**EXPLANATORY STATEMENT**

Issued by the Authority of the Minister for Families, Community Services and Indigenous Affairs and Minister for Disability Reform

National Disability Insurance Scheme Act 2013

*National Disability Insurance Scheme (Registered Providers of Supports) Rules 2013*

Section 209 of the National Disability Insurance Scheme Act 2013 (the Act) provides that the Minister may, by legislative instrument, 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 this Act.

The National Disability Insurance Scheme (Registered Providers of Supports) Rules 2013 (the Registered Provider Rules) are made pursuant to sections 70 to 73 of the Act.

The Registered Provider Rules are about registered providers of supports – how they become approved and the requirements that apply to them. When the National Disability Insurance Scheme Transition Agency (DisabilityCare Australia) manages the funding of supports under a participant’s plan, only registered providers can provide those supports (in other cases, anyone can provide the supports). These Rules also apply to the registration of registered plan management providers.

The Minister in making the Registered Provider Rules has had regard to the financial sustainability of the National Disability Insurance Scheme (the scheme) as required under subsection 209(3) of the Act.

The Registered Provider Rules include Category A rules for the purposes of section 209 of the Act. Accordingly the Commonwealth and each host jurisdiction have agreed to the making of these Rules.

**Background**

In 2011, the Productivity Commission report, Disability Care and Support (Report No. 54), found that ‘current disability support arrangements are inequitable, underfunded, fragmented and inefficient, and give people with a disability little choice’ (Overview, p. 5), and recommended the establishment of a National Disability Insurance Scheme. People who are participants in the scheme will be assisted to develop a personal, goal-based plan about how they will be provided with general supports and reasonable and necessary supports.

The Act was enacted in March 2013 giving effect to the commitment by the Commonwealth, State and Territory Governments to establish such a scheme, and for its progressive implementation from July 2013. The Act sets out the statutory framework for the National Disability Insurance Scheme (the scheme), and for DisabilityCare Australia to administer the scheme. The Act is to be supplemented by National Disability Insurance Scheme rules, which address the more detailed operational aspects of the scheme. The Registered Provider Rules is one of a number of instruments that comprise these rules.

**Commencement**

The Registered Provider Rules commence on the day they are registered.

**Consultation**

The design of the scheme has been a collaborative exercise, relying heavily on substantial contributions from stakeholders, including:

* the COAG Select Council on Disability Reform;
* joint Commonwealth/State/Territory Government working groups at official levels;
* extensive consultation with people with disabilities, their advocates, carers and families;
* the NDIS Advisory Group, comprising people, some of whom live with disability, who have expertise in social insurance principles, disability policy, service provision, performance monitoring, training and curriculum development, academia and research, psychological and intellectual disability, Indigenous disability services, young people and children with disability;
* four Expert Groups, comprising persons with disabilities, their carers, advocates, service providers and other sector experts, focused on:
  + a national approach to control and choice;
  + eligibility and assessment;
  + quality, safeguards and standards; and
  + disability workforce and sector capacity; and
  + the National Disability and Carer Alliance, which undertook public engagements around the country.

The Registered Provider Rules is a legislative instrument for the purposes of the Legislative Instruments Act 2003.

**Explanation of provisions**

The Registered Provider Rules have six Parts:

* **Part 1** explains what these Rules are about.
* **Part 2** provides an outline of these Rules.
* **Part 3** sets out the criteria against which the CEO must consider an application from a person or entity to be approved as a registered provider of supports.
* **Part 4** sets out some requirements that apply to registered providers of supports. The requirements are that providers notify DisabilityCare Australia if particular things happen, such as the provider being the subject of a complaint to, or an adverse action by, a responsible authority.
* **Part 5** sets out circumstances in which a provider’s approval as a registered provider of supports can be revoked.
* **Part 6** deals with other matters, including interpretation of these Rules.

**Part 1 – What these Rules are about**

**Paragraphs 1.1 to 1.8** are explanatory and contextual.

**Part 2 – Outline of these Rules**

**Paragraphs 2.1 to 2.4** are explanatory and contextual.

**Part 3 – Criteria for approval as a registered provider of supports**

When a person or entity (the applicant) applies to be a registered provider of supports, the CEO considers the applicant against a set of criteria. Those criteria are set out in this Part.

**Paragraphs 3.1 to 3.6** summarise Part 3 of Chapter 4 of the Act, which relates to registered providers of supports including the making of applications to be approved as a registered provider of supports.

**Paragraphs 3.7 to 3.15** prescribe criteria for the purposes of paragraphs 70(1)(d) and 72(1)(a) of the Act. The criteria are essentially about compliance with relevant laws and how a provider seeking registration is able to establish their suitability to provide the supports for which they wish to register. For an applicant to be approved by the CEO as a registered provider of supports, among other things the CEO must be satisfied that the applicant meets the criteria prescribed in these Rules (see paragraph 70(1)(d) of the Act).

**Paragraph 3.7** provides that an applicant is to have an ABN and an account with a financial institution (which is defined in paragraph 6.4).

The criteria in paragraphs 3.8 to 3.11 require an applicant to make declarations in relation to certain matters.

**Paragraph 3.8** provides that an applicant is to declare its agreement to be bound by DisabilityCare Australia’s terms of business (as in force from time to time). DisabilityCare Australia’s terms of business are intended to provide a level of confidence to participants that a registered provider will follow good business practices, will deal with them fairly, and will respond to any complaints in a timely manner.

**Paragraph 3.9** provides that an applicant is to declare that it complies with – and has mechanisms in place to ensure ongoing compliance with – all employment and workplace health and safety laws that apply to the applicant. The obligation imposed by subsection 357(1) of the Fair Work Act 2009, which relates to sham contracting arrangements, is used as an example.

**Paragraph 3.10** is similar to paragraph 3.9, but requires an applicant to declare that it has in place mechanisms to ensure that contractors engaged for the provision of supports or the management of funding for supports comply with such laws.

**Paragraph 3.11** requires an applicant to declare that the applicant and its staff comply with criminal laws.

For an applicant to be approved as a registered provider of supports the CEO must be satisfied that the applicant is suitable to manage the funding for supports or provide supports, as the case requires, applying any criteria and having regard to any matters prescribed by the rules (see paragraph 70(1)(e) of the Act).

**Paragraph 3.12** prescribes, for the purposes of paragraph 70(1)(e) of the Act, that an applicant for registration in relation to the provision of supports is to be a suitable person, having regard to considerations relating to:

* qualifications and approvals held by the applicant;
* the applicant’s capacity;
* the applicant’s experience; and
* if the applicant proposes to provide supports for a particular participant only – whether the participant has stated that he or she considers the applicant to be suitable.

**Paragraph 3.13** is substantially similar to paragraph 3.12 but relates to applicants who wish to be approved in relation to managing the funding for supports under plans, as opposed to the provision of supports.

**Paragraph 3.14** confirms, in order to avoid doubt, that if a person or entity applies to be a registered provider of supports in relation to both the provision of supports and managing the funding of supports under plans, the criteria prescribed in paragraphs 3.12 and 3.13 apply.

**Paragraph 3.15** also deals with applicants who seek to be approved in relation to both the provision of supports and managing the funding of supports under plans. It provides that such an applicant is to have in place mechanisms for dealing with conflicts of interest when performing both of those roles in relation to the same participant.

**Part 4 – Requirements for registered providers**

This Part prescribes requirements with which registered providers must comply under subsection 73(2) of the Act.

**Paragraph 4.1** provides that a registered provider must notify DisabilityCare Australia of certain matters. The matters relate to:

* complaints about the standard, effectiveness or safety of the provision of supports;
* adverse action by a responsible authority relating to the provision of supports or the management of funding for supports;
* adverse action by a responsible authority in respect of an approval;
* insolvency;
* a failure by the provider to comply with an employment or workplace health and safety law;
* a failure by a contractor to comply with an employment or workplace health and safety law;
* a failure to comply with a law mentioned in paragraph 3.11, which relates to criminal laws.

**Paragraph 4.2** provides that a provider must notify DisabilityCare Australia of a matter described in paragraph 4.1 as soon as possible after becoming aware of the matter.

**Paragraph 4.3** provides that if paragraph 4.1(a) applies, which relates to complaints, the provider must also notify DisabilityCare Australia of the action that the provider takes in relation to the complaint (for example, to resolve or address the complaint).

**Part 5 – Revocation**

This Part deals with the circumstances in which the CEO may revoke the approval of a person or entity as a registered provider of supports.

**Paragraph 5.1** summarises subsection 72(1) of the Act, which sets out the three grounds on which the CEO may revoke the approval of a registered provider. The first and second grounds, respectively, are that the registered provider no longer meets the approval criteria in Part 3, or that their application for approval contained information that was false or misleading in a material particular.

The third is that a circumstance set out in Part 5 exists, and that circumstance presents an unreasonable risk to one or more participants. Paragraph 5.2 sets out the circumstances, which relate to:

* contravening DisabilityCare Australia’s terms of business (see paragraph 3.8);
* adverse action by a responsible authority relating to the provision of supports or the management of funding for supports;
* adverse action by a responsible authority in respect of an approval;
* insolvency;
* a failure by the provider to comply with an employment or workplace health and safety law;
* a failure by the provider to have in place suitable mechanisms to ensure any contractors comply with an employment or workplace health and safety law;
* a failure to comply with a law mentioned in paragraph 3.11, which relates to criminal laws;
* contravening a requirement in Part 4.

**Part 6 – Other matters**

Citation

**Paragraph 6.1** specifies the citation for the Registered Provider Rules.

Interpretation

**Paragraphs 6.2 to 6.4** give guidance on interpretation and definitions for certain terms used in the Registered Provider Rules.

**Statement of Compatibility**

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

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 the Human Rights (Parliamentary Scrutiny) Act 2011.

**Overview**

The purpose of this legislative instrument is to set out the criteria for the approval of registered providers of supports, and some of the circumstances in which a provider’s registration may be revoked by the CEO of DisabilityCare Australia, as well as requirements with which registered providers of supports must comply.

**Human rights implications**

This legislative instrument is essential to the operation of the scheme, which has been designed to advance the human rights of people with disability with severe and permanent disability. Specifically, the instrument will regulate the approval and revocation of approval of registered providers of supports, and impose requirements with which registered providers of supports must comply.

The instrument engages, either directly or indirectly, the following human rights:

Rights of people with disabilities

* The Convention on the Rights of Persons with Disabilities (CRPD) contains several human rights relevant to the scheme. 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 relates to several human rights set out in the CRPD (including personal mobility, health, habilitation and rehabilitation), and promotes respect for the dignity of people with disabilities. Consistent with Article 26 of the CRPD (health and habitation), the instrument sets out ‘effective and appropriate measures’ for the registration of providers of support to facilitate the provision of high quality supports and foster individual choice and control for people with disability.

Right to health; Right to social security; and Right to an adequate standard of living

* The right to health – encompassing the right to the enjoyment of the highest attainable standard of physical and mental health – is contained in article 12(1) of the International Covenant on Economic and Social and Cultural Rights (ICESCR). The UN Committee on Economic Social and Cultural rights has stated that health is a fundamental human right indispensible for the exercise of other human rights.
* The right to social security is set out in Article 9 of the ICESCR; Article 28 of the CRPD; and Article 26 of Convention on the Rights of the Child (CRC); and Article 11 of the Convention on the Elimination of all Forms of Discrimination Against Women. Essentially, that right requires that governments, within their maximum available resources, take action to ensure access to a social security scheme that provides a minimum essential level of benefits to all individual and families that will enable them to acquire essential health care.
* The right to an adequate standard of living is specified in Article 11 of the ICESCR, Article 28 of the CRPD and Article 27 of the CRC, which require governments to take appropriate steps to realise this right. The CRPD provides that one step is to ensure access by people with disabilities to appropriate and affordable services, devices and other assistance for disability related needs.
* This instrument is intended to help people with disability obtain access to reasonable and necessary supports by ensuring that registered providers of supports are properly regulated to provide quality services and supports. This will help people with disability to enjoy the highest attainable standard of physical and mental health, access to essential social welfare measures, and assist that people with disability to enjoy an adequate standard of living.

Right to just and favourable conditions of work

* The right to work and rights in work is contained in Articles 6(1), 7 and 8(1)(a) of the International Covenant on Economic and Social and Cultural Rights (ICESCR), and various other conventions are also relevant. The right to just and favourable conditions of work, set out in article 7 of ICESCR encompasses a number of elements including, remuneration which provides all workers, as a minimum, with fair wages and equal remuneration for work of equal value without distinction of any kind; safe and healthy working conditions; equal opportunity to be promoted in employment to an appropriate higher level subject to no considerations other than seniority and competence; and rest, leisure and reasonable limitation of working hours and periodic holidays with pay, as well as remuneration for public holidays.
* This instrument engages the right to the enjoyment of just and favourable conditions of work by requiring an applicant who wishes to be approved as a registered provider of supports to declare that it complies with, and has mechanisms in place to ensure ongoing compliance with, all employment and workplace health and safety laws that apply to the applicant. Similarly, the approval of a registered provider of supports may be revoked if a provider of supports contravenes an employment or workplace safety law.

**Conclusion**

This legislative instrument is compatible with human rights as it forms part of an overall legislative scheme designed to deliver improved health, social security and living standards to people with disability (including women and children), and contains safeguards to protect people who provide services in accordance with the legislative framework. The legislative instrument does not limit any human rights.