

EXPLANATORY STATEMENT

Issued by the Authority of the Minister for Social Services

National Disability Insurance Scheme Act 2013

*National Disability Insurance Scheme (Facilitating the Preparation of
Participants' Plans—Northern Territory) Rules 2016*

Section 209 of the *National Disability Insurance Scheme Act 2013* (the Act) provides that the Minister may, by legislative instrument, prescribe matters required or permitted by the Act to be prescribed or which are necessary or convenient to be prescribed in order to carry out or give effect to the Act.

The *National Disability Insurance Scheme (Facilitating the Preparation of Participants' Plans—Northern Territory) Rules 2016* (the Phasing Rules—Northern Territory) are made pursuant to sections 32 and 32A (other than subsection 32A(4)) of the Act.

The Phasing Rules—Northern Territory are about the order in which the CEO of the National Disability Insurance Agency will commence the facilitation of the preparation of plans for different classes of participants in the Northern Territory. They should be read in conjunction with the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016*, which set out when people residing in particular areas of the Northern Territory will be able to become participants: a person will only be able to have a plan once they are a participant.

In making the Phasing Rules—Northern Territory, the Minister has had regard to the financial sustainability of the National Disability Insurance Scheme (the scheme) as required under subsection 209(3) of the Act.

The Phasing Rules—Northern Territory are Category B rules for the purposes of the Act. Accordingly the Commonwealth and the Government of the Northern Territory have agreed to the making of the rules (see subsection 209(5)(b) of the Act).

Commencement

The Phasing Rules—Northern Territory commence on the day after the instrument is registered.

Consultation

The Phasing Rules—Northern Territory were developed in close consultation with the Government of the Northern Territory.

The Phasing Rules—Northern Territory are a legislative instrument for the purposes of the *Legislation Act 2003*.

Explanation of provisions

The Phasing Rules—Northern Territory have three Parts:

- **Part 1** explains what the Rules are about;
- **Part 2** deals with the preparation of plans for residents of the Northern Territory; and
- **Part 3** deals with other matters, including interpretation of the Phasing Rules—Northern Territory.

Part 1 – What these Rules are about

Paragraphs 1.1 to 1.5 are explanatory and contextual. The phasing process is based on an agreement that has been reached between the Commonwealth and the Government of the Northern Territory and is intended to give effect to that agreement.

Part 2 – Preparation of plans for residents of the Northern Territory

Paragraphs 2.1 to 2.3 explain how the CEO is to commence facilitating the preparation of a plan for a participant residing in the Northern Territory. Paragraph 2.2 provides that the process for commencing the facilitation of the preparation of plans for participants in the Northern Territory is set out in the table in paragraph 2.5. The CEO is generally required to deal with each class sequentially; facilitation for a class will generally be commenced once the CEO has decided that the Agency has the capacity to do so.

Paragraph 2.4 summarises the effect of subsection 32A(3) of the Act.

Paragraph 2.5 contains a table which sets out six classes of participants residing in the Northern Territory and the circumstances in, or period within, which the CEO is required to commence the facilitation of the preparation of those participants' plans.

The classes and circumstances in which the CEO is to commence facilitation have been defined jointly with the Government of the Northern Territory to ensure that there is a smooth and steady transition for participants within these classes from the service or support they previously received to the scheme. This arrangement will provide certainty for:

- individuals about when they will enter the scheme;
- providers to assist their business planning; and
- governments to ensure that they can plan for the future of affected programs and the expected impact on their budgets.

The CEO has the discretion to delay the commencement of Classes 2 to 6 according to the Agency's capacity to begin facilitating new plans. This discretion would allow the CEO to respond to unforeseen events affecting the Agency in the Northern Territory, or unanticipated levels of demand within a class.

The details outlined in the table in paragraph 2.5 are intended to give effect to an agreement between the Commonwealth and the Government of the Northern Territory.

Paragraph 2.6 specifies that if the CEO is considering using the discretion to delay the opening of a class, he or she must consult with the Commonwealth and the Government of the Northern Territory on the implications of that decision, including for the funding arrangements agreed between both governments. The CEO must use his or her best endeavours to reach an agreement with both governments about this decision.

Paragraph 2.7 provides special rules for participants residing in the same Supported Accommodation household as other participants. The CEO is to have regard to the intensive support these participants may require in the planning process, including the time the planning process may take. In addition, where practicable, the CEO is required to commence facilitating the preparation of plans for all participants in the household at the same time.

Part 3 – Other matters

Citation

Paragraph 3.1 specifies the citation for the Phasing Rules—Northern Territory.

Interpretation

Paragraphs 3.2 to 3.5 give guidance on interpretation and definitions for certain terms used in the Phasing Rules—Northern Territory.

Statement of Compatibility

Prepared in accordance with Part 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

This legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011* (Cth).

Overview

This instrument sets out the circumstances in which the facilitation of the preparation of National Disability Insurance Scheme participants' plans will commence in the Northern Territory. The instrument identifies classes of participants in the Northern Territory and sets out the circumstances in, or periods within, which the CEO is to commence the facilitation of the preparation of those participants' plans.

Progressive implementation

Consistent with the recommendations of the Productivity Commission, the scheme will be implemented progressively. The initial trial sites were the Hunter region in New South Wales, the Barwon region in Victoria, South Australia and Tasmania for specified age cohorts, the Australian Capital Territory, the Barkly region in the Northern Territory and the Perth Hills area in Western Australia. The scheme will now be fully operational in the Northern Territory.

In the Northern Territory there will be a gradual intake of participants to ensure that all participants are well supported as they enter, or make the transition to, the scheme.

Human rights implications

The Phasing Rules—Northern Territory engage the following human rights:

- The rights of persons with disabilities in the Convention on the Rights of Persons with Disabilities (CRPD), especially Articles 3 (general principles), 4 (general obligations), 9 (accessibility), 19 (living independently and being included in the community) and 23 (respect for home and the family);
- Article 10 of the International Covenant on Economic, Social and Cultural Rights (ICESCR);
- Articles 2 and 26 of the International Covenant on Civil and Political Rights (ICCPR); and
- The rights of children in the Convention on the Rights of the Child (CRC), especially Articles 2, 9, 18 and 23.

General Principles underpinning the CRPD

The CRPD recognises the barriers that people with disability may face in realising their rights. While the rights under all human rights treaties apply to everyone, including people with disability, the CRPD applies human rights specifically to the context of people with disability.

The establishment of the scheme promotes the rights of people with disability in Australia by providing access to nationally consistent funding and support to help them realise their goals and aspirations, and to participate in the social and economic life of the Australian community.

The preamble of the CRPD, and the General Principles set out in Article 3, reflect the need for the respect for the inherent dignity, individual autonomy (including the freedom to make one's own choices and the independence of the person), the need for people with disability to be able to participate fully and effectively and be included in society, the need for respect for difference and acceptance of people with disability as part of human diversity and providing people with disability the opportunity to be involved actively in decision-making processes about policies and programmes, including those directly concerning them.

The objectives and general principles of the Act include:

- People with disability should be supported to participate in, and contribute to social and economic life to the extent of their ability;
- People with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime; and
- People with disability should be supported to receive reasonable and necessary supports, including early intervention supports.

The Phasing Rules—Northern Territory recognise that contributing to social and economic life to the extent of their ability is integral to participants' sense of belonging and wellbeing in their communities, a right that is promoted in Articles 3 and 19 of the CRPD.

The objects and the guiding principles of the scheme also recognise the rights of people with disability to be provided with reasonable and necessary supports to live independently, engage in the life of the community, and to have certainty that they will receive the lifelong care and support they need. The role of carers, families and other significant persons is also recognised and respected. In this way, the Phasing Rules—Northern Territory promote Article 10 of ICESCR, which requires that the widest possible protection and assistance should be accorded to the family, especially while it is responsible for the care and education of dependent children.

Progressive implementation of the scheme and the principle of non-discrimination

The right to equality and non-discrimination is protected by Article 2 of the ICCPR and Article 2 of the CRC which prohibits denying a person or child rights on certain grounds. This is reinforced in the context of human rights for people with disability by Article 3 (b) of the CRPD which provides that non-discrimination is a general principle in relation to all rights in the CRPD. As noted by the Human Rights Committee in General Comment No. 18 on equivalent rights in the ICCPR, the rights to equality and non-discrimination in the ICCPR sometimes require nation states 'to take affirmative action in order to diminish or eliminate conditions which cause or help perpetuate discrimination'.

Non-discrimination ensures that no one is denied their rights because of factors such as race, colour, sex, language, religion, political or other opinion, national or social origin, property or birth. In addition to those grounds, discrimination on certain other grounds may also be prohibited. These grounds include age, nationality, marital status, disability, place of residence within a country and sexual orientation.

Accordingly differential treatment will not constitute discrimination if the differences in treatment are aimed at achieving a legitimate purpose and are reasonable and proportionate to this purpose.

This instrument imposes additional limitations on access to reasonable and necessary supports under the scheme on the basis of residence. These restrictions are temporary in nature, and the intent of this limitation is the integrity and financial sustainability of the scheme during its transition.

Conclusion

This instrument is compatible with human rights because it advances the protection of the rights of people with disability in Australia, consistent with the CRPD. It creates additional opportunities for people with disability to exercise those rights by providing support to enable participation in the social, economic and cultural life of the community. To the extent that it limits human rights in some circumstances, those limitations are reasonable, necessary and proportionate to ensure the long-term integrity and sustainability of the scheme.