

National Disability Insurance Scheme (NSW Enabling) Bill 2013

Overview of Bill

The object of this Bill is to authorise and facilitate the transfer of the State's public sector disability services assets in connection with the implementation of the National Disability Insurance Scheme of the Commonwealth. The Bill also makes detailed arrangements for the transfer of the employment and entitlements of public sector disability services employees.

Outline of provisions

Part 1 Preliminary

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on the date of assent to the proposed Act.

Clause 3 specifies the objects of the proposed Act, which include ensuring that the State's 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.

Clause 4 contains definitions of key terms used in the proposed Act. Schedule 1 contains other definitions. The clause defines *disability services assets* to mean assets, rights and liabilities of a public sector agency of the State that are assets, rights and liabilities of the agency in connection with the exercise of disability services functions by the agency or another public sector agency of the State. The *authorised implementation* is defined to mean the transfer of disability services assets authorised by clause 5.

Clause 5 authorises the transfer of disability services assets 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 New South Wales public sector agency).

Clause 6 empowers the Minister to 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

Clause 7 provides that the Minister has and may exercise all such functions as are necessary or convenient for the purposes of the authorised implementation.

Clause 8 provides that the authorised implementation is to be effected as directed by the Minister in any manner that the Minister considers appropriate.

Clause 9 provides for the establishment of companies as implementation companies for the purposes of the authorised implementation.

Clause 10 provides that 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.

Clause 11 provides that 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.

Clause 12 provides that the 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

Clause 13 provides for the transfer of the employment of a disability services employee to the employment of another public sector agency.

Clause 14 provides for the transfer of the employment of a disability services employee to the employment of a non-government sector employer.

Clause 15 provides for the continuity of the employment entitlements of employees transferred under the proposed Part.

Clause 16 provides for the operation of other laws and entitlements in relation to the transfer of a person's employment under the proposed Part.

Clause 17 provides for the *Fair Work Act 2009* of the Commonwealth to override the proposed Part, to the extent of any inconsistency between them.

Part 4 Arrangements for transfer of assets and functions

Clause 18 authorises the Minister to make vesting orders under proposed Schedule 2 for the purposes of the authorised implementation.

Clause 19 provides for the Minister to direct that specified fixtures are severed from the land on which they are situated.

Clause 20 provides for the Minister to give directions for the grant of any relevant authorisations under various laws to a person who becomes or is proposed to become the new operator of any disability services assets pursuant to the authorised implementation.

Part 5 Operation of other laws

Clause 21 provides that various State taxes and charges are not payable by public sector agencies in connection with transactions for the purposes of the authorised implementation and authorises the Treasurer to exempt other persons from liability for State taxes and charges in connection with the authorised implementation.

Clause 22 provides for the provisions of the proposed Act to prevail in the event of an inconsistency between the proposed Act and other State legislation.

Clause 23 provides that the *Public Authorities (Financial Arrangements) Act 1987* does not apply to any transaction, agreement or other arrangement entered into for the purposes of the authorised implementation. This clause further provides that the approval of the Treasurer is required for any implementation arrangement that involves a public sector agency of the State obtaining financial accommodation, entering into a joint financing arrangement or carrying on a joint venture.

Clause 24 authorises the release of information by the Auditor-General for the purposes of the authorised implementation.

Clause 25 exempts contracts for the sale of land from section 52A of the *Conveyancing Act 1919* when entered into for the purposes of the authorised implementation.

Clause 26 prevents the operation of the proposed Act and the various arrangements and actions that it authorises from constituting a breach of various civil obligations.

Clause 27 protects the State from claims for compensation in connection with the enactment or operation of the proposed Act.

Part 6 Miscellaneous

Clause 28 authorises the delegation of functions of the Minister and the Treasurer under the proposed Act.

Clause 29 provides for the proposed Act to bind the State and all other Australian jurisdictions.

Clause 30 provides for the operation of the proposed Act outside the State.

Clause 31 provides for when orders take effect and for evidence of and presumptions about orders.

Clause 32 provides for how documents are to be given or served for the purposes of the proposed Act.

Clause 33 is a general regulation-making power.

Schedule 1 Interpretative provisions

Schedule 1 contains definitions and other interpretative provisions for the purposes of the proposed Act.

Schedule 2 Vesting of assets, rights and liabilities

Schedule 2 provides for the making of vesting orders by the Minister for the purposes of the authorised implementation. Vesting orders operate to vest assets, rights and liabilities comprising disability services assets in the transferee specified in the order.

Schedule 3 Savings, transitional and other provisions

Schedule 3 enacts a savings and transitional regulation-making power.

Schedule 4 Amendment of Acts

Schedule 4 makes a consequential amendment to the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.