

EXPLANATORY STATEMENT

Issued by the authority of the Minister for Social Services

Disability Services and Inclusion Act 2003

Disability Services and Inclusion (Compliance Standards and Alternative Compliance Requirements) Rules 2023

Purpose

The *Disability Services and Inclusion (Compliance Standards and Alternative Compliance Requirements) Rules 2023* (the instrument) establishes the compliance standards and alternative compliance requirements for persons undertaking regulated activities under of the *Disability Services and Inclusion Act 2003* (the Act).

Under the Act, a person is only eligible for an arrangement or grant relating to a regulated activity if they hold a certificate of compliance for the regulated activity or they are covered by a determination under subsection 9(2) of the Act, providing a person with a specified timeframe in which to obtain a certificate of compliance.

Certificates of compliance may be granted by accredited certification bodies for meeting compliance standards (see section 21 of the Act) or by the Secretary for meeting alternative compliance requirements (see section 22 of the Act). The instrument sets out compliance standards and alternative compliance requirements that people undertaking regulated activities may be required to meet.

Background

The Act replaces the *Disability Services Act 1986* (the DS Act). A key driver for replacing the DS Act was to establish a more consistent approach to regulation and safeguarding in relation to Commonwealth funded disability services outside of the NDIS. The intent is also to reduce unnecessary regulatory burden on providers of disability related supports and services.

The compliance standards largely replicate the current National Standards for Disability Services (NSDS). The NSDS was developed through extensive consultation with people with disability, Disability Representative Organisations, service providers and state and territory governments. Disability ministers from all jurisdictions endorsed the NSDS as they currently operate on 18 December 2013. The NSDS are currently the only compliance standards covering disability employment and advocacy services funded by the Commonwealth.

Apart from changes to language and phrasing, it is not appropriate to depart from the NSDS at this time. Any new or reformed standards would require extensive consultation and co-design.

The instrument also specifies the alternative compliance requirements. As noted above, the Secretary may grant a certificate of compliance if a person meets relevant alternative compliance requirements. A person will be required to provide appropriate evidence that they meet the alternative compliance requirements.

The Secretary will only grant a certificate of compliance for meeting an alternative compliance requirement, if those requirements are appropriate to the regulated activity proposed to be undertaken, and appropriate to the kind of person who will be undertaking the regulated activity.

Under the Act, it is a statutory funding condition to hold a certificate of compliance if undertaking a regulated activity. If a person fails to meet the compliance standards, or ceases to meet the alternative compliance requirements, the person's funding agreement may be terminated or varied and details about the breach may be published on the Department's website.

Commencement

The instrument commences on the later of the day on which the Act commences and the day after this instrument is registered.

The instrument is made in reliance on subsection 4(2) of the *Acts Interpretation Act 1901*, which allows for the exercise of a power following enactment but before the commencement of an Act.

Consultation

The instrument will be circulated to Disability Representative Organisations along with all service providers who are currently funded by the department to provide disability services and supports outside the NDIS for input. The Australian Services Union will also be given opportunity to comment. The combined feedback from this consultation will be considered for the final version of the instrument.

The department will continue to work and engage with stakeholders in relation to individual programs so that they deliver the intended outcomes for people with disability into the future.

Consultation has also occurred with the NDIS Quality and Safeguards Commission, the Aged Care Quality and Safeguards Commission, the Australian Commission on Safety and Quality in Health Care, the Department of Health and Aged Care, Speech Pathology Australia and the National Accreditation Authority for Translators and Interpreters in relation to the alternative compliance requirements.

Regulation Impact Analysis (RIA)

A RIA is not required for this instrument (OIA23-05099).

Explanation of the provisions

Part 1 – Preliminary

Section 1 – Name

Section 1 provides the name of the instrument being the *Disability Services and Inclusion (Compliance Standards and Alternative Compliance Requirements) Rules 2023*.

Section 2 – Commencement

Section 2 provides that the instrument commences on the later of:

- the day on which the Act commences
- the day after this instrument is registered.

The Act commences 28 days after it receives the Royal Assent.

Section 3 – Authority

Section 3 provides that this instrument is made under the *Disability Services and Inclusion Act 2023*.

Specifically, it is made under section 23 of the Act, which for rules for in relation to standards for persons undertaking regulated activities, section 24 of the Act, which provides for rules in relation to alternative compliance requirements for persons undertaking regulated activities and section 36 of the Act, which allows the Minister to make the relevant rules.

Section 4 – Definitions

Section 4 sets out the definitions for terms used in the instrument.

A number of terms are defined in the Act, including:

- code of conduct
- regulated activity
- statutory funding conditions

The instrument also provides for the following definitions:

Act means the *Disability Services and Inclusion Act 2023*.

Employee, of a person, means a person who is employed or otherwise engaged by the person.

Part 2 – Compliance Standards

Division 1 – Introduction

Section 5 – Simplified outline of this Part

Section 5 provides a simplified outline of Part 2 of the instrument to help readers understand the substantive provisions. This is included as a navigation aid for the reader and is not intended to be comprehensive. The reader should consult the substantive provisions to understand the rights and obligations that arise under this Part.

Section 6 – Purpose of this Part

Section 6 provides that Part 2 is made for the purposes of subsection 23(1) of the Act, which makes provision for and in relation to standards for persons undertaking regulated activities.

Division 2 – National Standards for Disability Services

This Division establishes six standards, which set out requirements that persons undertaking a regulated activity must comply with. Each standard has associated indicators (known as indicators of practice) which demonstrate that a standard has been met. The indicators of practice identify the key elements that should be demonstrated in order to meet the requirement of the standard.

The indicators are applied and assessed only as applicable. This means that an indicator is only assessed if it is relevant to the activity to be undertaken. Where indicators require systems, it is expected that they will be proportionate to the size and scale of the organisation and the scope and complexity of the supports.

Section 7 – Application of this Division

Section 7 provides that Division 2 sets out the compliance standards that apply to a person undertaking a regulated activity, being the NSDS.

Section 8 – First standard – rights

Section 8 sets out the first compliance standard, which deals with the rights of people with disability. The intent of this standard is to promote quality, respectful and safe service delivery which meets or exceeds legislative requirements and achieves positive outcomes for people with disability.

Subsection 8(1) provides that a person undertaking a regulated activity must:

- promote the individual rights of people with disability to freedom of expression, self-determination and decision-making; and
- actively prevent abuse, harm and neglect of, and violence towards, people with disability.

Subsection 8(2) provides indicators of practice for this standard. To meet this standard a person undertaking a regulated activity, as well as its key personnel and

employees, must treat people with disability with dignity and respect and uphold their rights to freedom of expression, choice and control and self-determination, including by providing appropriate support and information. The standard also requires the person to treat personal information confidentially and privately.

The person must also address the risks of harm, neglect, abuse or violence which some people with disability may face when using services or supports. The indicators highlight the roles for services and supports, families, friends, carers and advocates in reducing these risks.

If a breach of rights occurs, the person is required to address the breach promptly and systemically, and use the breach as an opportunity to improve supports and services.

Section 9 – Second standard – participation and inclusion

Section 9 sets out the second compliance standard, which deals with the participation and inclusion of people with disability. The intent is to promote the connection of people with disability with their families, friends and chosen communities. It requires that services work together with individuals to enable their genuine participation and inclusion.

Subsection 9(1) provides that a person undertaking a regulated activity must work with people with disability and their families and carers to promote opportunities for meaningful participation and active inclusion in society.

Subsection 9(2) provides indicators of practice for this standard. To meet this standard a person undertaking a regulated activity must actively support and encourage individuals to connect with family and friends and to feel included in their chosen communities. This should be based on an individual's interests, identity, heritage and aspirations.

The person should also work with the wider community – including, where appropriate, families and carers, advocates, and other organisations and community members – to promote meaningful participation and active inclusion. The person must use strategies that promote community and cultural connection for Aboriginal and Torres Strait Islander people.

Section 10 – Third standard – individual outcomes

Section 10 sets out the third compliance standard, which deals with individual outcomes for people with disability. It requires a person-centred approach to service delivery, with individuals enabled to lead and direct their services and supports. It also requires a person undertaking a regulated activity to provide supports and services which are flexible and tailored to each individual's strengths and needs and which enable people with disability to reach their goals.

Subsection 10(1) provides that a person undertaking a regulated activity must assess, plan, provide and review the activity to ensure that it:

- builds on the individual strengths of people with disability; and

- enables people with disability to reach their goals.

Subsection 10(2) provides indicators of practice for this standard. To meet this standard a person undertaking a regulated activity must recognise and respond to issues related to disability, age, gender, culture, heritage, language, faith, sexual identity, relationship status, and other relevant factors. The person must also consider the unique characteristics, circumstances, needs and preferences of each person with disability who accesses their supports and services.

Central to this person-centred approach is the right of the person with disability to active choice and decision-making. This means collaboration between the individual and the person undertaking the regulated activity in making decisions. This focus on collaboration and decision-making also extends to reviewing progress against planned and measurable outcomes.

The standard also requires a recognition of the potential role, with the individual's consent, of families, friends, carers and advocates in planning, delivery and review of supports and services. It encourages active dialogue between an individual, their family, friends, carers and/or advocates and the person undertaking the regulated activity. The individual's consent is an important part of ensuring that the individual and their needs and preferences are central in the process.

Section 11 – Fourth standard – feedback and complaints

Section 11 sets out the fourth compliance standard, which deals with feedback and complaints. It requires people undertaking regulated activities to manage complaints and disputes effectively and use them as opportunities for improvement. This standard operates alongside the requirements for all people receiving funding under the Act to maintain an appropriate complaints management and resolution system, consistent with subsection 15(4) of the Act.

Subsection 11(1) provides that a person undertaking a regulated activity must:

- seek regular feedback in relation to the activity; and
- use that feedback to inform reviews of, and improvements to, the activity, both at an individual and an organisation wide level.

Subsection 11(2) provides indicators of practice for this standard. To meet this standard a person undertaking a regulated activity should have clearly communicated and effective systems in place to address and resolve issues raised by people with disability, families, friends, carers and advocates.

The indicators of practice recognise that robust and timely feedback, both positive and negative, is essential for continuous improvement. People undertaking regulated activities should look for opportunities to seek feedback, including regular and day-to-day feedback, formal consultation or engagement and regular satisfaction surveys or opportunities for group feedback.

The indicators of practice also recognise that people need to feel safe to make a complaint or provide negative feedback. A person undertaking a regulated activity should ensure that individuals are able to access independent mechanisms for

complaints, appeals or disputes without fear of adverse consequences or loss of service. This also includes access to advocates, independent information, support, advice and representation.

Section 12 – Fifth standard – service access

Section 12 sets out the fifth compliance standard, which deals with service access. It requires access to services and supports to be fair, equal, transparent and responsive across entry/commencement, service use, and exit or transfer.

Subsection 12(1) provides that a person undertaking a regulated activity must manage, in a transparent, fair, equal and responsive way, the manner by which people with disability access, commence and leave the activity

Subsection 12(2) provides indicators of practice for this standard. To meet this standard people providing regulated activities must ensure that access to activities is fair, equal and transparent including through seeking input from people with disability and their families and carers, and providing information to them in formats that are accessible to them.

This should be considered for all stages of service delivery, including when a person enters or commences a service, throughout their time using or accessing the service, and when they leave or cease using the service.

People undertaking a regulated activity are required to be proactive in ensuring their services and supports are accessible, including through monitoring and addressing potential barriers to access. This includes clear explanations when a service or support is not available to a person with disability. The person should also collaborate with other organisations and community members as needed to ensure options are available to refer individuals to other service options when needed.

Section 13 – Sixth standard – service management

Section 13 sets out the sixth compliance standard, which deals with service management. It requires people undertaking a regulated activity to be effective and accountable in service management and delivery.

Subsection 13(1) provides that a person undertaking a regulated activity must have effective and accountable service management and leadership to maximise outcomes for people with disability.

Subsection 13(2) provides indicators of practice for this standard. To meet this standard, the key personnel and employees of person undertaking a regulated activity must be suitably qualified for their role, including having appropriate skills and support. It requires that practices are based on evidence, and involve the least restriction of the rights and opportunities of people with disability.

People must have suitable systems and processes in place. These are essential for supporting quality service provision, sound governance and management, and effective planning and continuous improvement. Support for organisational learning and skills development is considered integral to a culture of quality service delivery and continuous improvement.

Part 3 – Alternative Compliance Requirements

Division 1 – Introduction

Section 14 – Simplified outline of this Part

Section 14 provides a simplified outline of Part 3 to help readers understand the substantive provisions. This is included as a navigation aid for the reader and is not intended to be comprehensive. The reader should consult the substantive provisions to understand the rights and obligations that arise under this Part.

Section 15 – Purposes of this Part

This section states that, for the purposes of subsection 24(1) of the Act, Part 3 makes provision for and in relation to requirements for persons undertaking regulated activities.

Division 2 – Alternative compliance requirements

Section 22 of the Act provides that the Secretary may grant a certificate of compliance for meeting alternative compliance requirements. These alternative compliance requirements allow for the Secretary to recognise a person's compliance or certification against another comparable regulatory scheme.

Recognising compliance with alternative compliance requirements is discretionary, and will only be done if the person is accredited or certified against standards that are applicable to the regulated activity. Whether it is appropriate to recognise alternative compliance requirements will depend, in part, on what supports and services the person provides under the comparable regulatory scheme, and whether those are comparable to the supports or services to be provided under the Act.

For example, if a large organisation is a registered NDIS provider and holds a certificate of registration to provide particular supports or services under the NDIS, the registration would only be recognised for the purposes of the Act if:

- the same part of the organisation will be delivering the activity, and
- the NDIS Practice Standards are relevant to the proposed activity.

Section 16 – Requirements for NDIS providers

Section 16 sets out the alternative compliance requirements for a person who is a registered NDIS provider (within the meaning of the NDIS Act). This allows the Secretary to recognise a person's registration as a registered NDIS provider.

Section 9 of the NDIS Act provides that a registered NDIS provider is a person or entity who is registered under section 73E of that Act. Section 73E of the NDIS Act provides that the NDIS Quality and Safeguards Commissioner (NDIS Commissioner) may register a person as a registered NDIS provider if, among other things, the person has been assessed by an approved quality auditor as meeting the applicable standards and other requirements prescribed by the NDIS Practice Standards, which are prescribed in NDIS rules.

The NDIS Practice Standards include a core module alongside a number of additional modules which relate to specialist services and supports. The core module is directly comparable to the general compliance standards set out in Part 2 of this instrument and assesses the same aspects of service delivery. Registered NDIS providers are subject to robust compliance, investigation and enforcement powers. This offers a high degree of confidence that a provider who is meeting the NDIS Practice Standards in respect of particular services and supports would also meet the general compliance standards for those services and supports.

Subsection 16(2) provides that the person must give to the Secretary a copy of the most recent certificate of registration provided to the person under paragraph 73E(4)(b) of the NDIS Act.

A certificate of registration sets out a range of matters, including the classes of supports or services that a person is registered to provide, if relevant, the class of persons in respect of which the provider is registered, the conditions (if any) on the registration imposed by the NDIS Commissioner and the period for which the registration is in force.

This certificate of registration provides the evidence that the Secretary needs to be satisfied that a person meets the requirement to be a registered NDIS provider. It will also allow the Secretary to be satisfied that a person was been registered to provide comparable supports and services.

Subsection 16(3) provides that a person must inform the Secretary within 24 hours of the occurrence of any of the following:

- the person's registration is varied under section 73L of the NDIS Act;
- the person is notified of a decision to suspend the person's registration under section 73N of the NDIS Act;
- the person is notified of a decision to revoke the person's registration under section 73P of the NDIS Act;
- the person otherwise ceases to be a registered NDIS provider.

Subsection 22(5) of the Act provides that the Secretary must revoke a certificate of compliance granted to a person if the Secretary is satisfied that the person ceases to comply with the alternative compliance requirements for the regulated activities covered by the certificate.

Subsection 16(3) will ensure that the Secretary is able to revoke a person's certificate of compliance if they cease to meet alternative compliance requirements by ceasing to be a registered NDIS provider.

Section 17 – Requirements for approved providers of aged care

Section 17 sets out the alternative compliance requirements for a person who is an approved provider of aged care (within the meaning of the *Aged Care Quality and Safety Commission Act 2018* (ACQSC Act)). This allows the Secretary to recognise a person's approval as an approved provider of aged care.

Section 7 of the ACQSC Act provides that a person or body is an approved provider if the person or body has been approved as a provider of aged care under section 63D of the ACQSC Act, or is taken, under paragraph 63F(2)(a), to be an approved provider and the approval of the person or body is in effect.

Section 63D of the ACQSC Act provides that the Commissioner of the Aged Care Quality and Safety Commission (Aged Care Commissioner) must decide whether to approve a person as a provider of aged care if, among other things, the Commissioner is satisfied that the person is suitable to provide aged care. Further, approved providers are required to comply Chapter 4 of the *Aged Care Act 1997* (Aged Care Act), setting out the responsibilities of approved providers, which include requirements around quality of care, user rights, accountability as well as the requirement to comply with the Aged Care Quality Standards. Approved providers are accredited in accordance with the *Aged Care Quality and Safety Commission Rules 2018*.

The Aged Care Quality Standards establish similar quality and safeguarding requirements to the general compliance standards. Approved providers of aged care are also subject to robust compliance, investigation and enforcement powers. Therefore, meeting the requirements of the Aged Care Quality Standards in respect of particular services and supports offers a high degree of confidence that the provider would also meet the requirements of the general compliance standards for comparable services and supports provided under the Act.

Subsection 17(2) provides that a person must give to the Secretary a copy of the most recent notice given to the person under subsection 63E(1) of the ACQSC Act.

Notices provided under subsection 63E(1) of the ACQSC Act include information that the Secretary requires to be satisfied that the person is approved to provide comparable supports and services.

Subsection 17(3) provides that a person must inform the Secretary within 24 hours of the occurrence of any of the following:

- the person's approval is suspended under Part 7B of the ACQSC Act;
- the person's registration is revoked under Division 4 of Part 7A, or Part 7B, of the ACQSC Act;
- the person otherwise ceases to be an approved provider of aged care.

Subsection 22(5) of the Act provides that the Secretary must revoke a certificate of compliance granted to a person if the Secretary is satisfied that the person ceases to comply with the alternative compliance requirements for the regulated activities covered by the certificate.

Subsection 17(3) will ensure that the Secretary is able to revoke a person's certificate of compliance if they cease to meet alternative compliance requirements by ceasing to be an approved provider of aged care.

Section 18 – Requirements for accredited organisations providing health care services

Section 18 sets out the alternative compliance requirements for a person who is accredited against certain standards formulated under paragraph 9(1)(e) of the *National Health Reform Act 2011* (NHR Act).

The NHR Act establishes the Australian Commission on Safety and Quality in Health Care (Health Care Commission). One of the functions of the Health Care Commission is to formulate, in writing, standards relating to health care safety and quality matters (see paragraph 9(1)(e) of the NHR Act). Relevantly, these standards include:

- National Safety and Quality Health Service Standards
- National Safety and Quality Primary and Community Healthcare Standards
- National Safety and Quality Digital Mental Health Standards
- National Safety and Quality Mental Health Standards for Community Managed Organisations

These standards may be accessed on the Health Care Commission website (<https://www.safetyandquality.gov.au>).

Healthcare services may choose to be accredited on one or more standards to improve the safety and quality of health care provision. While accreditation to relevant standards is generally voluntary, entities may choose to obtain accreditation to any National Health Standard.

Meeting the requirements of a National Health Standard in respect of particular services and supports offers a high degree of confidence that the provider would also meet the requirements of the general compliance requirements for those services and supports.

Subsection 18(2) provides that a person must give to the Secretary a copy of the most recent accreditation certificate issued to the person by an accreditation agency approved by the Health Care Commission.

Accreditation to relevant standards is undertaken by an accrediting agency approved by the Health Care Commission. These agencies provide an accreditation certificate that demonstrates that the person has been accredited to a relevant standard. Accreditation generally lasts 3 years before it needs to be renewed.

Subsection 18(3) provides that a person must inform the Secretary within 24 hours of the person ceasing to be accredited against a standard made under paragraph 9(1)(e) of the NHR Act. This will ensure that the Secretary is able to revoke a person's certificate of compliance if they cease to meet alternative compliance requirements.

Section 19 – Requirements if regulated activities are to be provided by registered health practitioners

Section 19 sets out the alternative compliance requirements for a person undertaking a regulated activity where that activity is of a kind that is provided, in whole or in part, by a health practitioner (within the meaning of Health Practitioner Regulation National Law).

Certain regulated activities may be delivered by health practitioners, such as occupational therapists or physiotherapists. A person will only meet the alternative compliance requirement if all relevant aspects of a regulated activity are provided by a health practitioner. Staff incidentally engaged in a regulated activity (for example in purely administrative support roles) do not need to be health practitioners.

The Australian Health Practitioner Regulation Agency (AHPRA) works with the 15 National Boards to help protect the public by regulating Australia's registered health practitioners. Together, the primary role is to protect the public and set standards and policies that all registered health practitioners must meet. Accreditation is a key part of the National Registration and Accreditation Scheme.

These regulatory requirements for health practitioners are robust and include appropriate oversight, investigation and enforcement powers. These provide confidence that a provider who holds appropriate registration as a health practitioner is able to deliver quality supports and services which would meet the requirements of the NSDS.

Subsection 19(2) provides that the regulated activity (or relevant part of the regulated activity) must be provided by a health practitioner who is registered in a State or Territory, as the kind of health practitioner that can provide that kind of activity, under:

- for a State or Territory other than Western Australia—the Health Practitioner Regulation National Law, as it applies (with or without modification) as a law of the State or Territory, or
- for Western Australia—the *Health Practitioner Regulation National Law (WA) Act 2010* of Western Australia, so far as that Act corresponds to the Health Practitioner Regulation National Law.

Subsection 19(3) provides that if the person provides a regulated activity, the person must give to the Secretary evidence of their compliance with the requirement in subsection (2).

Subsection 19(4) provides that, for each health practitioner who provides the regulated activity (or aspects of the regulated activity) for or on behalf of the person, the person must give to the Secretary evidence of the health practitioner's compliance with the requirement in subsection (2).

Subsection 19(5) provides that for the purposes of section 19 'Health Practitioner Regulation National Law' means the Health Practitioner Regulation National Law set out in the Schedule to the *Health Practitioner Regulation National Law Act 2009* of Queensland.

Although the Health Practitioner National Law is Queensland legislation, it has been adopted by all other states and territories, either in whole or with some modification.

Section 20 – Requirements if regulated activities are to be provided by speech pathologists

Section 20 sets out the alternative compliance requirements for a person undertaking a regulated activity of a kind that is provided, in whole or in part, by a speech pathologist.

Subsection 20(2) provides that the regulated activity (or relevant part of the regulated activity) must be provided by a speech pathologist who is a certified practicing member of Speech Pathology Australia (SPA).

SPA is recognised by the Commonwealth as the professional body representing speech pathologists in Australia. SPA is responsible for setting the minimum standards expected of the speech pathology profession in Australia and sets and monitors certification requirements for speech pathologists. SPA is also a member of the National Alliance of Self-Regulating Health Professions (NASRHP) and must meet NASRHP requirements for certification.

Certification by SPA demonstrates the following:

- SPA's commitment to protect the public through robust self-regulation and maintenance of quality standards of professional practice
- speech pathologists' obligation and responsibility to undertake continuing professional development and maintain Recency of Practice to ensure their professional skills and knowledge remain current, relevant, culturally responsive and evidence based
- SPA's commitment to enabling a culturally responsive workforce where speech pathologists critically reflect upon their biases and undertake learning to ensure service provision privileges Aboriginal and Torres Strait Islander Peoples and communities.

Further, the Certification Program binds all Certified Practicing Speech Pathologists to its Code of Ethics, Professional Standards and Scope of Practice which can found on the SPA website: <https://www.speechpathologyaustralia.org.au>.

Subsection 20(3) provides that if a person provides the regulated activity (or relevant part of the regulated activity), the person must give to the Secretary a copy of the most recent certificate issued to the person by SPA that indicates that the person is a certified practising speech pathologist.

Subsection 20(4) provides that for each speech pathologist who provides the regulated activity (or part) for or on behalf of the person, the person must give to the Secretary a copy of the most recent certificate issued to the speech pathologist by SPA that indicates that the speech pathologist is a certified practising speech pathologist.

Section 21 – Requirements if regulated activities are to be provided by translators or interpreters

Section 21 sets out the alternative compliance requirements for a person undertaking a regulated activity of a kind that is provided, in whole or in part, by a translator or interpreter.

Subsection 21(2) provides that the regulated activity (or relevant part of the regulated activity) must be provided by a translator or interpreter who is certified or recognised as a translator or interpreter by the National Accreditation Authority for Translators and Interpreters (NAATI).

NAATI is the certification body for translators and interpreters in Australia. NAATI Certification carries a requirement of formal training at a diploma level or higher and an ongoing requirement to recertify the credential by providing evidence of work practice and professional development every three years. All practitioners must also adhere to the code of ethics available on the NAATI website: <https://www.naati.com.au>. This Code of Ethics sets standards around professional conduct, confidentiality, competence, impartiality, accuracy, clarity of role boundaries, maintaining professional relationships, professional development and professional solidarity.

Subsection 21(3) provides that if a person provides the regulated activity (or relevant part of a regulated activity), the person must give to the Secretary a copy of the most recent certificate issued to the person by NAATI that denotes the credentials and practitioner number of the person.

Subsection 21(4) provides that for each translator or interpreter who provides the regulated activity (or relevant part of a regulated activity) for or on behalf of the person, the person must give to the Secretary a copy of the most recent certificate issued to the translator or interpreter by NAATI that denotes the credentials and practitioner number of the translator or interpreter.

Section 22 – Requirements for legal aid commissions

Section 22 provides that it is an alternative compliance requirement that a person is an authority established by or under a law of a State or a Territory for the primary purpose of providing legal assistance. This allows legal aid commissions to provide legal advocacy supports and services to people with disability without needing to undergo an audit and certification process.

Legal aid commissions in each State and Territory are established as independent statutory bodies. All solicitors who provide legal services through legal aid commissions are required to comply with professional rules and standards. Compliance with these obligations are monitored and enforced by the Law Society or Law Institute in each State and Territory. While the professional rules and standards are very different to the compliance standards under this instrument, they provide appropriate assurance given the nature of the services that legal aid commission provide.

Statement of Compatibility with Human Rights

Prepared in accordance with Part 3 of the Human Rights (Parliamentary Scrutiny) Act 2011

Disability Services and Inclusion (Compliance and Alternative Compliance Requirements) Rules 2023

The legislative instrument is compatible with the human rights and freedoms recognised or declared in the international instruments listed in section 3 of the *Human Rights (Parliamentary Scrutiny) Act 2011*.

Overview of the legislative instrument

The *Disability Services and Inclusion (Compliance Standards and Alternative Compliance Requirements) Rules 2023* (the instrument) establishes the compliance standards and alternative compliance requirements for persons undertaking regulated activities under of the *Disability Services and Inclusion Act 2023* (the Act). This instrument re-establishes the National Standards for Disability Services (NSDS) under the Act and provides for their application to all regulated activities, rather than limited to employment services, rehabilitation programs, and advocacy services as under the

Under the Act, a person is only eligible for an arrangement or grant relating to a regulated activity if they hold a certificate of compliance for the regulated activity or they are covered by a determination under subsection 9(2) of the Act, providing a person with a specified timeframe in which to obtain a certificate of compliance.

Certificates of compliance may be granted by accredited certification bodies for meeting compliance standards (see section 21 of the Act) or by the Secretary for meeting alternative compliance requirements (see section 22 of the Act). The instrument sets out compliance standards and alternative compliance requirements that people undertaking regulated activities may be required to meet.

Human rights implications

The instrument engages the following human rights:

- Right to equality and non-discrimination and right to freedom of opinion and expression and access to information – Articles 3, 4, 5, 12 and 21 of the *Convention on the Rights of Persons with Disabilities* (CRPD) and Articles 2, 16, 19 and 26 of the *International Covenant on Civil and Political Rights* (ICCPR)
- Right to freedom from exploitation, violence and abuse – Article 16 of the CRPD

Right to equality and non-discrimination – Articles 3, 4, 5, 12 and 21 of the CRPD and Articles 2, 16, 19 and 26 of the ICCPR

Article 3 of the CRPD reflects the need for the respect for the inherent dignity, individual autonomy (including the freedom to make one's own choices and the

independence of the person), non-discrimination, full and effective participation and inclusion in society, the need for respect for difference and acceptance of persons with disabilities, equality of opportunity, accessibility, gender equality and respect for the evolving capacities of children with disabilities, including their right to preserve their identities.

In addition, Article 4 of the CRPD outlines the obligations of State Parties to ensure and promote the full realisation of all human rights and fundamental freedoms for all persons with disability without discrimination of any kind on the basis of disability.

Article 5(2) of the CRPD requires State Parties to prohibit all discrimination on the basis of disability and guarantee persons with disabilities equal and effective legal protection against discrimination on all grounds. Article 12 of the CRPD reaffirms that persons with disability have the right to recognition everywhere as persons before the law and shall enjoy legal capacity on an equal basis with others, with appropriate measures being taken to provide access and support in exercising their legal capacity, including appropriate safeguards.

Similarly, Article 16 of the ICCPR states that everyone shall have the right to recognition everywhere as a person before the law, and Article 26 of the ICCPR states that all persons are equal before the law and are entitled, without any discrimination on any grounds, to the equal protection of the law, including protection from discrimination. Article 2(3) of the ICCPR provides State Parties to undertake to ensure that any person whose rights or freedoms are violated shall have an effective remedy, and that competent authorities enforce such remedies when granted.

Article 21 of the CRPD requires that States Parties shall take all appropriate measures to ensure that persons with disabilities can exercise the right to freedom of expression and opinion, including the freedom to seek, receive and impart information and ideas on an equal basis with others and through all forms of communication of their choice. Similarly, article 19 of the ICCPR provides that everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds.

The National Standards for Disability Services set out in Part 2 of the instrument provide that a person undertaking a regulated activity must promote the individual rights of people with disability, freedom of expression, self-determination and decision-making.

Several of the alternative compliance requirements set out in Part 3 involve similar obligations, including the obligations, such as those imposed on registered NDIS providers by the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018*.

Right to freedom from exploitation, violence and abuse – Article 16 of the CRPD

Article 16 provides that States Parties shall take all appropriate measures to protect persons with disabilities from all forms of exploitation, violence and abuse and that to facilitate this, State Parties must ensure that all facilities and programmes designed

to serve persons with disabilities are effectively monitored by independent authorities.

This instrument embeds a requirement for entities providing higher risk supports or services funded under the Act to be independently monitored, in accordance with Article 16(3). This may be through auditing compliance with the National Standards for Disability Services set out in Part 2 of the instrument, or through meeting relevant alternative compliance requirements set out in Part 3 of the instrument.

This instrument also provides a framework to enable the effective identification of concerns and continuous improvement related to exploitation, violence and abuse against persons with disabilities, consistent with Article 16(5).

Conclusion

This instrument is compatible with human rights as it advances the protection of the rights of people with disability in Australia, including in relation to preventing exploitation, violence and abuse in the disability sector.