing CoS providers will be transitioned from the CoS program to the Disability Support for Older Australians (DSOA) program. The Instrument ensures that there is no disruption to the jurisdiction of the NDIS Quality and Safeguards Commission (NDIS Commission) in relation to NDIS providers funded under the new arrangement. The Instrument will also commence from 1 July 2021.

#### **Background**

The Commonwealth CoS program was established to meet the Council of Australian Governments' (COAG) commitment that older people with disability who were receiving state-administered specialist disability services, but who were ineligible for the NDIS as a result of their age, would be provided with continuity of support.

The Commonwealth DSOA program commences from 1 July 2021. The Instrument ensures the NDIS Commission will continue to have oversight of providers who support older people with disability through this program to ensure that existing safeguarding arrangements are uninterrupted.

Prescribing an entity to be an NDIS provider means that it will be subject to the jurisdiction of the NDIS Commission. The NDIS Commission is established by the NDIS Act with responsibilities associated with protecting and preventing people with disability from experiencing harm arising from poor quality or unsafe services under the National Disability Insurance Scheme (NDIS).

## **Human rights implications**

The Instrument advances the protection of the rights of people with disability in Australia consistent with the Convention on the Rights of Persons with Disabilities (CRPD) and engages the following rights under international human rights law:

- The rights of people with disabilities in the, *Convention on the Rights of Persons with Disabilities* (CRPD), especially articles 3, 4, 5, 12, 16, 17, 19, 20, 21, 22, 25, 26, 28 and 30; and
- Articles 9 and 12 of the *International Covenant on Economic, Social and Cultural Rights* (ICESCR); and
- Article 17 of the *International Covenant on Civil and Political Rights* (ICCPR).

The NDIS Commission promotes the rights of people with disabilities in Australia by protecting and preventing people with disability from experiencing harm arising from poor quality or unsafe supports or services under the NDIS.

This Instrument engages with these Articles by ensuring the jurisdiction of the Commissioner of the NDIS Commission to cover older people with disability who are receiving supports or services under the Cos Program or the new DSOA program. These protections include that all NDIS providers, and any persons who are employed or otherwise engaged by an NDIS provider, are subject to the Code of Conduct and the complaints jurisdiction of the Commissioner of the Commission. Further, NDIS providers may be registered by the Commissioner, and thereby be covered by the Commissioner's full suite of regulatory powers.

## **Conclusion**

This Instrument is compatible with human rights because it advances the protection of human rights in particular, by ensuring the ongoing jurisdiction of the Commissioner over services provided to older people with disability by the Commonwealth who were found ineligible for the NDIS at the time of transition to the NDIS in their state or territory.

**Graeme Head AO, Commissioner of the NDIS Quality and Safeguards Commission**