

Disability Services (Transitional) Regulation 2021

Explanatory notes for SL 2021 No. 3

made under the

Disability Services Act 2006

General Outline

Short title

Disability Services (Transitional) Regulation 2021

Authorising law

Disability Services Act 2006, section 393

Policy objectives and the reasons for them

The objective of the *Disability Services (Transitional) Regulation 2021* (Transitional Regulation) is to provide transitional arrangements for worker screening requirements for relevant residential aged care (RAC) providers and workers providing supports or services under the National Disability Insurance Scheme (NDIS) to participants that are also receiving residential care from the provider.

Reasons for policy objectives

From 1 February 2021, nationally consistent worker screening under the NDIS will commence in Queensland, under the *Disability Services and Other Legislation (Worker Screening) Amendment Act 2020*.

From 1 December 2020, RAC providers that support NDIS participants have transitioned to the Commonwealth NDIS legislative framework under the *National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 2020* (Transitional Rules). The Transitional Rules deem the following providers as registered NDIS providers under the *National Disability Insurance Scheme Act 2013 (Cwth)* (NDIS Act): an approved provider under the *Aged Care Quality and Safety Commission Act 2018 (Cwth)*, that is not a registered NDIS provider and is providing residential care under the *Aged Care Act 1997 (Cwth)* (Aged Care Act), on a permanent basis, to a resident that is also an NDIS participant.

As part of the transition to the Commonwealth regulatory framework, RAC providers must meet worker screening obligations as a condition of registration under the NDIS Act and *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018* (WS Rules). However, the Transitional Rules provide transitional arrangements under the WS Rules for RAC providers. These arrangements recognise an aged care provider check, obtained prior to 1 February

2021 and not more than 3 years old, as an acceptable check for the purposes of worker screening under the NDIS.

The Transitional Regulation will reflect the transitional arrangements under the WS Rules and enable RAC providers in Queensland to meet their screening obligations based on their aged care provider check.

Achievement of policy objectives

To achieve its objective, the Transitional Regulation will reflect the transitional arrangements for RAC providers under the WS Rules. This will ensure that RAC providers that comply with existing screening obligations under the Aged Care Act are exempt from Queensland's offences and penalties for NDIS worker screening under the *Disability Services Act 2006* (DSA) for a specified period.

The Amendment Regulation provides that despite sections 53 and 54 of the DSA, which provide that it is an offence for a registered NDIS provider to engage a person in a risk assessed role without an NDIS clearance (and the corresponding offence for the worker), a RAC provider may do so, and the person may work in that role, if the provider:

- complies with the *Accountability Principles 2014 (Cwth)* (the Accountability Principles) made under the Aged Care Act for the person; and
- has obtained a police certificate for the person, issued before 1 February 2021 which is less than 3 years old. This also aligns with the expiry of the Transitional Regulation after 3 years.

The RAC provider and worker will not be able to rely on the transitional arrangement if a relevant event occurs. This means if the RAC provider is no longer able to meet certain ongoing obligations under the Accountability Principles in relation to the worker, or once the person makes a disability worker screening application that is decided, withdrawn or an interim bar is imposed. This includes either an NDIS or State disability worker screening application. This recognises that the person does not receive the benefit of the transitional arrangement once they have entered the disability worker screening system and a relevant event occurs.

The Transitional Regulation will commence from 1 February 2021 to align with the commencement of NDIS worker screening in Queensland.

Consistency with policy objective of authorising law

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

Inconsistency with policy objectives of other legislation

The Transitional 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. The Transitional Regulation ensures that Queensland's legislation supports, and is consistent with, transitional arrangements for RAC

providers to meet their worker screening obligations as registered NDIS providers under the WS Rules.

Benefits and costs of implementation

The Transitional Regulation will support the transitional approach in the WS Rules by ensuring the smooth and effective transition of RAC providers, and their workers, into NDIS worker screening. This is achieved by allowing RAC providers, and their workers in a risk assessed role, to rely on screening requirements under the Aged Care Act for a transitional period if they already have a police check, instead of immediately requiring an NDIS clearance at 1 February 2021. As the Transitional Regulation maintains existing screening requirements for workers on a transitional basis, it will ensure that any disruption to service delivery is minimised. The financial implications for RAC providers and workers, who will need to apply for an NDIS or State disability worker screening clearance, is minimised due to the gradual transition of workers to the new screening requirements.

Consistency with fundamental legislative principles

The Transitional 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 making of the Transitional Rules and consulted all states and territories, including on amendments to the WS Rules for RAC providers.

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