



Queensland

Disability Services and Other Legislation (NDIS) Amendment Regulation 2019

Subordinate Legislation 2019 No. 125

made under the

Disability Services Act 2006

Police Service Administration Act 1990

Working with Children (Risk Management and Screening) Act 2000

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Part 1 Preliminary

1 Short title

This regulation may be cited as the *Disability Services and Other Legislation (NDIS) Amendment Regulation 2019*.

2 Commencement

This regulation commences on 1 July 2019.

Part 2 Amendment of Disability Services Regulation 2017

3 Regulation amended

This part amends the *Disability Services Regulation 2017*.

4 Amendment of s 4 (Prescribed services—Act, s 12, definition *disability services*)

Section 4, from ‘each’—

omit, insert—

a service that is within a class of supports mentioned in the NDIS (Registration) Rules, section 20(3) is prescribed.

5 Replacement of s 5 (Prescribed disability services—Act, ss 14 and 16A)

Section 5—

omit, insert—

5 Prescribed disability services—Act, s 16A

For section 16A of the Act, a service provided by a registered NDIS provider that is within a class of

[s 6]

supports mentioned in the NDIS (Registration) Rules, section 20(3) is prescribed.

6 Insertion of new s 5A

After section 5—

insert—

5A When NDIS non-government service providers are engaging persons at service outlets—Act, s 46

- (1) For section 46(8)(a) of the Act, an NDIS non-government service provider is engaging a person at a service outlet of the provider if—
 - (a) the person is key personnel of the provider; or
 - (b) the person is engaged in a role for which the normal duties are likely to require more than incidental contact with a person who is receiving disability services at the outlet; or
 - (c) the person is engaged in a role for which the normal duties include the direct delivery of supports or services—
 - (i) to a person who is receiving disability services at the outlet; and
 - (ii) mentioned in the list of specified supports and services published by the NDIS commissioner under the NDIS (WS) Rules, section 7.
- (2) In this section—

key personnel see the NDIS Act, section 11A.

more than incidental contact see the NDIS (WS) Rules, section 6.

7 Insertion of new s 6A

After section 6—

insert—

6A Service providers to which pt 6 of the Act does not apply—Act, s 140

- (1) For section 140(2) of the Act, a service provider that is an approved provider is prescribed if—
 - (a) the service provider is providing disability services to an adult; and
 - (b) the adult is approved as a recipient of residential care under the Aged Care Act, part 2.3.
- (2) In this section—

Aged Care Act means the *Aged Care Act 1997* (Cwlth).

approved provider see the Aged Care Act, schedule 1.

residential care see the Aged Care Act, section 41-3.

8 Insertion of new s 8A

After section 8—

insert—

8A Prescribed relevant service providers—Act, s 199

- (1) For section 199(1) of the Act, an NDIS provider providing a class of supports to a participant under a plan is prescribed.
- (2) In this section—

class of supports means a class of supports mentioned in the NDIS (Registration) Rules, section 20(3).

[s 9]

participant see the NDIS Act, section 9.

plan see the NDIS Act, section 9.

9 Insertion of new s 9A

After section 9—

insert—

9A Delayed application of particular provisions in pt 5 of the Act—Act, s 239

- (1) For section 239(2)(a) and (b) of the Act, during the transition period the delayed sections of the Act do not apply in relation to—
 - (a) a service provider (a *new NDIS non-government service provider*) that becomes an NDIS non-government service provider on the commencement because of section 5; and
 - (b) the engagement of a person (a *new engaged person*) by a new NDIS non-government service provider; and
 - (c) the engagement of a person (also a *new engaged person*) who, because of section 5A, on the commencement becomes a person, for part 5 of the Act, engaged by an NDIS non-government service provider.
- (2) The *transition period* is the period ending on—
 - (a) if within 4 months after the commencement a prescribed notice application or exemption notice application about the new engaged person, other than a person who is a sole trader, is made by a relevant service provider and the chief executive becomes aware the new engaged person was convicted of a serious offence—the day the chief executive issues a written notice to the provider that made the application stating—

- (i) the transition period has ended; and
 - (ii) the provider is not allowed to engage the new engaged person before the application is decided; or
 - (b) if within 4 months after the commencement a prescribed notice application or exemption notice application about the new engaged person, who is a sole trader, is made by a relevant service provider and the chief executive becomes aware the new engaged person was convicted of a serious offence—the day the chief executive issues a written notice to the sole trader stating—
 - (i) the transition period has ended; and
 - (ii) the sole trader must not provide disability services as an NDIS non-government service provider at a service outlet of the service provider before the application is decided; or
 - (c) if paragraphs (a) and (b) do not apply and within 4 months after the commencement a prescribed notice application or exemption notice application is made about the new engaged person by a relevant service provider—the day the application is decided, withdrawn or taken to have been withdrawn under the Act; or
 - (d) if paragraphs (a), (b) and (c) do not apply—the day that is 4 months after the commencement.
- (3) However, if subsection (2)(c) applies and the application is not decided, withdrawn, or taken to be withdrawn before the final day, the transition period ends on the final day.
- (4) If the chief executive issues a notice under subsection (2)(a), the chief executive must issue a

[s 10]

written notice to the new engaged person stating—

- (a) the transition period has ended; and
- (b) the provider is not allowed to engage the new engaged person before the prescribed notice application or exemption notice application is decided.

(5) In this section—

delayed sections of the Act means sections 65, 66, 67, 67A and 68 of the Act.

final day means the day that is 1 year after the commencement.

relevant service provider means—

- (a) a new NDIS non-government service provider; or
- (b) an NDIS non-government service provider mentioned in subsection (1)(c).

10 Omission of sch 1 (Prescribed services or disability services)

Schedule 1—

omit.

11 Amendment of sch 4 (Dictionary)

Schedule 4—

insert—

NDIS (Registration) Rules means the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cwlth).

NDIS (WS) Rules means the *National Disability Insurance Scheme (Practice Standards—Worker*

6A Delayed application of particular provisions in ch 8 of the Act to new employees—Act, s 401

- (1) For section 401(4)(a) of the Act, during the transition period the delayed sections of the Act do not apply to the employment of a person (the *new employee*) who, because of section 6C(1), on the commencement is employed by an NDIS non-government service provider in regulated employment.
- (2) The *transition period* is the period ending on—
 - (a) if within 4 months after the commencement an application about the new employee has been made under section 199 of the Act and the chief executive becomes aware the new employee was convicted of a serious offence—the day the chief executive issues a written notice to the NDIS non-government service provider stating—
 - (i) the transition period has ended; and
 - (ii) the provider is not allowed to employ the new employee in regulated employment before the application is decided; or
 - (b) if paragraph (a) does not apply and within 4 months after the commencement a prescribed notice application or exemption notice application is made about the new employee—the day the application is decided, withdrawn or deemed to be withdrawn under the Act; or
 - (c) if paragraphs (a) and (b) do not apply—the day that is 4 months after the commencement.
- (3) However, if subsection (2)(b) applies and the application is not decided, withdrawn or deemed to be withdrawn before the final day, the

transition period ends on the final day.

- (4) If the chief executive issues a notice under subsection (2)(a), the chief executive must issue a written notice to the new employee stating—
 - (a) the transition period has ended; and
 - (b) the provider is not allowed to employ the new employee in regulated employment before the prescribed notice application is decided.
- (5) In this section—

delayed sections of the Act means sections 188, 193, 251 and 255 of the Act.

6B Delayed application of particular provisions in ch 8 of the Act to particular new NDIS non-government service providers—Act, s 401

- (1) For section 401(4)(a) of the Act, during the transition period the delayed sections of the Act do not apply to a new NDIS non-government service provider that—
 - (a) provides services within a class of supports—
 - (i) mentioned in the NDIS (Registration) Rules, section 20(3); and
 - (ii) that were not mentioned in the *Disability Services Regulation 2017*, schedule 1, as in force immediately before the commencement of the *Disability Services and Other Legislation (NDIS) Amendment Act 2019*; and
 - (b) carries on a regulated business.
- (2) The *transition period* is the period ending on—

- (a) if within 4 months after the commencement the new NDIS non-government service provider makes an application under section 211 of the Act and the chief executive becomes aware the provider was convicted of a serious offence—the day the chief executive issues a written notice to the provider stating—
 - (i) the transition period has ended; and
 - (ii) the provider is not allowed to carry on a regulated business before the application is decided; or
 - (b) if paragraph (a) does not apply and within 4 months after the commencement the provider makes a prescribed notice application or exemption notice application—the day the application is decided, withdrawn or deemed to be withdrawn under the Act; or
 - (c) if paragraphs (a) and (b) do not apply—the day that is 4 months after the commencement.
- (3) However, if subsection (2)(b) applies and the application is not decided, withdrawn or deemed to be withdrawn before the final day, the transition period ends on the final day.
- (4) In this section—

delayed sections of the Act means sections 197 and 259 of the Act.

NDIS (Registration) Rules means the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* (Cwlth).

**6C When employment by NDIS non-government service provider is regulated employment—
Act, sch 1, s 6**

- (1) For schedule 1, section 6(4)(a) of the Act, the employment of a person by an NDIS non-government service provider is regulated employment if—
- (a) the person is key personnel of the provider;
or
 - (b) the person is employed in a role for which the normal duties are likely to require more than incidental contact with a child receiving disability services at a child-related service outlet of the provider;
or
 - (c) the person is employed in a role for which the normal duties include the direct delivery of supports or services—
 - (i) to a child receiving disability services at a child-related service outlet of the provider; and
 - (ii) mentioned in the list of specified supports and services published by the NDIS commissioner under the NDIS (WS) Rules, section 7.
- (2) In this section—
- key personnel* see the NDIS Act, section 11A.
- more than incidental contact* see the NDIS (WS) Rules, section 6.

16 Amendment of sch 5 (Dictionary)

Schedule 5—

insert—

final day means the day that is 1 year from the day

sections 6A and 6B commenced.

NDIS Act means the *National Disability Insurance Scheme Act 2013* (Cwlth).

NDIS commissioner means the Commissioner of the NDIS commission appointed under the *NDIS Act*, section 181L.

NDIS (WS) Rules means the *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018* (Cwlth).

new NDIS non-government service provider see section 401(5) of the Act.

ENDNOTES

- 1 Made by the Governor in Council on 27 June 2019.
- 2 Notified on the Queensland legislation website on 28 June 2019.
- 3 The administering agency is the Department of Communities, Disability Services and Seniors.

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