

Disability Services (Transitional) Regulation 2019

Explanatory notes for SL 2019 No.126

made under the

Disability Services Act 2006

General Outline

Short title

Disability Services (Transitional) Regulation 2019

Authorising law

Section 366 of the *Disability Services Act 2006*

Policy objectives and the reasons for them

The policy objectives of the Disability Services (Transitional) Regulation 2019 (Transitional Regulation) are to ensure that the chief executive of the Department of Communities, Disability Services and Seniors (DCDSS) is able to deal with complaints about the delivery of disability services that were made, or relate to matters that arose, before 1 July 2019.

Reasons for the policy objectives

On 1 July 2019, Queensland will become a participating jurisdiction under the *National Disability Insurance Scheme Act 2013* (Cwth) (the NDIS Act). From this time, the NDIS Quality and Safeguards Commission (the NDIS Commission) will commence operation in Queensland.

One of the functions of the NDIS Commission is to support the resolution of complaints about the provision of supports and services by all NDIS providers. However, the NDIS Commission will only have jurisdiction in relation to matters that occurred on or after 1 July 2019.

The *Disability Services and Other Legislation (NDIS) Amendment Act 2019* (DSOLA Act 2019) amended the *Disability Services Act 2006* (the DSA) to reflect that from 1 July 2019, the NDIS Commission will be responsible for managing complaints in relation to NDIS providers.

The DSOLA Act also made provision for a transitional regulation to be made to allow or facilitate the doing of anything to achieve the transition from the operation of the DSA as it was in force prior to commencement to the operation of the amended Act.

Achievement of policy objectives

To achieve its objectives, the Transitional Regulation will ensure:

- Part 3 of the *Disability Services Act 2006* continues to apply in relation to complaints made, before 1 July 2019, to the chief executive under the pre-amended Act (the *Disability Services Act 2006* as in force immediately before 1 July 2019), even if the complaint may not be made under the Act on or after 1 July 2019; and
- complaints that could have been made by a person under the pre-amended Act, but immediately before 1 July 2019 had not been made, can still be made to the chief executive under the *Disability Services Act 2006* if the complaint relates to a matter arising before 1 July 2019.

Consistency with policy objective of authorising law

The Transitional Regulation is consistent with the policy objectives of the DSA, which include to support the operation of the NDIS in Queensland and ensure the quality and safety of disability services in the context of the national regulatory framework.

Inconsistency with policy objectives of other legislation

The Transitional Regulation is consistent with the policy objectives of other legislation. It provides for the quality and safety of services for Queenslanders, consistent with the DSA and the *Community Services Act 2007*.

Alternative ways of achieving policy objectives

There is no alternative way of achieving the policy objectives. The Transitional Regulation generates the greatest net benefits for the community in that it ensures clarity in relation to the management of complaints about disability services after 1 July 2019.

Benefits and costs of implementation

DCDSS has existing processes in place for the management of complaints relating to the delivery of disability services, as well as staff familiar with the requirements. The 2019-20 Queensland State Budget included additional funding in 2019-20 for ongoing management complaints and investigations.

The costs associated with the management of existing and historical complaints by DCDSS will be met within existing funding.

Consistency with fundamental legislative principles

The Transitional Regulation is generally consistent with fundamental legislative principles (FLPs). Potential breaches of FLPs are addressed below.

Section 4(2)(b) Legislative Standards Act 1992 – Whether subordinate legislation has sufficient regard to the institution of Parliament

The Transitional Regulation may be considered a breach of the fundamental legislative principle that legislation has sufficient regard to the institution of Parliament. However, the Transitional Regulation is being made to ensure sufficient provision is made for existing complaints or complaints about matters that took place before 1 July 2019. It is necessary to allow for appropriate transitional and ongoing arrangements once the NDIS Commission commences operation in Queensland from 1 July 2019.

Consultation

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

In addition, the Commonwealth Government undertook extensive consultation between 16 February 2015 to 30 April 2015 to assess regulatory impacts on participants, suppliers and specific stakeholder groups of the NDIS QSF. The Department of Social Services prepared a Decision Regulation Impact Statement (RIS) that was provided to COAG Disability Reform Council for their decision. As the Transitional Regulation effectively implements the NDIS QSF in Queensland, further extensive consultation has not been undertaken at this time.