

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Families and Social Services

Disability Services Act 1986

Disability Services (National Standards for Disability Services) Amendment (2021 Measures No. 1) Determination 2021

Purpose

The purpose of this instrument is to amend the *Disability Services Act (National Standards for Disability Services) Determination 2014* ('NSDS Determination') to adjust the quality standards assessment for that cohort of State or eligible organisations that are providers of the current Commonwealth Disability Employment Assistance Program (known as Australian Disability Enterprises or 'ADEs') who are also registered providers under the National Disability Insurance Scheme (NDIS).

The ADEs targeted by this instrument are those seeking certification and funding for both the provision of supported employment services under the *Disability Services Act 1986* ('DSA'), as well as for the provision of specialised supported employment under the NDIS. Specialised supported employment is a registerable class of NDIS supports under subsection 20(3) of the National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 ('NDIS Rules').

This instrument permits this cohort of ADE providers, who are also Registered NDIS Providers, to be audited against the standards as prescribed in the NDIS Rules. Previously these organisations were required to be audited against, and receive certification under both the NDIS Rules and the NSDS. Where these providers require certification and funding under the DSA for the provision of supported employment services, this instrument enables them to be audited against the standards prescribed in Schedule 1 of the NDIS Rules. The audit report from the NDIS Rules audit can then be provided to demonstrate compliance with the NSDS.

Other organisations funded under the DSA comprising other employment services, rehabilitation programs and advocacy services, will still be required to obtain certification under the Determination, and their certification requirements remain unchanged.

Background

The Department of Social Services ('the department') Quality Framework for Disability Employment states that all disability service providers must meet the requirements of the independent quality assurance system to receive funding from the Australian

Government. This requirement is prescribed in paragraph 12AD(2)(b) and Division 3B of Part II of the DSA.

To ensure continued compliance with the DSA, ADEs undertake annual audits on a three year certification cycle in accordance with the standards prescribed in the NSDS Determination. Maintenance audits are conducted in the first and second year of the certification cycle, and a recertification audit is conducted in the third year. With the introduction of the NDIS, these providers have been transitioning from the DEA Program administered by the department to the NDIS.

Most ADEs are now registered NDIS providers and, to be certified to receive funding under the NDIS, are required to meet the separate quality assurance certification requirements set by the NDIS Quality and Safeguards Commission. These requirements are found in paragraph 73E(1)(c) of the *National Disability Insurance Scheme Act 2013* ('NDIS Act') and subsection 20(3) (item 34) of the NDIS Rules, where the standards themselves are prescribed in Schedule 1 to the NDIS Rules.

At this time, providers funded by both the department and the NDIS must undergo two separate but similar audits to become or remain certified to receive funding. Due to the two auditing assessment schemes being so similar, the affected ADEs have reported the current system is inefficient and costly. The department's Disability, Employment and Carers Group agree with these concerns, adding that there is considerable departmental expenditure involved with having separate audits.

To improve the dual auditing process, this instrument amends the NSDS Determination to allow auditors to conduct both audits against the same standards, and hence allow the audits to be undertaken simultaneously.

Commencement

The instrument commences on the day after it is registered.

Consultation

As this instrument is giving effect to recommendations made by a number of impacted providers, the specific contents of the instrument has not been made available to the providers for consultation. The impacted providers and the certifying bodies that conduct the relevant audits, have however, been informed of the policy change and the progress of the instrument. They are supportive of this policy and the introduction of this instrument, particularly given that it will maximise efficiencies, cut red tape and minimise costs for providers.

The NDIS Quality and Safeguards Commission have been consulted on the instrument and are supportive of the approach outlined in this instrument.

Regulation Impact Statement (RIS)

Following consultation with the Office of Best Practice Regulation (OBPR), a RIS is not required for this instrument (**OBPR ID 42920**).

Explanation of the provisions

Section 1 – Name

Section 1 provides this instrument is titled the Disability Services (National Standards for Disability Services) Amendment (2021 Measures No. 1) Determination 2021.

Section 2 – Commencement

Section 2 provides that this instrument commences the day after it is registered.

Section 3 – Authority

Section 3 provides that this instrument is made under section 5A of the *Disability Services Act 1986* (DSA).

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 relevant items of the Schedule.

Schedule 1 – Amendments

Part 1 – Main Amendments

Disability Services Act (National Standards for Disability Services) Determination 2014 ('NSDS determination').

Item 1

This amendment removes subsection (1) from section 5. This means that section 5 has no subsections within the provision.

Item 2

This amendment repeals the definition for indicators of practice as this definition is no longer required.

Item 3

This amendment repeals sections 6, 7 and 8 of the NSDS determination and substitutes them with new provisions.

Section 6 operates to ensure that the amendments will not affect the quality assessment standards of other eligible organisations that require funding under the DSA for services other than supported employment services.

Subsection 6(1) prescribes the standards for the provision of employment services (other than supported employment services), advocacy services and rehabilitation programs by a State or eligible organisation. This provision stipulates that the standards for these services are determined as set out in Schedule 1 of the determination.

Subsection 6(2) provides that, for the purposes of subsection 5A(2) of the DSA, the indicators of practice as set out in Schedule 1 of the determination are approved as key performance indicators to be applied in assessing whether the standards have been observed by the State or eligible organisation.

Section 7 provides the standards for quality assessment of supported employment services for a State or eligible organisations that is not registered, and has not applied for registration, as a registered NDIS provider. Subsection 7(2) then provides that the relevant organisation, in the provision of supported employment services, is to observe the standards set out in Schedule 1 of the determination.

Subsection 7(3) provides that, for the purposes of subsection 5A(2) of the DSA, the indicators of practice as set out in Schedule 1 of this instrument are approved as key performance indicators to be applied in assessing whether the standards have been observed by the State or eligible organisation.

Section 8 prescribes the standards for quality assessment of supported employment services for a State or eligible organisations that is registered, or has applied for registration, as an NDIS provider. Subsection 8(2) confirms that, for the purposes of 5A(1)(b) of the DSA, the standards set out in Schedule 1 to the *National Disability Insurance Scheme (Provider Registration and Practice Standard) Rules 2018* (NDIS Rules) are the disability employment standards to be observed in the provision of supported employment services.

Subsection 8(3) prescribes that, for the purpose of 5A(2) of the DSA, the indicators in Part 2 of the *National Disability Insurance Scheme (Quality Indicators) Guidelines 2018* are approved as key performance indicators to be applied in assessing whether the standards set out in Schedule 1 to the NDIS Rules have been observed by the State or eligible organisation.

Statement of Compatibility with Human Rights

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

Disability Services Act (National Standards for Disability Services) Amendment (2020 Measures No. 1) Determination 2021

The Determination 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

This instrument enables supported employment services funded under the *Disability Services Act 1986* (the Act), that are also registered providers under the National Disability Insurance Scheme (NDIS), to be audited against the standards prescribed in the National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018 (Practice Standards Rules). Previously, these organisations were required to be audited against, and receive certification under, both the *Disability Services Act (National Standards for Disability Services) Determination 2014* (the Determination) and the Practice Standards Rules. Other organisations funded under the Act comprising other employment services, rehabilitation programs and advocacy services, will still be required to obtain certification under the Determination, and as such their certification requirements remain unchanged.

Although this instrument amends the Determination to create different certification requirements between supported employment services, depending on whether they are registered as an NDIS provider or not, the relevant quality standards will apply the same to all persons with a disability within each supported employment service. Therefore, this instrument will not directly, nor indirectly, discriminate against persons with disabilities under the *Disability Discrimination Act 1992*.

Human rights implications

The Determination aims to promote the human rights of people with disability by requiring providers of employment services, rehabilitation programs and advocacy services to observe six national standards in their provision of these services/programs to people with disability. This furthers the objects of the Act which includes assisting persons with disabilities to receive services necessary to enable them to work towards full participation as members of the community.

This instrument incorporates into the Determination the standards prescribed in Schedule 1 to the Practice Standards Rules as being the relevant standards to be observed for the provision of supported employment services, where the eligible organisation is, or has applied for registration as, an NDIS provider. The standards

prescribed in Schedule 1 to the Practice Standards Rules help to ensure people with disability are protected and prevented from experiencing harm arising from poor quality or unsafe supports or services under the NDIS. The Practice Standards Rules are deemed 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*.

The Convention on the Rights of People with Disabilities (CRPD) contains several human rights that are addressed, either directly or indirectly by this instrument, including:

- respect for the inherent dignity, independence of persons and individual autonomy, including the freedom to make one's own choices;
- non-discrimination;
- full and effective participation and inclusion in society;
- respect for difference and acceptance of persons with disabilities as part of human diversity and humanity;
- equality of opportunity;
- accessibility;
- equality between men and women;
- freedom of expression and opinion;
- freedom from exploitation, violence and abuse;
- active partnerships between services and people with disability, and where appropriate, their families, friends, carers and/or advocates; and
- respect for the evolving capacities of children with disability and respect for the right of children with disability to preserve their identities.

As such, this instrument promotes the human rights of persons with disabilities as set out in the CRPD, by requiring supported employment services, which are also NDIS providers, to observe standards promoting the welfare of disabled people in their provision of the relevant services and programs.

Conclusion

The Determination is compatible with human rights because it advances the protection of rights for people with disability and does not raise any human rights issues.

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