

Disability Services Regulation 2017

Explanatory notes for SL 2017 No. 99

made under the

Disability Services Act 2006

General Outline

Short title

Disability Services Regulation 2017

Authorising law

This Regulation is made under section 239 of the *Disability Services Act 2006*.

Policy objectives and the reasons for them

The *Disability Services Act 2006* (DSA) protects and promotes the rights of people with disability. The Department of Communities, Child Safety and Disability Services (DCCSDS) provides and funds services that are safe, accountable and responsive to the needs of people with disability, including improving safeguards for people with disability from abuse, neglect and exploitation.

The Disability Services Regulation 2006 (repealed) was due to expire on 30 August 2016 and approval was obtained for an exemption from expiration under section 56A(1)(b) of the *Statutory Instruments Act 1992*.

This exemption was granted on the grounds that the DSA is under review. However, it was only granted for one year and the Regulation will again be due for expiry on 31 August 2017.

Accordingly, a policy objective is for this Regulation to be remade, to avoid the process of annually seeking an exemption from expiry while the DSA remains under review.

Similarly to the Disability Services Regulation 2006 (repealed), the remade *Disability Services Regulation 2017* (the remade Regulation) prescribes fees for criminal history screening applications made under the DSA; prescribes the information that a service provider must give to the chief executive in relation to approval of and the use of restrictive practices in relation to an adult with an intellectual or cognitive disability; and prescribes the types of records that must be made and kept by a funded non-government service provider. It also prescribes primary and secondary identification documents that constitute proof of a person's identity for the purposes of making a criminal history screening application under the DSA.

Also, the remade Regulation has two key updates:

- An update to a list of names and descriptions of National Disability Insurance Agency (NDIA) registration groups, to ensure the remade Regulation accurately applies Queensland's legislative safeguards to relevant specialist disability service providers during Queensland's transition (until 30 June 2019) to the National Disability Insurance Scheme (NDIS); and
- An update to apply the annual indexation of criminal history screening fees (Yellow Card).

It is proposed the Regulation commence on 1 July 2017.

Prescribed disability services

A policy objective of the remade Regulation is to maintain Queensland's commitment to extend its existing quality and safeguards framework during transition to the NDIS.

On 1 April 2016, the *Disability Services and Other Legislation Amendment Act 2016* (the Amendment Act) commenced to coincide with Queensland's transition to the NDIS.

Through the *Bilateral Agreement between the Commonwealth and Queensland: Transition to a National Disability Insurance Scheme*, Queensland agreed to operate its existing quality and safeguarding arrangements until 30 June 2019, or until a national framework is agreed and implemented (clause 32).

As such, the Amendment Act made changes to the DSA to ensure Queensland's quality and safeguarding framework applies to relevant specialist disability support service providers funded through an NDIS participant's plan.

Additionally, on 1 April 2016, amendments to the Disability Services Regulation 2006 (repealed) commenced. These include the insertion of a list of prescribed NDIS disability supports, so these support providers are captured by Queensland's legislative safeguards during transition (to 30 June 2019).

The list of disability services was prescribed in the Disability Services Regulation 2006 (repealed) to enable flexibility to amend it (rather than the Act) if the NDIA made changes to groups of disability supports. The list was prepared by mapping the relevant NDIS supports to existing specialist disability services in section 12 of the DSA. Currently, these include: accommodation support services; respite services; community support services; community access; and advocacy or information services or services that provided alternative forms of communication.

The NDIA has made changes to the support clusters, now referred to as registration groups. The Regulation gives effect to these changes made by the NDIA.

This update to the prescription of NDIS disability services in the Regulation will ensure providers delivering those NDIS services will be required to comply with the safeguards contained in the DSA. These legislative safeguards include a complaints management system, criminal history screening and a restrictive practices framework.

This will ensure that during transition to the NDIS, all people with disability in receipt of specialist disability services will be protected by the same level of safeguards under the DSA.

Criminal history screening

One of the safeguards is the criminal history screening provisions under the DSA. People who are employed or proposed to be employed by DCCSDS, DCCSDS funded non-government organisations, or non-government organisations funded under an NDIS participant's plan need to undergo criminal history screening and hold a current Yellow Card or exemption.

The DSA requires a prescribed fee to accompany an application made under its criminal history screening provisions. Fees set out in the Regulation are charged under this regime to help recover costs associated with conducting criminal history screening and issuing a notice. Fees apply to an:

- application for a prescribed notice about an engaged person (s52 of the DSA);
- application to cancel a negative notice or negative exemption notice (s82);
- application for a replacement positive notice, positive notice card or positive exemption notice (s92); and
- application for an eligibility declaration by a person who is disqualified (s99).

An additional policy objective of the Regulation is to increase the fees associated with applications for criminal history screening (obtaining a Yellow Card) for the financial year 2017-18.

The *Queensland Government Principles for Fees and Charges* requires agencies to have processes in place to ensure that fees maintain their value over time.

Where regular comprehensive review is not cost effective or no specific indexation method was approved by Cabinet Budget Review Committee, then agencies should apply the Government indexation rate for fees. The indexation rate published in the *Financial Circular 2016-17* by Queensland Treasury for increase in fees from 1 July 2017 to 30 June 2018 is 3.5 per cent.

Other proposed changes compared to the Disability Services Regulation 2006 (repealed)

Section 6 (documents to be sighted as proof of identity in an application for criminal history screening) is amended to also apply to NDIS non-government service providers.

Section 7 is also intended to apply to NDIS non-government service providers. Accordingly, it contains an update to the definition of 'provider number' to also capture a unique registration number allocated by the National Disability Insurance Agency to the NDIS non-government service provider.

Achievement of policy objectives

The Regulation is consistent with the policy objectives of the DSA to provide and fund disability services that are safe, accountable and responsive to the needs of people with disability.

The Regulation achieves the policy objective by remaking the Disability Services Regulation:

- To avoid the process of seeking a further exemption from expiry of the Regulation during 2017 and 2018, while the DSA remains under review; and
- To provide opportunity for a review of the Regulation to ensure the language and style of the provisions are contemporary.

Schedule 1 of the Regulation is updated to ensure the list of NDIS disability support services is current.

The Regulation also applies the annual government indexation rate of 3.5 per cent to comply with the government indexation policy, *Queensland Government Principles for Fees and Charges*, for the process of applying, cancelling, replacing, or seeking an eligibility declaration in relation to Yellow Cards for the financial year 2017-18.

Consistency with policy objective of authorising law

The Regulation gives effect to section 239 of the DSA, which provides for regulation making powers.

The Regulation gives effect to the intention of sections 12, 14 and 16A of the DSA. The Regulation is consistent with the objectives of the DSA as it ensures that disability services are safe, accountable and respond to the needs of people with disability.

The Regulation also gives effect to sections 52, 82, 92 and 99 of the DSA, which provide for regulation to be made about fees in relation to criminal history screening.

Inconsistency with policy objectives of other legislation

There is no inconsistency with the policy objectives of other legislation.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives, pending the consideration of any amendments to the DSA arising from a review of that Act, which is expected to be conducted during 2017 and throughout 2018.

Benefits and costs of implementation

The costs associated with the implementation of this Regulation will be met within existing resources.

The increase to Yellow Card fees assists DCCSDS to continue to meet the costs to provide criminal history screening, while maintaining a proportionate and sustainable fee structure.

There are no additional implementation costs to government in indexing the Yellow Card fees.

Consistency with fundamental legislative principles

The Regulation is consistent with the fundamental legislative principles as defined in section 4 of the *Legislative Standards Act 1992*.

Consultation

Consultation has been undertaken with the Department of the Premier and Cabinet and Queensland Treasury.

The changes meet an agency-assessed exclusion category and accordingly do not require consultation with the Office of Best Practice Regulation, Queensland Productivity Commission.