

# National Disability Insurance Scheme (NSW Enabling) Act 2013 No 104

[2013-104]



New South Wales

## Status Information

### Currency of version

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### Provisions in force

The provisions displayed in this version of the legislation have all commenced.

### Notes—

- **Note**  
Amending provisions are subject to automatic repeal pursuant to sec 30C of the [Interpretation Act 1987 No 15](#) once the amendments have taken effect.

### Authorisation

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New South Wales

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# National Disability Insurance Scheme (NSW Enabling) Act 2013 No 104



New South Wales

An Act to provide for the transfer of the disability services assets of the State in connection with the National Disability Insurance Scheme of the Commonwealth; and for other purposes.

## Part 1 Preliminary

### 1 Name of Act

This Act is the *National Disability Insurance Scheme (NSW Enabling) Act 2013*.

### 2 Commencement

This Act commences on the date of assent to this Act.

### 3 Objects

The objects of this Act are as follows:

- (a) to ensure that implementation of the National Disability Insurance Scheme of the Commonwealth is managed in a way that promotes service continuity for people receiving disability services and community care supports,
- (b) to provide arrangements for the transfer of staff to promote retention of a skilled disability services workforce and continuity of services,
- (c) to provide for the transfer of disability services assets to maximise the capacity of the disability services sector and ensure continuity of service while achieving value for the State.

### 4 Interpretation—key definitions

#### Note—

Schedule 1 contains other interpretative provisions.

In this Act:

***authorised implementation*** means a transfer of disability services assets authorised by

section 5.

**disability services agency** means a public sector agency of the State in which disability services assets are vested.

**disability services assets** means assets, rights and liabilities of a public sector agency of the State that are assets, rights and liabilities of the public sector agency in connection with the exercise of disability services functions by the public sector agency or another public sector agency of the State.

**disability services employee** means a person employed in a public sector agency of the State who is engaged in the exercise of disability services functions.

**disability services functions** means functions under disability services legislation and functions exercised in the course of or in connection with the administration or execution of disability services legislation.

**disability services legislation** means the following Acts and the regulations or other instruments under those Acts:

- (a) *Disability Services Act 1993*,
- (b) *Community Welfare Act 1987*,
- (c) *Home Care Service Act 1988*,
- (d) any other Act prescribed by the regulations for the purposes of this definition.

**NDIS arrangements** means any agreement, understanding or other arrangement entered into by the State with the Commonwealth in connection with the operation of the National Disability Insurance Scheme of the Commonwealth.

## 5 Authorised implementation

- (1) For the purposes of the implementation of the NDIS arrangements, disability services assets are authorised to be transferred from a public sector agency of the State to the non-government sector or from a public sector agency of the State to any other public sector agency (whether or not a public sector agency of the State).
- (2) A transfer of disability services assets is for the purposes of the implementation of the NDIS arrangements if the transfer is for the purposes of facilitating or assisting in the implementation of the NDIS arrangements or for any purpose that is ancillary or incidental to or consequential on the implementation of the NDIS arrangements.

## 6 Provision of financial assistance

The Minister may provide financial assistance to a person in the non-government sector to whom disability services assets are transferred for the purposes of the authorised implementation.

## **Part 2 Facilitating the authorised implementation**

### **7 Minister's functions**

- (1) The Minister has and may exercise all such functions as are necessary or convenient for the purposes of the authorised implementation. The functions conferred on the Minister by any other provision of this Act do not limit the Minister's functions under this section.
- (2) The Minister requires the approval of the Treasurer before exercising a function under section 8 (1), 9, 10 (3), 11 (2), 13, 14 or 18 or Schedule 2. The Treasurer's approval can be given for the exercise of such a function in a specific case or in a class of cases.

### **8 Manner of effecting authorised implementation**

- (1) The authorised implementation is to be effected as directed by the Minister and can be effected in any manner considered appropriate by the Minister.
- (2) There are no limitations as to the nature of the transactions or arrangements that can be entered into or used for the purposes of the authorised implementation.
- (3) The provisions of this Act for the establishment of implementation companies do not limit the nature of the legal entities or arrangements that can be used for the purposes of the authorised implementation.

### **9 Implementation companies**

- (1) The Minister may for the purposes of the authorised implementation establish, or direct the establishment of, companies as implementation companies in any of the following ways:
  - (a) the formation or acquisition by or on behalf of the State of a company limited by shares, so that all the issued shares in the company are held by or on behalf of the State,
  - (b) the formation or acquisition of a company as a wholly owned subsidiary company of an implementation company.
- (2) An implementation company that is a public sector agency of the State may be converted from one kind of company to any other kind of company.
- (3) Except by express agreement with the Minister:
  - (a) an implementation company is not and does not represent the State, and
  - (b) the debts, liabilities and obligations of an implementation company are not guaranteed by the State.

- (4) The Minister may act for or on behalf of the State or an implementation company that is a public sector agency of the State in connection with the rights, privileges and benefits, and the duties, liabilities and obligations, of the State or an implementation company as the holder of shares or other securities in or issued by an implementation company.
- (5) Shares and other securities in or issued by an implementation company that is a public sector agency of the State may be issued, sold or transferred in accordance with the directions of the Minister. The Minister may on behalf of the State or an implementation company that is a public sector agency of the State enter into and carry out implementation arrangements for the issue, sale or transfer of shares and other securities in or issued by an implementation company.

#### **10 Additional functions of disability services agencies and implementation companies**

- (1) Each disability services agency and implementation company has and may exercise all such functions as are necessary or convenient for the purposes of the authorised implementation.
- (2) The functions conferred by this section are in addition to any other functions that a disability services agency or an implementation company has apart from this section and those other functions do not prevent or otherwise limit the exercise of the additional functions conferred by this section.
- (3) The Minister may act for or on behalf of a disability services agency or an implementation company in the exercise of any of its functions for the purposes of the authorised implementation while it is a public sector agency of the State.

#### **11 Direction and control of disability services agencies and implementation companies**

- (1) Each disability services agency and implementation company is subject to the direction and control of the Minister in the exercise of any of its functions for the purposes of the authorised implementation while it is a public sector agency of the State.
- (2) The Minister may give directions for the purposes of the authorised implementation to a disability services agency and implementation company, and to the directors and other officers of a disability services agency and implementation company. Any such directions must be complied with by the disability services agency, the implementation company or the directors or other officers concerned.
- (3) Directions to an implementation company (or its directors and other officers) can only be given and are only required to be complied with while the implementation company is a public sector agency of the State.
- (4) The power to give directions under this section extends to directions with respect to the way in which a disability services agency or implementation company is to

conduct its business and other affairs.

- (5) Anything done or omitted to be done by a director or other officer of an implementation company in complying with a direction given by the Minister under this Act does not subject the director or officer personally to any action, liability, claim or demand.
- (6) The provisions of this section are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of the Corporations legislation generally.

## **12 Proceeds of authorised implementation**

All proceeds of the transfer of disability services assets to the non-government sector pursuant to the authorised implementation belong to and are payable to the State.

## **Part 3 Arrangements for transfer of staff**

### **13 Transfers within public sector**

- (1) The Minister may, for the purposes of the authorised implementation, by order in writing transfer the employment of a disability services employee to the employment of another public sector agency.
- (2) A transfer of employment under this section does not require the consent of the person transferred.
- (3) An employee whose employment is transferred under this section is (until other provision is duly made under any Act or law) to be employed in accordance with any relevant statutory provisions, awards, agreements and determinations that would have applied to the employee had the employee remained a disability services employee.
- (4) The Minister may negotiate and enter into agreements or industrial instruments concerning workplace relations for or on behalf of a public sector agency of the State in connection with the operation of this section.

### **14 Transfers to non-government sector employment**

- (1) The Minister may, for the purposes of the authorised implementation, enter into an agreement (a **transfer agreement**) with an employer in the non-government sector for the transfer of the employment of a disability services employee to the employment of that employer as the **new employer** of the employee.
- (2) The Minister may by order in writing transfer the employment of a disability services employee to the employment of the new employer to give effect to a transfer agreement.



- (3) A transfer of employment under this section does not require the consent of the person transferred.
- (4) A transfer agreement must contain provision to give effect to the following requirements:
  - (a) the employment of a transferred employee with the new employer is to be on the same terms and conditions as applied under an industrial instrument to the employee as a disability services employee immediately before the transfer of employment,
  - (b) in the case of a transferred employee who is an apprentice or trainee under the [Apprenticeship and Traineeship Act 2001](#), the new employer must apply under section 20 of that Act for approval to the transfer of the apprenticeship or traineeship to the new employer,
  - (c) the provisions of section 15 apply in respect of the transferred employee.
- (5) A transfer agreement may specify an employment guarantee period for the transferred employee and if it does so must contain provision to give effect to the following requirements:
  - (a) the terms and conditions of employment of the transferred employee with the new employer under an industrial instrument cannot be varied during the employment guarantee period for the transferred employee except by agreement entered into by or on behalf of the transferred employee in accordance with any applicable industrial law,
  - (b) the employment of a transferred employee with the new employer cannot be terminated by the new employer during the employment guarantee period for the transferred employee, except:
    - (i) for serious misconduct, or
    - (ii) pursuant to the proper application of reasonable disciplinary procedures, or
    - (iii) by agreement with the employee.
- (6) A transfer agreement may include provision with respect to any other matters concerning the terms and conditions of employment of the transferred employee.

## **15 Continuity of entitlements of transferred employees**

- (1) On the transfer by order under this Part of an employee's employment from one employer (the **current employer**) to another employer (the **new employer**) the following provisions have effect:
  - (a) the employee is entitled to continue as a contributor, member or employee for the

purposes of any superannuation scheme in respect of which he or she was a contributor, member or employee (as an employee of the current employer) immediately before the transfer of employment and remains so entitled subject to any variation to that entitlement made either by agreement or otherwise in accordance with law,

- (b) the new employer is taken to be an employer for the purposes of any superannuation scheme in respect of which the employee continues as a contributor, member or employee pursuant to an entitlement under this section,
  - (c) the continuity of the employee's contract of employment is taken not to have been broken by the transfer of employment, and service of the employee with the current employer (including service deemed to be service with the current employer) that is continuous service up to the time of transfer is taken for all purposes to be service with the new employer,
  - (d) the employee retains any rights to annual leave, sick leave, extended or long service leave accrued or accruing immediately before the transfer (except accrued leave for which the employee has, on ceasing to be an employee of the current employer, been paid the monetary value in pursuance of any other entitlement of the employee).
- (2) An employee is not entitled in respect of the same period of service to claim a benefit under this section and another law or instrument.
  - (3) The Minister may in connection with the transfer of an employee's employment under this Part give a certificate in writing as to the extent of the accrued rights to annual leave, sick leave, extended or long service leave that are retained by the employee under this section, and such a certificate is evidence of the matters certified.
  - (4) Nothing in the [Long Service Leave Act 1955](#) prevents payment in connection with the transfer under this Part of the employment of a disability services employee to the employment of an employer in the non-government sector of the monetary value of long service leave in lieu of an entitlement to that leave accrued as a disability services employee before the transfer of the employee's employment.

## **16 Operation of other laws and entitlements**

The following provisions apply in relation to the transfer of a person's employment under this Part:

- (a) the transfer has effect despite any other law, contract or instrument under a law,
- (b) the transfer does not constitute a retrenchment, redundancy or termination of employment at the initiative of the Crown or any other public sector agency,

**Note—**

For example, the transfer is not a termination for the purposes of clause 4 (Payment of accrued leave on termination of employment) of Schedule 3 to the *Public Sector Employment and Management Act 2002*.

- (c) the person transferred is not entitled to any payment or other benefit by reason only of having ceased to be an employee of a public sector agency as a result of the transfer,
- (d) a public sector agency is not required to make any payment to the transferred person in relation to the transferred person's accrued rights in respect of annual leave, sick leave or extended or long service leave.

#### **17 Operation of Commonwealth law**

A provision of this Part (including a provision to the extent that it imposes or continues a term or condition of employment) has no effect to the extent of any inconsistency with any provision of the *Fair Work Act 2009* of the Commonwealth or of any instrument under that Act.

### **Part 4 Arrangements for transfer of assets and functions**

#### **18 Vesting orders**

The Minister may make vesting orders under Schedule 2 for the purposes of the authorised implementation.

#### **19 Severance of fixtures**

- (1) The Minister may by order in writing for the purposes of the authorised implementation direct that specified fixtures to which this section applies are severed from the land on which they are situated.
- (2) The effect of such an order is that the fixtures concerned are deemed to be severed from the land on which they are situated and may be dealt with as personal property separate from the land for the purposes of the authorised implementation.
- (3) This section applies to fixtures that are disability services assets situated on land owned by a public sector agency of the State and that are designated by the Minister by order in writing to be fixtures to which this section applies.
- (4) The severance of a fixture from land under this section does not affect the right of the fixture to be situated on that land and does not affect any right to drain water or sewage from the fixture across and through the land or to use any means of drainage of water or sewage from the fixture across and through the land.

#### **20 Grant of relevant authorisations**

- (1) The Minister may give directions to a public sector agency for or with respect to the grant of any relevant authorisation to a person who becomes or who it is proposed will

become the new operator of any disability services assets pursuant to the authorised implementation, including directions for or with respect to any of the following:

- (a) requiring the grant of any such relevant authorisation without the necessity for the making or determination of any application,
  - (b) the displacement or modification of any provision of a relevant law in its application to the grant of any such relevant authorisation,
  - (c) the conditions or endorsements subject to which any such relevant authorisation is to be granted or that are to be attached to any such relevant authorisation.
- (2) A direction may only be given under this section for the grant of a relevant authorisation that:
- (a) operates to transfer or replace an existing relevant authorisation that is currently in force, and
  - (b) is subject to terms, conditions or endorsements that are the same (or to substantially the same effect) as those to which that existing relevant authorisation is subject.
- (3) The Minister must consult with a public sector agency before giving a direction to the public sector agency under this section.
- (4) A public sector agency exercising functions under a relevant law must comply with a direction of the Minister under this section.
- (5) Anything done by a disability services agency in compliance with a condition or endorsement of a relevant authorisation in relation to disability services assets of which a person is the new operator is taken to have been done by the new operator for the purposes of any corresponding condition or endorsement of a relevant authorisation granted to the new operator pursuant to a direction under this section.
- (6) A relevant authorisation granted to a disability services agency or to the new operator of disability services assets may not be suspended or cancelled on the ground of the conversion of the new operator to a company or on the ground of any change that has occurred in the officers or shareholders of the company as a result of that conversion or pursuant to an implementation arrangement.
- (7) In this section:
- grant** includes issue and transfer.
- new operator** of disability services assets means:
- (a) a public sector agency to which any disability services assets are transferred for the purposes of the authorised implementation, or

- (b) a person (or the nominee of a person) in whom disability services assets are vested, or to whom disability services assets are transferred, pursuant to the authorised implementation.

**public sector agency** means a public sector agency of the State and includes a council under the [Local Government Act 1993](#) and a State owned corporation under the [State Owned Corporations Act 1989](#).

**relevant authorisation** means a licence, permit, consent, entitlement, accreditation, exemption or other authorisation under a relevant law.

**relevant law** means any of the following Acts and any regulations or instruments under those Acts:

[Hunter Water Act 1991](#)

[Local Government Act 1993](#)

[Sydney Water Act 1994](#)

## Part 5 Operation of other laws

### 21 State taxes

- (1) In this section:

**relevant matter** means any of the following:

- (a) any implementation arrangement,
- (b) a vesting of assets, rights or liabilities by operation of Schedule 2 (Vesting of assets, rights and liabilities) and anything certified by the Treasurer as having been done in consequence of such a vesting (for example, the transfer or registration of an interest in land),
- (c) the issue, disposal or purchase of shares or other securities in or issued by a company for the purposes of the authorised implementation,
- (d) such other matters for the purposes of the authorised implementation as may be prescribed by the regulations,
- (e) any transaction occurring within 6 months after completion of the authorised implementation and certified by the Treasurer to be a transaction entered into in connection with the transfer of disability services assets to the non-government sector pursuant to the authorised implementation.

**State tax** means application or registration fees, duty under the [Duties Act 1997](#) or any other tax, duty, fee or charge imposed by any Act or law of the State.

- (2) State tax is not payable by a public sector agency in relation to a relevant matter.
- (3) State tax is not payable by a person or body (other than a public sector agency) in relation to a relevant matter to such extent (if any) as the Treasurer may direct by order in writing, either generally or in a particular case.
- (4) An order may be made by the Treasurer under this section before or after the liability to pay the State tax concerned accrues.
- (5) The Treasurer must give a copy of an order under this section to the Chief Commissioner of State Revenue.

## **22 General relationship of Act with other State legislation**

- (1) None of the following provisions operate to prevent, restrict or otherwise limit the carrying out of an implementation arrangement or the exercise of a function for the purposes of the authorised implementation:
  - (a) any provision of the *Charitable Trusts Act 1993*,
  - (b) any provision of the *Community Welfare Act 1987*,
  - (c) any provision of the *Disability Services Act 1993* or a condition of any grant of financial assistance under that Act,
  - (d) any provision of the *Home Care Service Act 1988*.
- (2) In the event of any inconsistency between the provisions of this Act or the regulations and a provision of any other State legislation that is prescribed by the regulations as an inconsistent provision for the purposes of this section, the provisions of this Act or the regulations (as the case may be) prevail to the extent of the inconsistency.
- (3) The requirements of any other Act (whether enacted before or after this Act) for the approval by resolution of either or both Houses of Parliament (or by Act) of any act that constitutes the transfer of disability services assets for the purposes of the authorised implementation is satisfied by the enactment of this Act.

## **23 Public Authorities (Financial Arrangements) Act**

- (1) The *Public Authorities (Financial Arrangements) Act 1987* does not apply to any implementation arrangement.
- (2) An implementation arrangement requires the approval of the Treasurer before it is entered into if the implementation arrangement involves a public sector agency of the State:
  - (a) obtaining financial accommodation, or
  - (b) entering into a joint financing arrangement, or

(c) carrying on a joint venture.

(3) The expressions **financial accommodation**, **joint financing arrangement** and **joint venture** have the same meaning as in the *Public Authorities (Financial Arrangements) Act 1987*.

#### **24 Release of information by Auditor-General**

Section 38 (Secrecy) of the *Public Finance and Audit Act 1983* does not apply to or in respect of a report or communication that the Minister authorises the Auditor-General to make to a person for the purposes of the authorised implementation or for the purposes of the audit (before or after the completion of the authorised implementation) of records relating to disability services assets transferred pursuant to the authorised implementation.

#### **25 Contracts for sale of land**

Section 52A (Contracts for sale of land) of the *Conveyancing Act 1919* does not apply to a contract for the sale of land that is entered into for the purposes of the authorised implementation.

#### **26 Protection of contractual and other obligations**

(1) This section applies to the following:

- (a) the operation of this Act (including any order under this Act and anything done or omitted to be done under or for the purposes of this Act),
- (b) the transfer of disability services assets for the purposes of the authorised implementation,
- (c) the entering into or performance of obligations under an implementation arrangement by a public sector agency,
- (d) a disclosure of information by, on behalf of or with the consent of a public sector agency for the purposes of the authorised implementation.

(2) None of the matters or things to which this section applies are to be regarded as:

- (a) a breach of contract or confidence or otherwise as a civil wrong, or
- (b) a breach of any instrument (including, without limitation, any provision prohibiting, restricting or regulating the assignment or transfer of assets, rights or liabilities) or as requiring any act to be done under an instrument, or
- (c) giving rise to any right or remedy by a party to a contract or other instrument, or as causing or permitting the termination of, or exercise of rights under, any contract or other instrument, or

- (d) an event of default under any contract or other instrument, or
  - (e) giving rise to a breach of, a complaint under or an offence against a provision of an Act that prohibits or restricts the disclosure of information, or
  - (f) releasing a surety or other obligee wholly or in part from an obligation.
- (3) This section does not affect the rights and obligations of the parties to an implementation arrangement in respect of the performance of obligations under the implementation arrangement.

- (4) In this section:

**instrument** means an instrument (other than an instrument made under this Act) or any other document that creates, modifies or extinguishes rights or liabilities (or would do so if lodged, filed or registered in accordance with any law), and includes any judgment, order, process or other instrument issued by a court or tribunal.

## 27 Compensation not payable

- (1) Compensation is not payable by or on behalf of the State:

- (a) because of the enactment or operation of this Act, or for any consequence of that enactment or operation, or
- (b) because of any statement or conduct relating to the enactment of this Act.

- (2) This section does not extend to compensation payable under an implementation arrangement to a party to the implementation arrangement in connection with the performance of obligations under the implementation arrangement.

- (3) In this section:

**compensation** includes damages or any other form of monetary compensation.

**conduct** includes any act or omission, whether unconscionable, misleading, deceptive or otherwise.

**operation of this Act** includes the operation of any notice or order under this Act and any agreement entered into under or for the purposes of this Act.

**statement** includes a representation of any kind:

- (a) whether made verbally or in writing, and
- (b) whether negligent, false, misleading or otherwise.

**the State** means the Crown within the meaning of the [Crown Proceedings Act 1988](#), and includes a public sector agency of the State and an officer, employee or agent of the Crown or a public sector agency of the State.



## **Part 6 Miscellaneous**

### **28 Delegation**

- (1) The Minister may delegate any function of the Minister under this Act except this power of delegation to any of the following:
  - (a) any other Minister,
  - (b) the Director-General or any officer of the Department of Family and Community Services,
  - (c) any person employed in the Public Service prescribed by the regulations.
- (2) The Treasurer may delegate to the Secretary of the Treasury, or to any other person employed in the Public Service prescribed by the regulations, any function of the Treasurer under this Act except this power of delegation.

### **29 Act to bind State and other jurisdictions**

- (1) This Act binds the State and, in so far as the legislative power of the Parliament of New South Wales permits, the other States, the Territories and the Commonwealth.
- (2) Without limiting subsection (1), this Act has effect despite any privilege or immunity of the Crown in any of its capacities.
- (3) This Act does not make any State or Territory, the Commonwealth, or the Crown in any of its capacities, liable to be prosecuted for an offence.
- (4) A reference in this section to a State, Territory or the Commonwealth includes a reference to the Government of the State, Territory or Commonwealth.

### **30 Extraterritorial operation of Act**

- (1) It is the intention of the Parliament of New South Wales that the operation of this Act should, as far as possible, include operation in relation to the following:
  - (a) things situated in or outside the territorial limits of the State,
  - (b) acts, transactions and matters done, entered into or occurring in or outside the territorial limits of the State,
  - (c) things, acts, transactions and matters (wherever situated, done, entered into or occurring) that would, apart from this Act, be governed or otherwise affected by the law of another State, a Territory, the Commonwealth or a foreign country.
- (2) Without limiting subsection (1), it is the intention of the Parliament of New South Wales that the provisions of this Act have an operation in relation to the things, acts, transactions and matters referred to in that subsection even if the rules of private

international law (whether at general law or as provided by legislation) would require the application of a law other than this Act instead of the provisions of this Act.

### **31 Orders**

- (1) An order made under a provision of this Act takes effect at the beginning of the day on which it is made, unless the order otherwise provides.
- (2) An order cannot provide for the order to take effect earlier than the beginning of the day on which it is made (but can provide for the order to take effect at a time on the day on which it is made that is earlier than the time at which it is made).
- (3) A document purporting to be an order made under a provision of this Act is, unless the contrary is established, taken to be such an order and to have been properly made.
- (4) A certificate purporting to be signed by the Minister or an officer prescribed by the regulations certifying that an order specified or referred to in the certificate is an order made under a specified provision of this Act is admissible in evidence in any legal proceedings and is evidence of the matters certified.
- (5) A provision of another Act that results from an amendment made by this Act and that provides for the making of an order is deemed for the purposes of this section to be a provision of this Act (and the order is deemed to be an order made under a provision of this Act).

### **32 Service or giving of documents**

- (1) A document that is authorised or required by this Act or the regulations to be served on or given to any person may be served or given:
  - (a) in the case of a natural person:
    - (i) by delivering it to the person personally, or
    - (ii) by sending it by post to the address specified by the person for the giving or service of documents or, if no such address is specified, the residential or business address of the person last known to the person giving or serving the document, or
    - (iii) by sending it by facsimile transmission to the facsimile number of the person, or
  - (b) in the case of a body corporate:
    - (i) by leaving it with a person apparently of or above the age of 16 years at, or by sending it by post to, the head office, a registered office or a principal office of the body corporate or to an address specified by the body corporate for the

giving or service of documents, or

(ii) by sending it by facsimile transmission to the facsimile number of the body corporate.

(2) Nothing in this section affects the operation of any provision of a law or of the rules of a court authorising a document to be served on or given to a person in any other manner.

### 33 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

## Schedule 1 Interpretative provisions

### 1 Definitions

In this Act:

**assets** means any legal or equitable estate or interest (whether present or future, whether vested or contingent and whether personal or assignable) in real or personal property of any description (including money), and includes securities, choses in action and documents.

**completion** of the authorised implementation occurs on such date as may be designated by the Minister by order in writing as the date of completion of the authorised implementation.

**Corporations Act** means the [Corporations Act 2001](#) of the Commonwealth.

**Corporations legislation** means the Corporations legislation to which Part 1.1A of the Corporations Act applies.

**disability services agency**—see section 4.

**disability services assets**—see section 4.

**disability services employee**—see section 4.

**disability services functions**—see section 4.

**disability services legislation**—see section 4.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**general law** means the common law and equity (as modified from time to time by

legislation).

**implementation arrangement** means a transaction, agreement or other arrangement entered into by or on behalf of a public sector agency of the State for the purposes of the authorised implementation.

**implementation company** means a company established as an implementation company pursuant to this Act.

**legislation** includes:

- (a) any statute of a legislature (whether enacted or made in Australia or elsewhere), and
- (b) any proclamation, regulation, rule, by-law, order or any other kind of subordinate legislation (however described) made under the authority of a statute (whether enacted or made in Australia or elsewhere).

**liabilities** means any liabilities, debts or obligations (whether present or future, whether vested or contingent and whether personal or assignable).

**modification** includes addition, exception, omission or substitution.

**non-government sector** means any person other than a public sector agency and includes a public sector agency of another State or Territory.

**public sector agency** means each of the following:

- (a) the State or the Commonwealth (including the Crown in right of the State or the Commonwealth),
- (b) a Minister of the government of the State or the Commonwealth,
- (c) a government sector agency (within the meaning of the [Government Sector Employment Act 2013](#)) or a Department or other agency of the Commonwealth government,
- (d) a public authority of the State or the Commonwealth,
- (e) a statutory health corporation under the [Health Services Act 1997](#),
- (f) the Home Care Service of New South Wales constituted by the [Home Care Service Act 1988](#),
- (g) any other person acting on behalf of the State or the Commonwealth (or the Crown in right of the State or the Commonwealth),
- (h) an implementation company, but only while all the shares in the company are held by or on behalf of the State or the company is the subsidiary of another implementation company all the shares in which are held by or on behalf of the State,

(i) a wholly owned subsidiary of a public sector agency.

**rights** means any rights, powers, privileges or immunities (whether present or future, whether vested or contingent and whether personal or assignable).

**State legislation** means any legislation of the State.

**the State** means the State of New South Wales.

**transfer** of disability services assets includes the sale or lease of disability services assets and the creation and transfer of any interest in disability services assets.

## 2 Disability services assets

In this Act, **disability services assets** includes assets, rights and liabilities vested in a public sector agency of the State that were disability services assets before their transfer to a public sector agency for the purposes of the authorised implementation. Assets, rights and liabilities cease to be disability services assets when they are transferred to the non-government sector or to a public sector agency of the Commonwealth for the purposes of the authorised implementation.

## 3 Functions for the purposes of the authorised implementation

For the purposes of this Act, any act, matter or thing is done or has effect for the purposes of the authorised implementation if:

- (a) it is done or has effect for the purpose of effecting or facilitating the authorised implementation, or
- (b) it is done or has effect for any purpose that is ancillary or incidental to or consequential on the authorised implementation, or
- (c) it is done or has effect for any purpose connected with the vesting of disability services assets in, or the transfer of a disability services employee to, a public sector agency at any time after completion of the authorised implementation.

## 4 Transfer and acquisition of assets, rights and liabilities

(1) The assets, rights and liabilities of a body corporate include the assets, rights and liabilities of a wholly owned subsidiary of the body corporate and accordingly the following principles apply in the interpretation of this Act:

- (a) assets, rights and liabilities of a body corporate can be transferred to another person (the **transferee**) by a transfer of shares or any other transaction that results in the body corporate becoming a wholly owned subsidiary of the transferee,
- (b) assets, rights and liabilities of a body corporate are acquired by (and become assets, rights and liabilities of) a transferee when the body corporate becomes a

wholly owned subsidiary of the transferee.

- (2) This clause does not limit the ways in which assets, rights and liabilities can be transferred for the purposes of the authorised implementation and does not prevent the direct transfer of assets, rights and liabilities to a transferee.

## 5 Words and expressions defined in Corporations Act

Words and expressions used in this Act that are defined in section 9 of the Corporations Act have the same meanings as in that section, except in so far as they are defined differently in this Act or the context or subject-matter otherwise indicates or requires.

## 6 When events occur

If this Act provides for an event or other thing to occur on a particular day, that event or thing is taken to occur at the beginning of that day.

## 7 Notes

Notes included in this Act do not form part of this Act.

# Schedule 2 Vesting of assets, rights and liabilities

(Section 18)

## 1 Definitions

In this Schedule:

**transferee** means the person or body in whom any assets, rights or liabilities are vested by a vesting order.

**transferor** means the person or body from whom any assets, rights or liabilities are divested by a vesting order.

**vesting order** means a vesting order under this Schedule.

## 2 Making of vesting order

- (1) The Minister may, by order in writing (a **vesting order**), vest assets, rights and liabilities comprising disability services assets in a person specified in the order as the transferee.
- (2) A vesting order can vest an asset, right or liability in more than one transferee.
- (3) The power to vest an asset by means of a vesting order includes the power to vest an interest in the asset. The vesting of an interest in an asset operates to create the interest in such terms as are specified in the vesting order if the interest does not already exist as a separate interest.

- (4) A vesting order vests an asset subject to any trusts, estates, interests, dedications, conditions, restrictions and covenants to which the asset was subject immediately before the vesting.

### **3 Vesting of assets, rights and liabilities in transferee**

- (1) When any assets, rights or liabilities are vested by a vesting order, the following provisions have effect (subject to the vesting order):
- (a) the assets vest in the transferee by virtue of this clause and without the need for any conveyance, transfer, assignment or assurance,
  - (b) the rights and liabilities become, by virtue of this clause, the rights and liabilities of the transferee,
  - (c) all proceedings relating to the assets, rights or liabilities pending by or against the transferor are taken to be proceedings pending by or against the transferee,
  - (d) the transferee has all the entitlements and obligations of the transferor in relation to the assets, rights and liabilities that the transferor would have had but for the order, whether or not those entitlements and obligations were actual or potential at the time the order took effect,
  - (e) any act, matter or thing done or omitted to be done in relation to the assets, rights or liabilities by, to or in respect of the transferor is (to the extent that the act, matter or thing has any force or effect) taken to have been done or omitted by, to or in respect of the transferee,
  - (f) a reference in any Act, in any instrument made under any Act or in any document of any kind to the transferor or a predecessor of the transferor is (to the extent that it relates to those assets or liabilities but subject to the regulations) to be read as, or as including, a reference to the transferee.
- (2) No attornment to the transferee by a lessee from the transferor is required.

### **4 Terms and conditions of vesting**

A vesting order may be made on such terms and conditions as are specified in the order.

### **5 Consideration for vesting**

A vesting order may specify the consideration for which a vesting to which it applies is made and the value or values at which assets, rights or liabilities are vested.

### **6 Variation of contracts**

- (1) If disability services assets comprise rights and liabilities arising under a contract for the provision of goods or services, a vesting order for the vesting of assets related to the contract can provide for the variation of the terms of the contract so that the

contract provides for the provision of goods or services to one or more transferees under the vesting order (in addition to or instead of providing for the provision of goods or services under the existing terms of the contract).

- (2) Assets are related to a contract if the contract provides for the provision of goods or services in connection with the use or operation of the assets.
- (3) A variation of the terms of a contract by a vesting order has effect in accordance with the terms of the vesting order.

## **7 Registration of interest to prevent dealings in land transferred**

- (1) A vesting order that vests land in the transferor may be made subject to a condition that the land is subject to this clause.
- (2) The transferor must not transfer or otherwise deal with land that is subject to this clause unless the Minister consents to the transfer or other dealing. The Minister must not unreasonably withhold consent to the transfer or other dealing.
- (3) The Registrar-General must, on application by the Minister, make a recording in the Register kept under the *Real Property Act 1900* to signify that the land specified in the application is subject to this clause.
- (4) If such a recording is made, the Registrar-General is not to register under the *Real Property Act 1900* a transfer of that land or any other dealing that is otherwise registrable under that Act unless the consent of the Minister to the transfer or other dealing has been endorsed on the transfer or other dealing.
- (5) The Registrar-General must, on the application of the Minister, make a recording in the Register to signify that a recording made under this clause has ceased to have effect.
- (6) If an application is made for the making of a recording under this clause, the Registrar-General is not to inquire into whether the land is or is not subject to this clause.
- (7) This clause does not affect the operation of any other prohibition or restriction relating to transfers or other dealings in land.

## **8 Confirmation of vesting**

- (1) The Minister may by order in writing confirm a vesting of particular assets, rights or liabilities by operation of this Schedule.
- (2) Such an order is evidence of that vesting.



## **9 Determinations by Minister**

For the purposes of the making of a vesting order, the Minister may determine whether or not particular assets, rights or liabilities comprise disability services assets, and such a determination is conclusive as to the matters determined.

## **10 Certification to registration authorities**

(1) In this clause:

**registration authority** means a person or body that has functions under any law in connection with the keeping of a register in respect of assets, rights or liabilities.

(2) A public sector agency that is the transferee or transferor under a vesting order may lodge with a registration authority a certificate certifying as to such information as may reasonably be required by the registration authority to enable the registration authority to exercise any function of the authority arising in connection with the vesting of any asset, right or liability pursuant to the vesting order.

(3) Such a certificate is to be accepted and acted upon by the registration authority and, despite any other law, the registration authority is not entitled to require that the information concerned be provided to it in any particular form or in any particular manner.

(4) No fee or charge is payable by the transferee to a registration authority for or in respect of the exercise of any function by the registration authority in connection with the vesting of an asset, right or liability by a vesting order.

(5) A document purporting to be a certificate given under this clause is, unless the contrary is established, taken to be such a certificate and to have been properly given.

## **11 Public sector accounting policies**

The Treasurer may give directions to public sector agencies of the State for or with respect to accounting policies to be applied by public sector agencies of the State in connection with the transfer between public sector agencies of assets, rights and liabilities comprising disability services assets for the purposes of the authorised implementation (in place of public sector accounting policies that would otherwise be applicable in respect of any such transfer).

## **Schedule 3 Savings, transitional and other provisions**

### **Part 1 General**

#### **1 Regulations**

(1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Schedule 4 Amendment of Act**

### **Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2**

#### **Section 4 Definitions**

Insert after paragraph (b) of the definition of ***service provider*** in section 4 (1):

- (b1) an implementation company under the *National Disability Insurance Scheme (NSW Enabling) Act 2013* while the company is a public sector agency of the State under that Act, or