

# **Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020**

Explanatory notes for SL 2020 No. 254

made under the

*Disability Services Act 2006*

## **General Outline**

### **Short title**

*Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020*

### **Authorising law**

*Disability Services Act 2006*, sections 41A and 239.

### **Policy objectives and the reasons for them**

The objective of the *Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020* (the Amendment Regulation) is to amend the *Disability Services Regulation 2017* (DSR) to exempt relevant residential aged care (RAC) providers providing NDIS supports to NDIS participants, from screening requirements under the *Disability Services Act 2006* (DSA), from 1 December 2020.

#### ***Reasons for the policy objectives***

Under the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*, approved RAC providers under the *Aged Care Act 1997* (Cth) (the Aged Care Act) are currently exempt from registration under the *National Disability Insurance Act 2013* (Cth) (the NDIS Act) in order to provide certain NDIS supports and services to NDIS participants. Instead, they are regulated under the aged care system.

This exemption lapses at the end of 30 November 2020 and certain requirements under the NDIS will apply to RAC providers from 1 December 2020.

This change to the DSR will enable RAC providers to continue to be exempt from worker screening requirements under the DSA on the basis that they will have already had an aged care provider check.

This reflects the NDIS worker screening transitional arrangements previously agreed to and implemented by the Commonwealth, under which particular pre-existing employment checks are recognised as acceptable checks for registered NDIS providers until NDIS worker screening commences. This includes disability checks under the yellow card system under part 5 of the DSA, working with children checks under the *Working With Children (Risk Management and Screening) Act 2000*, and registration as a health practitioner under the *Health Practitioner Regulation National Law*.

The Amendment Regulation is consistent with this agreed existing policy, and will provide that, from 1 December 2020 and until NDIS worker screening commences, RAC providers continue not to be subject to Queensland's yellow card screening system. This will also ensure the DSA remains consistent with the policy intent of the proposed transitional arrangements for RAC providers under the WS Rules.

## **Achievement of policy objectives**

Under the regulation-making head of power under sections 41A and 239 of the DSA, the Amendment Regulation will amend the DSR to recognise that RAC providers will continue to be exempt from screening requirements.

The Amendment Regulation will ensure Part 5 of the DSA remains consistent with transitional arrangements adopted to date for worker screening under the NDIS, by clarifying that RAC providers do not require yellow card screening prior to commencement of NDIS worker screening.

The Amendment Regulation is to take effect from 1 December 2020 which is consistent with the commencement of the changes at a Commonwealth level to bring aged care providers within the regulatory framework under the NDIS.

## **Consistency with policy objective of authorising law**

The Amendment Regulation is consistent with the main objects of the DSA to ensure that Queensland's disability legislation operates effectively in conjunction with the NDIS regulatory framework.

## **Inconsistency with policy objectives of other legislation**

The Amendment Regulation is consistent with the policy objectives of other legislation.

## **Alternative ways of achieving policy objectives**

There are no alternative ways of achieving the policy objective. To the greatest extent possible, the Amendment Regulation ensures that Queensland's legislation supports, and is consistent with, existing policy regarding transitional arrangements for worker screening under the NDIS.

## **Benefits and costs of implementation**

The Amendment Regulation will provide a mechanism for the smooth and effective transition of RAC providers into the NDIS. This is achieved by ensuring that, from 1 December 2020, relevant RAC providers are not required to obtain a yellow card or yellow card exemption for relevant workers. The Amendment Regulation maintains the existing screening requirements for workers on a transitional basis so as not to disrupt service provision, and thus has no financial implications.

## **Consistency with fundamental legislative principles**

The Amendment Regulation is consistent with fundamental legislative principles (FLPs) under the *Legislative Standards Act 1992* (LSA).

## **Consultation**

The Commonwealth Department of Social Services (DSS) is responsible for the transitional arrangements for RAC providers and is consulting on these requirements.

The Amendment Regulation is of a savings nature and does not implement new policy. It has therefore not been necessary to undertake separate consultation on the Amendment Regulation.

The Amendment Regulation meets an agency-assessed exclusion (Category (d) – Regulatory proposals of a savings nature). Accordingly, no further regulatory impact assessment is required under the Queensland Government Guide to Better Regulation.