

EXPLANATORY STATEMENT

Issued by authority of the Minister for Social Services

Disability Services (Consequential Amendments and Transitional Provisions) Act 2023

Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Rules 2025

- 1 The instrument, *Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Rules 2025*, is made under item 10 of Schedule 3 of the *Disability Services (Consequential Amendments and Transitional Provisions) Act 2023* (**the Act**). That provision allows the Minister to make rules prescribing matters of a transitional nature (including prescribing any saving or applications provisions) relating to the enactment of the *Disability Services and Inclusion Act 2023* (**DSI Act**) or the amendments or repeals made by Schedule 1 or 2 of the Act.
- 2 The instrument commences on the day after registration on the Federal Register of Legislation and is a legislative instrument for the *Legislation Act 2003* (**the Legislation Act**).

Purpose

- 3 The DS Act was replaced by the DSI Act on 1 January 2024. However, grants of financial assistance made under Part II and measures or arrangements made under Part III of the DS Act before 1 January 2024 can continue to be administered on and after that date (see the notes to sub-items 4(1) and 8(1) of Schedule 3 of the Act).
- 4 The purpose of this instrument is to support persons who provide supports and services for the benefit of people with disability, their families and carers, to meet the eligibility requirements of the DSI Act for a transition period (1 July 2025 to 31 December 2025) where the payment arrangement or grant is for a “regulated activity” under the DSI Act.
- 5 A regulated activity is defined under the *Disability Services and Inclusion (Regulated Activities) Determination 2023* to mean an eligible activity that either:
 - (a) involves the delivery of higher-risk or complex supports to people with disability; or
 - (b) is delivered by persons undertaking the activity through substantial one-on-one contact with people with disability to whom the activity is provided; or
 - (c) involves regular engagement over a prolonged period between persons undertaking the activity and people with disability to whom the activity is provided.
- 6 Paragraph 9(1)(a)(i) of the DSI Act requires a person to hold a ‘certificate of compliance’ for the regulated activity to be eligible for the payment arrangement or grant under section 13 of the DSI Act. The person must maintain that certificate of compliance as a statutory funding condition under subsection 15(3) of the DSI Act.
- 7 A certificate of compliance may be issued by an accredited certification body under section 21 of the DSI Act if satisfied that the person complies with the ‘compliance standards’ for those activities. The compliance standards are the National Standards for Disability Services (NSDS) as outlined in Part 2 of the *Disability Services and Inclusion (Compliance Standards and Alternative Compliance*

Requirements) Rules 2023. In practice, the certification body assesses compliance through an audit carried out against the current version of the audit scheme specified for the activities.

- 8 As part of the transition to the DSI Act, existing NSDS audit schemes have been revised to address outdated provisions and update legislative references as needed. The new schemes were developed by the Joint Accreditation System for Australia and New Zealand as instructed by the department. These new schemes are available for new audits taking place on or after 1 July 2025.
- 9 Certificates under the DS Act are generally issued with an expiry date based on the date of issue (for example, three years from issue). To ensure that recently certified providers are not disadvantaged during the transition to the DSI Act, the updated audit schemes include a transition policy which will allow existing certificates to be reissued in recognition of current certificate expiry dates, effectively matching current certification periods to ensure a smooth transition. However, to allow certifying bodies to undertake due diligence, this process will not be able to be complete before 1 September 2025.
- 10 This creates a gap during which providers under the DSI Act may be in technical breach of the legislative requirements despite holding a current certificate of compliance under the DS Act. The purpose of this instrument is to allow a person who holds a certificate of compliance given under section 6D, 6DA or 6E of the DS Act that is in force on 30 June 2025 to be eligible for a payment arrangement or grant under section 13 of the DSI Act that concerns a regulated activity during the transition period of 1 July 2025 and 31 December 2025. After this period, it is expected that the person would hold a new certificate of compliance under the DSI Act.
- 11 Prior to 1 July 2025, grants made for the Disability Employment Services (**DES**) Program and the National Disability Advocacy Program (**NDAP**) were made under the DS Act. Both programs have been extended from 1 July 2025 by arrangement under section 13 of the DSI Act and therefore the eligibility requirements of the DSI Act will apply to both programs from 1 July 2025. This instrument provides certainty that eligible persons delivering the DES and NDAP programs are able to meet the requirements of the DSI Act and their grant agreements during the transition.
- 12 Based on current data, around three quarters of DES and NDAP providers (approximately 110 providers) will have their certificates preserved by the instrument. The remaining providers have certificates which have recently expired and will not be covered by the instrument. For these providers, the Secretary is able to issue a determination under subsection 9(2) of the DSI Act, allowing them up to 15 months to obtain a certificate of compliance under the new arrangements.

Details of the instrument

- 13 Details of the instrument are included at **Attachment A**.

Consultation

- 14 The instrument has been prepared in consultation with the Joint Accreditation System of Australia and New Zealand (JASANZ) to develop the transition policy for certificates of compliance, which together with this instrument ensures a smooth transition to the DSI Act. JASANZ is the authority responsible under section 25 of the DSI Act for accrediting certification bodies who assess and issue certificates of compliance.

- 15 The Office of Impact Analysis (**OIA**) was consulted and considered that a detailed analysis is not required under the Australian Government's Policy Impact Analysis Framework and no regulatory impact statement was required. The OIA reference number is OIA25-09513.

Parliamentary scrutiny etc.

- 16 The instrument is subject to disallowance under section 42 of the Legislation Act.
- 17 A Statement of Compatibility with Human Rights has been prepared in relation to the instrument and provides that the instrument is compatible with human rights as it supports the continuity and smooth transition of programs that contribute to upholding the rights of people with disability. The Statement is included at **Attachment B**.

Details of the *Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Rules 2025*

Part 1—Preliminary

Section 1 Name

This section provides that the name of the instrument is the *Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Rules 2025*.

Section 2 Commencement

This section provides that the instrument commences on the day after registration on the Federal Register of Legislation.

Section 3 Authority

This section provides that the instrument is made under item 10 of Schedule 3 of the Act.

That provision allows the Minister to make rules prescribing matters of a transitional nature (including prescribing any saving or applications provisions) relating to the enactment of the DSI Act or the amendments or repeals made by Schedule 1 or 2 of the Act.

Section 4 Interpretation

Section 4 provides definitions for the following terms used in the instrument:

- *Act* means the *Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Act 2023*.
- *Advocacy service* has the same meaning in section 7 of the DS Act.
- *DS Act* means the *Disability Services Act 1986*.
- *DSI Act* means the *Disability Services and Inclusion Act 2023*.
- *Employment service* has the same meaning in section 7 the DS Act.
- *Regulated activity* has the same meaning in section 8 of the DSI Act, which means an activity specified in an instrument in force under section 11 of the DSI Act. Section 5 of the *Disability Services and Inclusion (Regulated Activities) Determination 2023* specifies the kinds of activities that are a regulated activity.
- *Rehabilitation program* has the same meaning in Part III of the DS Act.
- *Transition Period* means the period starting on 1 July 2025 and ending 31 December 2025.

Part 2—Transitional Rules for Certificates of Compliance under the DSI Act

Section 5 Certificates of compliance issued under DS Act have effect under the DSI Act

Subsection 5(1) allows a person to satisfy subparagraph 9(1)(a)(i) of the DSI Act during the transition period (1 July 2025 to 31 December 2025) if the person holds a certificate of compliance under section 6D, 6DA or 6E of the DS Act. The certificate must be in force on 30 June 2025 and be for a service or program under the DSI Act that is now a regulated activity under section 13 of the DSI Act.

The purpose of this section is to allow persons who provide a service or program under the DS Act to continue to provide those services or programs where they are now a regulated activity under the DSI Act. Reference to the grant opportunity guidelines for the payment arrangement or grant under section 13 of the DSI Act will assist with determining whether the service or program is a regulated activity.

Subsection 5(2) provides that a certificate of compliance given under the DS Act is in force on 30 June 2025 if the certificate has not been revoked by that date and the certification body which gave the certificate has not lost its accreditation.

The notes in section 5 assist with explaining the effect of relevant savings provisions in the Act.

Notes 1 and 2 explain that grants of financial assistance made under Part II or measures or arrangements made under Part III of the DS Act can continue to be administered and have effect after 1 January 2024 until those funding agreements, measures or arrangements expire. This assists in explaining that certificates of compliance will be in force where a grant, measure or arrangement under Part II or III of the DS Act is also still in force on 30 June 2025.

Note 3 explains that an accreditation under Part IA of the DS Act continues in relation to the continued application of Parts II and III of the DS Act. This assists in explaining that the certification body that gave the certificate is not taken to have automatically ceased to be accredited as a result of the repeal of the DS Act.

Statement of Compatibility with Human Rights

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

Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Rules 2025

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

Overview of the Disallowable Legislative Instrument

The instrument, *Disability Services and Inclusion (Consequential Amendments and Transitional Provisions) Rules 2025*, is made under item 10 of Schedule 3 of the *Disability Services (Consequential Amendments and Transitional Provisions) Act 2023 (the Act)*. That provision allows ‘the Minister’ to make rules prescribing matters of a transitional nature (including prescribing any saving or applications provisions) relating to the enactment of the *Disability Services and Inclusion Act 2023 (DSI Act)* or the amendments or repeals made by Schedule 1 or 2 of the Act.

The DS Act was replaced by the DSI Act from 1 January 2024. However, grants of financial assistance made under Part II and measures or arrangements made under Part III of the DS Act before 1 January 2024 can continue to be administered on and after that date (see the notes to sub-items 4(1) and 8(1) of Schedule 3 of the Act).

The purpose of this instrument is to support persons, who provide supports and services for the benefit of people with disability, their families and carers, meet the eligibility requirements of the DSI Act for a transition period (1 July 2025 to 31 December 2025) where the payment arrangement or grant is for a ‘regulated activity’ under the DSI Act.

A regulated activity is defined under the *Disability Services and Inclusion (Regulated Activities) Determination 2023* to mean an eligible activity that either:

- involves the delivery of higher-risk or complex supports to people with disability; or
- is delivered by persons undertaking the activity through substantial one-on-one contact with people with disability to whom the activity is provided; or
- involves regular engagement over a prolonged period between persons undertaking the activity and people with disability to whom the activity is provided.

Paragraph 9(1)(a)(i) of the DSI Act requires a person to hold a ‘certificate of compliance’ for the regulated activity to be eligible for the payment arrangement or grant under section 13 of the DSI Act. The person must maintain that certificate of compliance as a statutory funding condition under subsection 15(3) of the DSI Act.

The purpose of the instrument is to allow a person to satisfy subparagraph 9(1)(a)(i) of the DSI Act during the transition period (1 July 2025 to 31 December 2025) if the person holds a certificate of compliance under section 6D, 6DA or 6E of the DS Act. The certificate must be in force on

30 June 2025 and for a service or program under the DSI Act that is now a regulated activity under section 13 of the DSI Act.

The intended effect of the instrument is to allow persons who provide a service or program under the DS Act to continue to provide those services or programs where they are now a regulated activity under the DSI Act. Reference to the grant opportunity guidelines for the payment arrangement or grant under section 13 of the DSI Act will assist with determining whether the service or program is a regulated activity.

It is expected that after the transition period, the person will hold a new certificate of compliance issued by an accredited certification body under section 21 of the DSI Act to maintain their eligibility for the payment arrangement or grant in accordance with the second statutory funding condition under subsection 15(3) of the DSI Act.

Human rights implications

This instrument engages the following rights:

- Right to full and effective participation and inclusion in society, equality and non-discrimination – Articles 3 and 5 of the Convention on the Rights of Persons with Disabilities (CRPD)
- Right to freedom from exploitation, violence and abuse – Article 16 of the CRPD.

Right to full and effective participation and inclusion in society, equality and non-discrimination – Articles 3 and 5 of the CRPD

The Instrument engages Article 3 and Article 5 of the CRPD. Article 3 of the CRPD reflects the need for full and effective participation and inclusion in society and equality of opportunity for persons with disability. Article 5 of the CRPD details the right of people with disability to equality and non-discrimination.

The DSI Act provides a mechanism for the funding of services and supports for people with disability. This includes the continuation of existing measures, such as Disability Employment Services and the National Disability Advocacy Program, which play an important role in advancing the inclusion of people with disability and supporting their full and effective participation.

By providing a mechanism for providers to transition smoothly to new arrangements, this instrument helps to prevent any detrimental effect on program delivery during transition, ensuring that the rights of people with disability are not compromised by service interruption, through supporting providers to ensure they meet compliance requirements under the Act. This upholds the right to full and effective participation, equality and non-discrimination.

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

This instrument engages the right to freedom from exploitation, violence and abuse. Article 16 of the CRPD provides that States Parties shall take all appropriate legislative and administrative measures to protect persons with disabilities from all forms of exploitation, violence and abuse. State Parties shall ensure that supports and services designed for persons with disabilities are effectively monitored by independent authorities.

The DSI Act requires eligible persons providing higher risk supports and services to meet additional regulatory requirements, including but not limited to being certified against the National Standards

for Disability Services as outlined in Part 2 of the *Disability Services and Inclusion (Compliance Standards and Alternative Compliance Requirements) Rules 2023*.

By allowing for certification held under the DS Act to be recognised for the purposes of obtaining certification under the DSI Act, the instrument forms part of an effective, proportionate and risk-based approach to the regulation of disability services and supports. Failing to recognise existing certificates would create a risk that providers, certifying bodies or the department would waste resources on duplicative requirements with no beneficial effect on the rights of people with disability.

This instrument therefore forms part of a regulatory system which aims to ensure that people with disability can expect to receive services and supports free from exploitation, violence and abuse.

Conclusion

The instrument is compatible with human rights because it will support the continuation of services and supports which have been designed to uphold and advance social inclusion and equality for people with disability. This Instrument also provides assurance to people with disability that providers continue to meet regulatory requirements, ensuring the quality and safety of supports and services.

The Hon Tanya Plibersek MP
Minister for Social Services