

# Disability Services (Specialist Disability Service Types) Declaration 2014 (No 1)

Disallowable instrument DI2014-190

made under the

Disability Services Act 1991, s 4 *What is a specialist disability service?*

## EXPLANATORY STATEMENT

Subsection 4(2) of the *Disability Services Act 1991* (the Act) empowers the Minister to declare that a type of service is a specialist disability service for the purposes of the Act.

Subsection 4(1) of the *Disability Services Act 1991* states that a specialist disability service is firstly a service that is provided specifically for people with a disability and secondly that it is a type declared by the Minister under subsection 4(2). The *Disability Services (Specialist Disability Service Types) Declaration 2014 (No 1)* establishes the specific types of services that are declared to be specialist disability services under the Act.

Subsection 5(1) of the Act further declares that a specialist disability service does not include those services that are delivered specifically to people with a disability by either the Territory or a close relative.

### Policy Context

The ACT National Disability Insurance Scheme (NDIS) Trial will commence on 1 July 2014 in tandem with the Disability Services Act as amended from 1 July 2014. Agreement was not reached on the design of a nationally consistent quality assurance and safeguarding framework prior to the commencement of the first NDIS trial sites.

In developing the Intergovernmental Agreement (IGA) for the National Disability Insurance Scheme (NDIS) Trial, it was agreed that the existing Quality Assurance frameworks and safeguarding arrangements in each State and Territory would remain for the trial period. This includes the safeguarding and quality obligations that are currently expected of Territory funded providers of disability services in the ACT.

The safeguarding and quality approach adopted during Trial in the ACT is the only instance where this framework needs to capture and oversight the full suite of relevant disability services, both those currently funded by the Territory and any new relevant market entrants.

In light of the introduction of the NDIS, the ACT will progressively cease to have a direct funding relationship with disability services as the funds transition to the National Disability Insurance Agency (NDIA). The amendments to the Act remove the reliance on a funding relationship and the requirement for disability service providers to enter into an agreement with the Minister in order to be within the scope of the regulatory regime of the Act.

The amendments to the Act provide the Territory with the mechanism and authority to maintain existing quality assurance frameworks and safeguard arrangements in the absence of a contractual relationship.

### **Defining the scope**

The term ‘specialist disability service’ (SDS) is used to identify those specialist services that are provided specifically to people with a disability, as distinct from generalist services, which also cater to, or are inclusive of, people with a disability. Schedule 1 of *Disability Services (Specialist Disability Service Types) Declaration 2014 (No 1)* sets out high level categories, under which a range of relevant service types are captured.

The ACT Government currently funds and regulates a range of disability services, excluding disability employment services. Not all of the disability services currently funded and regulated by ACT Government are funded under the Act. They sit across three Directorates; Community Services, Education and Training, and Health. Contracts from across the three Directorates will be phased out as a result of the introduction of the NDIS.

In seeking to maintain existing safeguards and quality standards, it is necessary that the *Disability Services (Specialist Disability Service Types) Declaration 2014 (No 1)* adequately capture the suite of relevant service types that are currently within the remit of the Territory. This ensures that key minimum safeguards and quality standards can continue to be mandated for in scope disability services once they are no longer contractually obliged to do so.

Importantly, this strategic approach ensures that it captures relevant service types that commence operation in the ACT post 1 July 2014 who have never had a contractual relationship with the Territory. The approach to classification in Schedule 1 is constructed in such a way that it can accommodate and capture the growth of the sector. This includes:

- o Existing providers who are seeking to diversify the suite of services they deliver but who have not previously been contracted to provide these services in the ACT; and
- o New providers whom ACT Government has never contracted. including those who operate for profit, who have entered the ACT market after 1 July 2014.

The types of Territory funded disability services are described and defined under a range of definitional conventions. Some of these stem from nationally consistent programmatic frameworks such as those under the National Program Guidelines for the Home and Community Care Program and the Disability Services National

Minimum Data Set. Others stem from funded programs that have established their own local definitional conventions. Notwithstanding the variance in naming conventions, the actual nature and ‘type’ of service provided is often funded under multiple programs.

The primary naming convention for service types will be the ‘clusters of support’ under the NDIS and their associated definitions. If a service provider elects to register with the NDIA to deliver services under the NDIS, they will be obliged to nominate the cluster/s that their service type most closely aligns with.

Registration with the National Disability Insurance Agency (NDIA) for the delivery of services is not a determinant of whether a service/activity is defined as a specialist disability service for the purposes of the Act. However, any service/activity considered a specialist disability service under the Act will also fall under one or more of the defined ‘clusters of support’ for the delivery of services under the NDIS. Schedule 1 maps specialist disability service ‘types’ with relevant NDIA ‘clusters of support’ to provide additional context but does not assume that registration with the NDIA is in any way a prerequisite or requirement for compliance with this Act.

Consistent with arrangements prior to the introduction of the NDIS, some service providers deliver service types under multiple categories. Conversely, some generic service providers that do not specialise in the provision of services to people with a disability will have one or more ‘arm’ or component of their overall service provision that is specifically for people with a disability. In these instances, those components of their operations will fall within scope of the Act and are obliged to comply with the provisions of the Act.

### **Case studies**

The following case studies are not exhaustive but provide some illustration of how the Act applies to a range of realistic scenarios.

1. If, after 1 July 2014, a participant of the NDIS purchases services from a lawn mowing agency to meet their reasonable and necessary support needs then this service will not be captured under the amended Act. This is irrespective of whether the lawn mowing service is registered with the NDIA to provide services under the NDIS or not.
2. If, after 1 July 2014, a new provider commences operations in the ACT and is specialising in delivering personal care (a program type that is currently funded) to people with a disability in their homes, then this provider will be captured under the amended Act as it is a Specialist Disability Service.
3. If, after 1 July 2014, a provider that delivers childcare in the ACT to all children (not just those with a disability) seeks to commence delivering a program specifically for children with a disability to teach trapeze skills (a program type not currently funded by the Territory) then this aspect of their overall service will not be captured under this amendment as it is not a service type that is currently funded by the Territory and is therefore out of scope.

4. If, after 1 July 2014, a provider that delivers recreational programs for older people (not just those with a disability) commences a new service delivering community access specifically for people with a disability under the age of 65 (a program type that is currently funded) then this aspect of their overall service will be captured under the amended Act as it is a Specialist Disability Service.
5. If, after 1 July 2014, a provider that delivers supported employment specifically for people with a disability (a disability program type that is funded by the Commonwealth rather than the Territory) commences a new service delivering respite specifically for people with a disability (a program type that is currently funded) then this aspect of their overall service will be captured under the amended Act as it is a Specialist Disability Service.
6. If, after 1 July 2014, a provider that delivers mental health support specifically to people with a psychosocial disability commences a new service delivering lawn-mowing services to anyone in the community (where the employees are not just people with a disability or psychosocial disability) then this aspect of their overall service will not be captured under this amendment as it is a mainstream service.

### **Key considerations**

In determining whether a disability service type is within scope of the Act, there are some important factors and rationale to take into consideration. During the Trial of the NDIS, the Territory is only able to maintain key minimum safeguards and quality standards for those service types that are the responsibility of the Territory. Service types such as disability employment services are out of scope of this legislation as the Commonwealth has responsibility for funding this service type.

Not all disability service types that are the responsibility of the Territory are within scope of the Act. At the heart of the amendments to the Act was the intention to ensure, for the period of the NDIS Trial, that key minimum safeguards and quality standards continued to apply to Territory funded services. More importantly, was the desire to offer people with a disability and the community assurance that these protections would continue to apply to specialist disability service delivery in the ACT during a time of significant change and reform.

Due to their nature and specialization, some of the disability service types that are funded by the Territory are subject to significant oversight and regulation, which exists in addition to those obligations imposed through contracts with the Territory. These oversight and regulatory frameworks are nationally consistent, highly specialized and often more extensive and rigorous than what is contained in contract.

These frameworks will also continue to apply under the NDIS. Noting the intention to:

- move towards a nationally consistent quality and safeguarding framework under the NDIS;
- ensure, in the absence of contracts, key minimum safeguards and quality standards are mandatory for those specialist disability service types for

- whom they otherwise would not apply;
- assure people with a disability and the community that the ACT Government is committed to ensuring protections continue to apply to specialist disability service providers during a time of significant change; and
- facilitate the growth of a strong and diverse market of disability service providers by not imposing unnecessary duplication or regulatory impost.

## **Conclusion**

The scope of the Act is limited by removing these service types from the definition of specialist disability services under the Act.

Specifically, these are:

- disability services delivered by health professionals registered with the Australian Health Practitioner Regulation Agency;
- home and vehicle modifications specifically for people with a disability;
- aids and equipment specifically for people with a disability;
- disability services delivered by the Territory as a provider; and
- disability services delivered in a clinical or health environment.

Considering these exemptions, a service/activity is therefore considered a specialist disability service for the purposes of the Act if:

- the type of service/activity provided is consistent with, but not limited to, those listed and described in Schedule 1; AND
- it is provided in the ACT; AND
- the activity is conducted, or the service is provided, specifically for people with a disability and/or people who are mentally impaired, mentally dysfunctional or mentally ill.