



Disability Services and Inclusion Act 2023

No. 107, 2023

**An Act relating to supports and services for people
with disability, and for related purposes**

Note: An electronic version of this Act is available on the Federal Register of Legislation
(<https://www.legislation.gov.au/>)

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Disability Services and Inclusion Act 2023

No. 107, 2023

**An Act relating to supports and services for people
with disability, and for related purposes**

[Assented to 4 December 2023]

The Parliament of Australia enacts:

Section 1

Part 1—Preliminary

Division 1—Introduction

1 Short title

This Act is the *Disability Services and Inclusion Act 2023*.

2 Commencement

- (1) Each provision of this Act specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this Act	The 28th day after this Act receives the Royal Assent.	1 January 2024

Note: This table relates only to the provisions of this Act as originally enacted. It will not be amended to deal with any later amendments of this Act.

- (2) Any information in column 3 of the table is not part of this Act. Information may be inserted in this column, or information in it may be edited, in any published version of this Act.

3 Objects of this Act

The objects of this Act are to:

- (a) in conjunction with other laws, give effect to the Convention on the Rights of Persons with Disabilities; and
- (b) provide funding, outside of the National Disability Insurance Scheme, to persons that provide supports and services for the benefit of people with disability, their families and carers; and

- (c) advance the inclusion and social and economic participation of people with disability; and
- (d) support people with disability to exercise choice and control in matters that affect their lives, including by participating in the development and review of policy and programs; and
- (e) promote respect for the inherent dignity, difference and individual autonomy of people with disability and raise community understanding of barriers to the inclusion and participation of people with disability on an equal basis; and
- (f) protect the rights of people with disability who receive supports or services from persons funded under this Act, including by:
 - (i) setting compliance standards that align with contemporary practice; and
 - (ii) requiring persons providing such supports or services to implement and maintain appropriate complaints management and resolution systems and incident management systems; and
- (g) promote national consistency, coordination and accessibility of supports and services for people with disability; and
- (h) support people with disability to access supports or services that:
 - (i) are safe and provided in a way that does not expose people with disability to violence, abuse, neglect or exploitation; and
 - (ii) are locally available (including in rural and remote communities) and provided in a manner that is timely, effective and innovative; and
 - (iii) to the extent possible, are integrated with services generally available to other members of Australian society; and
 - (iv) to the extent possible, provide continuity of support and services for people with disability; and
 - (v) assist people with disability to meet the daily and lifetime norms of other members of Australian society; and

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- (vi) meet the needs of people with disability who experience compound disadvantage, including as a result of being an Indigenous person or as a result of a person's age, sex, gender identity, sexual orientation, intersex status, ethnicity, religious belief or cultural or linguistic background, socioeconomic status or experience of past trauma; and
- (vii) respect the privacy of people with disability; and
- (viii) provide accurate and sufficient information about the supports and services available and the quality of those supports and services; and
- (ix) increase the independence and wellbeing of people with disability; and
- (x) provide meaningful opportunities for employment, education and development for people with disability; and
- (xi) support people with disability to participate in Australian society on an equal basis to other members of Australian society; and
- (i) in conjunction with other laws, give effect to certain obligations that Australia has as a party to:
 - (i) the International Covenant on Civil and Political Rights done at New York on 16 December 1966 ([1980] ATS 23), as amended and in force for Australia from time to time; and
 - (ii) the International Covenant on Economic, Social and Cultural Rights done at New York on 16 December 1966 ([1976] ATS 5), as amended and in force for Australia from time to time; and
 - (iii) the Convention on the Rights of the Child done at New York on 20 November 1989 ([1991] ATS 4), as amended and in force for Australia from time to time; and
 - (iv) the Convention on the Elimination of All Forms of Discrimination Against Women done at New York on 18 December 1979 ([1983] ATS 9), as amended and in force for Australia from time to time; and

- (v) the International Convention on the Elimination of All Forms of Racial Discrimination done at New York on 21 December 1965 ([1975] ATS 40), as amended and in force for Australia from time to time.

Note: The text of a Convention or Covenant could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

4 General principles guiding actions under this Act

- (1) If this Act requires or permits an act or thing to be done, the act or thing is to be done, so far as practicable, in accordance with the general principles in this section.
- (2) People with disability are individuals who have the inherent right to respect for their human worth and dignity, and live a life free from violence, neglect, abuse and exploitation.
- (3) People with disability, whatever the origin, nature, type and degree of disability, have the same basic human rights as other members of Australian society.
- (4) People with disability have the same right as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development.
- (5) People with disability have the same right as other members of Australian society to supports and services which will support their attaining a reasonable quality of life.
- (6) People with disability have the same right as other members of Australian society to exercise choice and control in relation to the decisions that affect their lives.
- (7) People with disability receiving supports or services have the same right as other members of Australian society to receive those supports or services in a manner which results in the least restriction of their rights and opportunities.
- (8) People with disability have the same right as other members of Australian society to pursue any grievance in relation to supports or services.

5 Simplified outline of this Act

The Minister may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments to a person, or make, vary or administer a grant of financial assistance to a person, in relation to various activities for the benefit of people with disability. Those activities are called eligible activities.

However, the Minister must not make an arrangement for the making of payments, or make a grant of financial assistance, to a person unless the person is an eligible person.

Generally, a person is an eligible person for an arrangement or grant if the person, and the person's key personnel, are not subject to a banning order under the NDIS Act and, in the case where the arrangement or grant is in relation to a regulated activity, the person either:

- (a) holds a certificate of compliance for the regulated activity; or
- (b) is covered by a determination made by the Secretary specifying a day by which the person must obtain a certificate of compliance for the regulated activity.

The Secretary can make a legislative instrument to prescribe kinds of eligible activities to be regulated activities.

Accredited certification bodies, and the Secretary, can grant a person a certificate of compliance for a regulated activity. Certificates can be granted if the person complies with the compliance standards or alternative compliance requirements for regulated activities.

A person to whom money may be payable under an arrangement, or who receives a grant of financial assistance, must comply with the statutory funding conditions under this Act and any other terms and conditions set out in a funding agreement with the Commonwealth.

A breach of the statutory funding conditions can result in termination or variation of the funding agreement, termination or variation of the arrangement or grant and publication of information about the breach.

The statutory funding conditions for a person who is a party to a funding agreement are the conditions that the person:

- (a) comply with the code of conduct; and
- (b) hold a certificate of compliance for regulated activities (or be covered by a determination made by the Secretary); and
- (c) implement and maintain an appropriate complaints management and resolution system; and
- (d) implement and maintain an appropriate incident management system; and
- (e) comply with other requirements in relation to banning orders under the NDIS Act.

Rules made for the purposes of this Act can make provision for a code of conduct, compliance standards and alternative compliance requirements.

Information obtained or generated by entrusted persons in administering this Act cannot be used or disclosed unless required or authorised by this Act.

6 Act binds the Crown

- (1) This Act binds the Crown in each of its capacities.
- (2) However, this Act does not make the Crown liable to be prosecuted for an offence.

7 Extension to external Territories

This Act extends to the external Territories.

Division 2—Definitions

8 Definitions

In this Act:

accessibility supports or services means supports or services to assist a person with disability to access the physical environment or to participate in the social environment.

accommodation supports or services means supports or services to assist a person with disability to obtain or maintain suitable residential arrangements.

accredited certification body means a person granted an accreditation that is in force under section 26.

accrediting authority means a person granted an approval that is in force under section 25.

advocacy supports or services means supports or services:

- (a) to assist a person with disability to exercise choice or control in matters that affect the person, including the provision of legal services; or
- (b) to assist a person with disability to understand and advocate for their rights and to uphold and enforce their rights, including the provision of legal services; or
- (c) to influence community attitudes, government policy or laws in relation to the rights and freedoms of people with disability.

alternative compliance requirements has the meaning given by subsection 24(3).

arrangement includes a contract, agreement, deed or understanding.

capacity building supports or services means the following:

- (a) supports or services to improve the capability of a person with disability to participate in Australian society, including through peer support, mentoring and skills development;
- (b) supports or services to improve the capability of persons to deliver inclusive and accessible infrastructure, supports or services to people with disability.

carer supports or services means supports or services that assist carers of people with disability in their caring role.

centrelink program has the same meaning as in the *Human Services (Centrelink) Act 1997*.

certificate of compliance means a certificate of compliance that:

- (a) is granted under section 21 or 22 to a person; and
- (b) is in force.

code of conduct has the meaning given by subsection 20(3).

community inclusion supports or services means supports or services to assist a person with disability to engage with their chosen community and culture, including by removing barriers to their inclusion in community and cultural activities.

compliance standards has the meaning given by subsection 23(3).

constitutional corporation means a corporation to which paragraph 51(xx) of the Constitution applies.

Convention on the Rights of Persons with Disabilities means the Convention on the Rights of Persons with Disabilities done at New York on 13 December 2006, as amended and in force for Australia from time to time.

Note: The Convention on the Rights of Persons with Disabilities is in Australian Treaty Series 2008 No. 12 ([2008] ATS 12) and could in 2023 be viewed in the Australian Treaties Library on the AustLII website (<http://www.austlii.edu.au>).

counselling supports or services means supports or services based on discussing, describing and addressing issues that a person with disability experiences in their life or relationships with the purpose of assisting that person to resolve or manage those issues.

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education supports or services means supports or services to assist a person with disability to prepare for, or participate in, education at any level.

eligible activity has the meaning given by subsection 13(1).

eligible person has the meaning given by subsection 9(1).

employment supports or services means the following:

- (a) supports or services to assist a person with disability to prepare for, obtain or maintain paid work, including training;
- (b) supports or services to assist a person with disability to gain and maintain self-employment;
- (c) the provision of incentives or supports to employers to employ people with disability.

entrusted person means any of the following:

- (a) the Secretary;
- (b) an APS employee;
- (c) any other person employed or engaged by the Commonwealth to provide services to the Commonwealth.

funding agreement has the meaning given by paragraph 14(1)(d).

independent living supports or services means supports or services to assist a person with disability to develop or maintain the personal skills and self-confidence necessary to enhance the person's independence, and self-reliance, in the community and in the person's home.

Indigenous person means a person who is:

- (a) a member of the Aboriginal race of Australia; or
- (b) a descendant of an Indigenous inhabitant of the Torres Strait Islands.

information supports or services means supports or services (including translation and interpretation services) to assist a person with disability to access and understand information available generally to members of Australian society.

key personnel has the meaning given by section 10.

make, in relation to an arrangement, includes enter into.

medicare program has the same meaning as in the *Human Services (Medicare) Act 1973*.

National Disability Insurance Scheme has the meaning given by the NDIS Act.

NDIS Act means the *National Disability Insurance Scheme Act 2013*.

protected information means either of the following kinds of information:

- (a) personal information within the meaning of the *Privacy Act 1988*;
- (b) information about the affairs of a person the disclosure of which could reasonably be expected to found an action by a person (other than the Commonwealth) for breach of a duty of confidence.

recreation supports or services means supports or services to assist a person with disability to participate in recreation and leisure activities.

regulated activity means an activity specified in an instrument in force under section 11.

relevant information means information obtained or generated by an entrusted person in:

- (a) performing functions or duties, or exercising powers, under this Act; or
- (b) assisting another person to perform functions or duties, or exercise powers, under this Act.

research and evaluation program means a program to:

- (a) undertake research or data analysis in relation to people with disability, including in relation to the provision of supports and services for people with disability; or
- (b) evaluate programs or policies that are directed towards people with disability, including activities funded under

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arrangements, or grants of financial assistance, made under this Act.

respite care supports or services means supports or services to provide short term care for a person with disability, as an alternative care arrangement, for the purpose of giving relief or assistance to:

- (a) the person with disability; or
- (b) the family members or carers of the person with disability.

rules means the rules made under section 36.

Secretary means the Secretary of the Department.

statutory funding condition has the meaning given by section 15.

supports or services includes the supply of goods or facilities.

9 Meaning of *eligible person*

Eligible person

- (1) A person is an **eligible person**, for an arrangement or grant to be made under section 13, if:
 - (a) in the case where the arrangement or grant is to be in relation to an eligible activity that is a regulated activity—the person:
 - (i) holds a certificate of compliance for the regulated activity; or
 - (ii) is covered by a determination, in force under subsection (2) of this section, for the regulated activity and the day specified in the determination has not occurred; and
 - (b) the person is not subject to a banning order that is in force under section 73ZN of the NDIS Act; and
 - (c) none of the members of the key personnel of the person is subject to a banning order that is in force under section 73ZN of the NDIS Act.

Determination

- (2) The Secretary may, in writing, make a determination specifying a day by which a person must obtain a certificate of compliance for a regulated activity if the person has given written notice to the Secretary stating the person's intention to seek and obtain such a certificate on or before that day.
- (3) The specified day must be no later than 15 months after the day on which the determination is made.
- (4) The Secretary may, in writing, vary the determination to specify a later day if the Minister has made an arrangement for the making of payments, or made a grant of financial assistance, to the person under section 13. The later day must be no later than 15 months after the day on which the arrangement or grant was made.
- (5) A determination under subsection (2) is not a legislative instrument.

10 Meaning of *key personnel*

- (1) Each of the following is one of the *key personnel* of a person:
 - (a) a member of the group of persons who is responsible for the executive decisions of the person;
 - (b) any other person who has authority or responsibility for (or significant influence over) planning, directing or controlling the activities of the person.
- (2) Without limiting paragraph (1)(a), a reference in that paragraph to a person who is responsible for the executive decisions of a person includes:
 - (a) if the person is a body corporate that is incorporated, or taken to be incorporated, under the *Corporations Act 2001*—a director of the body corporate for the purposes of that Act; and
 - (b) in any other case—a member of the person's governing body.

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11 Meaning of *regulated activity*

The Secretary may, by legislative instrument, determine that a specified kind of eligible activity is a regulated activity.

Part 2—Funding arrangements and grants

12 Simplified outline of this Part

The Minister may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth to a person, or make, vary or administer a grant of financial assistance to a person, in relation to various activities for the benefit of people with disability.

However, the Minister must not make an arrangement for the making of payments, or make a grant of financial assistance, to a person who is not an eligible person for the arrangement or grant.

The person must comply with the statutory funding conditions set out in this Part and any other terms and conditions set out in a funding agreement between the person and the Commonwealth.

The Minister may, on behalf of the Commonwealth, take particular action if the person breaches the statutory funding conditions, including by terminating or varying the funding agreement or publishing information about the breach.

This Part operates concurrently with the power to make arrangements and grants of financial assistance under section 32B of the *Financial Framework (Supplementary Powers) Act 1997* or Chapter 2D of the *Social Security Act 1991*.

13 Arrangements and grants

Arrangements and grants

- (1) The Minister may, on behalf of the Commonwealth, make, vary or administer an arrangement for the making of payments by the Commonwealth to a person, or make, vary or administer a grant of financial assistance to a person, in relation to one or more of the following activities (the ***eligible activities***):

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- (a) the provision of accessibility supports or services;
- (b) the provision of accommodation supports or services;
- (c) the provision of advocacy supports or services;
- (d) the provision of capacity building supports or services;
- (e) the provision of carer supports or services;
- (f) the provision of community inclusion supports or services;
- (g) the provision of counselling supports or services;
- (h) the provision of education supports or services;
- (i) the provision of employment supports or services;
- (j) the provision of independent living supports or services;
- (k) the provision of information supports or services;
- (l) the provision of recreation supports or services;
- (m) the provision of respite care supports or services;
- (n) the provision of a research and evaluation program;
- (o) an activity relating to furthering the objects of this Act;
- (p) an activity determined by the Minister under subsection (2);
- (q) an activity that is incidental or ancillary to any of the above.

Note: Section 16 sets out the constitutional limits on arrangements and grants.

- (2) The Minister may, by legislative instrument, determine an activity for the purposes of paragraph (1)(p).
- (3) Subsection (1) does not limit the kinds of activities the Minister may determine under subsection (2).
- (4) The rules may set out matters to which the Minister must or may have regard in deciding whether to make or vary an arrangement or grant under subsection (1).

Exception

- (5) Despite subsection (1), the Minister must not make an arrangement for the making of payments, or make a grant of financial assistance, to a person unless the person is an eligible person for the arrangement or grant.

Other matters

- (6) An arrangement under subsection (1) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses (including costs or expenses incurred in obtaining a certificate of compliance for activities in relation to the arrangement).
- (7) A grant under subsection (1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses (including costs or expenses incurred in obtaining a certificate of compliance for activities in relation to the grant).
- (8) Subsections (6) and (7) do not limit subsection (1).
- (9) Subsection (1) does not authorise the making of a loan.

14 Terms and conditions

- (1) The terms and conditions:
 - (a) on which money may be payable by the Commonwealth to a person under an arrangement made under section 13; or
 - (b) on which a grant of financial assistance is made to a person under section 13;are the following:
 - (c) the statutory funding conditions;
 - (d) any other terms and conditions set out in a written agreement (the ***funding agreement***) between the Commonwealth and the person.

Note: For the statutory funding conditions, see section 15.

- (2) The person must comply with the statutory funding conditions and the terms and conditions set out in the funding agreement.

Terms and conditions in funding agreement

- (3) The terms and conditions set out in the funding agreement:
 - (a) must provide for the circumstances in which the person must repay amounts to the Commonwealth; and

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- (b) may deal with matters covered by the statutory funding conditions; and
- (c) may deal with the consequences for a breach of a term or condition of the funding agreement; and
- (d) may contain obligations to provide information or reports to the Secretary in relation to the following:
 - (i) alleged breaches, or actual breaches, of the code of conduct by the person;
 - (ii) action taken in response to those alleged or actual breaches.

Note 1: An amount repayable to the Commonwealth would be a debt due to the Commonwealth.

Note 2: The code of conduct under section 20 may deal with when a person breaches the code of conduct because of an act, or an omission to perform an act, by a member of the key personnel of the person or by another person who is employed, or otherwise engaged, by the person.

- (4) Subsections (3) and (6) do not limit the terms and conditions that may be set out in a funding agreement.
- (5) However, a term or condition of a kind mentioned in paragraph (3)(b) set out in a funding agreement is of no effect to the extent of any inconsistency with the statutory funding conditions.

Breach of statutory funding conditions

- (6) If the Minister is satisfied that a person:
 - (a) to whom money may be payable under an arrangement made under section 13; or
 - (b) who receives a grant of financial assistance made under section 13;

has breached a statutory funding condition, the Minister may, on behalf of the Commonwealth, take one or more of the following actions:

- (c) terminate the funding agreement made under this Act with the person in relation to the arrangement or grant;
- (d) vary the funding agreement made under this Act with the person in relation to the arrangement or grant, including by

imposing terms and conditions and by reducing the amount of money to be paid;

- (e) terminate the arrangement or grant;
- (f) vary the arrangement or grant;
- (g) publish information about the breach on a website maintained by the Department.

Minister may enter into funding agreement

- (7) The Minister may, on behalf of the Commonwealth, enter into a funding agreement.

Protection from civil proceedings

- (8) The Commonwealth, the Minister or a delegate of the Minister is not liable to any action, suit or other civil proceeding for or in relation to the publication, in good faith, of information under paragraph (6)(g).

15 Statutory funding conditions

Statutory funding conditions

- (1) This section sets out the statutory funding conditions that apply to a person:
 - (a) to whom money may be payable under an arrangement made under section 13; or
 - (b) who receives a grant of financial assistance made under section 13.

First condition—code of conduct

- (2) The first **statutory funding condition** is the condition that the person complies with the code of conduct.

Note: For the code of conduct, see section 20.

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Second condition—certificate of compliance

- (3) The second **statutory funding condition** is the condition that, if the arrangement or grant is in relation to an eligible activity that is a regulated activity, the person:
- (a) holds a certificate of compliance for the regulated activity; or
 - (b) is covered by a determination, in force under subsection 9(2), for the regulated activity and the day specified in the determination has not occurred.

Note: For certificates of compliance, see sections 21 and 22.

Third condition—complaints management and resolution system

- (4) The third **statutory funding condition** is the condition that the person implements and maintains a complaints management and resolution system that:
- (a) is appropriate for the size of the person and for the kinds of eligible activities to which the arrangement or grant relates; and
 - (b) acknowledges the role of advocates (including independent advocates), and other representatives, of people with disability; and
 - (c) provides for cooperation with, and facilitates arrangements for, those advocates, and other representatives, to support people with disability who:
 - (i) are affected by the complaints process; and
 - (ii) wish to be independently supported in that process by an advocate or other representative; and
 - (d) complies with the requirements (if any) prescribed by the rules for the purposes of this paragraph.

Fourth condition—incident management system

- (5) The fourth **statutory funding condition** is the condition that the person implements and maintains an incident management system that:
- (a) is appropriate for the size of the person and for the kinds of eligible activities to which the arrangement or grant relates; and

- (b) complies with the requirements (if any) prescribed by the rules for the purposes of this paragraph.

Fifth condition—banning orders

- (6) The fifth **statutory funding condition** is the condition that:
 - (a) the person is not subject to a banning order that is in force under section 73ZN of the NDIS Act; and
 - (b) none of the members of the key personnel of the person is subject to a banning order that is in force under section 73ZN of the NDIS Act; and
 - (c) if another person (the **employee**), who is employed or otherwise engaged by the person, is subject to a banning order that is in force under section 73ZN of the NDIS Act in relation to activities, supports or services:
 - (i) the employee does not breach the banning order in engaging in those activities or providing those supports or services for, or on behalf of, the person; and
 - (ii) if the employee became subject to the banning order on or after the day the arrangement or grant is made—the person notifies the Secretary, in writing, of the banning order as soon as practicable after the banning order is made; and
 - (iii) if the employee became subject to the banning order before the day the arrangement or grant is made—the person notifies the Secretary, in writing, of the banning order as soon as practicable after the day the arrangement or grant is made.

16 Constitutional limits

An arrangement or grant referred to in section 13 must be with respect to one or more of the following:

- (a) implementing any of Australia's international obligations under the Convention on the Rights of Persons with Disabilities;
- (b) the granting of financial assistance to a State or Territory;
- (c) a Territory;

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- (d) activities, supports or services for Indigenous persons;
- (e) activities, supports or services that involve the use of a postal, telegraphic, telephonic or other like service within the meaning of paragraph 51(v) of the Constitution;
- (f) activities, supports or services provided by way of sickness benefits or medical services;
- (g) the granting of financial assistance to a constitutional corporation for the purposes of carrying out the corporation's activities;
- (h) implementing any of Australia's international obligations under a Convention or Covenant mentioned in paragraph 3(i);
- (i) the exercise of the executive power of the Commonwealth;
- (j) matters incidental to the execution of any of the legislative powers of the Parliament or the executive power of the Commonwealth.

17 Relationship with other laws

Financial Framework (Supplementary Powers) Act 1997

- (1) To avoid doubt, the power of the Commonwealth to make, vary or administer an arrangement or grant under this Part must be disregarded for the purpose of paragraph 32B(1)(a) of the *Financial Framework (Supplementary Powers) Act 1997*.

Note: The effect of this section is to make clear that this Part does not effectively limit the operation of section 32B of the *Financial Framework (Supplementary Powers) Act 1997*. The Commonwealth has the power to make, vary or administer an arrangement or grant under that section whether the Commonwealth also has the power to do so under this Part.

Social Security Act 1991

- (2) This Part does not limit Chapter 2D of the *Social Security Act 1991* (about arrangements and grants relating to assisting persons to obtain and maintain paid work).

18 Executive power of the Commonwealth

This Part does not, by implication, limit the executive power of the Commonwealth.

Part 3—Code of conduct, certificates of compliance and accreditations

Division 1—Introduction

19 Simplified outline of this Part

The rules can make provision for a code of conduct that applies to persons to whom money may be payable under an arrangement or who receive a grant of financial assistance. A breach of the code of conduct is a breach of a statutory funding condition.

An accredited certification body can grant a certificate of compliance to a person for a regulated activity if the person complies with the compliance standards for the activity. The rules can make provision for compliance standards.

The Secretary can grant a certificate of compliance to a person for a regulated activity if the person complies with the alternative compliance requirements for the activity. The rules can make provision for alternative compliance requirements.

Accredited certification bodies and the Secretary can also revoke or vary a certificate of compliance granted to a person.

The Secretary has the power to approve a person to be an accrediting authority. An accrediting authority has the function of accrediting persons to be accredited certification bodies.

Division 2—Code of conduct

20 Code of conduct

- (1) The rules may make provision for or in relation to a code of conduct that applies to persons:
 - (a) to whom money may be payable under an arrangement made under section 13; or
 - (b) who receive a grant of financial assistance made under section 13.

Note: Subsection 14(3) provides that the terms and conditions set out in a funding agreement with a person may contain obligations to provide information or reports to the Secretary in relation to alleged breaches, or actual breaches, of the code of conduct and to action taken in response to those alleged or actual breaches.

- (2) Without limiting subsection (1), rules made for the purposes of that subsection may make provision for circumstances in which a person breaches the code of conduct because of an act, or an omission to perform an act, by:
 - (a) a member of the key personnel of the person; or
 - (b) another person who is employed, or otherwise engaged, by the person.
- (3) Rules made for the purposes of subsection (1) and in force are the *code of conduct*.

Division 3—Certificates of compliance

21 Accredited certification body may grant certificate of compliance for meeting compliance standards

Certificate of compliance

- (1) An accredited certification body must, in writing, grant a person a certificate of compliance for one or more regulated activities if:
 - (a) the person has made a request, in writing, to the body for a certificate of compliance for those activities; and
 - (b) the body is satisfied the person complies with the compliance standards for those activities.

Note: For compliance standards, see section 23.

- (2) The body must, as soon as practicable after granting the certificate to the person, give a copy of the certificate to the person.
- (3) The certificate must:
 - (a) state that the person complies with the compliance standards for the regulated activities covered by the certificate; and
 - (b) specify the day on which the certificate ceases to be in force.
- (4) If the accredited certification body refuses to grant a certificate of compliance for a regulated activity, as requested by a person under this section, the body must, as soon as practicable after refusing the request, give written notice of the refusal to the person.

Revocation of certificate

- (5) An accredited certification body must, in writing, revoke a certificate of compliance granted to a person under this section if the body is satisfied the person ceases to comply with the compliance standards for the regulated activities covered by the certificate.
- (6) The body must, as soon as practicable after revoking the certificate, give written notice of the revocation to the person.

- (7) The notice must specify the day the revocation takes effect, which must be no earlier than the day after the notice is given to the person.

Variation of certificate

- (8) An accredited certification body must, in writing, vary a certificate of compliance granted to a person under this section:
- (a) to exclude a regulated activity, if the body is satisfied the person ceases to comply with the compliance standards for that activity; or
 - (b) to include one or more additional regulated activities, if:
 - (i) the person has made a request, in writing, to the body to vary the certificate to include those activities; and
 - (ii) the body is satisfied the person complies with the compliance standards for those activities.
- (9) The body must, as soon as practicable after varying the certificate granted to the person, give written notice of the variation to the person.
- (10) The notice must specify the day the variation takes effect, which must be no earlier than the day after the notice is given to the person.
- (11) If the body refuses to vary a certificate of compliance, as requested by a person, the body must, as soon as practicable after refusing the variation, give written notice of the refusal to the person.

Period certificate is in force

- (12) A certificate of compliance granted under this section:
- (a) comes into force on the day the copy of the certificate is given under subsection (2); and
 - (b) remains in force until the earliest of the following occurs:
 - (i) the day specified under paragraph (3)(b);
 - (ii) the day a revocation of the certificate takes effect;
 - (iii) if the accredited certification body that granted the certificate ceases to be accredited—the end of the period of 3 months after the cessation.

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Notification to Secretary

- (13) If an accredited certification body grants, refuses to grant, revokes, varies or refuses to vary a certificate of compliance under this section, the body must notify the Secretary, in writing, as soon as practicable of:
- (a) that fact; and
 - (b) for a decision to refuse to grant or vary, or to revoke or vary, a certificate—the reasons for the decision.

Certificate not a legislative instrument

- (14) A certificate of compliance under subsection (1) is not a legislative instrument.

22 Secretary may grant certificate of compliance for meeting alternative compliance requirements

Certificate of compliance

- (1) The Secretary may, in writing, grant a person a certificate of compliance for one or more regulated activities if:
- (a) the person has made a request, in writing, to the Secretary for a certificate of compliance for those activities; and
 - (b) the Secretary is satisfied the person complies with the alternative compliance requirements for those activities.

Note: For alternative compliance requirements, see section 24.

- (2) The Secretary must, as soon as practicable after granting a certificate to the person, give a copy of the certificate to the person.
- (3) The certificate must:
- (a) state that the person complies with the alternative compliance requirements for the regulated activities covered by the certificate; and
 - (b) specify the day on which the certificate ceases to be in force.
- (4) If the Secretary refuses to grant a certificate of compliance for a regulated activity, as requested by a person under this section, the

Secretary must, as soon as practicable after refusing the request, give written notice of the refusal to the person.

Revocation of certificate

- (5) The Secretary must, in writing, revoke a certificate of compliance granted to a person under this section if the Secretary is satisfied the person ceases to comply with the alternative compliance requirements for the regulated activities covered by the certificate.
- (6) The Secretary must, as soon as practicable after revoking the certificate, give written notice of the revocation to the person.
- (7) The notice must specify the day the revocation takes effect, which must be no earlier than the day after the notice is given to the person.

Variation of certificate

- (8) The Secretary must, in writing, vary a certificate of compliance granted to a person under this section:
 - (a) to exclude a regulated activity, if the Secretary is satisfied the person ceases to comply with the alternative compliance requirements for that activity; or
 - (b) to include one or more additional regulated activities, if:
 - (i) the person has made a request, in writing, to the Secretary to vary the certificate to include those activities; and
 - (ii) the Secretary is satisfied the person complies with the alternative compliance requirements for those activities.
 - (9) The Secretary must, as soon as practicable after varying the certificate granted to the person, give written notice of the variation to the person.
 - (10) The notice must specify the day the variation takes effect, which must be no earlier than the day after the notice is given to the person.
 - (11) If the Secretary refuses to vary a certificate of compliance, as requested by a person, the Secretary must, as soon as practicable
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after refusing the variation, give written notice of the refusal to the person.

Period certificate is in force

- (12) A certificate of compliance granted under this section:
- (a) comes into force on the day the copy of the certificate is given under subsection (2); and
 - (b) remains in force until the earliest of the following occurs:
 - (i) the day specified under paragraph (3)(b);
 - (ii) the day a revocation of the certificate takes effect.

Certificate not a legislative instrument

- (13) A certificate of compliance under subsection (1) is not a legislative instrument.

23 Compliance standards

- (1) The rules may make provision for or in relation to standards for persons undertaking regulated activities.
- (2) Without limiting subsection (1), the rules may make provision for or in relation to different standards for different kinds of persons or regulated activities.
- (3) Rules made for the purposes of subsection (1) and in force are the ***compliance standards***.

24 Alternative compliance requirements

- (1) The rules may make provision for or in relation to requirements for persons undertaking regulated activities.
- (2) Without limiting subsection (1), the rules may make provision for or in relation to:
 - (a) different requirements for different kinds of persons or regulated activities; and
 - (b) giving notice to the Secretary of any non-compliance with the requirements for undertaking regulated activities.

- (3) Rules made for the purposes of subsection (1) and in force are the *alternative compliance requirements*.

Division 4—Accrediting authorities

25 Secretary may approve persons to be accrediting authorities

Approval

- (1) The Secretary may, in writing, grant an approval to a person to perform the functions of granting and withdrawing accreditation under section 26 if the Secretary is satisfied that:
 - (a) the person is internationally recognised as a suitable person to perform those functions; and
 - (b) the person will perform those functions in an independent and impartial way; and
 - (c) the person will perform those functions effectively; and
 - (d) the person has appropriate internal controls and complaints processes.
- (2) The Secretary must, as soon as practicable after granting the approval to the person, give written notice of the approval to the person.

Revocation of approval

- (3) The Secretary must, in writing, revoke an approval granted to a person under this section if the Secretary ceases to be satisfied of the matter mentioned in paragraph (1)(a), (b), (c) or (d) in relation to the person.
 - (4) The Secretary must, as soon as practicable after revoking an approval granted to a person under this section, give written notice of the revocation to:
 - (a) the person; and
 - (b) each accredited certification body granted an accreditation by the person under section 26 that is in force; and
 - (c) each person granted a certificate of compliance by the body.
 - (5) The notice must specify the day the revocation takes effect, which must not be earlier than the day after the notice is given to the person.
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Period approval is in force

- (6) An approval granted under this section:
- (a) comes into force on the day the notice is given under subsection (2); and
 - (b) unless revoked earlier, remains in force indefinitely.

Approval not a legislative instrument

- (7) An approval under subsection (1) is not a legislative instrument.

Division 5—Accredited certification bodies

26 Accrediting authorities may accredit persons to be accredited certification bodies

Accreditation

- (1) An accrediting authority must, in writing, grant an accreditation to a person to perform the functions of granting, revoking and varying certificates of compliance under section 21 if the authority is satisfied:
 - (a) the person will perform those functions competently and impartially; and
 - (b) the person has made a request to the authority for accreditation under this section.
- (2) The authority must, as soon as practicable after granting the accreditation to the person, give written notice of the accreditation to the person.
- (3) If the authority refuses to grant an accreditation, as requested by a person under this section, the authority must, as soon as practicable after refusing the request, give written notice of the refusal to the person.

Withdrawal of accreditation

- (4) An accrediting authority must, in writing, withdraw an accreditation granted to a person under this section if the authority ceases to be satisfied of the matter mentioned in paragraph (1)(a) in relation to the person.
- (5) The accrediting authority must, as soon as practicable after withdrawing the accreditation, give written notice to the person of the withdrawal.
- (6) The notice must specify the day the withdrawal takes effect, which must not be earlier than the day after the notice is given.

Notification

- (7) If an accrediting authority grants, refuses to grant or withdraws an accreditation under this section, the authority must notify the Secretary, in writing, as soon as practicable of:
- (a) that fact; and
 - (b) for a decision to refuse to grant, or to withdraw, an accreditation—the reasons for the decision.
- (8) As soon as practicable after the Secretary is notified under subsection (7) of the withdrawal of the accreditation of an accredited certification body, the Secretary must give written notice of the withdrawal to each person granted a certificate of compliance by the body.

Period accreditation is in force

- (9) An accreditation granted under this section:
- (a) comes into force on the day the notice is given under subsection (2); and
 - (b) remains in force until the earlier of the following occurs:
 - (i) the day the withdrawal of the accreditation takes effect;
 - (ii) if the authority that granted the accreditation ceases to be an accrediting authority—the end of the period of 3 months after the cessation.

Accreditation not a legislative instrument

- (10) An accreditation under subsection (1) is not a legislative instrument.

Part 4—Information management

27 Simplified outline of this Part

Entrusted persons may commit an offence if they use or disclose protected information other than in accordance with this Part.

Entrusted persons can use or disclose information (referred to as relevant information) obtained or generated in the administration of this Act in accordance with this Part.

28 Unauthorised use or disclosure of protected information

- (1) A person commits an offence if:
- (a) the person is, or has been, an entrusted person; and
 - (b) the person has obtained or generated relevant information in the person's capacity as an entrusted person; and
 - (c) the information is protected information; and
 - (d) the person uses or discloses the information.

Penalty: Imprisonment for 2 years or 120 penalty units, or both.

- (2) Subsection (1) does not apply if the use or disclosure is required or authorised by:
- (a) this Act or another law of the Commonwealth; or
 - (b) a law of a State or Territory prescribed by the rules for the purposes of this paragraph.

Note: A defendant bears an evidential burden in relation to a matter in this subsection (see subsection 13.3(3) of the *Criminal Code*).

29 Authorised uses and disclosures of relevant information

Use or disclosure in the administration of this Act

- (1) An entrusted person may use or disclose relevant information for the purposes of:

- (a) performing functions or duties, or exercising powers, under this Act; or
- (b) assisting another person to perform functions or duties, or exercise powers, under this Act.

Use or disclosure for purpose determined by Secretary

- (2) An entrusted person may use or disclose relevant information if the use or disclosure is for a purpose specified in a determination made under subsection (3).
- (3) The Secretary may, by legislative instrument, make a determination for the purposes of subsection (2).
- (4) An instrument made under subsection (3) must specify the legislative power or powers of the Parliament in respect of which the instrument is made.

Commonwealth purposes

- (5) An entrusted person may disclose relevant information:
 - (a) to the Secretary of a Department of State of the Commonwealth, or to the head of an authority of the Commonwealth, for the purposes of that Department or authority; or
 - (b) to the Chief Executive Centrelink for the purposes of a centrelink program; or
 - (c) to the Chief Executive Medicare for the purposes of a medicare program.

State or Territory purposes

- (6) An entrusted person may disclose relevant information to the head (however described) of a Department of State of a State or Territory, or of an authority of a State or Territory, if the disclosure is for a purpose specified in a determination made under subsection (7).
- (7) The Secretary may, by legislative instrument, make a determination for the purposes of subsection (6).

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- (8) An instrument made under subsection (7) must specify the legislative power or powers of the Parliament in respect of which the instrument is made.

Disclosure to a court, tribunal etc.

- (9) An entrusted person may disclose relevant information to a court exercising federal jurisdiction.
- (10) An entrusted person may disclose relevant information to:
- (a) a court; or
 - (b) a tribunal, authority or person that has the power to require the answering of questions or the production of documents; for the purposes of the enforcement of a law of the Commonwealth or to assist the court, tribunal, authority or person to make or review an administrative decision that is required or authorised to be made or reviewed under a law of the Commonwealth.

Use or disclosure for purposes of preventing threat to life, health or safety of a person with disability

- (11) An entrusted person may use or disclose relevant information if the entrusted person reasonably believes that doing so is necessary to lessen or prevent a threat to the life, health or safety of a person with disability.

Use or disclosure of statistics

- (12) An entrusted person may use or disclose relevant information if the information is statistics (within the meaning of paragraph 51(xi) of the Constitution) that are not likely to enable the identification of a person.

Use or disclosure with consent

- (13) An entrusted person may use or disclose relevant information that relates to a person if:
- (a) the person, or an agent of the person, has consented to the use or disclosure; and
 - (b) the use or disclosure is in accordance with that consent.

Disclosure to person to whom information relates

- (14) An entrusted person may disclose relevant information to the person to whom the information relates.

Use or disclosure of information that is already public

- (15) An entrusted person may use or disclose relevant information if the information has already been lawfully made available to the public.

Part 5—Miscellaneous

30 Simplified outline of this Part

This Part deals with the delegation of functions or powers by the Minister and the Secretary, the application of this Act to partnerships, unincorporated associations and trusts and the power to make rules.

31 Delegation by the Minister

- (1) The Minister may, by writing, delegate any or all of the Minister's powers under subsection 13(1) and section 14 to:
 - (a) the Secretary; or
 - (b) an SES employee, or acting SES employee, in the Department; or
 - (c) an SES employee, or acting SES employee, in a Department of State of the Commonwealth other than the Department.

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) However, the Minister must not delegate to a person mentioned in paragraph (1)(c) the following:
 - (a) the Minister's power under subsection 13(1) to make an arrangement or grant;
 - (b) the Minister's power under subsection 14(7) to enter into a funding agreement.
- (3) In exercising any powers under a delegation under this section, the delegate must comply with any directions of the Minister.

32 Delegation by the Secretary

- (1) The Secretary may, by writing, delegate to an SES employee, or acting SES employee, in the Department any or all of the Secretary's functions or powers under the following provisions:

- (a) subsections 9(2) and (4) (specifying a day to obtain a certificate of compliance);
- (b) section 22 (certificates of compliance);
- (c) section 25 (approval of accrediting authority).

Note: Sections 34AA to 34A of the *Acts Interpretation Act 1901* contain provisions relating to delegations.

- (2) In performing any functions, or exercising any powers, under a delegation under this section, the delegate must comply with any directions of the Secretary.

33 Treatment of partnerships

- (1) This Act applies to a partnership as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the partnership by this Act is imposed on each partner instead, but may be discharged by any of the partners.
- (3) If this Act would otherwise permit something to be done by the partnership, the thing may be done by one or more of the partners on behalf of the partnership.
- (4) For the purposes of this Act, a change in the composition of a partnership does not affect the continuity of the partnership.

34 Treatment of unincorporated associations

- (1) This Act applies to an unincorporated association as if it were a person, but with the changes set out in this section.
- (2) An obligation that would otherwise be imposed on the association by this Act is imposed on each member of the association's committee of management instead, but may be discharged by any of the members.
- (3) If this Act would otherwise permit something to be done by the unincorporated association, the thing may be done by one or more of the members of the association's committee of management on behalf of the association.

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35 Treatment of trusts

- (1) This Act applies to a trust as if it were a person, but with the changes set out in this section.

Trusts with a single trustee

- (2) If the trust has a single trustee:
- (a) an obligation that would otherwise be imposed on the trust by this Act is imposed on the trustee instead; and
 - (b) if this Act would otherwise permit something to be done by the trust, the thing may be done by the trustee.

Trusts with multiple trustees

- (3) If the trust has 2 or more trustees:
- (a) an obligation that would otherwise be imposed on the trust by this Act is imposed on each trustee instead, but may be discharged by any of the trustees; and
 - (b) if this Act would otherwise permit something to be done by the trust, the thing may be done by any of the trustees.

36 Rules

- (1) The Minister may, by legislative instrument, make rules prescribing matters:
- (a) required or permitted by this Act to be prescribed by the rules; or
 - (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.
- (2) To avoid doubt, the rules may not do the following:
- (a) create an offence or civil penalty;
 - (b) provide powers of:
 - (i) arrest or detention; or
 - (ii) entry, search or seizure;
 - (c) impose a tax;
 - (d) set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;

(e) directly amend the text of this Act.

Incorporation by reference

- (3) Despite subsection 14(2) of the *Legislation Act 2003*, the rules may make provision in relation to a matter by applying, adopting or incorporating, with or without modification, any matter contained in an instrument or other writing as in force or existing from time to time.

[*Minister's second reading speech made in—
House of Representatives on 14 September 2023
Senate on 15 September 2023*]

(111/23)
