



National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018

made under item 81 of Schedule 1 of the

National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017

Compilation No. 1

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About this compilation

This compilation

This is a compilation of the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018* that shows the text of the law as amended and in force on 1 December 2020 (the **compilation date**).

The notes at the end of this compilation (the **endnotes**) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

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Part 1—Preliminary

1 Name

This instrument is the *National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018*.

3 Authority

This instrument is made under item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*.

4 Definitions

- (1) In this instrument:

Act means the *National Disability Insurance Scheme Act 2013*.

residential care has the same meaning as in the *Aged Care Act 1997*.

transitioned provider: see subsection 7(4).

transitioned RAC provider: see subsection 12(4).

- (2) Other expressions that are used in the Act have the same meaning, when used in this instrument, as in the Act.

Section 5

Part 2—Transitioning applicants and providers in participating jurisdictions

5 Purpose of this Part

This Part is made for the purposes of item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*.

6 Applications for registration pending at transition time are taken to have been refused

- (1) This section sets out what happens to an application to be a registered provider of supports under section 69 of the Act if:
 - (a) the host jurisdiction in which the supports will be provided, or the funding for supports will be managed, becomes a participating jurisdiction at a particular time (the *transition time*); and
 - (b) the application is pending at the transition time.

Note: For the meaning of *host jurisdiction*, see section 10 of the Act, and for the meaning of *participating jurisdiction*, see section 10A of the Act.

- (2) To the extent that the application is for either or both of the following:
 - (a) managing the funding of supports under plans for participants in the participating jurisdiction;
 - (b) the provision of supports to participants in the participating jurisdiction;the application is taken, immediately after the transition time, to have been refused by the CEO.
- (3) To the extent that the application is not covered by subsection (2), the application may continue to be dealt with under the Act.

7 Transitioning registered providers of supports

Providers to whom this section applies

- (1) This section applies to a person or entity if:
 - (a) at a particular time (the *transition time*), the person or entity is approved, as a registered provider of supports, to do either or both of the following:
 - (i) manage the funding for supports under a participant's plan;
 - (ii) provide supports to a participant; and
 - (b) at the transition time, the host jurisdiction in which the participant lives becomes a participating jurisdiction.

Note: For the meaning of *host jurisdiction*, see section 10 of the Act, and for the meaning of *participating jurisdiction*, see section 10A of the Act.

Transition of registered providers of supports to registered NDIS providers

- (2) Immediately after the transition time:
- (a) the person or entity ceases to be a registered provider of supports to participants in the participating jurisdiction; and
 - (b) the Commissioner is taken to have decided to register the person or entity as a registered NDIS provider under section 73E of the Act in the participating jurisdiction in relation to:
 - (i) managing the funding for supports under plans that the person or entity was, immediately before the transition time, approved to manage; and
 - (ii) each class of supports in respect of which the person or entity was, immediately before the transition time, approved to provide; and
 - (iii) each class of persons in respect of which the approval, immediately before the transition time, applied.

Note: The Commissioner must give a certificate of registration to the provider (see paragraph 73E(4)(b) of the Act). The certificate must specify the period for which the registration is in force (see paragraph 73E(5)(e) of the Act).

- (3) Subsection 73E(4) of the Act applies to the decision as if paragraph (a) of that subsection were omitted.

Note: This means that the Commissioner is not required to give written notice of the decision to register, nor to provide reasons for the decision.

- (4) A person or entity who is a registered NDIS provider under the Act because of paragraph (2)(b) of this section is a ***transitioned provider***.
- (5) To avoid doubt, the person or entity ceases to be a transitioned provider if:
- (a) the person or entity makes an application under section 73C of the Act and the Commissioner makes a decision under section 73E of the Act to register, or not to register, the person or entity as a registered NDIS provider; or
 - (b) the registration of the provider is revoked under section 73P of the Act; or
 - (c) unless section 73K of the Act applies—the period specified for the purposes of paragraph 73E(5)(e) of the Act expires.

Act applies to transitioned providers, subject to modifications

- (6) The Act applies in relation to a transitioned provider, subject to the modifications in section 9.

Registration in other jurisdictions not affected

- (7) To avoid doubt, this section does not affect the continuity, on and after the transition time, of the registration of a transitioned provider as a registered provider of supports to participants other than in a participating jurisdiction.

Section 8

8 Modifications—matter that must be included in a participant’s plan

- (1) This section applies if:
 - (a) at a particular time (the **transition time**), the funding for supports under a participant’s plan is managed by the Agency; and
 - (b) the participant is being provided with the supports in a participating jurisdiction at the transition time.
- (2) For the purposes of subsection 33(6) of the Act, as inserted by item 17 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*, the participant’s plan is taken, on and after the transition time, to provide that the supports are to be provided only by a registered NDIS provider.

9 Modifications—applications and review of decisions

- (1) Paragraphs 73N(1)(b) and 73P(1)(b) of the Act, as inserted by item 48 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*, have effect in relation to a transitioned provider as if the application made by the provider to the CEO under section 69 of the Act were an application made to the Commissioner under section 73C of the Act.
- (2) The following decisions of the Commissioner are not **reviewable decisions** under the Act:
 - (a) a decision under section 73G of the Act to impose conditions on the registration of a transitioned provider;
 - (b) a decision under section 73L of the Act to vary, or refuse to vary, the registration of a transitioned provider.

10 NDIS Provider Register

If the Agency held information in relation to a provider at the time the provider became a transitioned provider, the Agency may disclose the information to the Commissioner for the purposes of establishing and maintaining the NDIS Provider Register.

Part 3—Transitioning certain residential aged care providers

11 Purpose of this Part

This Part is made for the purposes of item 81 of Schedule 1 to the *National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Act 2017*.

12 Certain residential aged care providers are taken to be registered NDIS providers

Providers to whom this section applies

- (1) This section applies to a person or entity if, on 1 December 2020:
 - (a) the person or entity is an approved provider (within the meaning of the *Aged Care Quality and Safety Commission Act 2018*); and
 - (b) the person or entity is providing residential care on a permanent basis to a participant; and
 - (c) the participant is approved as a recipient of residential care under Part 2.3 of the *Aged Care Act 1997*; and
 - (d) the person or entity is neither a registered NDIS provider nor a registered provider of supports.

Transition of residential aged care providers to registered NDIS providers

- (2) On 1 December 2020, the Commissioner is taken to have decided to register the person or entity as a registered NDIS provider under section 73E of the Act in respect of providing assistance with daily life tasks in a group or shared living arrangement under participants' plans.

Note 1: Assistance with daily life tasks in a group or shared living arrangement is the class of support referred to in item 15 of the table in subsection 20(3) of the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Note 2: The Commissioner must give a certificate of registration to the provider (see paragraph 73E(4)(b) of the Act). The certificate must specify the period for which the registration is in force (see paragraph 73E(5)(e) of the Act).

- (3) Subsection 73E(4) of the Act applies to the decision as if paragraph (a) of that subsection were omitted.

Note: This means that the Commissioner is not required to give written notice of the decision to register, nor to provide reasons for the decision.

- (4) A person or entity who is a registered NDIS provider under the Act because of subsection (2) of this section is a **transitioned RAC provider**.

- (5) To avoid doubt, the person or entity ceases to be a transitioned RAC provider if:

Section 13

- (a) on or after 1 December 2020:
 - (i) the person or entity makes an application under section 73C of the Act to be a registered NDIS provider; and
 - (ii) the Commissioner makes a decision under section 73E of the Act to register, or not to register, the person or entity as a registered NDIS provider; or
- (b) the registration of the provider is revoked under section 73P of the Act; or
- (c) unless section 73K of the Act applies—the period specified for the purposes of paragraph 73E(5)(e) of the Act expires.

13 Applications for registration pending immediately before 1 December 2020—providing multiple supports

- (1) This section applies if:
 - (a) before 1 December 2020, a person or entity to which section 12 of this instrument applies has made an application under section 73C of the Act to be a registered NDIS provider; and
 - (b) the application relates to providing supports other than, or in addition to, the supports mentioned in subsection 12(2) (providing assistance with daily life tasks in a group or shared living arrangement under participants' plans); and
 - (c) the application is pending immediately before 1 December 2020.
- (2) The application has effect, on and after 1 December 2020, as if it were an application made under section 73M of the Act, and in compliance with subsection (2) of that section, for a variation to the person or entity's registration as a registered NDIS provider.

14 Applications for registration pending immediately before 1 December 2020—applications relating solely to providing assistance with daily life tasks

- (1) This section applies if:
 - (a) before 1 December 2020, a person or entity to which section 12 of this instrument applies has made an application under section 73C of the Act to be a registered NDIS provider; and
 - (b) the application is only to provide the supports mentioned in subsection 12(2) (providing assistance with daily life tasks in a group or shared living arrangement under participants' plans); and
 - (c) the application is pending immediately before 1 December 2020.
- (2) The application is taken to have been withdrawn on 1 December 2020.

Note: The applicant is taken to be a registered NDIS provider under subsection 12(2).

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Name	Registration	Commencement	Application, saving and transitional provisions
National Disability Insurance Scheme (Quality and Safeguards Commission and Other Measures) Transitional Rules 2018	18 May 2018 (F2018L00630)	1 July 2018 (s 2(1) item 1)	
National Disability Insurance Scheme Legislation Amendment (Transitioning Aged Care Providers) Rules 2020	30 Nov 2020 (F2020L01512)	1 Dec 2020 (s 2(1) item 1)	—

Endnotes

Endnote 4—Amendment history

Endnote 4—Amendment history

Provision affected	How affected
Part 1	
s 2	rep LA s 48D
s 4	am F2020L01512
Part 3	
Part 3	ad F2020L01512
s 11	ad F2020L01512
s 12	ad F2020L01512
s 13	ad F2020L01512
s 14	ad F2020L01512