

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

Human Rights Certificate

Prepared in accordance with Part 3 of the *Human Rights Act 2019*

In accordance with section 41 of the *Human Rights Act 2019*, I, Craig Crawford, Minister for Seniors and Disability Services and Minister for Aboriginal and Torres Strait Islander Partnerships, provide this human rights certificate with respect to the *Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020* made under the *Disability Services Act 2006* (the DSA).

In my opinion, the *Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020* is compatible with the human rights protected by the *Human Rights Act 2019*. I base my opinion on the reasons outlined in this statement.

Overview of the Subordinate Legislation

The objective of the amendment in 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* (the DSR) to exempt relevant residential aged care (RAC) providers from the worker screening requirements under the *Disability Services Act 2006*. This is consistent with the existing policy relating to worker screening under the National Disability Insurance Scheme (NDIS) that recognises existing screening processes on a transitional basis.

RAC providers are approved providers under the *Aged Care Quality and Safety Commission Act 2018* (Cth) and may provide supports or services to an NDIS participant who is also approved as a recipient of residential care under the *Aged Care Act 1997* (Cth) (the Aged Care Act). RAC providers are currently exempt from the requirement to be registered under the *National Disability Insurance Act 2013* (Cth) (the NDIS Act) in order to provide certain supports and services to NDIS participants.

This exemption will lapse at the end of 30 November 2020. From 1 December 2020, RAC providers will be required to comply with NDIS registration requirements.

Part 5 of the DSA provides for screening of particular persons engaged by the department, funded service providers or registered NDIS providers under the yellow card screening system.

The Amendment Regulation ensures that Part 5 of the DSA, which sets out worker screening requirements under the yellow card system for certain disability service providers, does not apply to RAC providers that are also registered NDIS providers, and which are providing residential care and NDIS supports or services to an NDIS participant, during the transition to NDIS worker screening.

The Amendment Regulation clarifies that RAC providers do not require yellow card screening and as such, is consistent with the current approach to recognise existing checks for the purpose of transition to worker screening under the NDIS. RAC providers will have also undertaken screening through an acceptable aged care provider check.

The DSR amendment will take effect on 1 December 2020 to align with changes to the Commonwealth regulations.

Human Rights Issues

Human rights relevant to the subordinate legislation (Part 2, Division 2 and 3 *Human Rights Act 2019* (HR Act))

In my opinion, the human rights under the HR Act that are relevant to the Amendment Regulation are:

- Recognition and equality before the law (section 15 of the HR Act).

The right to recognition and equality before the law is relevant to the Amendment Regulation as the provision under the DSR will mean that different screening requirements are maintained in certain aged care settings, depending on whether the provider engages a person to work with an NDIS participant in an aged care residential facility. Despite RAC providers being recognised as registered NDIS providers because they are providing NDIS supports to an NDIS participant that is a resident, these providers will not be required to ensure their workers hold a valid disability worker screening check at 1 December 2020. These arrangements will be reconsidered when NDIS worker screening commences in Queensland.

RAC providers have obligations under the Aged Care Act to ensure that relevant staff members and volunteers they engage have been subject to a police check, have not been convicted of certain offences and hold a police certificate that is not more than 3 years old. Accordingly relevant RAC providers already have to ensure persons in risk assessed roles hold an acceptable aged care provider check.

As the Amendment Regulation is of a savings nature and is made to provide for appropriate transitional arrangements, and does not expand the scope of yellow card screening under the DSA in relation to RAC providers, I believe that the Amendment Regulation is compatible with the right to recognition and equality before the law and that further analysis is not required.

Conclusion

I consider that the *Disability Services (Exclusion of Approved Aged Care Providers from Screening) Amendment Regulation 2020* is compatible with the *Human Rights Act 2019* because it raises human rights issues but does not limit human rights.

Craig Crawford

Minister for Seniors and Disability Services and
Minister for Aboriginal and Torres Strait Islander Partnerships