Western Australia

Disability Services Act 1993

Disability Services Regulations 2004

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Western Australia

Disability Services Regulations 2004

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Disability Services Regulations 2004

Part 1 — General

[Heading inserted: Gazette 30 Jun 2014 p. 2394.]

1. Citation

These are the *Disability Services Regulations 2004*.

2. Commencement

These regulations come into operation on the day on which the *Disability Services Amendment Act 2004* comes into operation.

3. Nominations for Board membership (s. 7)

For the purposes of section 7(2a) of the Act, the Minister is to seek nominations for membership of the Board by notice published at least 3 weeks before nominations close in a newspaper circulating throughout the State.

4A. Disability Service Standards (s. 12)

The following Disability Service Standards, endorsed and published by the Commission in 2014 are prescribed for the purposes of section 12(1)(i) of the Act —

(a) Rights;

(b) Participation and Inclusion;

(c) Individual Outcomes;

(d) Feedback and Complaints;

(e) Service Access;

(f) Service Management.

[Regulation 4A inserted: Gazette 30 Jun 2014 p. 2394.]

4. Nominations for Council membership (s. 22)

For the purposes of section 22(3) of the Act, the Minister is to seek nominations for membership of the Council by notice published at least 3 weeks before nominations close in a newspaper circulating throughout the State.

5. Procedure for public consultation by Council (s. 23)

(1) For the purposes of section 23(1a) of the Act, the Council is to undertake consultation by calling for submissions on issues of concern to people with disability either specifically or generally —

(a) by notice in a newspaper circulating throughout the State; or

(b) on any website maintained by or on behalf of the Council.

(2) Nothing in subregulation (1) prevents the Council from also undertaking any other consultation.

[Regulation 5 amended: Gazette 11 Jun 2013 p. 2162 and 2164.]

6. Public authorities to which Part 5 does not apply (s. 27)

Part 5 of the Act does not apply to any public authority except to a public authority specified in Schedule 1.

7. Standards for disability access and inclusion plans (s. 28)

For the purposes of section 28(5) of the Act, the standards that a disability access and inclusion plan must meet are those specified in Schedule 2.

8. Information in reports about disability access and inclusion plans (s. 29)

For the purposes of section 29(4) of the Act, a report about a disability access and inclusion plan must include information relating to —

(a) progress made by the relevant public authority and any agents and contractors of the relevant public authority in achieving the desired outcomes specified in Schedule 3; and

(b) the strategies implemented by the relevant public authority to inform its agents and contractors of its disability access and inclusion plan.

9. Publication of disability access and inclusion plans (s. 29A)

For the purposes of section 29A, a public authority must publish its disability access and inclusion plan in a document that is made available —

(a) on request, at the offices of the authority —

(i) in an electronic format; and

(ii) in hard copy format in both standard and large print; and

(iii) in an audio format on cassette or compact disc;

and

(b) on request, by email; and

(c) on any website maintained by or on behalf of the authority,

and notice of which is given in a newspaper circulating throughout the State or, in the case of a local government, the district of that local government under the *Local Government Act 1995*.

10. Procedure for public consultation by authorities (s. 28)

(1) For the purposes of section 28(10) of the Act, a public authority is to undertake consultation in relation to its disability access and inclusion plan by calling for submissions either generally or specifically —

(a) by notice in a newspaper circulating throughout the State or, in the case of a local government, the district of that local government under the *Local Government Act 1995*; and

(b) on any website maintained by or on behalf of the public authority.

(2) Nothing in subregulation (1) prevents a public authority from also undertaking any other consultation.

[Regulation 10 amended: Gazette 11 Jun 2013 p. 2162-3.]

Part 2 — Trial of disability services model

[Heading inserted: Gazette 30 Jun 2014 p. 2395.]

Division 1 — General

[Heading inserted: Gazette 30 Jun 2014 p. 2395.]

11. Terms used

In this Part —

2017 expansion area means the area constituted as at 1 January 2017 by the local government districts of Bayswater, Bassendean, Chittering, Toodyay, York and Northam;

child means a person who has not reached 18 years of age;

Cockburn-Kwinana area means the area constituted as at 1 July 2014 by the local government districts of Cockburn and Kwinana;

Kimberley-Pilbara area means the area constituted as at 1 July 2017 by the local government districts of Ashburton, Broome, Derby-West Kimberley, East Pilbara, Halls Creek, Karratha, Port Hedland and Wyndam-East Kimberley;

Lower South West area means the area constituted as at 1 July 2014 by the local government districts of Augusta-Margaret River, Boyup Brook, Bridgetown-Greenbushes, Busselton, Donnybrook-Balingup, Manjimup and Nannup;

Mandurah-Rockingham area means the area constituted as at 1 July 2017 by the local government districts of Mandurah and Rockingham;

NDIS Act has the meaning given in section 26E of the Act;

participant has the meaning given in section 26E of the Act;

Perth Hills area means the area constituted as at 1 July 2017 by the local government districts of Kalamunda, Mundaring and Swan;

plan, in relation to a participant, has the meaning given in section 26I(1) of the Act;

Ranges area means the area constituted as at 1 October 2016 by the local government districts of Armadale, Murray and Serpentine-Jarrahdale;

support has the meaning given in section 26I(1) of the Act;

trial has the meaning given in section 26E of the Act.

[Regulation 11 inserted: Gazette 30 Jun 2014 p. 2395; amended: Gazette 14 Jun 2016 p. 1821; 30 Dec 2016 p. 5970; 16 Jun 2017 p. 2931; 30 Jun 2017 p. 3560.]

12. Trial areas and periods (s. 26G)

(1) For the purposes of section 26G(1) of the Act, the Lower South West area, the Cockburn-Kwinana area, the Ranges area, the 2017 expansion area, the Kimberley-Pilbara area, the Mandurah-Rockingham area and the Perth Hills area are prescribed.

(2) For the purposes of section 26G(3) of the Act, the trial period for the Lower South West area begins on 1 July 2014 and ends on 30 June 2018.

(3) For the purposes of section 26G(3) of the Act, the trial period for the Cockburn-Kwinana area begins on 1 July 2015 and ends on 30 June 2018.

(4) For the purposes of section 26G(3) of the Act, the trial period for the Ranges area begins on 1 October 2016 and ends on 30 June 2018.

(5) For the purposes of section 26G(3) of the Act, the trial period for the 2017 expansion area begins on 1 January 2017 and ends on 30 June 2018.

(6) For the purposes of section 26G(3) of the Act, the trial period for the Kimberley-Pilbara area, the Mandurah-Rockingham area

and the Perth Hills area begins on 1 July 2017 and ends on 30 June 2018.

[Regulation 12 inserted: Gazette 30 Jun 2014 p. 2396; amended: Gazette 14 Jun 2016 p. 1821; 30 Dec 2016 p. 5971; 16 Jun 2017 p. 2932; 30 Jun 2017 p. 3560.]

13. Disclosure of information (s. 52)

The disclosure of information to a person for the purpose of the performance of a function of the Agency as defined in the NDIS Act section 9 is prescribed for the purposes of section 52(1)(e) of the Act.

[Regulation 13 inserted: Gazette 30 Jun 2014 p. 2396.]

Division 2 — Becoming a participant

[Heading inserted: Gazette 30 Jun 2014 p. 2396.]

Subdivision 1 — General

[Heading inserted: Gazette 30 Jun 2014 p. 2396.]

14. References in regulation headings to comparable Commonwealth rules

Without limiting the *Interpretation Act 1984* section 32(2), a reference to "NDIS rule" followed by a rule designation in the heading to a regulation in this Division is a reference to the rule of the *National Disability Insurance Scheme (Becoming a Participant) Rules 2016* (Commonwealth) with which the regulation in this Division is comparable.

[Regulation 14 inserted: Gazette 30 Jun 2014 p. 2396; amended: Gazette 14 Jun 2016 p. 1821.]

Subdivision 2 — Residence requirements

[Heading inserted: Gazette 30 Jun 2014 p. 2397.]

15. Qualifying residence requirement to be met (additional residence requirement NDIS rule 4.1(c))

For the purposes of section 26H(1)(d) of the Act, a person must meet the qualifying residence requirement set out in regulation 16.

[Regulation 15 inserted: Gazette 30 Jun 2014 p. 2397; amended: Gazette 14 Jun 2016 p. 1823.]

16. Qualifying residence requirement (additional residence requirement NDIS rules 4.6 - 4.8)

(1) A person meets the qualifying residence requirement if —

(a) on 1 July 2014 the person resides in the Lower South West area; or

(b) on 1 July 2015 the person resides in the Cockburn-Kwinana area; or

(c) on 1 October 2016 the person resides in the Ranges area; or

(d) on 1 January 2017 the person resides in the 2017 expansion area; or

(e) on 1 July 2017 the person resides in the Kimberley-Pilbara area, the Mandurah-Rockingham area or the Perth Hills area.

(2) A person also meets the qualifying residence requirement if —

(a) at least one of the following applies —

(i) the person starts to reside in the Lower South West area at any time after 1 July 2014;

(ii) the person starts to reside in the Cockburn-Kwinana area at any time after 1 July 2015;

(iii) the person starts to reside in the Ranges area at any time after 1 October 2016;

(iv) the person starts to reside in the 2017 expansion area at any time after 1 January 2017;

(v) the person starts to reside in the Kimberley-Pilbara area, the Mandurah-Rockingham area or the Perth Hills area at any time after 1 July 2017;

and

(b) the person starts to reside in that area for the dominant purpose of accessing supports not provided under the Act (for example, education, employment, health care or family support); and

(c) exceptional circumstances apply — for example, the person would suffer significant financial or personal hardship, which could reasonably be expected to significantly undermine the person's wellbeing or social or economic participation, by reason of not being a participant.

(3) A child also meets the qualifying residence requirement if —

(a) the child is born after 1 July 2014, and at least one of the child's birth parents who cares for that child resides in the Lower South West area on the day the child is born; or

(b) the child is born after 1 July 2015, and at least one of the child's birth parents who cares for that child resides in the Cockburn-Kwinana area on the day the child is born; or

(ba) the child is born after 1 October 2016, and at least one of the child's birth parents who cares for that child resides in the Ranges area on the day the child is born; or

(bb) the child is born after 1 January 2017, and at least one of the child's birth parents who cares for that child resides

in the 2017 expansion area on the day the child is born; or

(bc) the child is born after 1 July 2017, and at least one of the child's birth parents who cares for that child resides in the Kimberley-Pilbara area, the Mandurah-Rockingham area or the Perth Hills area on the day the child is born; or

(c) at a time after 1 July 2014, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in the Lower South West area since 1 July 2014, and this will be the child's place of residence; or

(d) at a time after 1 July 2015, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in the Cockburn-Kwinana area since 1 July 2015, and this will be the child's place of residence; or

(da) at a time after 1 October 2016, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in the Ranges area since 1 October 2016, and this will be the child's place of residence; or

(db) at a time after 1 January 2017, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in the 2017 expansion area since 1 January 2017, and this will be the child's place of residence; or

(dc) at a time after 1 July 2017, the child comes to be in the care of a person who has ongoing parental responsibility for that child and who has resided in the Kimberley-Pilbara area, the Mandurah-Rockingham area or the Perth Hills area since 1 July 2017, and this will be the child's place of residence; or

(e) in the case of a child whose parents are separated and who spends time with each parent —

(i) at least one of the child's parents meets the qualifying residence requirement in subregulation (1); or

(ii) the following apply —

(I) at least one of the child's parents started to reside in the Lower South West area after 1 July 2014, or in the Cockburn-Kwinana area after 1 July 2015, or in the Ranges area after 1 October 2016, or in the 2017 expansion area after 1 January 2017, or in the Kimberley-Pilbara area, the Mandurah-Rockingham area or the Perth Hills area after 1 July 2017, for the dominant purpose of the child accessing supports that are not provided under the Act (for example, education, employment, health care or family support);

(II) exceptional circumstances apply — for example, the child would suffer significant personal hardship (including because of financial hardship to the parent), which could reasonably be expected to significantly undermine their wellbeing or social or economic participation, by reason of not being a participant.

[Regulation 16 inserted: Gazette 30 Jun 2014 p. 2397-9; amended: Gazette 14 Jun 2016 p. 1821-2 and 1823; 30 Dec 2016 p. 5971-2; 16 Jun 2017 p. 2932-3; 30 Jun 2017 p. 3560.]

17. Ongoing residence requirement to be met (additional residence requirement NDIS rule 4.1(c))

The Commission must ensure that a person does not continue to participate in a trial unless the person satisfies the ongoing residence requirement set out in regulation 18.

[Regulation 17 inserted: Gazette 30 Jun 2014 p. 2400; amended: Gazette 14 Jun 2016 p. 1823.]

18. Ongoing residence requirement (additional residence requirement NDIS rules 4.9 - 4.11)

(1) A person meets the ongoing residence requirement at a particular time if, at that time, the person resides in an area mentioned in regulation 12(1) (a ***trial area***).

(2) If a person who is a participant stops residing in a trial area, the person continues to satisfy the ongoing residence requirement for a period of 12 months.

(3) In the case of a child whose parents are separated and who spends time with each parent, the child meets the ongoing residence requirement —

(a) at a particular time if, at that time, at least one of the child's parents resides in a trial area; and

(b) for a period of 12 months if the child is a participant and both the child's parents stop residing in a trial area.

[Regulation 18 inserted: Gazette 30 Jun 2014 p. 2400; amended: Gazette 14 Jun 2016 p. 1823.]

Subdivision 3 — Disability requirements

[Heading inserted: Gazette 30 Jun 2014 p. 2400.]

19. Disability requirement — permanent impairment (NDIS rules 5.4 - 5.7)

(1) For the purposes of section 26H(1)(c)(i) of the Act, the Commission must apply the criteria set out in this regulation in

deciding whether a person meets the disability requirement in the NDIS Act section 24(1)(b).

(2) An impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.

(3) An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the impairment on the person's functional capacity, including their psychosocial functioning, may improve.

(4) An impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).

(5) If an impairment is of a degenerative nature, the impairment is, or is likely to be, permanent if medical or other treatment would not, or would be unlikely to, improve it.

[Regulation 19 inserted: Gazette 30 Jun 2014 p. 2400-1; amended: Gazette 14 Jun 2016 p. 1822.]

20. Disability requirement — substantially reduced functional capacity (NDIS rule 5.8)

(1) For the purposes of section 26H(1)(c)(i) of the Act, the Commission must apply the criteria set out in this regulation in deciding whether a person meets the disability requirement in the NDIS Act section 24(1)(c).

(2) An impairment results in substantially reduced functional capacity to undertake an activity if its result is that —

(a) the person is unable to participate effectively or completely in the activity, or to perform tasks or actions required to undertake or participate effectively or

completely in the activity, without assistive technology, equipment (other than commonly used items such as glasses) or home modifications; or

(b) the person usually requires assistance (including physical assistance, guidance, supervision or prompting) from other people to participate in the activity or to perform tasks or actions required to undertake or participate in the activity; or

(c) the person is unable to participate in the activity or to perform tasks or actions required to undertake or participate in the activity, even with assistive technology, equipment, home modifications or assistance from another person.

[Regulation 20 inserted: Gazette 30 Jun 2014 p. 2401-2; amended: Gazette 14 Jun 2016 p. 1822.]

Subdivision 4 — Early intervention requirements

[Heading inserted: Gazette 30 Jun 2014 p. 2402.]

21. Early intervention requirement — permanent impairment (NDIS rules 6.4 - 6.7)

(1) For the purposes of section 26H(1)(c)(ii) of the Act, the Commission must apply the criteria set out in this regulation in deciding whether a person meets the early intervention requirements in the NDIS Act section 25(1)(a)(i) and (ii).

(2) An impairment is, or is likely to be, permanent only if there are no known, available and appropriate evidence-based clinical, medical or other treatments that would be likely to remedy the impairment.

(3) An impairment may be permanent notwithstanding that the severity of its impact on the functional capacity of the person may fluctuate or there are prospects that the severity of the impact of the impairment on the person's functional capacity may improve.

(4) An impairment is, or is likely to be, permanent only if the impairment does not require further medical treatment or review in order for its permanency or likely permanency to be demonstrated (even though the impairment may continue to be treated and reviewed after this has been demonstrated).

(5) If an impairment is of a degenerative nature, the impairment is, or is likely to be, permanent if medical or other treatment would not, or would be unlikely to, improve it.

[Regulation 21 inserted: Gazette 30 Jun 2014 p. 2402-3; amended: Gazette 14 Jun 2016 p. 1823.]

22. Early intervention requirement — supports to benefit person (NDIS rules 6.9 and 6.10)

(1) For the purposes of section 26H(1)(c)(ii) of the Act, the Commission must apply the criteria set out in this regulation in deciding whether a person meets the early intervention requirements in the NDIS Act section 25(1)(b) and (c).

(2) In deciding whether provision of early intervention supports is likely to benefit the person the Commission may consider —

(a) the likely trajectory and impact of the person's impairment over time; and

(b) the potential benefits of early intervention on the impact of the impairment on the person's functional capacity and in reducing their future needs for supports; and

(c) evidence from a range of sources, such as expert opinion and information provided by the person with disability or their family members or carers.

(3) The Commission is taken to be satisfied that provision of early intervention supports for a child under the age of 6 is likely to benefit the child if one or more of the child's impairments is a mental or physical impairment which, by itself or in combination with other mental or physical impairments, results in developmental delay.

(4) In subregulation (3) —

developmental delay has the meaning given in the NDIS Act section 9.

[Regulation 22 inserted: Gazette 30 Jun 2014 p. 2403-4; amended: Gazette 14 Jun 2016 p. 1823.]

Subdivision 5 — Assessment tools

[Heading inserted: Gazette 30 Jun 2014 p. 2404.]

23. Assessment tools may be used (NDIS rule 7.1)

(1) In this regulation —

operational policy means a policy made under section 12(1)(b) of the Act as published by the Commission and amended from time to time.

(2) In deciding whether a prospective participant meets the disability requirements or the early intervention requirements, the Commission may, if the Commission considers it appropriate, conduct an assessment using an assessment tool specified in an operational policy.

[Regulation 23 inserted: Gazette 30 Jun 2014 p. 2404.]

Division 3 — Supports for participants

[Heading inserted: Gazette 30 Jun 2014 p. 2404.]

Subdivision 1 — General

[Heading inserted: Gazette 30 Jun 2014 p. 2404.]

24. References in regulation headings to comparable Commonwealth rules

Without limiting the *Interpretation Act 1984* section 32(2), a reference to "NDIS rule" followed by a rule designation in the heading to a regulation in this Division is a reference to the rule of the *National Disability Insurance Scheme (Supports for*

Participants) Rules 2013 (Commonwealth) with which the regulation in this Division is comparable.

[Regulation 24 inserted: Gazette 30 Jun 2014 p. 2404.]

Subdivision 2 — Assessing proposed supports

[Heading inserted: Gazette 30 Jun 2014 p. 2405.]

25. Value for money (NDIS rule 3.1)

In deciding whether a support represents value for money in that the costs of the support are reasonable, relative to both the benefits achieved and the cost of alternative support, the Commission must consider the following matters —

(a) whether there are comparable supports which would achieve the same outcome at a substantially lower cost;

(b) whether there is evidence that the support will substantially improve the life stage outcomes for, and be of long-term benefit to, the participant;

(c) whether funding or provision of the support is likely to reduce the cost of the funding of supports for the participant in the long-term (for example, some early intervention supports may be value for money given their potential to avoid or delay reliance on more costly supports);

(d) for supports that involve the provision of equipment or modifications —

(i) the comparative cost of purchasing or leasing the equipment or modifications; and

(ii) whether there are any expected changes in technology or the participant's circumstances in the short-term that would make it inappropriate to fund the equipment or modifications;

(e) whether the cost of the support is comparable to the cost of supports of the same kind that are provided in the area in which the participant resides;

(f) whether the support will increase the participant's independence and reduce the participant's need for other kinds of supports (for example, some home modifications may reduce a participant's need for home care).

[Regulation 25 inserted: Gazette 30 Jun 2014 p. 2405-6.]

26. Effective and beneficial and current good practice (NDIS rules 3.2 and 3.3)

(1) In deciding whether a support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice, the Commission must consider the available evidence of the effectiveness of the support for others in like circumstances, for example —

(a) published and peer-reviewed literature and any consensus of expert opinion; or

(b) the experience of the participant or their carers; or

(c) anything the Commission has learned through conducting a trial under section 26G(1) of the Act.

(2) In deciding whether a support will be, or is likely to be, effective and beneficial for a participant, having regard to current good practice, the Commission must take into account and, if necessary seek, expert opinion.

[Regulation 26 inserted: Gazette 30 Jun 2014 p. 2406.]

27. Reasonable family, carer and other support (NDIS rule 3.4)

In deciding whether funding or provision of a support takes account of what it is reasonable to expect families, carers,

informal networks and the community to provide, the Commission must consider the following matters —

(a) for a participant who is a child —

(i) that it is normal for parents to provide substantial care and support for children; and

(ii) whether, because of the child's disability, the child's care needs are substantially greater than those of other children of a similar age; and

(iii) the extent of any risks to the wellbeing of the participant's family members or carers; and

(iv) whether the funding or provision of the support for a family would improve the child's capacity or future capacity, or would reduce any risk to the child's wellbeing;

(b) for other participants —

(i) the extent of any risks to the wellbeing of the participant arising from the participant's reliance on the support of family members, carers, informal networks and the community; and

(ii) the suitability of family members, carers, informal networks and the community to provide the supports that the participant requires, including such factors as —

(I) the age and capacity of the participant's family members and carers, including the extent to which family and community supports are available to sustain them in their caring role; and

(II) the intensity and type of support that is required and whether it is age and gender appropriate for a particular family member or carer to be providing that support; and

(III) the extent of any risks to the long-term wellbeing of any of the family members or carers (for example, a child should not be expected to provide care for their parents, siblings or other relatives or be required to limit their educational opportunities);

and

(iii) the extent to which informal supports contribute to or reduce a participant's level of independence and other outcomes;

(c) for all participants — the desirability of supporting and developing the potential contributions of informal supports and networks within their communities.

[Regulation 27 inserted: Gazette 30 Jun 2014 p. 2406-8.]

Subdivision 3 — Criteria for supports

[Heading inserted: Gazette 30 Jun 2014 p. 2408.]

28. General criteria for supports (NDIS rules 5.1 - 5.3)

(1) A support will not be provided or funded under the Act if —

(a) it is likely to cause harm to the participant or pose a risk to others; or

(b) it is not related to the participant's disability; or

(c) it duplicates other supports provided to the participant; or

(d) it relates to day-to-day living costs (for example, rent, groceries and utility fees) that are not attributable to a participant's disability support needs; or

(e) the provision of the support would be contrary to a law of the Commonwealth or of this State; or

(f) the support consists of income replacement.

(2) The day-to-day living costs mentioned in subregulation (1)(d) do not include the following —

(a) additional living costs that are incurred by a participant solely and directly as a result of their disability support needs;

(b) costs that are ancillary to another support that is funded or provided under the participant's plan, and which the participant would not otherwise incur.

[Regulation 28 inserted: Gazette 30 Jun 2014 p. 2408-9.]

Division 4 — Supports for participants — accounting for compensation

[Heading inserted: Gazette 30 Jun 2014 p. 2409.]

Subdivision 1 — General

[Heading inserted: Gazette 30 Jun 2014 p. 2409.]

29. Terms used

In this Division —

Commission component, of an amount of compensation under a judgment or settlement, means the component that relates to the provision of supports of a kind that may be funded or provided by the Commission under the Act after the date of the judgment or settlement, and may include a component that consists of periodic payments;

compensation reduction amount means an amount worked out under Subdivision 4;

trial actuary means the person appointed by the Commission to be the actuary for a trial under section 26G(1) of the Act.

[Regulation 29 inserted: Gazette 30 Jun 2014 p. 2409-10.]

30. References in regulation headings to comparable Commonwealth rules

Without limiting the *Interpretation Act 1984* section 32(2), a reference to "NDIS rule" followed by a rule designation in the heading to a regulation in this Division is a reference to the rule of the *National Disability Insurance Scheme (Supports for Participants — Accounting for Compensation) Rules 2013* (Commonwealth) with which the regulation in this Division is comparable.

[Regulation 30 inserted: Gazette 30 Jun 2014 p. 2410.]

Subdivision 2 — Compensation

[Heading inserted: Gazette 30 Jun 2014 p. 2410.]

31. Application of Division (NDIS rules 3.1 and 3.2)

(1) This Division applies in relation to a person who is a participant, or who later becomes a participant, if the person's disability was caused to any extent by a personal injury, and one of the following cases applies —

(a) the person received compensation under a judgment or settlement in respect of the injury in which —

(i) it is possible to identify the Commission component of the amount of compensation; and

(ii) the component is either fixed by a non-consent judgment or is objectively identifiable (for example, commutation of benefits under a statutory scheme);

(b) the person received compensation under a judgment or settlement in respect of the injury that —

(i) does not satisfy paragraph (a); and

(ii) fixes an amount of compensation in respect of the injury;

(c) the person is receiving compensation under a scheme of insurance or compensation under a Commonwealth, State or Territory law, including a payment under a contract entered into under such a scheme;

(d) the person —

(i) entered into an agreement to give up a right to compensation in respect of the injury; and

(ii) because of that agreement, there are amounts that the person did not receive by way of a compensation payment (even if the person received other amounts by way of compensation payment in respect of the injury); and

(iii) the Commission is not satisfied that it was reasonable, in the circumstances, for the person to have entered into the agreement.

(2) For the purposes of subregulation (1)(d)(iii), in considering whether the person's entry into the agreement was reasonable, the Commission must have regard to the following matters —

(a) the disability of the participant or prospective participant, including whether the disability affected his or her ability to reasonably assess the terms of the agreement;

(b) the circumstances which gave rise to the entitlement or possible entitlement to compensation;

(c) any reasons given by the participant or prospective participant as to why he or she entered into the agreement;

(d) the impact (including any financial impact) on the participant or prospective participant and his or her family that would have occurred if the claim for compensation had been pursued or continued;

(e) any other matter the Commission considers relevant, having regard to the principles and objects set out in Schedules 1 and 2 of the Act.

[Regulation 31 inserted: Gazette 30 Jun 2014 p. 2410-12.]

32. Periodic payments (NDIS rule 3.3)

For the purposes of this Division, if the Commission component of compensation under a judgment or settlement includes an element that consists of periodic payments, the amount attributable to that element is taken to be —

(a) if the amount is specified in a judgment — that amount; or

(b) if the amount is not specified in a judgment, but the Commission is satisfied that a specified amount was paid by the defendant to ensure the provision of the periodic payments — that amount; or

(c) otherwise — the value of the periodic payments as assessed in accordance with accepted actuarial standards, in consultation with the trial actuary.

[Regulation 32 inserted: Gazette 30 Jun 2014 p. 2412-13.]

Subdivision 3 — Compensation, or foregone compensation, to be taken into account

[Heading inserted: Gazette 30 Jun 2014 p. 2413.]

33. Funding to be reduced by compensation reduction amount (NDIS rules 3.5 and 3.6)

(1) In considering whether or not to approve a plan for a participant, the Commission must take account of any compensation mentioned in regulation 31(1) by reducing the funding for reasonable and necessary supports that would otherwise be approved by the appropriate compensation reduction amount.

(2) To avoid doubt, a compensation reduction amount may arise in relation to each amount of compensation fixed or foregone in respect of injury, including amounts to which different paragraphs of regulation 31(1) apply — in this case, more than one compensation reduction amount may apply for the purposes of subregulation (1).

[Regulation 33 inserted: Gazette 30 Jun 2014 p. 2413.]

34. Reduction may be amortised (NDIS rule 3.7)

The reduction in respect of —

(a) an amount of compensation under a judgment, settlement or agreement mentioned in regulation 31(1)(a), (b) or (d); or

(b) a lump sum received as compensation under a scheme mentioned in regulation 31(1)(c),

may be amortised over a period no longer than the remainder of the participant's expected lifetime in accordance with accepted actuarial standards, in consultation with the trial actuary.

[Regulation 34 inserted: Gazette 30 Jun 2014 p. 2413-14.]

35. Commission may advise person as to likely compensation reduction amount (NDIS rule 3.8)

If requested to do so by a person who has suffered an injury and is considering a settlement or other agreement that might result in the application of this Part, the Commission may advise the person in relation to the likely compensation reduction amount, or elements of the likely compensation reduction amount, that would apply in relation to the settlement or agreement.

[Regulation 35 inserted: Gazette 30 Jun 2014 p. 2414.]

36. Special circumstances (NDIS rule 3.10)

For the purposes of regulation 33(1), the Commission may ignore the whole or part of a compensation reduction amount

that would otherwise arise under this Division if the Commission thinks it appropriate to do so in the special circumstances of the case (which may include financial hardship suffered by the participant).

[Regulation 36 inserted: Gazette 30 Jun 2014 p. 2414.]

Subdivision 4 — Compensation reduction amount

[Heading inserted: Gazette 30 Jun 2014 p. 2415.]

37. Compensation reduction amount — support component objectively identified (NDIS rules 3.11 and 3.12)

(1) In the case of a judgment or settlement mentioned in regulation 31(1)(a), the Commission must identify the compensation reduction amount as follows —

(a) identify the Commission component of the amount of compensation;

(b) subtract an amount that the Commission considers equivalent to the total of the amounts that were paid by the participant for supports of that kind after the date of the judgment or settlement and before becoming a participant;

(c) subtract the amount of any reduction in funding under regulation 33(1) that occurred in relation to a previous plan of the participant.

(2) If, by subtracting a particular amount under subregulation (1), the compensation reduction amount would be reduced to nil or less than nil, the Commission must subtract only so much of the amount that would reduce the compensation reduction amount to nil.

[Regulation 37 inserted: Gazette 30 Jun 2014 p. 2415.]

38. Compensation reduction amount — other circumstances (NDIS rules 3.13 - 3.16)

(1) In the case of a judgment or settlement mentioned in regulation 31(1)(b), the Commission must identify the compensation reduction amount as follows —

(a) calculate the amount of compensation fixed under the judgment or settlement;

(b) subtract the sum of the amounts (if any) payable in respect of the amount of compensation under the following —

(i) the *Health and Other Services (Compensation) Act 1995* (Commonwealth);

(ii) the *Health and Other Services (Compensation) Care Charges Act 1995* (Commonwealth);

(iii) Part 3.14 of the *Social Security Act 1991* (Commonwealth);

(iv) a law of the Commonwealth, a State or a Territory, prescribed by the National Disability Insurance Scheme rules as defined in the NDIS Act section 9;

(c) subtract an amount that the Commission considers reflects the value of any period of preclusion —

(i) that arises from a Commonwealth, State or Territory statutory scheme of entitlements (for example, the *Social Security Act 1991*) (Commonwealth); and

(ii) that is in respect of the injury;

(d) if no preclusion period has arisen for the purposes of paragraph (c) and the Commission is satisfied that —

(i) the participant claimed damages in relation to lost earnings or lost capacity to earn; and

(ii) the amount of compensation fixed under the judgment or settlement included an amount in respect of those damages,

subtract 50% of the amount of compensation;

(e) if the amount after applying paragraphs (a) to (d) is greater than the value of the reasonable and necessary supports that the Commission considers would have been provided to the participant and funded under the Act over the participant's expected lifetime, had the participant been a participant from the time of the compensable event — replace the amount by that value;

(f) subtract an amount that the Commission considers equivalent to the total of the amounts that were paid by the participant for supports, being supports of a kind funded under the Act, after the compensable event and before becoming a participant;

(g) subtract the amount of any reduction in funding under regulation 33(1) that occurred in relation to a previous plan of the participant.

(2) For the purposes of subregulation (1)(e), the calculation must be in accordance with any applicable actuarial model published by the Commission and in effect at the time the calculation is undertaken.

(3) If a compensation reduction amount has also been identified in respect of the injury under regulation 37(1), subregulation (1) is to be applied with the following modifications —

(a) reduce from the amount to be subtracted under subregulation (1)(f) any amount subtracted in respect of the injury under regulation 37(1)(b);

(b) reduce from the amount to be subtracted under subregulation (1)(g) any amount subtracted in respect of the injury under subregulation (1)(c).

(4) If, by subtracting a particular amount under subregulation (1), the compensation reduction amount would be reduced to nil or less than nil, the Commission must subtract only so much of the amount that would reduce the compensation reduction amount to nil.

[Regulation 38 inserted: Gazette 30 Jun 2014 p. 2415-18.]

39. Compensation reduction amount — participant in a Commonwealth, State or Territory statutory insurance scheme (NDIS rules 3.17 and 3.18)

(1) In the case of compensation mentioned in regulation 31(1)(c), the Commission must identify the compensation reduction amount by identifying the total value of the care and support expected to be provided to the participant under the scheme until the participant's plan is required to be reviewed in accordance with applicable operational policies.

(2) For the purposes of subregulation (1), the identification must be —

(a) in accordance with any applicable actuarial model published by the Commission and in effect at the time the calculation is undertaken; and

(b) done in consultation with the person or entity that administers the scheme.

[Regulation 39 inserted: Gazette 30 Jun 2014 p. 2418.]

40. Compensation reduction amount — agreement to give up compensation (NDIS rules 3.19 - 3.21)

(1) In the case of an agreement mentioned in regulation 31(1)(d), the Commission must identify the compensation reduction amount as follows —

(a) assess the likely amount of the Commission component of compensation that the participant would have received under a judgment (other than a consent

judgment) had the participant made a claim for compensation in respect of the personal injury;

(b) subtract the amount of any reduction in funding under regulation 33(1) that occurred in relation to a previous plan of the participant;

(c) subtract an amount that the Commission considers equivalent to the total of the amounts that were paid by the participant for supports, being supports of a kind funded under the Act, after incurring the injury and before becoming a participant.

(2) If a compensation reduction amount has also been identified in respect of the injury under regulation 37(1) or 38(1), subregulation (1) is to be applied with the following modifications —

(a) between the steps in subregulation (1)(a) and (b), subtract the compensation reduction amounts identified under regulation 37(1) or 38(1);

(b) reduce from the amount to be subtracted under subregulation (1)(b) any amount subtracted in respect of the injury under regulation 37(1)(c) or 38(1)(g);

(c) reduce from the amount to be subtracted under subregulation (1)(c) any amount subtracted in respect of the injury under regulation 37(1)(b) or 38(1)(f).

(3) If, by subtracting a particular amount under subregulation (1), the compensation reduction amount would be reduced to nil or less than nil, the Commission must subtract only so much of the amount that would reduce the compensation reduction amount to nil.

[Regulation 40 inserted: Gazette 30 Jun 2014 p. 2419-20.]

Part 3 — Complaints

[Heading inserted: Gazette 17 Jul 2015 p. 2915.]

40A. Services excluded from definitions of *disability service* and *resident service* (s. 30)

The following services are excluded from the definitions of ***disability service*** and ***resident service*** in section 30 of the Act —

(a) a service provided under the National Disability Insurance Scheme by an NDIS provider (as those terms are defined in the *National Disability Insurance Scheme Act 2013* (Commonwealth) section 9);

(b) a service provided by a person or entity who falls within paragraph (b) of the definition of NDIS provider in the *National Disability Insurance Scheme Act 2013* (Commonwealth) section 9, to a person receiving continuity of support under the programs mentioned in the *National Disability Insurance Scheme (NDIS Provider Definition) Rule 2018* (Commonwealth) section 5.

[Regulation 40A inserted: SL 2021/165 r. 4.]

*[**41.** Deleted: SL 2021/165 r. 5.]*

Schedule 1 — Public authorities to which Part 5 applies

[r. 6]

[Heading inserted: Gazette 11 Jun 2013 p. 2163.]

1. A department established under the *Public Sector Management Act 1994* section 35.

2. An entity specified in the *Public Sector Management Act 1994* Schedule 2 column 2.

3. A local government.

4. A regional local government, but only when performing a public service that is not the responsibility of a particular participating local government.

4A. A health service provider established by order under the *Health Services Act 2016* section 32(1).

5. Curtin University of Technology established under the *Curtin University of Technology Act 1966*.

6. Edith Cowan University established under the *Edith Cowan University Act 1984*.

7. Electricity Generation and Retail Corporation established by the *Electricity Corporations Act 2005*.

8. Electricity Networks Corporation established by the *Electricity Corporations Act 2005*.

[9. Deleted]

10. Forest Products Commission established by the *Forest Products Act 2000*.

[11. Deleted]

12. Heritage Council of Western Australia established under the *Heritage of Western Australia Act 1990*.

13. Keystart established under the *Keystart Act 2024* section 6(1).

[14. Deleted]

15. Legal Aid Commission of Western Australia established under the *Legal Aid Commission Act 1976*.

16. Murdoch University established under the *Murdoch University Act 1973*.

17. Parliamentary Commissioner for Administrative Investigations appointed under the *Parliamentary Commissioner Act 1971*.

[18. Deleted]

19. Regional Power Corporation established by the *Electricity Corporations Act 2005*.

[20-21. Deleted]

22. The University of Western Australia established under the *University of Western Australia Act 1911*.

23. Western Australian Health Promotion Foundation mentioned in the *Western Australian Health Promotion Foundation Act 2016* section 5.

24. Western Australian Mint preserved and continued by the *Gold Corporation Act 1987*.

25. Water Corporation established by the *Water Corporation Act 1995*.

[Schedule 1 inserted: Gazette 11 Jun 2013 p. 2163-4; amended: Gazette 27 Dec 2013 p. 6472; 24 Jun 2016 p. 2311; 26 Aug 2016 p. 3653; SL 2025/114 r. 4; SL 2025/189 r. 4.]

Schedule 2 — Standards for disability access and inclusion plans

[r. 7]

1. A disability access and inclusion plan must provide a means of ensuring that people with disability have the same opportunities as other people to access the services of, and any events organised by, the relevant public authority.

2. A disability access and inclusion plan must provide a means of ensuring that people with disability have the same opportunities as other people to access the buildings and other facilities of the relevant public authority.

3. A disability access and inclusion plan must provide a means of ensuring that people with disability receive information from the relevant public authority in a format that will enable them to access the information as readily as other people are able to access it.

4. A disability access and inclusion plan must provide a means of ensuring that people with disability receive the same level and quality of service from the staff of the relevant public authority as other people receive from that authority.

5. A disability access and inclusion plan must provide a means of ensuring that people with disability have the same opportunities as other people to make complaints to the relevant public authority.

6. A disability access and inclusion plan must provide a means of ensuring that people with disability have the same opportunities as other people to participate in any public consultation by the relevant public authority.

7. A disability access and inclusion plan must provide a means of reducing barriers to people with disability obtaining and maintaining employment.

[Schedule 2 amended: Gazette 11 Jun 2013 p. 2164-5; 11 Jun 2013 p. 2164.]

Schedule 3 — Desired outcomes of disability access and inclusion plans

[r. 8]

1. People with disability have the same opportunities as other people to access the services of, and any events organised by, a public authority.
2. People with disability have the same opportunities as other people to access the buildings and other facilities of a public authority.
3. People with disability receive information from a public authority in a format that will enable them to access the information as readily as other people are able to access it.
4. People with disability receive the same level and quality of service from the staff of a public authority as other people receive from the staff of that public authority.
5. People with disability have the same opportunities as other people to make complaints to a public authority.
6. People with disability have the same opportunities as other people to participate in any public consultation by a public authority.
7. People with disability have the same opportunities as other people to obtain and maintain employment with a public authority.

[Schedule 3 amended: Gazette 11 Jun 2013 p. 2164-5.]

[Schedule 4 deleted: SL 2021/165 r. 6.]

Notes

This is a compilation of the *Disability Services Regulations 2004* and includes amendments made by other written laws. For provisions that have come into operation, and for information about any reprints, see the compilation table.

Compilation table

Citation	Published	Commencement
Disability Services Regulations 2004	14 Dec 2004 p. 6002-6	15 Dec 2004 (see r. 2 and *Gazette* 14 Dec 2004 p. 5999)
Electricity Corporations (Consequential Amendments) Regulations 2006 r. 70	31 Mar 2006 p. 1299-357	1 Apr 2006 (see r. 2)
Disability Services Amendment Regulations 2013	11 Jun 2013 p. 2161-5	r. 1 and 2: 11 Jun 2013 (see r. 2(a)); Regulations other than r. 1, 2 and 7-9: 12 Jun 2013 (see r. 2(c) and *Gazette* 11 Jun 2013 p. 2161); r. 7-9: 11 Jun 2014 (see r. 2(b))
Reprint 1: The *Disability Services Regulations 2004* as at 2 Aug 2013 (includes amendments listed above except those in the *Disability Services Amendment Regulations 2013* r. 7-9)		
Electricity Corporations (Consequential Amendments) Regulations 2013 r. 4	27 Dec 2013 p. 6469-79	r. 4(1) and (2): 1 Jan 2014 (see r. 2(c) and *Gazette* 27 Dec 2013 p. 6465); r. 4(3): 11 Jun 2014 (see r. 2(b) and *Gazette* 11 Jun 2013 p. 2161-5)
Disability Services Amendment Regulations 2014	30 Jun 2014 p. 2391-420	1 Jul 2014 (see r. 2)
Disability Services Amendment Regulations 2015	17 Jul 2015 p. 2915-32	r. 1 and 2: 17 Jul 2015 (see r. 2(a)); Regulations other than r. 1 and 2: 18 Jul 2015 (see r. 2(b))
Disability Services Amendment Regulations (No. 2) 2016	14 Jun 2016 p. 1820-3	r. 1 and 2: 14 Jun 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 15 Jun 2016 (see r. 2(b))

Citation	Published	Commencement
Disability Services Amendment Regulations (No. 3) 2016	24 Jun 2016 p. 2311	r. 1 and 2: 24 Jun 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2016 (see r. 2(b) and *Gazette* 24 Jun 2016 p. 2291)
Disability Services Amendment Regulations 2016	26 Aug 2016 p. 3653	r. 1 and 2: 26 Aug 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Sep 2016 (see r. 2(b) and *Gazette* 26 Jul 2016 p. 3145)
Disability Services Amendment Regulations (No. 4) 2016	30 Dec 2016 p. 5970-2	r. 1 and 2: 30 Dec 2016 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jan 2017 (see r. 2(b))
Reprint 2: The *Disability Services Regulations 2004* as at 10 Feb 2017 (includes amendments listed above)		
Disability Services Amendment Regulations 2017	16 Jun 2017 p. 2931-3	r. 1 and 2: 16 Jun 2017 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2017 (see r. 2(b))
Disability Services Amendment Regulations (No. 2) 2017	30 Jun 2017 p. 3559-60	r. 1 and 2: 30 Jun 2017 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2017 (see r. 2(b))
Disability Services Amendment Regulations 2021	SL 2021/165 24 Sep 2021	r. 1 and 2: 24 Sep 2021 (see r. 2(a)); Regulations other than r. 1, 2, 5 and 6: 25 Sep 2021 (see r. 2(c)); r. 5 and 6: 1 Oct 2021 (see r. 2(b))
Disability Services Amendment Regulations 2025	SL 2025/114 25 Jun 2025	r. 1 and 2: 25 Jun 2025 (see r. 2(a)); Regulations other than r. 1 and 2: 1 Jul 2025 (see r. 2(b))
Disability Services Amendment Regulations (No. 2) 2025	SL 2025/189 12 Nov 2025	r. 1 and 2: 12 Nov 2025 (see r. 2(a)); Regulations other than r. 1 and 2: 13 Nov 2025 (see r. 2(b))

Defined terms

*[This is a list of terms defined and the provisions where they are defined.
The list is not part of the law.]*

Defined term	Provision(s)
2017 expansion area	11
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