

EXPOSURE DRAFT

2022-2023

The Parliament of the
Commonwealth of Australia

HOUSE OF REPRESENTATIVES

EXPOSURE DRAFT

Disability Services and Inclusion Bill 2023

No. , 2023

(Social Services)

**A Bill for an Act relating to supports and services
for people with disability, and for related purposes**

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EXPOSURE DRAFT

EXPOSURE DRAFT

Contents

Part 1—Preliminary	1
Division 1—Introduction	1
1 Short title.....	1
2 Commencement.....	2
3 Objects of this Act.....	2
4 General principles guiding actions under this Act.....	4
5 Simplified outline of this Act.....	5
6 Act binds the Crown.....	7
7 Extension to external Territories.....	7
Division 2—Definitions	8
8 Definitions.....	8
9 Meaning of <i>eligible person</i>	12
10 Meaning of <i>key personnel</i>	13
11 Meaning of <i>regulated activity</i>	13
Part 2—Funding arrangements	14
12 Simplified outline of this Part.....	14
13 Arrangements and grants.....	14
14 Terms and conditions.....	16
15 Statutory funding conditions.....	17
16 Constitutional limits.....	20
17 Relationship with <i>Financial Framework (Supplementary Powers) Act 1997</i>	20
18 Executive power of the Commonwealth.....	21
Part 3—Code of conduct and certificates of compliance	22
Division 1—Introduction	22
19 Simplified outline of this Part.....	22
Division 2—Code of conduct	23
20 Code of conduct.....	23
Division 3—Certificates of compliance	24
21 Accredited certification body may grant certificate of compliance for meeting compliance standards.....	24
22 Secretary may grant certificate of compliance for meeting alternative compliance requirements.....	26
23 Compliance standards.....	28
24 Alternative compliance requirements.....	28

EXPOSURE DRAFT

Division 4—Accredited certification bodies	30
25 Secretary may grant approval for accrediting authorities	30
26 Accrediting authorities may grant accreditation for certification bodies	31
Part 4—Information management	34
27 Simplified outline of this Part.....	34
28 Unauthorised use or disclosure of protected information	34
29 Authorised uses and disclosures of relevant information.....	35
Part 5—Miscellaneous	38
30 Simplified outline of this Part.....	38
31 Delegation by the Minister	38
32 Delegation by the Secretary.....	39
33 Treatment of partnerships.....	39
34 Treatment of unincorporated associations	39
35 Treatment of trusts.....	40
36 Rules.....	40

EXPOSURE DRAFT

1 **A Bill for an Act relating to supports and services**
2 **for people with disability, and for related purposes**

3 The Parliament of Australia enacts:

4 **Part 1—Preliminary**

5 **Division 1—Introduction**

6 **1 Short title**

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

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 1 Preliminary
Division 1 Introduction

Section 2

1 **2 Commencement**

2 (1) Each provision of this Act specified in column 1 of the table
3 commences, or is taken to have commenced, in accordance with
4 column 2 of the table. Any other statement in column 2 has effect
5 according to its terms.
6

Commencement information

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

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

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

13 **3 Objects of this Act**

14 The objects of this Act are to:

- 15 (a) in conjunction with other laws, give effect to the Convention
16 on the Rights of Persons with Disabilities; and
17 (b) provide funding, outside of the National Disability Insurance
18 Scheme, to persons that provide supports and services for the
19 benefit of people with disability, their families and carers;
20 and
21 (c) support the social and economic participation and inclusion
22 of people with disability; and
23 (d) support people with disability to exercise choice and control
24 in matters that affect their lives, including by participating in
25 the development and review of policy and programs; and
26 (e) raise community awareness of the competence and value of
27 people with disability and the barriers to inclusion affecting
28 people with disability; and

EXPOSURE DRAFT

- 1 (f) protect people with disability who receive supports or
2 services from persons funded under this Act, including by:
3 (i) setting compliance standards that align with
4 contemporary practice; and
5 (ii) requiring persons providing such supports or services to
6 establish appropriate complaints management and
7 resolution systems and incident management systems;
8 and
9 (g) promote national consistency, coordination and accessibility
10 of supports and services for people with disability; and
11 (h) support people with disability to access supports or services
12 that:
13 (i) are locally available (including in rural and remote
14 communities) and provided in a manner that is timely,
15 effective and innovative; and
16 (ii) to the extent possible, are integrated with services
17 generally available to other members of Australian
18 society; and
19 (iii) to the extent possible, provide continuity of support and
20 services for people with disability; and
21 (iv) to the extent possible, assist people with disability to
22 meet the daily and lifetime norms of other members of
23 Australian society; and
24 (v) meet the needs of people with disability who experience
25 compound disadvantage, including as a result of a
26 person's age, sex, gender identity, sexual orientation,
27 intersex status, ethnicity, religious belief or cultural or
28 linguistic background; and
29 (vi) respect the privacy of people with disability; and
30 (vii) provide accurate and sufficient information about the
31 supports and services available and the quality of those
32 supports and services; and
33 (viii) increase the independence and wellbeing of people with
34 disability; and

EXPOSURE DRAFT

Part 1 Preliminary

Division 1 Introduction

Section 4

- 1 (ix) provide meaningful opportunities for employment,
2 education and development for people with disability;
3 and
4 (x) support people with disability to participate in
5 Australian society on an equal basis to other members
6 of Australian society; and
7 (i) in conjunction with other laws, give effect to certain
8 obligations that Australia has as a party to:
9 (i) the International Covenant on Civil and Political Rights
10 done at New York on 16 December 1966 ([1980] ATS
11 23), as amended and in force for Australia from time to
12 time; and
13 (ii) the International Covenant on Economic, Social and
14 Cultural Rights done at New York on 16 December
15 1966 ([1976] ATS 5), as amended and in force for
16 Australia from time to time; and
17 (iii) the Convention on the Rights of the Child done at New
18 York on 20 November 1989 ([1991] ATS 4), as
19 amended and in force for Australia from time to time;
20 and
21 (iv) the Convention on the Elimination of All Forms of
22 Discrimination Against Women done at New York on
23 18 December 1979 ([1983] ATS 9), as amended and in
24 force for Australia from time to time; and
25 (v) the International Convention on the Elimination of All
26 Forms of Racial Discrimination done at New York on
27 21 December 1965 ([1975] ATS 40), as amended and in
28 force for Australia from time to time.

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

32 **4 General principles guiding actions under this Act**

- 33 (1) If this Act requires or permits an act or thing to be done, the act or
34 thing is to be done, so far as practicable, in accordance with the
35 general principles in this section.

EXPOSURE DRAFT

- 1 (2) People with disability are individuals who have the inherent right
2 to respect for their human worth and dignity, and live a life free
3 from violence, neglect, abuse and exploitation.
- 4 (3) People with disability, whatever the origin, nature, type and degree
5 of disability, have the same basic human rights as other members
6 of Australian society.
- 7 (4) People with disability have the same rights as other members of
8 Australian society to realise their individual capacities for physical,
9 social, emotional and intellectual development.
- 10 (5) People with disability have the same right as other members of
11 Australian society to supports and services which will support their
12 attaining a reasonable quality of life.
- 13 (6) People with disability have the same right as other members of
14 Australian society to exercise choice and control in relation to the
15 decisions that affect their lives.
- 16 (7) People with disability receiving supports or services have the same
17 right as other members of Australian society to receive those
18 supports or services in a manner which results in the least
19 restriction of their rights and opportunities.
- 20 (8) People with disability have the same right to pursue any grievance
21 in relation to supports or services as other members of Australian
22 society.

23 **5 Simplified outline of this Act**

24 This Act gives the Minister, on behalf of the Commonwealth, the
25 power to make, vary or administer an arrangement for the making
26 of payments to a person, or make, vary or administer a grant of
27 financial assistance to a person, in relation to various activities for
28 the benefit of people with disability. Those activities are called
29 eligible activities.

EXPOSURE DRAFT

Part 1 Preliminary

Division 1 Introduction

Section 5

1

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

2

3

4

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

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(a) holds a certificate of compliance for the regulated activity; or

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

14

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

15

16

Accredited certification bodies, and the Secretary, can grant a person a certificate of compliance for a regulated activity.

17

18

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20

Certificates can be granted if the person complies with the compliance standards or alternative compliance requirements for regulated activities.

21

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

22

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26

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

27

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29

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

30

31

(a) comply with the code of conduct; and

EXPOSURE DRAFT

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

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

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

16 **6 Act binds the Crown**

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

20 **7 Extension to external Territories**

21 This Act extends to the external Territories.

EXPOSURE DRAFT

Part 1 Preliminary
Division 2 Definitions

Section 8

1 **Division 2—Definitions**

2 **8 Definitions**

3 In this Act:

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

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

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

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

14 ***advocacy supports or services*** means supports or services:

- 15 (a) to assist a person with disability to exercise choice or control
16 in matters that affect the person; or
17 (b) to assist a person with disability to understand and advocate
18 for their rights; or
19 (c) to influence community attitudes, government policy or laws
20 in relation to the rights and freedoms of people with
21 disability.

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

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

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

EXPOSURE DRAFT

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

3 **certificate of compliance** means a certificate of compliance that:
4 (a) is granted under section 21 or 22 to a person; and
5 (b) is in force.

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

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

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

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

14 Note: The Convention on the Rights of Persons with Disabilities is in
15 Australian Treaty Series 2008 No. 12 ([2008] ATS 12) and could in
16 2023 be viewed in the Australian Treaties Library on the AustLII
17 website (<http://www.austlii.edu.au>).

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

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

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

23 **employment supports or services** means the following:
24 (a) supports or services to assist a person with disability to
25 prepare for, obtain or maintain paid work, including training;
26 (b) supports or services to assist a person with disability to
27 become self-employed;
28 (c) the provision of incentives to employers to employ persons
29 with disability.

30 **entrusted person** means any of the following:

31 (a) the Secretary;

EXPOSURE DRAFT

Part 1 Preliminary

Division 2 Definitions

Section 8

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

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

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

10 ***Indigenous person*** means a person who is:

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

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

17 ***key personnel*** has the meaning given by section 10.

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

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

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

23 ***NDIS Act*** means the *National Disability Insurance Scheme Act*
24 *2013*.

25 ***protected information*** means either of the following kinds of
26 information:

- 27 (a) personal information within the meaning of the *Privacy Act*
28 *1988*;
29 (b) information about the affairs of a person the disclosure of
30 which could reasonably be expected to found an action by a

EXPOSURE DRAFT

1 person (other than the Commonwealth) for breach of a duty
2 of confidence.

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

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

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

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

14 **research and evaluation program** means a program to:

- 15 (a) undertake research or data analysis in relation to people with
16 disability, including in relation to the provision of supports
17 and services for people with disability; or
18 (b) evaluate programs or policies that are directed towards
19 people with disability, including activities funded under
20 arrangements, or grants of financial assistance, made under
21 this Act.

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

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

28 **rules** means the rules made under section 36.

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

30 **statutory funding condition** has the meaning given by section 15.

31 **supports or services** includes the supply of goods.

EXPOSURE DRAFT

Part 1 Preliminary

Division 2 Definitions

Section 9

1 **9 Meaning of *eligible person***

2 *Eligible person*

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

18 *Determination*

- 19 (2) The Secretary may, in writing, make a determination specifying a
20 day by which a person must obtain a certificate of compliance for a
21 regulated activity if the person has given written notice to the
22 Secretary stating the person's intention to seek and obtain such a
23 certificate on or before that day.
- 24 (3) The specified day must be no later than 18 months after the day on
25 which the determination is made.
- 26 (4) The Secretary may, in writing, vary the determination to specify a
27 later day if the Minister has made an arrangement for the making
28 of payments, or made a grant of financial assistance, to the person
29 under section 13. The later day must be no later than 18 months
30 after the day on which the arrangement or grant was made.
- 31 (5) A determination under subsection (2) is not a legislative
32 instrument.

EXPOSURE DRAFT

1 **10 Meaning of *key personnel***

2 (1) Each of the following is one of the *key personnel* of a person:

3 (a) a member of the group of persons who is responsible for the
4 executive decisions of the person;

5 (b) any other person who has authority or responsibility for (or
6 significant influence over) planning, directing or controlling
7 the activities of the person.

8 (2) Without limiting paragraph (1)(a), a reference in that paragraph to
9 a person who is responsible for the executive decisions of a person
10 includes:

11 (a) if the person is a body corporate that is incorporated, or taken
12 to be incorporated, under the *Corporations Act 2001*—a
13 director of the body corporate for the purposes of that Act;
14 and

15 (b) in any other case—a member of the person’s governing body.

16 **11 Meaning of *regulated activity***

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

EXPOSURE DRAFT

Part 2 Funding arrangements

Section 12

1 Part 2—Funding arrangements

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3 12 Simplified outline of this Part

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

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11

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

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

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

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

22 13 Arrangements and grants

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Arrangements and grants

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

EXPOSURE DRAFT

- 1 (a) the provision of accessibility supports or services;
2 (b) the provision of accommodation supports or services;
3 (c) the provision of advocacy supports or services;
4 (d) the provision of education supports or services;
5 (e) the provision of employment supports or services;
6 (f) the provision of independent living supports or services;
7 (g) the provision of information supports or services;
8 (h) the provision of recreation supports or services;
9 (i) the provision of respite care supports or services;
10 (j) the provision of a capacity building program;
11 (k) the provision of a research and evaluation program;
12 (l) an activity relating to furthering the objects of this Act;
13 (m) an activity determined by the Minister under subsection (2);
14 (n) an activity that is incidental or ancillary to any of the above.
- 15 (2) The Minister may, by legislative instrument, determine an activity
16 for the purposes of paragraph (1)(m).
- 17 (3) Subsection (1) does not limit the kinds of activities the Minister
18 may determine under subsection (2).
- 19 (4) The rules may set out matters to which the Minister must or may
20 have regard in deciding whether to make or vary an arrangement or
21 grant of financial assistance under subsection (1).
- 22 *Exception*
- 23 (5) Despite subsection (1), the Minister must not make an arrangement
24 for the making of payments, or make a grant of financial
25 assistance, to a person unless the person is an eligible person for
26 the arrangement or grant.
- 27 *Other matters*
- 28 (6) An arrangement under subsection (1) may provide for the
29 Commonwealth to reimburse, or partly reimburse, costs or
30 expenses (including costs or expenses incurred in obtaining a

EXPOSURE DRAFT

Part 2 Funding arrangements

Section 14

1 certificate of compliance for activities in relation to the
2 arrangement).

3 (7) A grant under subsection (1) may be made by way of the
4 reimbursement, or partial reimbursement, of costs or expenses
5 (including costs or expenses incurred in obtaining a certificate of
6 compliance for activities in relation to the grant).

7 (8) Subsections (6) and (7) do not limit subsection (1).

8 (9) Subsection (1) does not authorise the making of a loan.

9 **14 Terms and conditions**

10 (1) The terms and conditions:

11 (a) on which money may be payable by the Commonwealth to a
12 person under an arrangement made under section 13; or

13 (b) on which a grant of financial assistance is made to a person
14 under section 13;

15 are the following:

16 (c) the statutory funding conditions;

17 (d) any other terms and conditions set out in a written agreement
18 (the *funding agreement*) between the Commonwealth and
19 the person.

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

22 *Terms and conditions in funding agreement*

23 (3) The terms and conditions set out in the funding agreement:

24 (a) must provide for the circumstances in which the person must
25 repay amounts to the Commonwealth; and

26 (b) may deal with matters covered by the statutory funding
27 conditions; and

28 (c) may deal with the consequences for a breach of a term or
29 condition of the funding agreement.

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

EXPOSURE DRAFT

1 (4) Subject to subsection (5), subsections (3) and (6) do not limit the
2 terms and conditions that may be set out in a funding agreement.

3 (5) However, a term or condition of a kind mentioned in
4 paragraph (3)(b) set out in a funding agreement is of no effect to
5 the extent of any inconsistency with the statutory funding
6 conditions.

7 *Breach of statutory funding conditions*

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

13 has failed to comply with a statutory funding condition, the
14 Minister may, on behalf of the Commonwealth, take one or more
15 of the following actions:

16 (c) terminate the funding agreement made under this Act with
17 the person in relation to the grant or arrangement;

18 (d) vary the funding agreement made under this Act with the
19 person in relation to the grant or arrangement, including by
20 imposing terms and conditions and by reducing the amount
21 of money to be paid;

22 (e) publish information about the failure on a website maintained
23 by the Department.

24 *Minister may enter into funding agreement*

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

27 **15 Statutory funding conditions**

28 *Statutory funding conditions*

29 (1) This section sets out the statutory funding conditions that apply to
30 a person who receives a grant of financial assistance, or to whom

EXPOSURE DRAFT

Part 2 Funding arrangements

Section 15

1 money may be payable under an arrangement, made under section
2 13.

3 *First condition—code of conduct*

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

6 *Second condition—certificate of compliance*

7 (3) The second **statutory funding condition** is the condition that, if the
8 arrangement or grant is in relation to an eligible activity that is a
9 regulated activity, the person:

- 10 (a) holds a certificate of compliance for the regulated activity; or
11 (b) is covered by a determination, in force under subsection 9(2),
12 for the regulated activity and the day specified in the
13 determination has not occurred.

14 *Third condition—complaints management and resolution system*

15 (4) The third **statutory funding condition** is the condition that the
16 person implements and maintains a complaints management and
17 resolution system that:

- 18 (a) is appropriate for the size of the person and for the kinds of
19 eligible activities to which the arrangement or grant relates;
20 and
21 (b) acknowledges the role of advocates (including independent
22 advocates), and other representatives, of persons with
23 disability; and
24 (c) provides for cooperation with, and facilitates arrangements
25 for, those advocates, and other representatives, to support
26 persons with disability who:
27 (i) are affected by the complaints process; and
28 (ii) wish to be independently supported in that process by
29 an advocate or other representative; and
30 (d) complies with the requirements (if any) prescribed by the
31 rules for the purposes of this paragraph.

EXPOSURE DRAFT

1 *Fourth condition—incident management system*

- 2 (5) The fourth **statutory funding condition** is the condition that the
3 person implements and maintains an incident management system
4 that:
5 (a) is appropriate for the size of the person and for the kinds of
6 eligible activities to which the arrangement or grant relates;
7 and
8 (b) complies with the requirements (if any) prescribed by the
9 rules for the purposes of this paragraph.

10 *Fifth condition—banning orders*

- 11 (6) The fifth **statutory funding condition** is the condition that:
12 (a) the person is not subject to a banning order that is in force
13 under section 73ZN of the NDIS Act; and
14 (b) none of the members of the key personnel of the person is
15 subject to a banning order that is in force under section 73ZN
16 of the NDIS Act; and
17 (c) if another person (the **employee**), who is employed or
18 otherwise engaged by the person, is subject to a banning
19 order that is in force under section 73ZN of the NDIS Act in
20 relation to activities, supports or services—the following:
21 (i) the employee does not breach the banning order in
22 engaging in those activities or providing those supports
23 or services for, or on behalf of, the person;
24 (ii) if the employee became subject to the banning order on
25 or after the day the arrangement or grant is made—the
26 person notifies the Secretary, in writing, of the banning
27 order as soon as practicable after the banning order is
28 made;
29 (iii) if the employee became subject to the banning order
30 before the day the arrangement or grant is made—the
31 person notifies the Secretary, in writing, of the banning
32 order as soon as practicable after that day.

EXPOSURE DRAFT

Part 2 Funding arrangements

Section 16

1 **16 Constitutional limits**

- 2 An arrangement or grant referred to in section 13 must be with
3 respect to one or more of the following:
- 4 (a) implementing any of Australia's international obligations
5 under the Convention on the Rights of Persons with
6 Disabilities;
 - 7 (b) the granting of financial assistance to a State or Territory;
 - 8 (c) a Territory;
 - 9 (d) supports or services for Indigenous persons;
 - 10 (e) activities, supports or services that involve the use of a
11 postal, telegraphic, telephonic or other like service within the
12 meaning of paragraph 51(v) of the Constitution;
 - 13 (f) supports or services provided by way of sickness benefits or
14 medical services;
 - 15 (g) the granting of financial assistance to a constitutional
16 corporation for the purposes of carrying out the corporation's
17 activities;
 - 18 (h) implementing any of Australia's international obligations
19 under a Convention or Covenant mentioned in
20 paragraph 3(i);
 - 21 (i) the exercise of the executive power of the Commonwealth;
 - 22 (j) matters incidental to the execution of any of the legislative
23 powers of the Parliament or the executive power of the
24 Commonwealth.

25 **17 Relationship with *Financial Framework (Supplementary Powers)***
26 ***Act 1997***

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

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

EXPOSURE DRAFT

Funding arrangements **Part 2**

Section 18

1 under that section whether the Commonwealth also has the power to
2 do so under this Part.

3 **18 Executive power of the Commonwealth**

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

EXPOSURE DRAFT

Part 3 Code of conduct and certificates of compliance

Division 1 Introduction

Section 19

1 **Part 3—Code of conduct and certificates of**
2 **compliance**

3 **Division 1—Introduction**

4 **19 Simplified outline of this Part**

5 The rules can make provision for a code of conduct that applies to
6 persons who receive a grant of financial assistance or to whom
7 money may be payable under an arrangement. The failure of a
8 person to comply with the code of conduct is a breach of a
9 statutory funding condition under this Act.

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

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

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

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

EXPOSURE DRAFT

Code of conduct and certificates of compliance **Part 3**

Code of conduct **Division 2**

Section 20

1 **Division 2—Code of conduct**

2 **20 Code of conduct**

3 (1) The rules may make provision for or in relation to a code of
4 conduct that applies to persons who receive a grant of financial
5 assistance, or to whom money may be payable by the
6 Commonwealth under an arrangement, made under section 13.

7 (2) Without limiting subsection (1), rules made for the purposes of that
8 subsection may make provision for circumstances in which a
9 person does not comply with the code of conduct because of an act,
10 or an omission to perform an act, by:

11 (a) a member of the key personnel of the person; or

12 (b) another person who is employed, or otherwise engaged, by
13 the person.

14 (3) Rules made for the purposes of subsection (1) and in force are the
15 *code of conduct*.

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 3 Code of conduct and certificates of compliance

Division 3 Certificates of compliance

Section 21

1 **Division 3—Certificates of compliance**

2 **21 Accredited certification body may grant certificate of compliance**
3 **for meeting compliance standards**

4 *Certificate of compliance*

- 5 (1) An accredited certification body must, in writing, grant a person a
6 certificate of compliance for one or more regulated activities if:
7 (a) the person has made a request, in writing, to the body for a
8 certificate of compliance for those activities; and
9 (b) the body is satisfied the person complies with the compliance
10 standards for those activities.
- 11 (2) The body must, as soon as practicable after granting the certificate
12 to the person, give a copy of the certificate to the person.
- 13 (3) The certificate must:
14 (a) state that the person complies with the compliance standards
15 for the regulated activities covered by the certificate; and
16 (b) specify the day on which the certificate ceases to be in force.
- 17 (4) If the accredited certification body refuses to grant a certificate of
18 compliance for a regulated activity, as requested by a person under
19 this section, the body must, as soon as practicable after refusing the
20 request, give written notice of the refusal to the person.

21 *Revocation of certificate*

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

EXPOSURE DRAFT

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

4 *Variation of certificate*

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

- 21 (11) If the body refuses to vary a certificate of compliance, as requested
22 by a person, the body must, as soon as practicable after refusing the
23 variation, give written notice of the refusal to the person.

24 *Period certificate is in force*

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

EXPOSURE DRAFT

Part 3 Code of conduct and certificates of compliance

Division 3 Certificates of compliance

Section 22

- 1 (iii) if the accredited certification body that granted the
2 certificate ceases to be accredited—the end of the period
3 of 3 months after the cessation.

4 *Notification to Secretary*

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

12 *Certificate not a legislative instrument*

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

15 **22 Secretary may grant certificate of compliance for meeting**
16 **alternative compliance requirements**

17 *Certificate of compliance*

- 18 (1) The Secretary must, in writing, grant a person a certificate of
19 compliance for one or more regulated activities if:
20 (a) the person has made a request, in writing, to the Secretary for
21 a certificate of compliance for those activities; and
22 (b) the Secretary is satisfied the person complies with the
23 alternative compliance requirements for those activities.
- 24 (2) The Secretary must, as soon as practicable after granting the
25 certificate to the person, give a copy of the certificate to the person.
- 26 (3) The certificate must:
27 (a) state that the person complies with the alternative compliance
28 requirements for the regulated activities covered by the
29 certificate; and
30 (b) specify the day on which the certificate ceases to be in force.

EXPOSURE DRAFT

- 1 (4) If the Secretary refuses to grant a certificate of compliance for a
2 regulated activity, as requested by a person under this section, the
3 Secretary must, as soon as practicable after refusing the request,
4 give written notice of the refusal to the person.

5 *Revocation of certificate*

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

15 *Variation of certificate*

- 16 (8) The Secretary must, in writing, vary a certificate of compliance
17 granted to a person under this section:
18 (a) to exclude a regulated activity, if the Secretary is satisfied the
19 person ceases to comply with the alternative compliance
20 requirements for that activity; or
21 (b) to include one or more additional regulated activities, if:
22 (i) the person has made a request, in writing, to the
23 Secretary to vary the certificate to include those
24 activities; and
25 (ii) the Secretary is satisfied the person complies with the
26 alternative compliance requirements for those activities.
- 27 (9) The Secretary must, as soon as practicable after varying the
28 certificate granted to the person, give written notice of the variation
29 to the person.
- 30 (10) The notice must specify the day the variation takes effect, which
31 must be no earlier than the day after the notice is given to the
32 person.

EXPOSURE DRAFT

Part 3 Code of conduct and certificates of compliance

Division 3 Certificates of compliance

Section 23

- 1 (11) If the Secretary refuses to vary a certificate of compliance, as
2 requested by a person, the Secretary must, as soon as practicable
3 after refusing the variation, give written notice of the refusal to the
4 person.

5 *Period certificate is in force*

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

12 *Certificate not a legislative instrument*

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

23 Compliance standards

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

24 Alternative compliance requirements

- 24 (1) The rules may make provision for or in relation to requirements for
25 persons undertaking regulated activities.
- 26 (2) Without limiting subsection (1), the rules may make provision for
27 or in relation to:

EXPOSURE DRAFT

Code of conduct and certificates of compliance **Part 3**
Certificates of compliance **Division 3**

Section 24

- 1 (a) different requirements for different kinds of persons or
2 regulated activities; and
3 (b) giving notice to the Secretary of any non-compliance with
4 the requirements for undertaking regulated activities.
- 5 (3) Rules made for the purposes of subsection (1) and in force are the
6 *alternative compliance requirements*.

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 3 Code of conduct and certificates of compliance

Division 4 Accredited certification bodies

Section 25

1 **Division 4—Accredited certification bodies**

2 **25 Secretary may grant approval for accrediting authorities**

3 *Approval*

- 4 (1) The Secretary may, in writing, grant an approval to a person to
5 perform the functions of granting and withdrawing accreditation
6 under section 26 if the Secretary is satisfied that:
- 7 (a) the person is internationally recognised as a suitable person
8 to perform those functions; and
9 (b) the person will perform the functions in an independent and
10 impartial way.
- 11 (2) The Secretary must, as soon as practicable after granting the
12 approval to the person, give written notice of the approval to the
13 person.

14 *Revocation of approval*

- 15 (3) The Secretary must, in writing, revoke an approval granted to a
16 person under this section if the Secretary ceases to be satisfied of
17 the matters mentioned in paragraphs (1)(a) and (b) in relation to the
18 person.
- 19 (4) The Secretary must, as soon as practicable after revoking an
20 approval granted to a person under this section, give written notice
21 of the revocation to:
- 22 (a) the person; and
23 (b) each accredited certification body granted an accreditation by
24 the person under section 26 that is in force; and
25 (c) each person granted a certificate of compliance by the body.
- 26 (5) The notice must specify the day the revocation takes effect, which
27 must not be earlier than the day after the notice is given to the
28 person.

EXPOSURE DRAFT

Code of conduct and certificates of compliance **Part 3**

Accredited certification bodies **Division 4**

Section 26

1 *Period approval is in force*

2 (6) An approval granted under this section:

3 (a) comes into force on the day the notice is given under
4 subsection (2); and

5 (b) unless revoked earlier, remains in force indefinitely.

6 *Approval not a legislative instrument*

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

8 **26 Accrediting authorities may grant accreditation for certification** 9 **bodies**

10 *Accreditation*

11 (1) An accrediting authority must, in writing, grant an accreditation to
12 a person to perform the functions of granting, revoking and varying
13 certificates of compliance under section 21 if the authority is
14 satisfied:

15 (a) the person will perform those functions competently and
16 impartially; and

17 (b) the person has made a request to the accrediting authority for
18 accreditation under this section.

19 (2) The authority must, as soon as practicable after granting the
20 accreditation to the person, give written notice of the accreditation
21 to the person.

22 (3) If the authority refuses to grant an accreditation, as requested by a
23 person under this section, the authority must, as soon as practicable
24 after refusing the request, give written notice of the refusal to the
25 person.

26 *Withdrawal of accreditation*

27 (4) An accrediting authority must, in writing, withdraw an
28 accreditation granted to a person under this section if the authority

EXPOSURE DRAFT

Part 3 Code of conduct and certificates of compliance

Division 4 Accredited certification bodies

Section 26

1 ceases to be satisfied that the person is performing the function of
2 granting certificates of compliance competently or impartially.

3 (5) The accrediting authority must, as soon as practicable after
4 withdrawing the accreditation, give written notice to the person of
5 the withdrawal.

6 (6) The notice must specify the day the withdrawal takes effect, which
7 must not be earlier than the day after the notice is given.

8 *Notification*

9 (7) If an accrediting authority grants, refuses to grant or withdraws an
10 accreditation under this section, the authority must notify the
11 Secretary, in writing, as soon as practicable of:

12 (a) that fact; and

13 (b) for a decision to refuse to grant, or to withdraw, an
14 accreditation—the reasons for the decision.

15 (8) As soon as practicable after the Secretary is notified under
16 subsection (7) that the accreditation of an accredited certification
17 body is withdrawn, the Secretary must notify, in writing, each
18 person that holds a certificate of compliance that was granted by
19 that body.

20 *Period accreditation is in force*

21 (9) An accreditation granted under this section:

22 (a) comes into force on the day the notice is given under
23 subsection (2); and

24 (b) remains in force until the earlier of the following occurs:

25 (i) the day the withdrawal of the accreditation takes effect;

26 (ii) if the authority that granted the accreditation ceases to
27 be an accrediting authority—the end of the period of 3
28 months after the cessation.

EXPOSURE DRAFT

Code of conduct and certificates of compliance **Part 3**
Accredited certification bodies **Division 4**

Section 26

- 1 *Accreditation not a legislative instrument*
- 2 (10) An accreditation under subsection (1) is not a legislative
- 3 instrument.

EXPOSURE DRAFT

EXPOSURE DRAFT

Part 4 Information management

Section 27

1 **Part 4—Information management**
2

3 **27 Simplified outline of this Part**

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

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

9 **28 Unauthorised use or disclosure of protected information**

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

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

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

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

1 **29 Authorised uses and disclosures of relevant information**

2 *Use or disclosure in the administration of this Act*

- 3 (1) An entrusted person may use or disclose relevant information for
4 the purposes of:
5 (a) performing functions or duties, or exercising powers, under
6 this Act; or
7 (b) assisting another person to perform functions or duties, or
8 exercise powers, under this Act.

9 *Use or disclosure for purpose determined by Secretary*

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

18 *Commonwealth purposes*

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

EXPOSURE DRAFT

Part 4 Information management

Section 29

1 *Use or disclosure to State or Territory for purpose determined by*
2 *Secretary*

3 (6) An entrusted person may disclose relevant information to the head
4 (however described) of a Department of State of a State or
5 Territory, or of an authority of a State or Territory, if the disclosure
6 is for a purpose specified in a determination made under
7 subsection (7).

8 (7) The Secretary may, by legislative instrument, make a
9 determination for the purposes of subsection (6).

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

13 *Disclosure to a court, tribunal etc.*

14 (9) An entrusted person may disclose relevant information to a court
15 exercising federal jurisdiction.

16 (10) An entrusted person may disclose relevant information to:
17 (a) a court; or
18 (b) a tribunal, authority or person that has the power to require
19 the answering of questions or the production of documents;
20 for the purposes of the enforcement of a law of the Commonwealth
21 or to assist the court, tribunal, authority or person to make or
22 review an administrative decision that is required or authorised to
23 be made or reviewed under a law of the Commonwealth.

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

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

EXPOSURE DRAFT

1 *Use or disclosure of statistics*

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

6 *Use or disclosure with consent*

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

12 *Disclosure to person to whom information relates*

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

15 *Use or disclosure of information that is already public*

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

EXPOSURE DRAFT

Part 5 Miscellaneous

Section 30

1 **Part 5—Miscellaneous**

2

3 **30 Simplified outline of this Part**

4

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6

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

8 **31 Delegation by the Minister**

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(1) The Minister may, by writing, delegate the Minister's powers under subsection 13(1) and section 14 to:

(a) the Secretary; or

(b) an SES employee, or acting SES employee, in the Department; or

(c) an SES employee, or acting SES employee, in a Department of State of the Commonwealth other than the Department.

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

18

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(2) However, the Minister must not delegate to a person mentioned in paragraph (1)(c) the following:

(a) the Minister's power under subsection 13(1) to make an arrangement or grant;

(b) the Minister's power under subsection 14(7) to enter into a funding agreement.

24

25

(3) In exercising any powers under a delegation under this section, the delegate must comply with any directions of the Minister.

32 Delegation by the Secretary

- 1
- 2 (1) The Secretary may, by writing, delegate to an SES employee, or
3 acting SES employee, in the Department the Secretary's powers
4 under the following provisions:
5 (a) subsections 9(2) and (4) (specifying a day to obtain a
6 certificate of compliance);
7 (b) section 22 (certificates of compliance);
8 (c) section 25 (approval of accrediting authority).

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

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

33 Treatment of partnerships

- 13
- 14 (1) This Act applies to a partnership as if it were a person, but with the
15 changes set out in this section.
- 16 (2) An obligation that would otherwise be imposed on the partnership
17 by this Act is imposed on each partner instead, but may be
18 discharged by any of the partners.
- 19 (3) If this Act would otherwise permit something to be done by the
20 partnership, the thing may be done by one or more of the partners
21 on behalf of the partnership.
- 22 (4) For the purposes of this Act, a change in the composition of a
23 partnership does not affect the continuity of the partnership.

34 Treatment of unincorporated associations

- 24
- 25 (1) This Act applies to an unincorporated association as if it were a
26 person, but with the changes set out in this section.
- 27 (2) An obligation that would otherwise be imposed on the association
28 by this Act is imposed on each member of the association's
29 committee of management instead, but may be discharged by any
30 of the members.

EXPOSURE DRAFT

Part 5 Miscellaneous

Section 35

- 1 (3) If this Act would otherwise permit something to be done by the
2 unincorporated association, the thing may be done by one or more
3 of the member of the association's committee of management on
4 behalf of the association.

5 **35 Treatment of trusts**

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

8 *Trusts with a single trustee*

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

14 *Trusts with multiple trustees*

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

21 **36 Rules**

- 22 (1) The Minister may, by legislative instrument, make rules
23 prescribing matters:
24 (a) required or permitted by this Act to be prescribed by the
25 rules; or
26 (b) necessary or convenient to be prescribed for carrying out or
27 giving effect to this Act.
- 28 (2) To avoid doubt, the rules may not do the following:
29 (a) create an offence or civil penalty;

EXPOSURE DRAFT

- 1 (b) provide powers of:
2 (i) arrest or detention; or
3 (ii) entry, search or seizure;
4 (c) impose a tax;
5 (d) set an amount to be appropriated from the Consolidated
6 Revenue Fund under an appropriation in this Act;
7 (e) directly amend the text of this Act.

8 *Incorporation by reference*

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

14