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**THE PARLIAMENT OF THE COMMONWEALTH OF AUSTRALIA**

**HOUSE OF REPRESENTATIVES**

**DISABILITY SERVICES AND INCLUSION BILL 2023**

**EXPLANATORY MEMORANDUM**

**(Circulated by the authority of the  
Minister for Social Services, the Hon Amanda Rishworth MP)**

## DISABILITY SERVICES AND INCLUSION BILL 2023

### OUTLINE

The Disability Services and Inclusion Bill 2023 (the Bill) is designed to help deliver the Government's commitment to enable people with disability to participate fully in society and exercise full choice and control over their lives and to improve job opportunities, job readiness and support in employment.

The Bill will repeal and replace the *Disability Services Act 1986* (DS Act) and establish a modern regime for programs targeted for the benefit of people with disability, their families and carers. The Bill will provide legislative authority for all new spending on disability related programs outside the National Disability Insurance Scheme (NDIS). Arrangements and grants made under the proposed Act will be supported by appropriate quality safeguards such a Code of Conduct and certification standards.

Existing grants and programs will continue under existing arrangements rather than transition these to the new arrangements. Transition to new arrangements will occur when current funding agreements end.

## DISABILITY SERVICES AND INCLUSION BILL 2023

### NOTES ON CLAUSES

#### Abbreviations used in this explanatory memorandum

In this explanatory memorandum, unless the contrary is indicated:

- **Acts Interpretation Act** means the *Acts Interpretation Act 1901*.
- **Bill** means the Disability Services and Inclusion Bill 2023.
- **commencement day** means the day the Act commences, which will be a single date to be fixed by proclamation, or 6 months after the Bill receives the Royal Assent if it has not commenced before that time.
- **DS Act** means the *Disability Services Act 1986*.
- **FF(SP) Act** means the *Financial Framework (Supplementary Powers) Act 1997*.
- **Legislation Act** means the *Legislation Act 2003*.
- **NDIS** means the National Disability Insurance Scheme.
- **NDIS Act** means the *National Disability Insurance Scheme Act 2013*.
- **UNCPRD** the United Nations 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.

## **Background**

International and Australian disability policy has evolved significantly in past decades, including since the DS Act commenced in 1986. Australia's entry into the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) and the development and implementation of Australia's Disability Strategy 2021-2031 (Strategy) have driven greater engagement by people with disability in determining how they live and are supported.

At the same time, the Australian governments have in some areas moved from direct service provision to person-centred market models of service delivery and support, including through the NDIS established by *National Disability Insurance Scheme Act 2013* (the NDIS Act), which currently supports around 590,000 people with disability.

With an estimated 1 in 6 people with disability in Australia, it is essential to establish a complementary, modern and streamlined Act that effectively facilitates funding for supports and services that will assist all people with disability regardless of whether or not they are a participant in the NDIS.

Contemporary disability programs employ a range of service delivery models that were not envisaged when the DS Act was established. Several of these programs are delivered through alternative financial arrangements such as procurements. Legislative authority for those programs is generally provided by the *Financial Framework (Supplementary Powers) Regulations 1997*. This can cause significant administrative delays in implementing important programs and means that some programs are not subject to any form of regulatory oversight.

Repealing the DS Act and replacing it with a modern and more broadly based framework offers the most effective means to create a fit-for purpose legislative basis for disability programs.

The Bill will also allow for better alignment between regulatory schemes and provide for a Code of Conduct, similar to that provided for under the NDIS Act. Unlike the NDIS, the Bill does not establish a regulator to monitor all persons receiving funding under the Bill. As a result, the safeguarding measures will be enforced through contract. This means that breaches of terms and conditions may result in the variation or revocation of a financial arrangement with the Commonwealth.

## **Explanation of the clauses**

### **Part 1—Preliminary**

#### **Division 1 - Preliminary**

##### **Clause 1 – Short title**

1. This clause sets out the short title of this Bill when it becomes law. It specifies that the Act shall be known as the *Disability Services and Inclusion Act 2023*.

##### **Clause 2 – Commencement**

2. This clause provides that the Bill will commence on the 28<sup>th</sup> day after the Act receives the Royal Assent.

##### **Clause 3 – Objects of this Act**

3. Clause 3 outlines the objects of the Bill.
4. The objects of the Bill are to:
  - (a) in conjunction with other laws, give effect to the Convention on the Rights of Persons with Disabilities
  - (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
  - (c) support the social and economic participation and inclusion of people with disability
  - (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
  - (e) raise community awareness of the competence and value of people with disability and the barriers to inclusion affecting people with disability
  - (f) protect 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 establish appropriate complaints management and resolution systems and incident management systems
  - (g) promote national consistency, coordination and accessibility of supports and services for people with disability
  - (h) support people with disability to access supports or services that:
    - (i) are locally available (including in rural and remote communities) and provided in a manner that is timely, effective and innovative; and

- (ii) to the extent possible, are integrated with services generally available to other members of Australian society
- (iii) to the extent possible, provide continuity of support and services for people with disability
- (iv) to the extent possible, assist people with disability to meet the daily and lifetime norms of other members of Australian society
- (v) meet the needs of people with disability who experience compound disadvantage, including as a result of a person's age, sex, gender identity, sexual orientation, intersex status, ethnicity, religious belief or cultural or linguistic background
- (vi) respect the privacy of people with disability
- (vii) provide accurate and sufficient information about the supports and services available and the quality of those supports and services
- (viii) increase the independence and wellbeing of people with disability
- (ix) provide meaningful opportunities for employment, education and development for people with disability
- (x) 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
  - (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
  - (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
  - (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
  - (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.

#### **Clause 4 – General principles guiding actions under this Act**

5. This clause sets out a list of general principles underpinning the Bill.
6. **Subclause 4(1)** provides that regard must be had to the principles in taking any action under the Bill. These actions include (but are not limited to) deciding to make or vary an arrangement or grant for an eligible activity and making rules, such as those setting compliance standards.

7. The general principles guiding actions under this Bill are:

- People with disability are individuals who have the inherent right to respect for their human worth and dignity, and live a life free from neglect, abuse and exploitation.
- People with disability, whatever the origin, nature, type and degree of disability, have the same basic human rights as other members of Australian society.
- People with disability have the same rights as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development.
- People with disability have the same right as other members of Australian society to services which will support their attaining a reasonable quality of life.
- 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.
- 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.
- People with disability have the same right of pursuit of any grievance in relation to supports or services as other members of Australian society.

#### **Clause 5 – Simplified outline of this Act**

8. **Clause 5** provides a simplified outline of the Bill 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.

#### **Clauses 6 – Act binds the Crown**

9. **Clause 6** provides that the Crown is bound in each of its capacities by this Act but it does not make the Crown liable to be prosecuted for an offence.

#### **Clause 7 – Extension to external Territories**

10. **Clause 7** provides that this Bill extends to the external Territories.

#### **Clause 8 – Definitions**

11. **Clause 8** sets out definitions for terms used in the Bill.

12. A number of definitions are signpost definitions which refer the reader to where the term is defined in detail later in this Bill. Examples include the following:

- accredited certification body
- accrediting authority

- alternative compliance requirements
- code of conduct
- compliance standards
- eligible activity
- eligible person
- funding agreement
- key personnel
- regulated activity
- rules
- statutory funding condition

13. A number of terms are also defined in other legislation, including:

- centrelink program
- National Disability Insurance Scheme
- medicare program.

14. A number of definitions define the 'eligible activities' that may be funded under clause 13 of the Bill. These are the following:

***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.

This definition engages with the CRPD for the purposes of ensuring funding for supports and services that improve and accessibility for people with disability. The definition is intended to capture a broad range of services and supports including those that:

- provide devices or technologies to people with disability to facilitate engagement in the person's physical and social environment
- help to remove or minimise physical and mental barriers to engaging in the physical or social environment
- take account of, or support, a person's personal attributes, including their race, sex, gender identity, sexual orientation, impairment, class, religious, age, social origin and other identity markers.

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

Access to accommodation supports or services to people with disability include:

- temporary accommodation
- supports to find suitable accommodation
- modifications to ensure the suitability of their accommodation
- assistance with housing related costs.

**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; or
- (b) to assist a person with disability to understand and advocate for their rights; or
- (c) to influence community attitudes, government policy or laws in relation to the rights and freedoms of people with disability as recognised or declared in the Convention on the Rights of Persons with Disabilities.

This definition is intended to, among other things, capture funding of services and supports that will help people with disability to develop the knowledge and skills to self-advocate or obtain the services of a person who can assist them to advocate or self-advocate. It is also aimed at supporting systemic advocacy services that seek to introduce and influence community attitudes and laws.

**capacity building program** means a program to improve the capability of systems for providing supports and services to people with disability.

This definition is intended to capture a range of programs including those that aim to improve the skills, abilities, knowledge, expertise and positive culture within the sector and empower people with disability to participate in that development.

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

**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 become self-employed;
- (c) the provision of incentives to employers to employ persons with disability.

This definition is intended to cover an extensive range of services such as: providing vocational education and training (job specific, career advancement or broader employment skills), assistance with finding, obtaining and maintaining employment, transition from disability-specific employment to mainstream employment; assessing capacity for employment; and promoting self-employment and entrepreneurship.

**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 their independence, and self-reliance, in the community and in the person's home.

This definition engages with the CRPD and is intended to capture the supports and services that help people with disability to live independently and to improve self-confidence and self-reliance.

**information supports or services** means supports or services to assist a person with disability to access and understand information available generally to the members of Australian society.

This definition engages with the CRPD and is intended to capture a broad range of services and supports including:

- (a) the translation and conversion of information into suitable formats such as sign language and accessible formats for people with print or learning disabilities
- (b) the provision, delivery and transport of translated or converted information.

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

This definition is intended to facilitate funding of supports and services to help people with disability to develop and enjoy their creative, artistic, intellectual and physical potential; to enjoy cultural pursuits, and participate in recreational, leisure and sporting activities.

**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 arrangements or grants of financial assistance made under this Bill.

These programs are intended to promote and encourage research relevant to the sector and will include programs that support the design and implementation of commissioned and independently conducted research (including data collection and analysis) and the development, evaluation and analysis of policies and programs affecting the sector.

**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.

This definition captures funding of services and supports that will assist people with disability and their families and carers to have peace of mind that the

people for whom they care and support are adequately cared for at times when they are not available or require respite support.

Other key terms include:

**arrangement** includes a contract, agreement, deed or understanding.

**certificate of compliance** means a certificate of compliance that is granted under clauses ^21 or ^22 to a person that is in force.

**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.

**entrusted person** means either 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.

**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.

This definition engages the races power in paragraph 51(xxvi) of the Constitution for the purposes of the constitutional limitation provision in section 9 of the Bill. The definition is a composite expression combining terms used in other Commonwealth legislation to signify First Nations people. For the purposes of this Bill, the term 'Indigenous person' is to be defined in a way that ensures a consistent approach with other laws including the *Aboriginal and Torres Strait Islander Act 2005* (which separately refers to 'Aboriginal person' and Torres Strait Islander' peoples as defined in similar terms).

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

**protected information** means any 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;

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

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

**Secretary** means the Secretary of the Department.

**supports and services** includes the supply of goods.

## Clause 9 – Meaning of eligible person

15. **Clause 9** sets out the meaning of an eligible person. An 'eligible person' is a person who may receive funding under a grant of financial assistance or an arrangement under clause 13.

16. The *Acts Interpretation Act 1901* provides that a person may be a natural person, a State or Territory, a partnership, an incorporated entity, an unincorporated association or a trust.

17. **Subclause 9(1)** provides that a person is an eligible person for a grant or arrangement if:

- the person, and/or its key personnel, is not subject to a banning order in force under the NDIS Act
- in the case the person undertakes an eligible activity that is a regulated activity (see clause 11), they must either hold a certificate of compliance for the regulated activity or be covered by a determination in force under subclause 9(2).

18. **Subclauses 9(2)** and **(3)** together allow for the Secretary to make a determination providing up to 18 months for a person that does not have a certificate of compliance to obtain that certificate. The purpose of these determinations is to provide persons that have not previously provided supports or services time to obtain a certificate of compliance. This is particularly important to address thin markets as it allows for new persons to step in to provide supports or services that were previously missing or not accessible.

19. **Subclause 9(2)** provides the Secretary with the power to make a determination specifying a day by which a person must obtain a certificate of compliance for a regulated activity. In order to obtain a certificate of compliance, the person must give written notice to the Secretary stating its intention to seek and obtain such a certificate on or before a certain day. **Subclause 9(3)** provides that that day must be no later than 18 months after the day on which the determination is made.

20. The length of time that the Secretary may grant a person will depend on the type of person, the kind of eligible activity, including whether it is a regulated activity and any other relevant circumstances (such as a lack of necessary supports or services in an area).
21. **Subclause 9(4)** provides that the Secretary may, in writing, vary a determination to specify a later day if the Secretary has made an arrangement for making payments or a grant of financial assistance under clause 13. This period must be no later than 18 months after the day on which the arrangement or grant was made. The ability to vary the date in the determination to a later day reflects the possibility of administrative delays in entering into a grant or arrangement, or reasonable delays in obtaining a certificate of compliance. In making a determination, the Secretary will need to have regard to the principles of the Bill (see **clause 4**).
22. **Subclause 9(5)** clarifies that a determination made under subclause 9(2) is not a legislative instrument within the meaning of subsection 8(1) of the Legislation Act because it does not determine the law, but provides for the making of administrative decisions.
23. The Secretary's powers to make or vary a determination under subclauses 9(2) and 9(4) are not subject to merits review. Merits review of these decisions is not appropriate as the safety or wellbeing of people with disability in respect of regulated activities could be jeopardised, particularly where funding is provided for new activities or to persons that have not delivered supports and services in the past.
24. A number of avenues for review will still be available to persons affected by decisions under subclauses 9(2) and (4), including under the *Administrative Decisions (Judicial Review) Act 1975* (ADJR Act), section 75(v) of the Constitution and section 39B of the *Judiciary Act 1903* (Judiciary Act). Persons affected would also have recourse to the Commonwealth Ombudsman where appropriate.

## **Clause 10 – Meaning of key personnel**

25. **Clause 10** provides a definition of key personnel. As noted above, a requirement for a person to be an eligible person is that it, and/or its key personnel, are not subject to a banning order in force under the NDIS Act.
26. **Subclause 10(1)** provides that the key personnel of a person is the member of the group of persons responsible for its executive decisions, and any other person who has authority or responsibility for planning, directing or controlling the activities of the person.
27. **Subclause 10(2)** clarifies that where the key personnel is a person responsible for the executive decisions of the person where the person is a body corporate that is incorporated, this person can be the director of a body corporate under the *Corporations Act 2001*, or a member of the person's governing body.

## **Clause 11 – Meaning of regulated activity**

28. **Clause 11** provides the meaning of regulated activity. It allows the Secretary to determine a kind of eligible activity as a regulated activity by legislative instrument.
29. Eligible persons undertaking a regulated activity must hold a certificate of compliance under sub-paragraph 9(1)(a)(i) or be covered by a determination under sub-paragraph 9(1)(a)(ii). This reflects that some eligible activities may have a higher risk associated with them. For example, an eligible activity that does not involve any direct contact or interaction with a person with disability may be sufficiently low risk so that a certificate of compliance is not necessary. Other activities, including those involving direct contact or interaction with people with disability would be more likely to require a certificate of compliance.
30. Prescribing the meaning of ‘regulated activity’ in a legislative is consistent with other regulatory frameworks. For example, the *National Disability Insurance Scheme (Provider Registration and Practice Standards) Rules 2018* prescribe the classes of supports for which NDIS providers must be registered, and the classes of supports that require verification rather than the more comprehensive certification process.

## **Part 2—Funding Arrangements**

### **Clause 12 – Simplified outline of this Part**

31. **Clause 12** contains a simplified outline for Part 2 of the Bill.
32. A simplified outline 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.

### **Clause 13 – Arrangements and grants**

33. **Clause 13** empowers the Minister to make, vary or administer arrangements for the making of payments and grants of financial assistance. Arrangements and grants can only be made to an eligible person in respect of eligible activities. The clause provides a definition for ‘eligible activities’ and sets out the circumstances in which the Minister can enter into an arrangement or grant under the Bill.
34. Funding decisions and payments for arrangements and grants of financial assistance made under subclause 13(1) are not subject to merits review as they relate to the allocation of finite resources. The Administrative Review Council has recognised that it is justifiable to exclude merits review in relation to decisions of this nature (see paragraphs 4.16 to 4.19 of the *What decisions should be subject to merit review? publication*).
35. Decisions under clause 13(1) would be subject to the requirements of the Commonwealth resource management framework including, where relevant, the *Public Governance, Performance and Accountability Act 2013* (PGPA Act),

the *Commonwealth Grants Rules and Guidelines 2017* and the *Commonwealth Procurement Rules*. These documents outline, among other things, requirements relating to the publication of applicant guidelines, development of eligibility and assessment criteria, and publication of details relating to the successful applicant and the arrangement and grant subsequently made.

36. In addition, the review and audit process undertaken by the Australian National Audit Office provides a mechanism to review Australian Government spending decisions and report any concerns to the Parliament. These requirements and mechanisms would help to ensure the proper use of Commonwealth resources and appropriate transparency around decisions relating to making, varying or administering arrangements and grants under subclause 13(1).
37. **Subclause 13(1)** empowers the Minister to make, vary or administer arrangements and grants for one or more of the following activities (being eligible activities):
- (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 education supports or services
  - (e) the provision of employment supports or services
  - (f) the provision of independent living supports or services
  - (g) the provision of information supports or services
  - (h) the provision of recreation supports or services
  - (i) the provision of respite care supports or services
  - (j) the funding of a disability sector capacity building program
  - (k) the funding of a research and evaluation program
  - (l) an activity relating to furthering the objects of this Act
  - (m) an activity determined by the Minister under subclause (2)
  - (n) a matter that is incidental or ancillary to any of the above.
38. Clause 8 provides definitions for each kind of eligible activity.
39. The terms 'provision', 'funding' and 'activity' and 'matter' are applied in a way that corresponds with the nature of the funding item and range of outcomes. For example, supports or services are generally provided by a person to a person whereas a funded research and development program may be delivered in a range of ways and is not necessarily 'provided'. The use of the term 'matter' also enables flexibility for incidental spending provided it is within constitutional limitations.
40. **Subclause 13(2)** authorises the Minister to determine, by legislative instrument, an activity for the purposes of paragraph 13(1)(m). This enables the Minister to expand the range of eligible activities to cover supports, services or

programs that may not yet be contemplated (but within constitutional limits). The Minister cannot change or remove the kinds of eligible activities that are set out in paragraphs 13(1)(a) to (k).

41. **Subclause 13(3)** clarifies that subclause 13(1) does not limit the kinds of activities that the Minister may determine under subclause 13(2). This ensures that the Bill will cater for emerging developments in the supports and services that may be provided and how they may be delivered. It ensures that the Bill does not constrain the Minister in making choices to fund services, supports and other things and matters for people with disability.
42. **Subclause 13(4)** states that 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 of financial assistance under subclause 13(1). There is no requirement to make rules under this provision. Regardless of whether rules are made under subclause 13(4), the Minister must consider the general principles guiding actions under the Bill (see clause 4) in deciding whether to make or vary an arrangement or grant.
43. **Subclause 13(5)** provides that despite subclause 13(1), the Minister must not make an arrangement of payment or grant of financial assistance in relation to a body unless the person is an eligible person (see clause 9 for definition of eligible person) for that arrangement or grant.
44. **Subclause 13(6)** provides that an arrangement under subclause 13(1) may provide for the Commonwealth to reimburse, or partly reimburse, costs or expenses.
45. **Subclause 13(7)** provides that a grant under subclause 13(1) may be made by way of the reimbursement, or partial reimbursement, of costs or expenses. This includes costs or expenses incurred in obtaining a certificate of compliance for regulated activities in relation to a grant.
46. **Subclause 13(8)** provides that subsections 13(6) and (7) do not limit subclause 13(1).
47. **Subclause 13(9)** clarifies that subclause 13(1) does not authorise the making of a loan.

## **Clause 14 – Terms and conditions**

48. **Clause 14** sets out the terms and conditions that will apply to arrangements and grants made by the Minister under the Bill. These include statutory funding conditions as well as terms and conditions in a funding agreement. This clause also deals with the consequences of a breach of statutory funding conditions. Consequences for a breach of terms and conditions set out in a funding agreement will be set out in the agreement.

49. **Subclause 14(1)** provides that any arrangement or grant entered into between the Commonwealth and an eligible person under clause 13 is subject to statutory funding conditions and any other terms and conditions set out in a written funding agreement between the person and the Commonwealth.
50. **Subclause 14(2)** places an obligation on a person to comply with the statutory funding conditions and the terms and conditions set out in the funding agreement.
51. **Subclause 14(3)** provides that the terms and conditions of the funding agreement must provide the circumstances in which the person must repay amounts to the Commonwealth. A funding agreement may also deal with the consequences for a breach of a term or condition of that agreement.
52. This subclause also clarifies that the terms and conditions in a funding agreement may deal with matters also covered by the statutory funding conditions. To the extent of any inconsistency, the statutory funding conditions would prevail (see subclause 14(5)).
53. **Subclause 14(4)** provides that subclauses 14(3) and (6) do not limit the terms and conditions that may be included in a funding agreement, subject to subclause 14(5).
54. **Subclause 14(5)** provides that a term or condition in a written funding agreement is of no effect to the extent of any inconsistency with a statutory funding term or condition. This recognises that the statutory requirements in this Bill take precedence over any contractual terms or conditions.
55. **Subclause 14(6)** relates to a breach of the statutory funding conditions. It provides that the Minister may, on behalf of the Commonwealth, take one or more of the following actions if the Minister is satisfied that a person (other than the Commonwealth) that is a party to a grant or financial arrangement has failed to comply with a statutory funding condition:
- terminate the funding agreement with the person in relation to the grant or arrangement
  - vary the funding agreement, including by imposing new terms and conditions in the funding agreement and by reducing the amount of money to be paid
  - publish information about the person's failure to comply with the terms and conditions on the Department's website.
56. While merits review is not available for decisions made under subclause 14(6), persons would have access to review under the ADJR Act.
57. **Subclause 14(7)** allows the Minister, on behalf of the Commonwealth, enter into a funding agreement.

## Clause 15 – Statutory funding conditions

58. **Clause 15** sets out the statutory funding conditions that will apply to arrangements and grants entered into under clause 13. The statutory funding conditions provide important safeguards for people with disability. A breach of the statutory funding conditions can lead to the termination or variation of a funding agreement (see subclause 14(6)).
59. **Subclause 15(1)** provides that the clause sets out the statutory funding conditions that apply to a person who receives a grant of financial assistance or to whom money may be payable under an arrangement, made under clause 13 of the Bill.
60. **Subclause 15(2)** sets out the first statutory funding condition. The clause requires a person (other than the Commonwealth) that is a party to a funding agreement to comply with the Code of Conduct (see clause 20). This applies to all persons receiving funding under the Bill.
61. **Subclause 15(3)** sets out the second statutory funding condition. The clause requires a person that is performing a regulated activity to either hold a certificate of compliance for the regulated activity (see clauses 21 and 22) or be covered by a determination made under subclause 9(2).
62. **Subclause 15(4)** sets out the third statutory funding condition. The clause requires a person (other than the Commonwealth) that is a party to a funding agreement to implement and maintain a complaints management and resolution system that is appropriate for the size of the person and the kinds of eligible activities to which the arrangement or grant relates. For example, a person who is conducting a remote research project will not have the same kind of system as a large organisation providing employment supports or services directly to a person with disability.
63. In addition to being appropriate for the size and kinds of eligible activities, the system must also:
- acknowledge the role of advocates (including independent advocates) and other representatives of persons with disability
  - provide for cooperation with, and facilitate arrangements for, advocates (including independent advocates) and other representatives of persons with disability who are affected by the complaints process and who wish to be independently supported in that process by an advocate or other representative
  - comply with the requirements (if any) prescribed by rules made for the purposes of paragraph 15(4)(d).
64. In general, the requirements for a complaints management and resolution system will be set out in departmental guidance. If it becomes necessary in the future, the rules can be utilised to more formally prescribe what may be considered an appropriate system in particular circumstances.

65. **Subclause 15(5)** sets out the fourth statutory funding condition. The clause requires a person (other than the Commonwealth) that is a party to a funding agreement to implement and maintain an incident management system that is appropriate for the size of the person and for the kinds of eligible activities to which the arrangement or grant relates.
66. A person must also comply with the requirements (if any) prescribed by rules made for the purposes of paragraph 15(5)(b).
67. Similarly to the complaints management system, the respective requirements for an incident management system will be set out in departmental guidance. If it becomes necessary in the future, the rules can be utilised to more formally prescribe what may be considered an appropriate system in particular circumstances.
68. **Subclause 15(6)** sets out the fifth statutory funding condition. The clause provides that it is a statutory funding condition that a person (other than the Commonwealth) or a member of the person's key personnel are not subject to a banning order under the NDIS Act (see section 73ZN of the NDIS Act).
69. In addition, if an employee is subject to a banning order under the NDIS Act in respect of certain activities, that employee must not engage in those activities or provide those supports or services for, or on behalf of, that person. The person must notify the Secretary if an employee is, or becomes, subject to a banning order before the day the arrangement or grant is made or as soon as practicable after the banning order is made (as the case requires).

## **Clause 16 - Constitutional limits**

70. **Clause 16** contains a constitutional limitation provision. The purpose of this provision is to ensure that the Minister only makes, varies and administers arrangements or grants under clause 13 within the limits of the Commonwealth's powers under the Constitution. The Minister may only exercise the power to provide financial assistance in relation 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
  - (d) 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) 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 the objects of this Bill (see clause 3)
- (i) matters with respect to 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.

71. Paragraph 16(d) only authorises the provision of supports and services that meet the specific needs of indigenous persons, for example the provision of advocacy supports specifically to indigenous persons with disability.

### **Clause 17 – Relationship with *Financial Framework (Supplementary Powers) Act 1997***

72. **Clause 17** clarifies the relationship of Part 2 of the Bill with the FF(SP) Act.

73. The effect of clause 17 is that Part 2 of the Bill will not limit the operation of paragraph 32B(1)(a) of the FF(SP) Act. Paragraph 32B(1)(a) of the FF(SP) Act provides that the FF(SP) Act may only be relied upon to make, vary or administer an arrangement where the Commonwealth does not have the power under any law other than subsection 32B(1).

74. This clause clarifies that programs currently funded under the FF(SP) Act and *Financial Framework (Supplementary Powers) Regulations 1997* will retain their authority and continue to operate under existing funding agreements once the Bill comes into effect. This ensures continuity of services for people with disability and provides persons with an opportunity to obtain a certificate of compliance if required. All new funding agreements will be made under the Bill.

75. The Bill is not intended to operate as an exhaustive code that completely precludes reliance on the FF(SP) Act by other portfolios. It is not practical or appropriate for supports or services administered by other portfolios to be funded under the Bill given that all of the powers and functions rest with the Minister and Secretary of the portfolio responsible for the Bill.

### **Clause 18 – Executive power of the Commonwealth**

76. **Clause 18** ensures that Part 2 of the Bill does not, by implication limit the executive power of the Commonwealth. This clause clarifies that the powers of the Minister relating to funding arrangements in Part 2 does not limit the Commonwealth's ability to function effectively.

## **Part 3—Code of Conduct and Certificate of Compliance**

### **Division 1—Introduction**

#### **Clause 19 – Simplified outline of this Part**

77. **Clause 19** contains a simplified outline for Part 3 of the Bill. A simplified outline 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.

### **Division 2—Code of Conduct**

#### **Clause 20—Code of Conduct**

78. **Clause 20** allows the Minister to make a rule for a Code of Conduct that applies to all persons who receive funding under the Bill.

79. The rule will also prescribe circumstances in which a person does not comply with the Code of Conduct because of an act or omission by a member of the key personnel of the person or by an employee or individual otherwise engaged by the person. This makes it the responsibility of persons who receive funding under the Bill to ensure that their key personnel, staff and contractors comply with the Code of Conduct.

80. The Code of Conduct contributes to ethical and safe delivery of supports and services by stating the standards and obligations that people with disability, their families and carers can expect of persons funded under the Bill. This will have both a preventative effect, by clearly setting out expectations of persons, and a corrective effect through sanctions for non-compliance.

81. Compliance with the Code of Conduct is a statutory funding condition (see subclauses 15(1) and (2)). A breach of the Code of Conduct (including by key personnel, employees or contractors) may lead to the termination or variation of a funding agreement and publication on a departmental website of information about the person's failure to comply with the Code.

82. Prescribing the Code of Conduct in a legislative instrument allows for flexibility to accommodate changing circumstances, for example, to amend the Code of Conduct to add additional requirements. This approach is consistent with other regulatory frameworks such as the *National Disability Insurance Scheme (Code of Conduct) Rules 2018*, which prescribe the NDIS Code of Conduct.

### **Division 3—Certificates of compliance**

83. **Division 3 of Part 3** deals with certificates of compliance. It is a statutory funding condition that any person undertaking a regulated activity must hold a certificate of compliance or be covered by a determination in force under subclause 9(2) (see subclause 15(3)).

84. A failure to meet compliance standards in relation to regulated activities may lead to the revocation or variation of a funding agreement or publication on a departmental website of information about the person's failure to meet with standard.

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

85. **Clause 21** deals with certificates of compliance granted by an accredited certification body. It sets out how an accredited certification body grants a certificate of compliance to a person for meeting compliance standards.

86. **Subclause 21(1)** requires an accredited certification body to grant a certificate of compliance to a person for one or more regulated activities if the body is satisfied that the person complies with the compliance standards for those activities. The person must make a written request for a certificate of compliance to an accredited certification body. There is no limit on the number of applications that a person may make.

87. **Subclause 21(2)** requires the body to give a copy of the certificate of compliance to the person as soon as practicable after the certificate has been granted. **Subclause 21(3)** provides that the certificate must state that the person complies with the compliance standards for the regulated activities covered by the certificate and specify the day on which the certificate ceases to be in force.

88. **Subclause 21(4)** requires an accredited certification body to notify the person, in writing, if it refuses to grant a certificate of compliance for a regulated activity. The notice must be given as soon as practicable after the request for certification is refused. A person who has been refused a certificate of compliance is not prevented from making further applications for certification.

89. **Subclause 21(5)** imposes an obligation on an accredited certification body to revoke a certificate of compliance if a person ceases to comply with the compliance standards for the regulated activities covered by the certificate.

90. **Subclause 21(6)** requires the body to notify a person in writing as soon as practicable after revoking the certificate. **Subclause 21(7)** provides that the notice must specify the day on which the revocation takes effect, which must be no earlier than the day after the notice is given to the person.

91. **Subclause 21(8)** requires an accredited certification body to vary a certificate of compliance to exclude a regulated activity if the body is satisfied the person ceases to comply with the compliance standards for that activity or to include one or more additional regulated activities. A person must make a written request to add a regulated activity to a certificate of compliance and the accredited certification body must be satisfied that the person complies with the compliance standards for those activities.

92. **Subclause 21(9)** requires the accredited certification body to notify a person in writing as soon as practicable after varying their certificate of compliance.
93. **Subclause 21(10)** provides that the notice must specify the day that the variation takes effect, which must be no earlier than the day after the notice is given to the person.
94. **Subclause 21(11)** requires an accredited certification body to notify a person in writing if it refuses to vary a certificate of compliance as requested by that person.
95. **Subclause 21(12)** provides that a certificate of compliance comes into force on the day that a copy of the certificate is provided to an person under subclause 21(2) and it remains in force until one of the following occurs:
- the day specified in the notice given under paragraph 21(3)(b)
  - the day the revocation of the certificate takes effect
  - if the accredited certification that granted the certificate ceases to be accredited—the end of the period of 3 months after the cessation.
96. **Subclause 21(13)** requires an accredited certification body to notify the Secretary if it refuses to grant, revoke or refuse to vary a certificate of compliance. The body must notify the Secretary in writing as soon as practicable after the fact and must provide reasons for the decision. A written statement of reasons should convey the substantive reasons for the decision of the accredited certification body so as to inform the government about any particular or systemic shortfalls in entities who seek, or processes for obtaining, Commonwealth funding to assist people with disability. There is no prescribed form in which a statement of reasons must be furnished.
97. **Subclause 21(14)** clarifies that the certificate of compliance granted under this Bill is not a legislative instrument for the purposes of subsection 8(1) of the Legislation Act as it is not declarative of the law. It is included to assist readers only.
98. The decisions of an accredited certification body under clause 21 are not subject to merits review. These decisions relate to whether a particular entity is capable of performing a regulated activity based on their compliance with the compliance standards. There is a substantial public interest in ensuring adequate standards of quality assurance for funded services under the Bill. An entity's capacity to meet these standards will be determined by an independent and internationally recognised accreditation body approved on the basis of their skills and experience. A person who is aggrieved by a decision by an accredited certification body can engage with the certification body itself. Alternatively, it will be open to the person to make a further application for certification or variation of certification as they consider appropriate.

#### **Clause 22 – Secretary may grant certificate of compliance for meeting alternative compliance requirements**

99. **Clause 22** deals with certificates of compliance granted in recognition of a person meeting alternative compliance requirements. These alternative compliance

requirements will allow for the Secretary to recognise a person's compliance or certification under another comparable legislative or other scheme. For example, an alternative compliance requirement may be that a provider is a registered NDIS provider (in which case the person is required to comply with the NDIS Practice Standards).

100. **Subclause 22(1)** requires the Secretary to grant a certificate of compliance to a person for one or more regulated activities if the Secretary is satisfied that the person complies with the alternative compliance requirements for those activities. The person must make a written request for a certificate of compliance to the Secretary. There is no limit on the number of applications that a person may make.
101. **Subclause 22(2)** requires the Secretary to give a copy of the certificate of compliance to the person as soon as practicable after the certificate has been granted. **Subclause 22(3)** provides that the certificate must state that the person complies with the alternative compliance requirements for the regulated activities covered by the certificate and specify the day on which the certificate ceases to be in force.
102. **Subclause 22(4)** requires the Secretary to notify a person if the Secretary refuses to grant a certificate of compliance requested by a person. The notice must be given as soon as practicable after the request for certification is refused. A person who has been refused a certificate of compliance is not prevented from making further applications for certification.
103. **Subclause 22(5)** requires the Secretary to revoke a certificate of compliance if the Secretary is satisfied that a person ceases to comply with alternative compliance requirements for the regulated activities covered by the certificate.
104. **Subclause 22(6)** requires the Secretary to notify a person in writing as soon as practicable after revoking the certificate. **Subclause 22(7)** provides that the notice must specify the day on which the revocation takes effect, which must be no earlier than the day after the notice is given to the person.
105. **Subclause 22(8)** requires the Secretary to vary a certificate of compliance granted to a person. The certificate must be varied to exclude a regulated activity if the Secretary is satisfied that the person no longer meets the alternative compliance requirements for that activity. The certificate must also be varied to include one or more regulated activities if a person makes a request in writing and the Secretary is satisfied that the person complies with the alternative compliance requirements for that activity.
106. **Subclause 22(9)** requires the Secretary to notify a person in writing as soon as practicable after varying the certificate of compliance. **Subclause 22(10)** provides that the notice must specify the day that the variation takes effect, which must be no earlier than the day after the notice is given to the person. **Subclause 22(11)** also requires the Secretary to notify a person as soon as practicable if the Secretary refuses to vary a certificate of compliance requested by a person.

107. **Subclause 22(12)** provides that a certificate of compliance comes into force on the day that a copy of the certificate is provided to a person under subclause 22(2). It also provides that the certificate remains in force until the earlier of the day specified in the certificate of compliance and the day the revocation of the certificate takes effect.
108. **Subclause 22(13)** clarifies that the certificate of compliance granted under this clause is not a legislative instrument for the purposes of subsection 8(1) of the Legislation Act as it is not declarative of the law. It is included to assist readers only.
109. The decisions of the Secretary under clause 22 are not subject to merits review. Decisions about whether a person meets alternative compliance requirements are operational in nature and do not involve an independent or separate assessment of whether an entity meets relevant standards.

### **Clause 23—Compliance standards**

110. This clause allows the Minister to make rules providing for standards for persons undertaking regulated activities. These rules are the ‘compliance standards’.
111. The Minister may make rules providing for or in relation to different standards for different kinds of persons or regulated activities. This allows for flexibility in how standards will be applied to different kinds of regulated activities. For example, this would allow the Minister to make standards dealing with a specific type of eligible activity such as advocacy supports or services, separately from employment or educational supports or services.

### **Clause 24—Alternative compliance requirements**

112. **Subclauses 24(1) to (3)** allow the Minister to make rules providing for requirements for persons undertaking regulated activities. The rules may provide for different requirements for different kinds of persons or regulated activities. These rules are the alternative compliance requirements.
113. The rules could, for example, provide that being a registered NDIS provider, and therefore compliant with the NDIS Practice Standards, is an alternative compliance requirement for the purposes of this clause. As outlined above, this will relieve dual regulatory burden on providers who operate under both legislative frameworks.
114. Allowing the Minister to make rules that determine the alternative compliance requirements will facilitate timely and flexible responses in circumstances where the alternative compliance requirements are based on matters not directly connected to the Bill. For example, the alternative compliance requirement may be determined that the provider meets standards related to particular health issues or aged. It is appropriate that new compliance requirements can be added, varied or removed without delay so as to ensure that people with disability receive services and supports in a safe and timely manner, including in locations

that offer limited services. Any changes will be subject to parliamentary oversight and disallowance processes.

#### **Division 4—Accredited certification bodies**

#### **Clause 25 – Secretary may grant approval for accrediting authorities**

115. **Clause 25** empowers the Secretary to approve accrediting authorities.
116. **Subclause 25(1)** allows the Secretary to approve a person to perform the function of granting and withdrawing accreditation under clause 26. The Secretary will only approve a person as an accredited certification body if the Secretary is satisfied that the person is internationally recognised as a suitable authority to grant accreditations of this kind and will perform its functions in an independent and impartial way.
117. **Subclause 25(2)** provides that the Secretary must give written notice of approval to the person as soon as practicable after the approval is granted.
118. **Subclause 25(3)** requires the Secretary to revoke a person's approval as an accrediting authority if the Secretary is satisfied that the person is no longer internationally recognised or is no longer able to perform its functions in an independent and impartial way.
119. **Subclause 25(4)** requires the Secretary, as soon as practicable after revoking the approval, to give written notice of a revocation to the person, each accredited certification body granted an accreditation by the person under clause 26 and each person granted a certificate of compliance by the body. **Subclause 25(5)** provides that the notice must specify the day that the revocation takes effect, which must not be earlier than the day after the notice is given to the person.
120. **Subclause 25(6)** provides that an approval granted under this clause comes into effect on the day that a notice is given and remains in force indefinitely unless revoked earlier.
121. **Subsection 25(8)** clarifies that an approval under this clause is not a legislative instrument for the purposes of subsection 8(1) of the Legislation Act as it is not declarative of the law. It is included to assist readers only.
122. Decisions of the Secretary made under clause 25 are not subject to merits review as they relate to the suitability of persons to conduct accreditation functions for the provision of regulated activities. The Administrative Review Council's publication on *What decisions should be subject to merit review?* states that decisions to appoint a person to undertake a specified function should not generally be subject to merits review. Appointment as an accredited certification body is dependent on the person's credentials and qualifications such that approval is not, in functional terms, conferring a new qualification upon them.

## **Clause 26 – Accrediting authorities may grant accreditation for certification bodies**

123. **Clause 26** empowers accrediting authorities to grant accreditation for certification bodies.
124. **Subclause 26(1)** requires an accrediting authority to grant an accreditation to a person to perform the functions of granting, revoking and varying certificates of compliance (see clause 21). The accrediting authority must be satisfied that the person will perform those functions competently and impartially. The person must make a request to the accrediting authority for accreditation.
125. **Subclause 26(2)** requires the authority to give written notice of accreditation to the person as soon as practicable after granting the accreditation. **Subclause 26(3)** provides that if the authority refuses to grant accreditation as requested by a person, the authority must give written notice of that refusal to the person.
126. **Subclause 26(4)** requires the accrediting authority to withdraw an accreditation if it ceases to be satisfied that the person is performing the function of granting certificates of compliance competently or impartially.
127. **Subclause 26(5)** requires the accrediting authority to give written notice of a withdrawal to the person as soon as practicable after the accreditation is withdrawn. **Subclause 26(6)** provides that the notice must specify the day that the withdrawal takes effect, which must not be earlier than the day after the notice is given to the person.
128. **Subclause 26(7)** requires an accrediting authority to notify the Secretary if it grants, refuses to grant or withdraws accreditation. The notification must advise the Secretary of the fact of the refusal to grant, or withdrawal of, accreditation and the reasons for the decision.
129. **Subclause 26(8)** provides that if the Secretary is notified that an accreditation of an accredited certification body is withdrawn, the Secretary must, as soon as practicable, notify in writing each person that holds a certificate of compliance granted by that body.
130. **Subclause 26(9)** provides that an accreditation granted under the clause comes into force on the day that the notice is given under subclause 26(2) and remains in force until the earlier of the following occurs:
- the day the withdrawal of accreditation takes effect
  - if the authority that granted the accreditation ceases to be an accrediting authority—the end of the period of 3 months after the cessation.
131. The Bill provides a grace period of 3 months for a person's accreditation as a certification body to continue. A grace period is considered necessary to ensure continuous service provision, particularly in the event that there is only one accredited certification body that performs the functions. This grace period

will enable the certification body to finalise any outstanding matters while remedial action is underway or a replacement body is accredited.

132. **Subsection 26(10)** clarifies that accreditation under this clause is not a legislative instrument for the purposes of subsection 8(1) of the Legislation Act as it is not declarative of the law. It is included to assist readers only.

133. Decisions made by an accrediting authority under clause 26 are not subject to merits review. These decisions require expert, competent and impartial assessment as to whether an entity is equipped to undertake a specified function. The Administrative Review Council's publication on *What decisions should be subject to merit review?* states that decisions to appoint a person to undertake a specified function should not generally be subject to merits review. Appointment as an accredited certification body is dependent on the person's credentials and qualifications.

## **Part 4— Information Management**

### **Clause 27 – Simplified outline of this Part**

134. **Clause 27** contains a simplified outline for Part 4 of the Bill. A simplified outline is 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.

### **Clause 28 – Unauthorised use or disclosure of protected information**

135. **Clause 28** sets out the circumstances in which an entrusted person commits an offence in relation to the use or disclosure of protected information.

136. Entrusted person is defined in clause 8 and means the Secretary, an APS employee or any other person employed or engaged by the Commonwealth to provide services to the Commonwealth.

137. Protected information is defined in clause 8 and means any of the following:

- information or an opinion about an identified individual, or an individual who is reasonably identifiable, whether the information or opinion is true or not and whether the information or opinion is recorded in a material form or not
- 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.

138. **Subclause 28(1)** provides that a person commits an offence if all of the following apply:

- the person is, or has been, an entrusted person
- the person has obtained or generated relevant information in the person's capacity as an entrusted person

- the information is protected information
  - the person uses or discloses the information.
139. The penalty for committing the offence is imprisonment for 2 years or 120 penalty units or both. This penalty is an appropriate deterrent against unauthorised disclosure or use of protected information and recognises that protected information may include highly sensitive information, including about people with disability.
140. **Subclause 28(2)** provides that subclause 28(1) does not apply if the use or disclosure is required or authorised by the Bill or another law of the Commonwealth or by a law of a State or Territory prescribed by the rules.
141. The note to subclause 28(2) provides that the evidential burden of proving this is on the defendant and directs the reader to section 13.4 of the Criminal Code. This provision in the Criminal Code provides that a defendant who wishes to rely on any exception, exemption, excuse, qualification or justification provided by the law creating an offence bears an evidential burden in relation to that matter. It is appropriate that the defendant bears the evidential burden for these matters, as they should be within the defendant's knowledge.

#### **Clause 29—Authorised uses and disclosures of relevant information**

142. **Clause 29** sets out the circumstances in which relevant information may be used and disclosed by an entrusted person.
143. 'Relevant information' is defined in clause 8 and means information obtained or generated by an entrusted person in:
- performing functions or duties, or exercising powers, under this Bill, or
  - assisting another person to perform functions or duties, or exercise powers, under this Bill.
144. 'Entrusted person' is defined in clause 8 and means the Secretary, an APS employee or any other person employed or engaged by the Commonwealth to provide services to the Commonwealth.
145. The authorised purposes for which relevant information may be used and disclosure are for:
- the administration of the Bill
  - a purpose determined by the Secretary
  - Commonwealth purposes
  - Use disclosure to a State or Territory for a purpose determined by the Secretary
  - disclosure to a court or tribunal etc.
  - preventing threat to life, health or safety of a person with disability
  - statistical purposes
  - with the consent of the person to whom the information relates

- disclosure to a person to whom the information relates
  - information that is already public.
146. **Subclause 29(1)** provides that an entrusted person may use or disclose relevant information for the purposes of performing functions or duties, or exercising powers under the Bill, or assisting another person to do so.
147. **Subclause 29(2)** provides that an entrusted person may use or disclose relevant information for a purpose specified in a determination made by the Secretary under subclause 29(3).
148. **Subclause 29(3)** provides that the Secretary may, by legislative instrument, make a determination setting out purposes for which an entrusted person may use or disclose relevant information. **Subclause 29(4)** provides that this instrument must specify the legislative power or powers of the Parliament in respect of which the instrument is made.
149. For example, a determination made under subclause 29(3) could allow for the use or disclosure of relevant information for purposes such as providing a brief to a Minister so that the Minister can consider complaints or issues raised with the Minister by or on behalf of a person, and respond to that person in relation to the complaints or issues.
150. **Subclause 29(5)** provides that an entrusted person may disclose relevant information for a Commonwealth purpose, specifically:
- 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
  - to the Chief Executive Centrelink for the purposes of a centrelink program
  - to the Chief Executive Medicare for the purposes of a medicare program.
151. **Subclause 29(6)** provides that an entrusted person may disclose relevant information to the head of a Department of State of a State or Territory, or an authority of a State or Territory, for a purpose specified in a determination made by the Secretary under subclause 29(7).
152. **Subclause 29(7)** provides that the Secretary may, by legislative instrument, make a determination setting out the purposes for which an entrusted person may use or disclose relevant information under subclause 29(6).
153. **Subclause 29(8)** provides that this instrument must specify the legislative power or powers in respect of which the instrument is made. For example, a determination made under subclause 29(7) could allow for the use or disclosure of relevant information for purposes such as a State or Territory law enforcement purpose.
154. **Subclause 29(9)** allows an entrusted person to disclose relevant information to a court exercising federal jurisdiction. **Subclause 29(10)** allows an

entrusted person to disclose relevant information to a court or 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.

155. **Subclause 29(11)** allows an entrusted person to 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.
156. For example, this would allow an entrusted person to use or disclose information about the whereabouts of a person with disability who may be at risk of violence, including family violence.
157. **Subclause 29(12)** allows an entrusted person to 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.
158. **Subclause 29(13)** allows an entrusted person to use or disclose relevant information that relates to the person if the person, or an agent of the person, has consented to the use or disclosure and the use or disclosure is in accordance with that consent.
159. **Subclause 29(14)** allows an entrusted person to use or disclose relevant information to the person to whom it relates.
160. **Subclause 29(15)** allows an entrusted person to use or disclose relevant information if the information has already been lawfully made available to the public.

## **Part 5— Miscellaneous**

### **Clause 30 – Simplified outline of this Part**

161. This clause contains a simplified outline for Part 5 of the Bill. A simplified outline 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.

### **Clause 31 – Delegation by the Minister**

162. **Clause 31** deals with the delegation of Ministerial powers to specified officials.
163. **Subclause 31(1)** provides that the Minister may, in writing, delegate the following powers to the Secretary or an SES employee or acting SES employee in the Department:

- under subclause 13(1), the power to 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
- under clause 14, the power to enter into a funding agreement (see subclause 14(7)), to terminate or vary a funding agreement for a breach of a term or condition and to arrange to publish information about a person's failure to comply with the terms and conditions of a funding agreement (see subclause 14(6)).

164. This is a common administrative provision, which will enable the effective day-to-day administration of the Bill. The delegation of these particular powers will allow the handling of high-volume decisions including the power to provide funding for supports and services for persons with disability efficiently, and also facilitate the efficient administration of grants or arrangements made under the Bill.

165. Delegations will be to SES level to ensure that officers with appropriate levels of skill and experience make the final decisions on any of these matters. SES officers have the kinds of qualifications, skills and expertise to make these delegated decisions based on their assigned functions, leadership and administration skills.

166. **Subclauses 31(1) and (2)** together provide that the Minister may, in writing, also delegate the following powers to an SES employee, or acting SES employee, in a Department of State of the Commonwealth other than the Department:

- under subclause 13(1), the power to vary and 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. The power to make an arrangement or grant is not delegated.
- under subclause 14(7), the power to enter into a funding agreement.

167. This addresses a situation where the administration of a support or service, but not the administration of the Bill, is moved to a different portfolio as a result of machinery of government changes. This will allow SES employees in other portfolios to continue to administer funding agreements to ensure continuity of service.

168. **Subclause 31(3)** requires the delegate to comply with any directions of the Minister in the exercise of powers under a delegation.

## **Clause 32 – Delegation by the Secretary**

169. **Clause 32** deals with the delegation of the Secretary's powers to specified officials.

170. **Subclause 32(1)** provides that the Secretary may, in writing, delegate the following powers to an SES employee, or acting SES employee, of the Department:

- under subclause 9(2), the power to make a determination specifying a day by which a person must obtain a certificate of compliance for a regulated activity
- under subclause 9(4), the power to vary a determination made under subclause 9(2) to specify a later date
- under clause 22, the power to grant certificate of compliance
- under clause 25, the power to approve an accrediting authority

171. This is a common administrative provision, which will enable the effective day-to-day administration of the Bill by senior officers of the Department. The delegation of these particular powers will allow the Department to efficiently manage some compliance decisions.

172. Delegations will be to SES level to ensure that officers with appropriate levels of skill and experience make the final decisions on any of these matters. SES officers have the kinds of qualifications, skills and expertise to make these delegated decisions based on their assigned functions, leadership and administration skills.

173. **Subclause 32(2)** requires the delegate to comply with any directions of the Secretary in the exercise of powers under a delegation.

### **Clause 33 – Treatment of partnerships**

174. **Clause 33** clarifies how the Bill applies to a partnership.

175. **Subclause 33(1)** provides that Bill applies to a partnership as if it were a person, subject to this clause.

176. **Subclause 35(2)** provides that where an obligation is imposed on the partnership by this Bill, that obligation is imposed on each partner instead and may be discharged by any of the partners.

177. **Subclause 33(3)** provides that if a thing is to be done by the partnership, the thing may be done by one or more of the partners, on the partnership's behalf.

178. **Subclause 33(4)** clarifies that a change in the composition of a partnership does not affect the continuity of the partnership.

### **Clause 34 – Treatment of unincorporated associations**

179. **Clause 34** clarifies how the Bill applies to unincorporated associations.

180. **Subclause 34(1)** provides that the Bill applies to an unincorporated association as if it were a person, subject to this clause.

181. **Subclause 34(2)** provides that where an obligation is imposed on the association by this Bill, it is imposed on each member of the association's committee of management instead and may be discharged by any of the members.

182. **Subclause 34(3)** provides that if a thing is to be done by the unincorporated association, the thing may be done by one or more of the member of the association's committee of management on the association's behalf.

### **Clause 35 – Treatment of trusts**

183. **Clause 35** clarifies how the Bill applies to trusts.

184. **Subclause 35(1)** provides that the Bill applies to a trust as if it were a person, subject to this clause.

185. **Subclause 35(2)** sets out how the obligations on a trust with a single trustee is discharged. It provides that an obligation that would otherwise be imposed on the trust by the Bill is imposed on the trustee instead and if the Bill would otherwise permit something to be done by the trust, the thing may be done by the trustee.

186. **Subclause 35(3)** sets out how the obligations on a trust with multiple trustees is discharged. It provides that an obligation that would otherwise be imposed on the trust by the Bill is imposed on each trustee instead and if the Bill would otherwise permit something to be done by the trust, the thing may be done by any of the trustees.

### **Clause 36 – Rules**

187. **Clause 36** provides a rule-making power for the Minister. This power will allow the Minister to set out matters that will ensure the effective functioning of the Bill.

188. **Subclause 36(1)** provides that the Minister may make rules, by legislative instrument, to prescribe matters that are required or permitted by the Bill to be prescribed or which are necessary or convenient to be prescribed for carrying out or giving effect to this Bill. The nature and scope of matters that may be subject to this rule-making power include:

- making a **code of conduct** that applies to an person that is a party to a funding agreement for the purposes of subclause 20(1) of the Bill
- setting **compliance standards** for persons undertaking regulated activities for the purposes of subclause 21(1) of the Bill
- setting **alternative compliance requirements** in which a person is to comply with for undertaking regulated activities for the purposes of subclause 22(1) of the Bill.

189. This rule-making power simplifies the language and structure of the provisions in the Bill, improving its accessibility. Having a single set of rules facilitates the use of a single type of Ministerial legislative instrument being needed for the Bill.

190. **Subclause 36(2)** provides that, to avoid doubt, the rules may not do any of the following:

- create an offence or civil penalty;
- provide powers of:
  - arrest or detention; or
  - entry, search or seizure;
- impose a tax;
- set an amount to be appropriated from the Consolidated Revenue Fund under an appropriation in this Act;
- directly amend the text of this Act.

191. **Subclause 36(3)** allows the rules to 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. This will provide flexibility on the kinds of requirements that could be alternative compliance requirements. For example, the rules concerning alternative compliance requirements could allow for standards under another relevant scheme could be adopted.