

# Disability Services Regulation 2014

## Subordinate Law SL2014–12

made under the

*Disability Services Act 1991*

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### EXPLANATORY STATEMENT

Part 5, section 12 (1) of the *Disability Services Act 1991* (the Act) empowers the Minister to make regulations for the purposes of the Act.

Part 5, section 12 (2) states that a regulation may make provision in relation to standards mentioned in section 11, including:

- (a) that the entities must comply with the standards;
- (b) provision in relation to: performance measures; monitoring compliance; enforcement of compliance; and
- (c) the consequences of failing to comply with the standards, including the creation of offences and penalties.

The ACT National Disability Insurance Scheme (NDIS) Trial will commence on 1 July 2014 in tandem with the 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 needs to capture and oversight the full suite of relevant disability services, both those currently funded by the Territory and any new in scope 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). In the current environment, funding agreements are the primary mechanism through which services are required to comply with approved standards and which mandate minimum safeguards. 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.

Section 1 names the regulation as the *Disability Services Regulation 2014*.

Section 2 states that the regulation commences on the commencement of the *Disability Services (Disability Service Providers) Amendment Act 2014*.

Section 3 describes the purpose of the Dictionary in defining certain terms used in the regulation and states that a definition applies to the entire regulation with the exception of a definition or provision that provides otherwise.

Section 4 explains that notes are explanatory and not part of the legislation, consistent with the Legislation Act.

Section 5 states that the Criminal Code applies in relation to offences against this regulation, while the Legislation Act defines the meaning of penalty units.

Section 6 requires providers to comply with relevant standards and sets the maximum penalty points for non-compliance.

Section 7 (1) to (4) empowers the director-general to require information for the purposes of monitoring quality and/or investigation of alleged failure to comply with a relevant standard. This section includes a proviso that information: is requested by written notice (a show cause notice); may include information about the provider's arrangements with other entities in relation to the provision of services; must state the (reasonable) time within which information is to be provided.

Section 7 (5) states that a specialist disability service must comply with a requirement under this section and sets the maximum penalty points for non-compliance.

A note to this section refers to the application of the privilege against self-incrimination and client legal privilege under the Legislation Act.

Section 8 (1) refers to the power of the director-general to give a provider a non-compliance notice when the director-general has grounds for believing that the provider is non-compliant with a relevant standard.

Section 8 (2 to 3) state that the non-compliance notice must be in writing and must: state the standard with which the provider is non-compliant; state what matters the provider needs to address; invite discussion of the matters with the director-general; and state the reasonable time for a response.

Section 8 (4) describes the ways in which a provider will be accepted to have responded to the non-compliance notice including: a written response to the director-general in relation to the matters identified; acts to address the non-compliance and tells the director-general in writing of the action.

Section 9 (1) describes the circumstances under which the director-general may give a provider a direction to comply with standards. These include a failure to respond to a non-compliance notice or apparent continued failure to comply despite a response to a non-compliance notice.

Section 9 (2) states that the director-general may give direction in writing that a provider: stop conduct in breach of a standard; provide the service in accordance with the standard; act to rectify any consequence of non-compliance.

Section 9 (3) to (5) state that a direction must state what matters the provider needs to address; and state a reasonable time for a response.

Section 9 (6) states that a specialist disability service must comply with a requirement under this section and sets the maximum penalty points for non-compliance.

Sections 10 (1) and (2) require a specialist disability service provider to report the circumstances of a risk where the provider has reasonable grounds to believe there is serious risk to the life, health or safety of a person with a disability to whom the provider is providing a specialist disability service.

Section 11 describes each provider's obligation for ongoing disclosure of: an investigation of the provider; arbitration, litigation or other adjudicative proceeding that could have an adverse impact on the provider's capacity to comply with the standards.

Section 12 gives power to the director-general to disclose information received under this regulation. These powers include disclosure to another government agency, whether Territory, State or Commonwealth, with functions in relation to people with disabilities where it relates to the health, safety or well-being of a person with a disability and is relevant to the functions of the other agency.

The Dictionary defines standard as that approved under section 5A.