

Disability Services (Transitional) Regulation 2021

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 (Transitional) Regulation 2021* (Transitional Regulation) made under the *Disability Services Act 2006* (DSA).

In my opinion, the Transitional Regulation as tabled in the Legislative Assembly, 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 Transitional Regulation is to provide a transitional arrangement regarding worker screening obligations of relevant residential aged care (RAC) providers and workers in Queensland during transition to worker screening under the National Disability Insurance Scheme (NDIS).

A RAC provider is an approved provider under the *Aged Care Quality and Safety Commission Act 2018* (Cth), that is a registered NDIS provider and is providing residential care under the *Aged Care Act 1997* (Cth) (Aged Care Act), on a permanent basis, to a resident that is also an NDIS participant. RAC providers were previously exempt from registration under the NDIS but since 1 December 2020, have been deemed as registered NDIS providers. This means they are subject to conditions of registration, such as workers screening obligations.

The *National Disability Insurance Scheme (Practice Standards—Worker Screening) Rules 2018* (WS Rules) includes transitional arrangements, to enable RAC providers to use a pre-existing screening check under the Aged Care Act to meet their screening obligations under the NDIS. The Transitional Regulation will reflect the transitional arrangements under the WS Rules, to ensure that when NDIS worker screening commences in Queensland from 1 February 2021, workers of RAC providers are not immediately required to obtain an NDIS clearance from that date.

The Transitional Regulation will exempt RAC providers from offences regarding the mandatory scope of worker screening under Part 5 of the DSA, if they meet certain screening requirements in the *Accountability Principles 2014* made under the Aged Care Act. This includes the requirement to obtain a police certificate, before 1 February 2021, that is not more than 3 years old. A RAC provider (and their workers) will not be able to rely on the Transitional Regulation if a relevant event occurs, for example, if the worker makes a disability worker screening application that is decided under the new framework. The Transitional Regulation will be in force for 3 years.

Human Rights Issues

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

In my opinion, recognition and equality before the law (section 15 of the HR Act) is relevant to the Transitional Regulation.

The right to recognition and equality before the law refers to the right of all individuals to be treated equally before the law, including equal protection of the law, without discrimination. This right is engaged under the Transitional Regulation, as it will impose different screening requirements for workers in residential aged care settings. A RAC provider that meets the screening obligations under the *Accountability Principles 2014* and pursuant to the WS Rules, will not be required to obtain an NDIS worker screening check from 1 February 2021, for up to three years after the time their police certificate was issued. However, a worker of a RAC provider that is also a registered NDIS provider who has not obtained an appropriate check under the transitional arrangements will be required to obtain an NDIS worker screening check immediately from 1 February 2021.

The conditions under the *Accountability Principles 2014* require RAC providers to ensure that relevant staff members and volunteers are subject to a police check that is not more than 3 years old and have not been convicted of certain offences. This aligns with the existing transitional policy that allows NDIS providers to use pre-existing employment screening checks, on a transitional basis, to meet worker screening obligations under the NDIS (such as use of a working with children check or current registration as a health practitioner).

As the Transitional Regulation is made to correspond with transitional arrangements under the WS Rules, it ensures RAC providers that meet existing screening obligations are subject to a smooth transition to NDIS worker screening and does not impose permanent changes to the scope of screening. Therefore I believe that the Transitional 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 (Transitional) Regulation 2021* is compatible with the HR Act because it does not limit, restrict or interfere with certain human rights, but those limitations are reasonably justified in a free and democratic society based on human dignity, equality and freedom.

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