

Western Australia

## **Disability Services Act 1993**

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## Disability Services Act 1993

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Western Australia

## **Disability Services Act 1993**

**An Act for the establishment of the Disability Services Commission and the Ministerial Advisory Council on Disability, for the furtherance of principles applicable to people with disabilities, for the funding and provision of services to such people that meet certain objectives, for the resolution of complaints by such people, and for related purposes.**

*[Long title amended by No. 44 of 1999 s. 4; No. 57 of 2004 s. 4.]*

## **Part 1 — Preliminary**

**1. Short title**

This Act may be cited as the *Disability Services Act 1993* <sup>1</sup>.

**2. Commencement**

This Act comes into operation 7 days after the day on which it receives the Royal Assent <sup>1</sup>.

**3. Terms used in this Act**

In this Act, unless the contrary intention appears —

**Account** means the account referred to in section 15(2);

**Board** means the board of the Commission provided for by section 7;

**carer** has the meaning given to that term in section 3A;

**chief executive officer** means the chief executive officer of the Commission;

**Commission** means the Disability Services Commission referred to in section 6;

**Council** means the Ministerial Advisory Council on Disability established under section 22;

**Director** means the person appointed under section 7(1) of the *Health Services (Conciliation and Review) Act 1995*;

**disability** means a disability —

- (a) which is attributable to an intellectual, psychiatric, cognitive, neurological, sensory, or physical impairment or a combination of those impairments;
- (b) which is permanent or likely to be permanent;
- (c) which may or may not be of a chronic or episodic nature; and

- (d) which results in —
  - (i) a substantially reduced capacity of the person for communication, social interaction, learning or mobility; and
  - (ii) a need for continuing support services;

**disability service** means —

- (a) a service provided specifically for people with disabilities, whether by carers or others; or
- (b) a service provided specifically for carers;

**metropolitan region** has the meaning given to that term in the *Planning and Development Act 2005* section 4;

**personnel** means the chief executive officer and people appointed or employed under section 9;

**public authority** means —

- (a) a department of the Public Service or an organisation specified in column 2 of Schedule 2 of the *Public Sector Management Act 1994*;
- (b) another authority or body (whether incorporated or not) that is established for a public purpose by the State, regardless of the way it is established; or
- (c) a person declared by regulation to be a public authority;

**service developer** means a person who or which —

- (a) investigates the need for disability services other than disability services provided by carers;
- (b) researches the provision of disability services other than disability services provided by carers;
- (c) plans for the provision of disability services other than disability services provided by carers;
- (d) develops proposals for the provision of disability services other than disability services provided by carers;

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- (e) initiates the provision of disability services other than disability services provided by carers;
- (f) develops or implements training programmes for people who provide disability services other than disability services provided by carers;
- (g) researches the effects of providing disability services other than disability services provided by carers; or
- (h) does any prescribed activity;

**service provider** means an individual or group of individuals or a body corporate or incorporate that renders or provides disability services other than disability services provided by carers.

*[Section 3 amended by No. 32 of 1994 s. 19; No. 44 of 1999 s. 5; No. 37 of 2004 s. 24; No. 57 of 2004 s. 5; No. 38 of 2005 s. 15.]*

**3A. Meaning of “carer”**

- (1) Except as provided in subsection (2), a person is a carer for the purposes of this Act if he or she is an individual who provides ongoing care or assistance to a person with a disability.
- (2) However a person is not a carer if he or she —
  - (a) provides the care or assistance under a contract for services (other than an agreement entered into under section 25) or a contract of service; or
  - (b) provides the care or assistance while doing community work as defined in section 3(1) of the *Volunteers and Food and Other Donors (Protection from Liability) Act 2002*.
- (3) A person is not a carer for the purposes of this Act only because —
  - (a) the person is a spouse, de facto partner, parent or guardian of a person with a disability; or

- (b) the person provides care to a child with a disability under an arrangement with the chief executive officer of the department principally assisting the Minister administering the *Child Welfare Act 1947*<sup>2</sup> in the administration of that Act.

*[Section 3A inserted by No. 37 of 2004 s. 25; amended by No. 53 of 2006 s. 12(2).]*

**4. Legal proceedings to enforce provision of a service**

- (1) This Act is not to be taken as providing a person with a disability, or any other person, with any greater entitlement to legally enforce the provision of a service than he or she would have had if this Act had not been enacted.
- (2) Subsection (1) does not limit the services that may be provided under this Act.

**5. Crown bound**

This Act binds the Crown.

## **Part 2 — Disability Services Commission**

### **Division 1 — Establishment and personnel**

#### **6. Commission a body corporate**

- (1) The body corporate established under the *Authority for Intellectually Handicapped Persons Act 1985* (repealed in Schedule 6) and called the Authority for Intellectually Handicapped Persons is continued as a body corporate under this Act and is called the Disability Services Commission.
- (2) The Commission is a body corporate with perpetual succession and a common seal.
- (3) Proceedings may be taken by or against the Commission in its corporate name.
- (4) The Commission is an agent of the Crown in right of the State and enjoys the status, immunities and privileges of the Crown.
- (5) The Commission is to be taken to be a department established under section 35 of the *Public Sector Management Act 1994*.  
*[Section 6 amended by No. 57 of 2004 s. 6.]*

#### **7. Board of the Commission**

- (1) The Commission is to have a board as its governing body and the Board, in the name of the Commission, is to perform the Commission's functions under this Act or any other written law.
- (2) The Board is to comprise 9 members appointed by the Minister from persons nominated under subsection (2a) —
  - (a) one of whom is to be the person appointed under Schedule 5 as the chairperson of the Council;
  - (b) at least 5 of whom are to have —
    - (i) a disability;

- (ii) a relative with a disability;
  - (iii) recent experience in caring for a person with a disability; or
  - (iv) recent experience as an advocate for people with disabilities;
- (c) at least 2 of whom are to have a disability;
  - (d) at least one of whom is to have a relative with a disability; and
  - (e) at least 2 of whom have had recent experience in matters relevant to people with disabilities outside the metropolitan region.
- (2a) The Minister is to seek nominations, in accordance with the regulations, of persons for appointment as members of the Board.
- (3) In appointing members the Minister is to ensure that appointed to the Board are —
- (a) people who have expertise relevant to the functions of the Commission and its operations, including expertise in management, finance, law, marketing, and the provision of services in the public and private sectors; and
  - (b) people who have knowledge of, and experience in, matters relevant to people with disabilities.
- (4) Schedule 3 has effect.
- [Section 7 amended by No. 57 of 2004 s. 7.]*

**8. Chief executive officer**

- (1) A chief executive officer of the Commission is to be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*.

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**Part 2** Disability Services Commission

**Division 1** Establishment and personnel

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- (2) The function of the chief executive officer is, subject to the control of the Board, to administer the day to day operations of the Commission.

*[Section 8 amended by No. 32 of 1994 s. 19.]*

**9. Other personnel**

- (1) Other officers who are necessary to enable the Commission to perform its functions may be appointed under and subject to Part 3 of the *Public Sector Management Act 1994*.
- (2) The Commission may employ people otherwise than under Part 3 of the *Public Sector Management Act 1994*, and such people are to be employed subject to any relevant industrial award or agreement.

*[Section 9 amended by No. 32 of 1994 s. 19; No. 44 of 1999 s. 6.]*

**10. Use of other government staff and facilities**

- (1) The Commission may by arrangement make use, either full-time or part-time, of —
- (a) the services of any officer or employee in the Public Service or in a State agency or instrumentality or otherwise in the service of the Crown in right of the State; or
  - (b) any facilities of a department of the Public Service or of a State agency or instrumentality.
- (2) An arrangement under subsection (1) is to be made between the Commission and the Minister concerned and on such terms as they and the relevant employing authority agree.

*[Section 10 amended by No. 32 of 1994 s. 19.]*

**11. Superannuation and leave entitlements**

Schedule 4 has effect.

## **Division 2 — Functions**

### **12. Functions of the Commission**

- (1) The functions of the Commission are —
- (a) to establish local and other bodies representative of people with disabilities, their families, guardians and other interested people to advise the Commission on such matters as it specifies;
  - (b) to develop policies for the provision, encouragement and facilitation of disability services;
  - (c) to make grants under Part 4 and to ensure that the use of grants is accounted for to the Commission;
  - (d) to provide and to encourage and facilitate the provision of disability services;
  - (e) to encourage people who provide services to the general public to adapt those services to meet the needs of people with disabilities;
  - (f) to inform people with disabilities about services available to them specifically, and about services available to the general public which meet the needs of people with disabilities, and to promote the use by them of such services;
  - (g) to inform the general public, or any section of it, about people with disabilities and to promote the acceptance by the general public, or any section of it, of the principles in Schedule 1;
  - (h) to advise public authorities in relation to the preparation of disability access and inclusion plans under Part 5 and to evaluate the effectiveness of such plans;
  - (i) to establish guidelines and standards for the provision of disability services other than disability services provided by carers;

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- (j) to investigate and make submissions about the effect of written laws on people with disabilities;
  - (k) to undertake and encourage research relating to any of its functions; and
  - (l) to cooperate and act jointly with people or bodies so far as is necessary for the performance of its functions.
- (2) Subject to section 12A and Part 4A, the Commission may do all things that are necessary or convenient to be done for, or in connection with, its functions.
- (3) In performing its functions the Commission is to —
- (a) further the principles in Schedule 1; and
  - (b) meet the objectives in Schedule 2.

*[Section 12 amended by No. 44 of 1999 s. 7; No. 57 of 2004 s. 8.]*

**12A. Contracts to provide goods or services to the Commission**

- (1) Subject to the *State Supply Commission Act 1991* and subsection (2), the Commission may —
- (a) engage a person under a contract for services to provide such professional, technical, or other assistance; or
  - (b) enter into a contract for the supply of such goods or services,

to the Commission as it considers necessary to enable it to perform its functions.

- (2) Except with the approval of the Minister, the Commission is not to enter into a contract under subsection (1) if the amount to be paid under the contract exceeds an amount specified in a written direction given to the Commission by the Minister under section 20(1).

*[Section 12A inserted by No. 44 of 1999 s. 8.]*

**13. Power to fix fees and charges**

- (1) The Commission may, with the approval of the Minister —
  - (a) fix the fees and charges to be paid to the Commission for using or residing in premises owned by or under the control or management of the Commission;
  - (b) fix the fees and charges to be paid to the Commission for services provided by the Commission;
  - (c) determine the people or classes of people who are liable to pay the fees or charges so fixed in full or in part, or who may be exempted from such payment.
- (2) Details of the fees and charges fixed and of any determination made must be tabled by the Minister before each House of Parliament within 6 sitting days of such House next following the Minister's approval.

**14. Delegation**

The Commission may in writing delegate to its personnel or a person referred to in section 10, any of its functions except this power of delegation.

**Division 3 — Financial provisions**

**15. Funds of the Commission**

- (1) The funds of the Commission consist of —
  - (a) moneys from time to time appropriated by Parliament;
  - (b) moneys received by the Commission in the performance of its functions;
  - (c) moneys borrowed by the Commission under this Act;  
and
  - (d) other moneys lawfully received by, or made available, given or payable to the Commission.

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**Part 2** Disability Services Commission

**Division 3** Financial provisions

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- (2) An account called the Disability Services Commission Account is to be established —
- (a) as an agency special purpose account under section 16 of the *Financial Management Act 2006*; or
  - (b) with the approval of the Treasurer, at a bank as defined in section 3 of that Act,

to which the funds referred to in subsection (1) are to be credited.

- (3) The Account is to be charged with —
- (a) the remuneration and allowances payable to members of the Board;
  - (b) the salaries and wages of the Commission's personnel;
  - (c) all expenditure lawfully incurred by the Commission in the performance of its functions; and
  - (d) repayment of, and interest on, moneys borrowed by the Commission under this Act.

*[Section 15 amended by No. 28 of 2006 s. 157; No. 77 of 2006 s. 17.]*

**16. Borrowing from Treasurer**

- (1) The Commission may borrow from the Treasurer such amounts as the Treasurer approves on such terms and conditions relating to repayment and payment of interest as the Treasurer imposes.
- (2) The Account and other assets of the Commission are, by virtue of this subsection, charged with the due performance by the Commission of its obligations in respect of a loan under subsection (1).

**17. Borrowing generally**

- (1) As well as being able to borrow under section 16, the Commission may —

- (a) with the Treasurer's prior written approval and on such terms and conditions as the Treasurer approves, borrow money for the purpose of performing its functions; and
  - (b) borrow moneys under this subsection on the guarantee of the Treasurer given under section 18.
- (2) Any moneys borrowed by the Commission under subsection (1) may be raised as one or more loans and in such manner as the Treasurer approves, but the total amount of the moneys so borrowed is not to exceed such amount as the Treasurer has approved.

**18. Treasurer's guarantee**

- (1) The Treasurer may, in the name and on behalf of the Crown in right of the State, guarantee, in such form and subject to such terms and conditions as he or she determines, the payment of any moneys payable by the Commission in respect of moneys borrowed by it under section 17.
- (2) Before a guarantee is given under subsection (1) the Commission is to give the Treasurer such security as the Treasurer requires and execute all such instruments as are necessary for the purpose.
- (3) The due payment of moneys payable by the Treasurer under a guarantee given under subsection (1) —
  - (a) is hereby guaranteed by the State; and
  - (b) is to be charged to the Consolidated Account, which to the extent necessary is appropriated accordingly.
- (4) The Account and other assets of the Commission are, by virtue of this subsection, charged with the due repayment of any payment made by the Treasurer under a guarantee given under subsection (1) and with the performance and observance by the Commission of any terms and conditions which the Treasurer determines under that subsection in respect of that guarantee.

- (5) Any moneys received or recovered from the Commission or otherwise in respect of a payment under a guarantee given under subsection (1) are to be credited to the Consolidated Account.
- (6) The Treasurer may fix charges to be paid by the Commission to the credit of the Consolidated Account in respect of a guarantee given under this section.
- (7) Payment of charges fixed under subsection (6) is to be made at such time or times as the Treasurer determines.

*[Section 18 amended by No. 77 of 2006 s. 4.]*

**19. Application of *Financial Management Act 2006* and *Auditor General Act 2006***

The provisions of the *Financial Management Act 2006* and the *Auditor General Act 2006* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

*[Section 19 amended by No. 77 of 2006 s. 17.]*

**Division 4 — Relationship with the Minister**

**20. Minister may give directions**

- (1) The Minister may give directions in writing to the Commission with respect to the performance of its functions, either generally or in relation to a particular matter, and the Commission must give effect to any such direction.
- (2) The text of any direction given under subsection (1) is to be included in the annual report submitted by the accountable authority of the Commission under Part 5 of the *Financial Management Act 2006*.

*[Section 20 amended by No. 77 of 2006 s. 17.]*

**21. Minister to have access to information**

- (1) For parliamentary purposes or for the proper conduct of the Minister's public business, the Minister is entitled —
  - (a) to have information in the possession of the Commission; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.
- (2) For the purposes of subsection (1) the Minister may —
  - (a) request the Commission to furnish information to the Minister;
  - (b) request the Commission to give the Minister access to information;
  - (c) for the purposes of paragraph (b) make use of the personnel and facilities of the Commission to obtain the information and furnish it to the Minister.
- (3) The Commission must comply with a request under subsection (2) and make its personnel and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) The Minister is not entitled to have information under this section in a form that —
  - (a) discloses the identity of a person with a disability; or
  - (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

- (5) In this section —

**document** includes any tape, disc or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;

**information** means information specified, or of a description specified, by the Minister that relates to the functions of the Commission;

*parliamentary purposes* means the purpose of —

- (a) answering a question asked in a House of Parliament; or
- (b) complying with a written law, or an order or resolution of a House of Parliament, that requires information to be furnished to a House of Parliament.

**21A. Notification of general policies of the Government**

- (1) The Minister may notify the Commission in writing of general policies of the Government that are to be implemented by the Commission.
- (2) The Commission must ensure that the policies are implemented.
- (3) The Minister may, in writing, exempt the Commission from subsection (2) in relation to specified activities.

*[Section 21A inserted by No. 44 of 1999 s. 9.]*

**21B. Minister to be consulted on major initiatives**

The Commission must consult the Minister before it enters upon a course of action that in its opinion —

- (a) amounts to a major initiative; or
- (b) is likely to be of significant public interest or of significant interest to people with disabilities, service developers, service providers or carers.

*[Section 21B inserted by No. 44 of 1999 s. 9; amended by No. 57 of 2004 s. 9.]*

### **Part 3 — Ministerial Advisory Council on Disability**

*[Heading inserted by No. 44 of 1999 s. 10; amended by No. 57 of 2004 s. 10.]*

#### **22. Council established**

- (1) A body called the Ministerial Advisory Council on Disability is established.
- (2) The Council is to comprise not more than 14 members, appointed by the Minister from persons nominated under subsection (3).
- (3) The Minister is to seek nominations, in accordance with the regulations, of persons for appointment as members of the Council.
- (4) In appointing the members the Minister is to ensure that —
  - (a) they are all persons who have disabilities, or knowledge of, and experience in, matters relevant to people with disabilities;
  - (b) they reflect the interests of the entire spectrum of disabilities; and
  - (c) at least 2 of them have had recent experience in matters relevant to people with disabilities outside the metropolitan region.
- (5) Schedule 5 has effect.

*[Section 22 inserted by No. 57 of 2004 s. 11(1).]*

#### **23. Council's functions**

- (1) The functions of the Council are —
  - (a) to advise the Minister, or such other person as the Minister directs, on the development and implementation of policies, services, programmes and activities that —

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- (i) affect people with disabilities;
    - (ii) inform the general public, or any section of it, about people with disabilities and that promote the acceptance by the general public, or any section of it, of the principles in Schedule 1;
  - (b) to recommend to the Minister, or such other person as the Minister directs, ways to improve the standards of disability services other than disability services provided by carers; and
  - (c) as directed by the Minister from time to time, provided that all such directions by the Minister are tabled in each House of Parliament on the first possible date after their issue.
- (1a) The Council is to undertake public consultation in accordance with the procedure specified in the regulations before it advises, or makes a recommendation to, the Minister under subsection (1)(a) or (b).
- (2) The Council may do all things that are necessary or convenient to be done for, or in connection with, its functions.
- (3) Without limiting the generality of subsection (2), the Council may request any public authority to provide it with information for the purpose of performing its functions and any such request must be complied with.

*[Section 23 amended by No. 57 of 2004 s. 12.]*

**Part 4 — Financial assistance for matters relating to  
people with disabilities**

**24. Grants of financial assistance**

- (1) The Commission may approve a grant of financial assistance, from moneys standing to the credit of the Account, to —
  - (a) a person with a disability;
  - (b) a carer;
  - (c) a service provider; or
  - (d) a service developer.
- (2) A grant of financial assistance must not be approved under subsection (1) unless the Commission is satisfied —
  - (a) that the grant will further the principles in Schedule 1; and
  - (b) that any service or programme funded by the grant meets the objectives in Schedule 2.
- (3) A grant of financial assistance may be made to a public authority.
- (4) A grant of financial assistance may be paid in a lump sum or in periodic payments.
- (5) Notwithstanding subsection (1), the Commission may, until 31 December 1995, approve a grant of financial assistance if satisfied the recipient will take steps before that date to ensure the principles in Schedule 1 are furthered and the objectives in Schedule 2 are met.

*[Section 24 amended by No. 49 of 1996 s. 64; No. 57 of 2004 s. 13.]*

**25. Grant to be subject of agreement**

- (1) A person is not to be paid funds under a grant of financial assistance until the person has entered into an agreement in

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writing with the Commission setting out the terms and conditions of the grant.

- (2) If a grant of financial assistance to an unincorporated association or body of people is approved, the agreement referred to in subsection (1) is to be entered into by an individual or individuals on its behalf.
- (3) Subsection (1) does not apply in respect of a grant made to a public authority that is not a body corporate.
- (4) Without limiting the terms and conditions that may be included in an agreement referred to in subsection (1), unless the Board considers that it is inappropriate for an agreement to do so, such an agreement is to require the recipient of a grant under section 24(1)(c) or (d) to report to the Commission —
  - (a) the death of any person with a disability;
  - (b) significant physical or psychological harm suffered by a person with a disability;
  - (c) without limiting paragraph (b), an assault (including a sexual assault) of a person with a disability; or
  - (d) neglect of a person with a disability to an extent that results, or is likely to result, in significant physical or psychological harm to that person,

within 7 days of the recipient becoming aware of that occurrence.

- (5) In subsection (4), a reference to a person with a disability is a reference to —
  - (a) a person with a disability to whom the recipient of a grant is providing a disability service; or
  - (b) a person with a disability who is the subject of the agreement.

- (6) If under subsection (4) the Board decides that it is inappropriate for an agreement to require a recipient of a grant to report to the Commission, the Board is to report to the Minister that it has made that decision.

*[Section 25 amended by No. 44 of 1999 s. 11; No. 57 of 2004 s. 14.]*

**26. Minister may review Commission's decisions**

- (1) A service provider which is affected directly by a decision by the Commission under this Part may, in writing, request the Minister to review the decision.
- (2) The Minister has an absolute discretion to review a decision by the Commission under this Part, whether on a request under subsection (1) or otherwise.
- (3) The Minister is to provide a service provider which has requested a review under this section with —
- (a) written reasons for refusing to conduct a review; or
  - (b) written conclusions reached after conducting a review.
- (4) After reviewing a decision by the Commission under this Part the Minister may give the Commission a direction under section 20.

**Part 4A — Contracts to provide some disability services**

*[Heading inserted by No. 44 of 1999 s. 12; amended by No. 57 of 2004 s. 15.]*

**26A. Terms used in this Part**

In this Part, unless the contrary intention appears —

**commencement day** means the day on which the *Disability Services Amendment Act 1999* comes into operation<sup>1</sup>;

**disability service** does not include a disability service provided by a carer;

**supply policies** has the same definition as it has in section 3(1) of the *State Supply Commission Act 1991*.

*[Section 26A inserted by No. 44 of 1999 s. 12; amended by No. 57 of 2004 s. 16.]*

**26B. Method of contracting to provide services for people with disabilities**

- (1) If the Commission wishes to contract with a service provider to provide disability services on behalf of the Commission, the Commission is to apply to the Minister for approval of the means of procuring the services.
- (2) If approval is sought under subsection (1), the Minister may direct —
  - (a) that the services be procured by means of a tender conducted in accordance with supply policies relating to tenders;
  - (b) that the Commission by public notice invite expressions of interest from service providers for the provision of the services; or
  - (c) that the Commission enter into negotiations with a service provider for the provision of the services.

- (3) The Commission may renew a contract, including a contract by way of renewal under this subsection —
- (a) for the type of service referred to in subsection (1) entered into before the commencement day; or
  - (b) entered into under this section,
- without complying with this section.

*[Section 26B inserted by No. 44 of 1999 s. 12; amended by No. 57 of 2004 s. 17.]*

**26C. Assignment of benefit of contract**

- (1) A person who after the commencement day has entered into a contract with the Commission for the provision of a disability service may not assign the benefit of that contract without the consent of the Commission.
- (2) When the benefit of a contract is assigned, the assignee is bound, by force of this subsection, to perform the obligations which the assignor was bound under the contract to perform.
- (3) Any purported assignment in contravention of this section is void.

*[Section 26C inserted by No. 44 of 1999 s. 12; amended by No. 57 of 2004 s. 18.]*

## **Part 5 — Disability access and inclusion plans by public authorities**

*[Heading amended by No. 57 of 2004 s. 19.]*

### **27. Application of Part**

- (1) This Part applies to public authorities.
- (2) Notwithstanding subsection (1), regulations may declare that this Part does not apply to a specified public authority.

### **28. Disability access and inclusion plans**

- (1) Each public authority must have a disability access and inclusion plan to ensure that in so far as its functions involve dealings with the general public, the performance of those functions furthers the principles in Schedule 1 and meets the objectives in Schedule 2.
- (2) A disability access and inclusion plan must meet any prescribed standards.
- (3) A public authority must lodge its disability access and inclusion plan with the Commission —
  - (a) if the authority was established before the commencement of the *Disability Services Amendment Act 2004*, without delay;
  - (b) if the authority is established after the commencement of the *Disability Services Amendment Act 2004*, within 12 months after the day on which it is established.
- (4) A public authority may amend its disability access and inclusion plan at any time.
- (5) A public authority may review its disability access and inclusion plan at any time.

- (6) After reviewing its disability access and inclusion plan, a public authority must lodge a report of the review with the Commission in accordance with subsection (7).
- (7) Not more than 5 years is to elapse —
- (a) between the day on which a public authority first lodges its disability access and inclusion plan with the Commission and the day it lodges a report of a review of the plan with the Commission; or
  - (b) between the lodgment of the report of one review of a plan and the lodgment of the report of another review of the plan.
- (8) After reviewing its disability access and inclusion plan, a public authority may amend the plan or prepare a new plan.
- (9) If at any time a public authority amends its disability access and inclusion plan or prepares a new plan, whether after a review or not, it must lodge the amended or new plan with the Commission as soon as practicable after doing so.
- (10) A public authority must undertake public consultation in accordance with the procedure specified in the regulations when preparing, reviewing or amending a disability access and inclusion plan.

*[Section 28 inserted by No. 57 of 2004 s. 20(1).]*

**29. Report about disability access and inclusion plan**

- (1) A public authority that has a disability access and inclusion plan must, if required to report under Part 5 of the *Financial Management Act 2006*, include in such report, a report about the implementation of the plan.
- (2) A local government or regional local government that has a disability access and inclusion plan must include in its annual report prepared under section 5.53 of the *Local Government Act 1995* a report about the implementation of the plan.

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- (3) A public authority that —
- (a) has prepared or amended a disability access and inclusion plan in a year ending 30 June; and
  - (b) is not required to report under subsection (1) or (2),
- must make a report about the implementation of the plan to the Commission within 2 months after the end of that year.
- (4) The regulations may prescribe information that must be included in a report under subsection (1), (2) or (3) about the implementation of a disability access and inclusion plan.

*[Section 29 inserted by No. 44 of 1999 s. 14; amended by No. 57 of 2004 s. 21; No. 5 of 2005 s. 38; No. 77 of 2006 s. 17.]*

**29A. Disability access and inclusion plans to be made available**

A public authority that has a disability access and inclusion plan must ensure that the plan is made available to people with disabilities, and the public generally, by publication in the prescribed manner.

*[Section 29A inserted by No. 57 of 2004 s. 22.]*

**29B. Public authorities to ensure implementation of a disability access and inclusion plan**

A public authority that has a disability access and inclusion plan must take all practicable measures to ensure that the plan is implemented by the public authority and its officers, employees, agents or contractors.

*[Section 29B inserted by No. 57 of 2004 s. 22.]*

**29C. Annual report by Commission about plans**

- (1) As soon as practicable after each 1 July the Commission must give the Minister a report on the effectiveness of disability access and inclusion plans, and the extent to which they have been complied with, during the year that ended on the preceding 30 June.

- (2) The Minister must cause the report received under subsection (1) to be laid before each House of Parliament within 14 sitting days after the Minister receives it.

*[Section 29C inserted by No. 57 of 2004 s. 22.]*

## **Part 6 — Complaints about some disability services**

*[Heading amended by No. 57 of 2004 s. 23.]*

### **Division 1 — Preliminary**

#### **30. Terms used in this Part**

In this Part, unless the contrary intention appears —

**Carers Charter** has the meaning given to that term in section 5 of the *Carers Recognition Act 2004*;

**complaint** means a complaint under Division 2;

**disability service** has the meaning given by section 3 but does not include —

- (a) such a service where it is provided wholly or partly from funds provided by the Health Department;
- (aa) such a service where it is provided wholly from funds paid to the service provider by the Commonwealth of Australia;
- (ab) such a service where it is provided by a carer; or
- (b) such a service where it is prescribed by regulation;

**Health Department** has the meaning given to “Department” by section 3 of the *Health Legislation Administration Act 1984*;

**member of the staff** has the same definition as it has in section 3(1) of the *Health Services (Conciliation and Review) Act 1995*;

**OHR** means the Office of Health Review established by section 6(1) of the *Health Services (Conciliation and Review) Act 1995*;

**respondent** means a person about whom or which a complaint is made.

*[Section 30 amended by No. 44 of 1999 s. 15; No. 37 of 2004 s. 26; No. 57 of 2004 s. 24; No. 28 of 2006 s. 158.]*

**30A. Functions of Director**

- (1) The functions of the Director under this Part are —
- (a) to undertake the receipt, conciliation and investigation of complaints;
  - (b) to review and identify the causes of complaints, and to suggest ways of removing and minimising those causes and bringing them to the notice of the public;
  - (c) to take steps to bring to the notice of people with disabilities and service providers details of procedures for making complaints under this Act;
  - (d) to assist service providers in developing and improving procedures for making complaints and the training of staff in handling complaints;
  - (e) with the approval of the Minister, to inquire into broader issues of the care of people with disabilities arising out of complaints received;
  - (f) subject to subsection (2), to cause information about the work of the OHR to be published from time to time; and
  - (g) to provide advice generally on any matter relating to complaints under this Act, and in particular —
    - (i) advice to people with disabilities on the making of complaints; and
    - (ii) advice to people with disabilities as to other avenues available for dealing with complaints.
- (2) The function of the Director under subsection (1)(f) does not include the publication of information in a form that —
- (a) discloses the identity of a person with disabilities involved in a complaint; or

- (b) might enable the identity of any such person to be ascertained,

but nothing in this subsection affects the operation of section 42A.

*[Section 30A inserted by No. 57 of 2004 s. 25.]*

**31. Parties themselves may resolve complaint**

- (1) Nothing in this Part prevents the complainant and the respondent resolving a complaint by agreement at any time, whether or not through conciliation provided for under this Part, but if that occurs the complainant must notify the Director of the fact without delay.
- (2) When the Director becomes aware that a complaint has been resolved, he or she must stop dealing with it under this Part.

*[Section 31 amended by No. 44 of 1999 s. 22.]*

**Division 2 — Complaints and conciliation**

**32. Who may complain**

- (1) A complaint about a person referred to in section 33(1) alleging one or more of the matters set out in section 33(2) may be made to the Director —
  - (a) personally by a person with a disability;
  - (b) on behalf of a person with a disability, by a person who under subsection (2) is recognised as an advocate for the person; or
  - (c) by 2 or more persons —
    - (i) on their own behalf; or
    - (ii) on behalf of themselves and another person or other persons.

- (2) The Director may recognise as an advocate for a person with a disability —
- (a) a person chosen as such by the person with a disability; or
  - (b) a person not chosen by the person with a disability if, in the Director's opinion —
    - (i) the person with a disability is unable personally to complain and is unable personally to choose a person to be his or her advocate; and
    - (ii) the prospective advocate is a person who has a sufficient interest in the subject matter of the complaint.
- (3) A person who is related (by blood or marriage) to a person with a disability may be his or her advocate.
- (4) A complaint alleging the matter set out in section 33(2)(f) may be made to the Director by a carer about a person who —
- (a) is referred to in section 33(1); and
  - (b) is an applicable organisation as defined in section 4 of the *Carers Recognition Act 2004*.

*[Section 32 amended by No. 44 of 1999 s. 22 and 23; No. 37 of 2004 s. 27.]*

**33. Who and what can be complained about**

- (1) A complaint may only be about —
- (a) a service provider who or which, at the time the subject matter of the complaint arose, was providing a disability service, whether or not with funds granted under Part 4;
  - (b) a service provider which is a public authority, other than the Health Department, and which, at the time the subject matter of the complaint arose, was providing a disability service, whether or not with funds granted under Part 4; or

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- (c) the Commission.
- (2) A complaint must allege that after the date on which this Act comes into operation, a service provider or the Commission —
  - (a) acted unreasonably by not providing a disability service to the complainant;
  - (b) acted unreasonably by providing a disability service to the complainant;
  - (c) acted unreasonably in the manner of providing a disability service to the complainant;
  - (d) acted unreasonably by denying or restricting the complainant's access to records relating to the complainant kept by the service provider or the Commission;
  - (e) acted unreasonably in disclosing records or confidential information relating to the complainant;
  - (f) failed to comply with the Carers Charter,

or that the Commission acted unreasonably in making or not making a grant to the complainant under Part 4.

- (3) A person must not make a statement in a complaint that the person knows is false or misleading in a material respect.

Penalty: \$2 500.

*[Section 33 amended by No. 44 of 1999 s. 16; No. 37 of 2004 s. 28.]*

**33A. Health services complaints**

A complaint cannot be made under this Act about a matter if a complaint about that matter could be made under Part 3 of the *Health Services (Conciliation and Review) Act 1995*.

*[Section 33A inserted by No. 75 of 1995 s. 80(2).]*

**34. Time for complaining**

The Director must reject a complaint the subject matter of which occurred more than 24 months before the complaint is made unless, in the Director's opinion, the complainant has shown good reason for the delay.

*[Section 34 amended by No. 44 of 1999 s. 17, 22 and 23.]*

**35. How to complain**

- (1) A person may complain to the Director orally, including by telephone, or in writing.
- (2) If the Director receives an oral complaint the Director must require the complainant to confirm it in writing unless the complainant satisfies the Director that there is good reason why the complaint should not be confirmed in writing.
- (3) The Director must require a complainant to give his or her name and may require the complainant to give other information relating to the complainant's identity.
- (4) The Director may require a complainant to give more information about the complaint within a time fixed by the Director.
- (5) If a complainant does not comply with a requirement of the Director under subsection (2), (3) or (4), the Director may reject the complaint.

*[Section 35 amended by No. 44 of 1999 s. 22.]*

**36. Withdrawal of complaint**

A complainant may at any time withdraw the complaint by notifying the Director and the Director must then —

- (a) stop dealing with or investigating the complaint;
- (b) if details have been given under section 37(3), notify the respondent of the withdrawal; and

- (c) if the complaint has been referred under section 38(4), notify the person to whom it has been referred.

*[Section 36 amended by No. 44 of 1999 s. 22.]*

**37. Preliminary decision by Director**

- (1) Within 28 days after receiving a complaint the Director must decide whether, and to what extent —
  - (a) to reject, defer, or refer it under section 38;
  - (b) to accept it and conciliate it under section 39,but the Director may extend the 28 day period for a further period not exceeding 28 days if it is for the benefit of the complainant to do so.
- (2) To enable the Director to make a decision under subsection (1) the Director may make such inquiries as the Director considers appropriate.
- (3) Within 14 days after making a decision under subsection (1), the Director must —
  - (a) if the complaint is rejected — give to the complainant written details of the decision;
  - (b) if the complaint is deferred or referred —
    - (i) give to the complainant — written details of the decision; and
    - (ii) give to the respondent — written details of the complaint and of the decision;or
  - (c) if the complaint is accepted —
    - (i) give to the complainant — written details of the decision and of the arrangements made for conciliation discussions between the complainant and the respondent; and

- (ii) give to the respondent — written details of the complaint, of the decision, and of the arrangements made for conciliation discussions between the complainant and the respondent and a written statement that the respondent may make submissions to the Director.
- (4) If the Director considers that on account of particular circumstances the disclosure of the complainant's identity —
- (a) may result in the health, safety or welfare of the complainant being put at risk; or
  - (b) would prejudice the proper investigation of the complaint,
- the Director, in giving written details under subsection (3)(b) or (c), is not to disclose the identity of the complainant.
- (5) Where the Director has acted under subsection (4), the Director must disclose the identity of the complainant to the respondent if the Director later becomes satisfied that the circumstances described under that subsection no longer apply.

*[Section 37 amended by No. 44 of 1999 s. 22.]*

**38. Rejection, deferral or referral of complaints**

- (1) The Director must reject a complaint that in the Director's opinion —
  - (a) is vexatious, trivial or without substance;
  - (b) does not warrant any further action; or
  - (c) does not comply with this Part.
- (2) If an issue raised in a complaint has already been dealt with under another written law or a law of the Commonwealth or by a court, the Director must reject the complaint to the extent to which it relates to that issue.

- (3) If an issue raised in a complaint is being dealt with under another written law or a law of the Commonwealth or by a court, the Director must defer dealing with the complaint to the extent to which it relates to that issue.
- (4) If a complaint raises issues that in the opinion of the Director would be better dealt with under another written law, the Director may, with the written consent of the complainant, refer the complaint to the appropriate person to be dealt with under that other written law, but the Director may not refer a complaint to a court.

*[Section 38 amended by No. 44 of 1999 s. 22 and 23.]*

**39. Conciliation of complaints**

- (1) The Director is to conciliate complaints that are accepted, but if he or she delegates this duty, it must be to a person whose duties consist of or include the conciliation of complaints.
- (2) The Director's function as conciliator is to encourage the settlement of the complaint by —
  - (a) arranging for the complainant and the respondent to hold informal discussions about the complaint;
  - (b) helping in the conduct of those discussions;
  - (c) if possible, assisting the complainant and the respondent to reach agreement.
- (3) During the conciliation process neither the complainant nor the respondent may be represented by another person, but —
  - (a) the complainant may be represented by his or her advocate recognised under section 32(2);
  - (b) if the Director is satisfied that the process will not work effectively otherwise, the Director may allow either party to be represented.
- (4) Nothing in subsection (3) prevents the personal attendance of any other person who may, in the opinion of the Director, help in the conciliation.

- (5) Evidence of anything said or admitted during the conciliation process is not admissible in proceedings before a court or tribunal.

*[Section 39 amended by No. 44 of 1999 s. 22 and 23.]*

### **Division 3 — Investigations**

#### **40. Investigation of complaints and referred matters**

- (1) If the conciliation process fails to result in the settlement of the complaint between the complainant and the respondent, the Director must investigate the complaint.

*[(2) deleted]*

- (3) The Director may at any time try to encourage the settlement of a complaint by means of conciliation.

- (4) The purpose of an investigation is to enable the Director to decide whether or not any unreasonable conduct referred to in section 33(2) has occurred and in so deciding, the Director is to have regard to —

- (a) the principles in Schedule 1 and the objectives in Schedule 2;
- (b) any agreement entered into by the service provider under section 25, or contract entered into under section 26B or assigned to the service provider under section 26C;
- (c) any disability access and inclusion plan prepared under section 28;
- (d) the generally accepted standard of service delivery expected of a service provider or the Commission, as the case may be;
- (e) such other standards of service for disability service users as are prescribed; and
- (f) the Carers Charter.

- (5) In conducting an investigation the Director —
- (a) must proceed with as little formality and technicality and as speedily as the requirements of this Part and proper investigation of the matter permits;
  - (b) is not bound by the rules of evidence but may inform himself or herself of any matter in such manner as he or she considers appropriate; and
  - (c) may, subject to this Part and the rules of natural justice, determine his or her own procedures.
- (6) In conducting an investigation the Director may make use of a member of the staff.

*[Section 40 amended by No. 44 of 1999 s. 18 and 22; No. 37 of 2004 s. 29; No. 57 of 2004 s. 26.]*

**41. Director's powers on investigation**

- (1) In this section —
- relevant information*** means information that is relevant to an investigation under section 40;
- relevant record*** means a record of information, however compiled, recorded or stored, that is relevant to an investigation under section 40;
- the person's representative*** means —
- (a) the person's advocate recognised under section 32(2);
  - (b) a guardian of the person under the *Guardianship and Administration Act 1990*; or
  - (c) in the case of a minor, a parent or guardian of the minor.
- (2) The Director may, by notice in writing given to a person, require the person —
- (a) to furnish the Director with a statement signed by the person or, in the case of a body corporate, by an officer of the body corporate, containing such relevant information as is specified in the notice;

- (b) to produce to the Director such relevant records as are specified in the notice.
- (3) The Director is not to issue a notice under subsection (2) to a person unless the Director has reason to believe that the person is capable of furnishing the relevant information or producing the relevant records, as the case may be.
- (4) A notice under subsection (2) is to specify the time and place for furnishing the relevant information or producing the relevant records, as the case may be.
- (5) Where a relevant record is produced in accordance with a notice under this section, the Director may —
  - (a) take possession of and retain it for such reasonable period as is necessary for the purposes of the investigation;
  - (b) inspect it and make copies of it;
  - (c) during that period permit a person who would be entitled to inspect the record if it were not in the possession of the Director to inspect it.
- (6) Nothing in this section prevents a person from —
  - (a) refusing to disclose relevant information or to produce a relevant record because it contains information in respect of which there is legal professional privilege;
  - (b) refusing to produce medical records except where —
    - (i) those medical records relate to the subject matter of the complaint; and
    - (ii) the person to whom the records relate, or the person's representative, has consented to the disclosure of information in the records.
- (7) A person who has been given a notice under this section must not, without reasonable excuse, proof of which is on the person, refuse or fail —
  - (a) to furnish relevant information; or

(b) to produce a relevant record.

Penalty: (a) in the case of an individual — \$1 000;

(b) in the case of a body corporate — \$5 000.

*[Section 41 amended by No. 44 of 1999 s. 22.]*

#### **Division 4 — Consequences of investigation**

#### **42. Director to decide, give reasons etc.**

- (1) After an investigation the Director must decide whether or not any unreasonable conduct referred to in section 33(2) has occurred and must give written notice of the decision to —
  - (a) in the case of a complaint — the complainant and the respondent;
  - (b) in the case of an investigation conducted under section 46 — the Minister and any person affected by the decision; or
  - (c) in the case of a matter referred under section 46A(1) — the presiding officer of the House or committee and any person affected by the decision.
- (2) The written notice must be provided —
  - (a) in a case referred to in subsection (1)(a) or (b) — within 14 days after the decision is made; and
  - (b) in a case referred to in subsection (1)(c) — within any time limit set out in the referral of the House or committee.
- (3) The written notice must —
  - (a) include the reasons for the decision; and
  - (b) if the Director has decided that unreasonable conduct has occurred, set out any action that the Director recommends ought to be taken to remedy the matter by —
    - (i) the respondent; or
    - (ii) any other person.

- (4) The Director is not to include in a written notice given under subsection (1)(c) any information that —
- (a) discloses the identity of a person with a disability; or
  - (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

*[Section 42 inserted by No. 57 of 2004 s. 27.]*

#### **42A. Reports to Parliament**

- (1) The Director may at any time lay a report before each House of Parliament on any matter that the Director considers necessary —
- (a) arising from an individual complaint or an investigation; or
  - (b) in relation to the performance of the Director's functions under this Act.

- (2) Subsection (1) does not limit Part 5 of the *Financial Management Act 2006*.

- (3) The Director is not to include in any such report any information that —
- (a) discloses the identity of a person with a disability; or
  - (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

*[Section 42A inserted by No. 57 of 2004 s. 27; amended by No. 77 of 2006 s. 17.]*

#### **43. Respondent to report on remedial action**

- (1) If a decision under section 42 recommends remedial action be taken by the respondent, the respondent must, within 45 days after receiving the notice of the decision, report in writing to the

Director what action the respondent has taken to remedy the matter.

Penalty: \$2 500.

- (2) Within the 45 day period referred to in subsection (1), the respondent may ask the Director to extend the time within which the respondent must report to the Director.
- (3) If asked under subsection (2), the Director may extend the time by no more than 15 days.

*[Section 43 amended by No. 44 of 1999 s. 19 and 22.]*

**44. Report to Parliament where report not made or remedial action not taken**

- (1) If a decision under section 42 recommends remedial action be taken by the respondent and the respondent does not report in accordance with section 43, the Director must give the Minister a copy of the decision and a written report about the refusal or failure by the respondent to so report.
- (2) If a decision under section 42 recommends remedial action be taken by the respondent and the respondent does not take the remedial action recommended within such time as in the Director's opinion is reasonable, the Director must give the Minister a copy of the decision and a written report about the refusal or failure by the respondent to take the remedial action.
- (3) After receiving the decision and a report under subsection (1) or (2) the Minister may lay both before each House of Parliament.
- (4) The Director is not to include the complainant's name in the material given to the Minister under subsection (1) or (2) unless authorised to do so by the complainant.

*[Section 44 amended by No. 44 of 1999 s. 22 and 23; No. 57 of 2004 s. 28.]*

**Division 4A — Director's relationship with the Minister**

*[Heading inserted by No. 57 of 2004 s. 29.]*

**44A. Minister may give directions**

- (1) The Minister may give directions in writing to the Director with respect to the performance of the functions of the Director under this Act, either generally or in relation to a particular matter, and the Director is to give effect to any such direction.
- (2) Without limiting section 46, the Minister cannot under subsection (1) direct the Director with respect to the performance of the Director's functions in respect of —
  - (a) a particular person;
  - (b) a particular complaint; or
  - (c) a matter relating to a particular complaint.
- (3) The Minister must cause the text of any direction given under subsection (1) to be laid before each House of Parliament within 14 sitting days after the direction is given.
- (4) The text of a direction given under subsection (1) is to be included in the annual report submitted by the accountable authority in respect of the OHR under Part 5 of the *Financial Management Act 2006*.

*[Section 44A inserted by No. 57 of 2004 s. 29; amended by No. 77 of 2006 s. 17.]*

**44B. Minister to have access to information**

- (1) The Minister is entitled —
  - (a) to have information in the possession of the Director; and
  - (b) where the information is in or on a document, to have, and make and retain copies of, that document.

- (2) For the purposes of subsection (1) the Minister may —
- (a) request the Director to furnish information to the Minister;
  - (b) request the Director to give the Minister access to information; and
  - (c) for the purposes of paragraph (b) make use of the staff of the OHR to obtain the information and furnish it to the Minister.
- (3) The Director is to comply with a request under subsection (2) and make staff and facilities available to the Minister for the purposes of paragraph (c) of that subsection.
- (4) The Minister is not entitled to have information under this section in a form that —
- (a) discloses the identity of a person involved in a complaint; or
  - (b) might enable the identity of any such person to be ascertained,

unless that person has consented to the disclosure.

- (5) In this section —
- document** includes any tape, disk or other device or medium on which information is recorded or stored mechanically, photographically, electronically or otherwise;
- information** means information specified, or of a description specified, by the Minister that relates to the functions of the Director under this Act.

*[Section 44B inserted by No. 57 of 2004 s. 29.]*

### **Division 5 — General**

#### **45. Proceedings to stop if court action etc.**

- (1) The Director must stop dealing with or investigating a complaint if the Director becomes aware that the complainant or

the respondent has begun proceedings under another written law or a law of the Commonwealth or in a court, which relate to an issue raised by the complaint.

- (2) If the Director stops dealing with a complaint under subsection (1), the Director must, within 14 days of doing so, give written notice of the fact to the complainant and the respondent.
- (3) If the Director has stopped dealing with a complaint under subsection (1) and later becomes aware that the proceedings under another written law or a law of the Commonwealth or in a court have been discontinued or abandoned, the Director may, with the consent of the complainant, resume dealing with the complaint under this Part.

*[Section 45 amended by No. 44 of 1999 s. 22.]*

**46. Minister may refer matters for investigation**

Where the Minister is of the opinion that —

- (a) circumstances exist in relation to a person with a disability that would justify a complaint being made under this Part; or
- (b) it is in the public interest on a matter of general importance relating to disability services that an investigation be carried out,

the Minister may direct the Director to conduct an investigation under Division 3 in accordance with such terms of reference as the Minister may specify.

*[Section 46 inserted by No. 57 of 2004 s. 30.]*

**46A. Investigation at the request of Parliament**

- (1) At any time —
  - (a) either House of Parliament; or
  - (b) any committee of either or both Houses,

may refer to the Director for investigation any matter relating to the provision of disability services or a particular disability service that the House or committee considers should be investigated by the Director.

- (2) If a matter is referred to the Director, the Director must investigate the matter immediately.

*[Section 46A inserted by No. 57 of 2004 s. 31.]*

**47. Person not to be penalised because of complaining**

A person must not —

- (a) by threats or intimidation persuade or attempt to persuade another person —
- (i) not to make a complaint or to withdraw such a complaint or not to continue proceedings under this Act in respect of such a complaint; or
  - (ii) not to provide information to or not to otherwise assist the Director in conducting an investigation under Division 3;

or

- (b) refuse to employ, or dismiss, another person or subject another person to any detriment, because the other person intends to make a complaint, or has made a complaint, or intends to take part, is taking part, or has taken part, in proceedings under this Part in respect of a complaint or an investigation.

Penalty: \$2 500.

*[Section 47 amended by No. 44 of 1999 s. 22.]*

**48. Registers of complaints**

- (1) The Director is to establish and maintain —
- (a) a register of complaints; and
  - (b) a register of matters referred for investigation.

- (2) The registers are to be established and maintained in such manner as is determined from time to time by the Director.
- (3) The form and contents of the registers are to be determined from time to time by the Director.

*[Section 48 amended by No. 44 of 1999 s. 22.]*

**49. Delegation**

The Director may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to a member of the staff, the Director's functions in this Part, other than —

- (a) this power of delegation; and
- (b) the duty in section 42 to decide if unreasonable conduct has occurred and the power to recommend remedial action.

*[Section 49 amended by No. 44 of 1999 s. 20 and 22.]*

**50. Confidentiality**

Section 71 of the *Health Services (Conciliation and Review) Act 1995*, with such modifications as are necessary, applies to the Director and to a delegate under section 49 in respect of information or documents relating to the affairs of another person acquired by the Director or delegate under this Part.

*[Section 50 amended by No. 44 of 1999 s. 21 and 22.]*

## **Part 7 — Miscellaneous**

### **51. Protection**

- (1) A member of the Board is not personally liable in civil proceedings for anything done or omitted to be done by the Commission, in good faith, in the exercise or purported exercise of its functions under this Act.
- (2) A member of the Council is not personally liable for anything done or omitted to be done by the Council, in good faith, in the exercise or purported exercise of its functions under this Act.
- (3) A person is not personally liable in civil proceedings for an act done or omission made, in good faith, in the performance or purported performance of a function under this Act.

### **52. Confidentiality**

- (1) A person who is or has been in a situation to which this section applies must not, whether directly or indirectly, record, disclose, or make use of any information obtained because of that situation except —
  - (a) in the course of duty;
  - (b) as required or allowed by this Act or any other law;
  - (ba) in connection with the investigation of an offence to —
    - (i) a member of the Police Force of Western Australia or the Australian Federal Police;
    - (ii) the Director of Public Prosecutions for Western Australia or the Commonwealth; or
    - (iii) an officer of another law enforcement agency established under the law of a State or Territory or the Commonwealth authorised by regulation to receive confidential information under this paragraph;
  - (bb) where it is in the public interest to protect the physical safety of an individual;

- (bc) for the purpose of enabling or facilitating the investigation by the CEO as defined in section 3 of the *Children and Community Services Act 2004*, or an officer as defined in that section, of whether or not a child is in need of protection under that Act;
- (bd) for the purpose of protection proceedings under the *Children and Community Services Act 2004*;
- (c) for the purpose of proceedings before the State Administrative Tribunal commenced under the *Guardianship and Administration Act 1990*;
- (d) if the information is personal information — with the consent of the person, or the person's guardian; or
- (e) in prescribed circumstances.

Penalty: \$2 500.

- (2) The situations to which this section applies are —
  - (a) being a member of the Board;
  - (b) being a member of the personnel of the Commission;
  - (c) being a person whose services are made use of under section 10, 12A or Part 4A.

*[Section 52 amended by No. 44 of 1999 s. 24; No. 34 of 2004 s. 251; No. 55 of 2004 s. 467.]*

**53. Offence of ill-treatment**

A person who ill-treats or wilfully neglects a person with a disability while that person is under his or her care, supervision or authority commits an offence.

Penalty: \$4 000 or imprisonment for 12 months.

**54. Prosecution of offences**

- (1) Proceedings for an offence against this Act may be commenced by the chief executive officer or a person authorised in writing to do so by the chief executive officer.

**s. 55**

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- (2) In any proceedings for an offence against this Act the authority of the prosecutor to commence the proceedings is to be presumed in the absence of evidence to the contrary.

*[Section 54 amended by No. 59 of 2004 s. 141; No. 84 of 2004 s. 80.]*

**55. Parliamentary Commissioner may conduct investigation**

For the purposes of section 14(4) of the *Parliamentary Commissioner Act 1971* the right to make a complaint under Part 6 is not to be regarded as a right of appeal, reference or review to or before a tribunal.

**56. Regulations**

The Governor may make regulations prescribing all matters required or permitted by this Act to be prescribed or necessary or convenient to be prescribed for carrying out this Act.

**57. Review of Act**

- (1) The Minister is to carry out a review of the operation and effectiveness of this Act —
- (a) not later than 5 years after its commencement; and
  - (b) not later than 5 years after the tabling of the report on that review and after the tabling of each subsequent report on a review.
- (2) For the purposes of conducting a review under subsection (1) the Minister may request the Director to provide a report about the nature of complaints made under Part 6.
- (3) If so requested, the Director is to provide a report but is not to include in it the name of any complainant.
- (4) In the course of a review under subsection (1) the Minister is to consider and have regard to —
- (a) the effectiveness of the operations of the Commission and the need for its continuation;

- (b) the effectiveness of the Council and its functions and the need for its continuation;
  - (c) the effectiveness of grants under Part 4 in furthering the principles in Schedule 1;
  - (d) the effectiveness of Part 6;
  - (e) any report by the Director provided under subsection (3); and
  - (f) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.
- (5) The Minister must prepare a report based on each review and shall, as soon as practicable after it is prepared, cause it to be tabled before each House of Parliament.

*[Section 57 amended by No. 44 of 1999 s. 22.]*

**[58.** *Omitted under the Reprints Act 1984 s. 7(4)(f).]*

**Schedule 1 — Principles applicable to people  
with disabilities**

[s. 12, 23, 24, 28, 40, 57]

*[Heading inserted by No. 57 of 2004 s. 32.]*

1. People with disabilities have the inherent right to respect for their human worth and dignity.
2. People with disabilities, whatever the origin, nature, type or degree of disability, have the same basic human rights as other members of society and should be enabled to exercise those basic human rights.
3. People with disabilities have the same rights as other members of society to realise their individual capacities for physical, social, emotional, intellectual and spiritual development.
4. People with disabilities have the same right as other members of society to services which will support their attaining a reasonable quality of life in a way that also recognises the role and needs of their families and carers.
5. People with disabilities have the same right as other members of society to participate in, direct and implement the decisions which affect their lives.
6. People with disabilities have the same right as other members of society to receive services in a manner that results in the least restriction of their rights and opportunities.
7. People with disabilities have the same right as other members of society to pursue any grievance concerning services.
8. People with disabilities have the right to access the type of services and supports that they believe are most appropriate to meet their needs.
9. People with disabilities who reside in rural and regional areas have a right, as far as is reasonable to expect, to have access to similar services provided to people with disabilities who reside in the metropolitan area.
10. People with disabilities have a right to an environment free from neglect, abuse, intimidation and exploitation.

*[Schedule 1 inserted by No. 57 of 2004 s. 32.]*

## **Schedule 2 — Objectives for services and programmes**

[s. 12, 24, 28, 40]

*[Heading inserted by No. 57 of 2004 s. 33.]*

1. Programmes and services are to focus on achieving positive outcomes for people with disabilities, such as increased independence, employment opportunities and inclusion within the community.
2. Programmes and services are to contribute to ensuring that the conditions of the every day life of people with disabilities are the same as, or as close as possible to, norms and patterns which are valued in the general community.
3. Programmes and services are to be integrated with services generally available to members of the community.
4. Programmes and services are to be tailored to meet the individual needs and goals of the people with disabilities receiving those programmes and services.
5. Programmes and services are to be designed and administered so as to meet the needs of people with disabilities who experience additional barriers as a result of their age, gender, aboriginality, culturally or linguistically diverse backgrounds or geographic location.
6. Programmes and services are to be designed and administered so as to promote recognition of the competence of, and enhance the community perception of, people with disabilities.
7. Programmes and services are to be designed and administered so as to promote the participation of people with disabilities in the life of the local community through maximum physical, social, economic, emotional, intellectual and spiritual inclusion in that community.
8. Programmes and services are to be designed and administered so as to ensure that no single organisation shall exercise control over all or most aspects of an individual's life.
9. Service provider organisations, whether disability specific or generic, shall be accountable to those people with disabilities who use their services, the advocates of such people, the State and the community generally for the provision of information from which the quality of their services can be judged.

10. Programmes and services are to be designed and administered so as to provide opportunities for people with disabilities to reach goals and enjoy lifestyles which are valued by the community.
11. Programmes and services are to be designed and administered so as to ensure that people with disabilities have access to advocacy support where necessary to ensure adequate participation in decision making about the services they receive or are seeking.
12. Programmes and services are to be designed and administered so as to ensure that appropriate avenues exist for people with disabilities to raise, and have resolved, any grievances about services.
13. Programmes and services are to be designed and implemented as part of local coordinated service systems and integrated with services generally available to members of the community. Public sector agencies are to develop, plan and deliver disability programmes and services in a coordinated and pro-active way.
14. Programmes and services are to be designed and administered so as to respect the rights of people with disabilities to privacy and confidentiality.
15. Programmes and services are to have regard for the benefits of activities that prevent the occurrence or worsening of disabilities and are to plan for the needs of such activities.
16. Programmes and services are to be designed and implemented to —
  - (a) consider the implications for the families and carers of people with disabilities;
  - (b) recognise the demands on the families of people with disabilities; and
  - (c) take into account the implications for, and demands on, the families and carers of people with disabilities.
17. Programmes and services are to be designed and administered so as to —
  - (a) provide people with disabilities with, and encourage them to make use of, ways of participating continually in the planning, operation and evaluation of services they receive; and
  - (b) provide for people with disabilities to be consulted about the development of major policy, programme or operational changes.

*[Schedule 2 inserted by No. 57 of 2004 s. 33.]*

## **Schedule 3 — Provisions applicable to the Board of the Commission**

[s. 7(4)]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **1. Tenure of office**

- (1) A member of the Board —
  - (a) holds office for such term not exceeding 3 years as is specified in the instrument appointing the member;
  - (b) except in the case of the chairperson, is not to hold office for more than 6 years continuously;
  - (c) is not to be reappointed unless 3 years have elapsed since —
    - (i) the end of a 6 year period of holding office continuously or, in the case of a person who has held office for a period greater than 6 years continuously, the end of that period of holding office;
    - (ii) he or she resigned from office; or
    - (iii) his or her appointment was terminated;and
  - (d) may resign from office by notice in writing delivered to the Minister.
- (2) The Minister may terminate the appointment of a member —
  - (a) if, in the opinion of the Minister, the member is unable, through illness or absence from the State, to perform the functions of the office;
  - (b) if, in the opinion of the Minister, the member misbehaves, neglects his or her duties or is incompetent;
  - (c) if the member is an insolvent under administration, as that expression is defined in the *Corporations Act 2001* of the Commonwealth;
  - (d) if the member is absent, without leave and without reasonable excuse, from 3 consecutive meetings of the Board of which the member has had notice; or
  - (e) for any other act or omission that in the opinion of the Minister may adversely affect the functioning of the Board.

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- (3) A member whose term of office expires due to the effluxion of time continues in office until he or she is reappointed or a successor comes into office (as the case may be).

*[Clause 1 amended by No. 44 of 1999 s. 25(1) and (2); No. 10 of 2001 s. 220.]*

**2. Chairperson**

- (1) The Minister is to appoint one of the members of the Board to be chairperson and another to be deputy chairperson.
- (2) The deputy chairperson is to perform the functions of the chairperson when the chairperson is unable to do so by reason of illness, absence or other cause, or when the office of chairperson is vacant.

**3. Meetings**

- (1) The Board, subject to this Schedule, is to determine the procedure for convening and conducting its meetings.
- (2) At a meeting of the Board —
- (a) the chairperson, or in his or her absence the deputy chairperson, is to preside; or
  - (b) in the absence of both those members, a member elected by the members present is to preside.
- (3) The Board must keep minutes of its meetings.

**4. Remuneration**

A member of the Board is entitled to such remuneration and allowances as are determined by the Minister from time to time on the recommendation of the Minister for Public Sector Management.

*[Clause 4 amended by No. 44 of 1999 s. 25(3).]*

## **Schedule 4 — Provisions applicable to the Commission's personnel**

[s. 11]

*[Heading amended by No. 19 of 2010 s. 4.]*

### **1. Superannuation**

- (1) If a person was a contributor within the meaning of the *Superannuation and Family Benefits Act 1938*<sup>3</sup> immediately before being appointed to the personnel of the Commission, the person may continue to be a contributor under that Act after being appointed.
- (2) For the purpose of subclause (1) the Commission —
  - (a) is a department within the meaning of the *Superannuation and Family Benefits Act 1938*<sup>3</sup>; and
  - (b) is to pay to the Board under that Act payments of the kind described in paragraph (i) of the proviso to the definition of “department” in section 6 of that Act.

### **2. Saving of leave entitlements**

- (1) If a person occupied an office in the Public Service immediately before being appointed to the personnel of the Commission, the person retains existing and accruing entitlements in respect of leave of absence as if service in the personnel of the Commission were a continuation of service in the office in the Public Service.
- (2) A person who ceases to be a member of the personnel of the Commission and becomes the holder of an office in the Public Service retains existing and accruing entitlements in respect of leave of absence as if service in the Public Service were a continuation of service in the personnel of the Commission.

**Schedule 5 — Provisions applicable to the Ministerial  
Advisory Council on Disability**

[s. 22(3)]

*[Heading inserted by No. 57 of 2004 s. 34(1).]*

**1. Tenure of office**

(1) A member of the Council —

- (a) holds office for such term not exceeding 2 years as is specified in the instrument appointing the member;
- (b) may be reappointed for a further term but is not to hold office for more than 2 consecutive terms unless subclause (1a) applies; and
- (c) may resign from office by notice in writing delivered to the Minister.

(1a) Despite subclause (1)(b), a member of the Council may be reappointed for a third consecutive term if the Minister wishes to appoint that member to be the chairperson under clause 2(1).

(2) The Minister may terminate the appointment of a member —

- (a) if, in the opinion of the Minister, the member is unable, through illness or absence from the State, to perform the functions of the office;
- (b) if, in the opinion of the Minister, the member misbehaves, neglects his or her duties or is incompetent;
- (c) if the member is an insolvent under administration, as that expression is defined in the *Corporations Act 2001* of the Commonwealth;
- (d) if the member is absent, without leave and without reasonable excuse, from 3 consecutive meetings of the Council of which the member has had notice; or
- (e) for any other act or omission that in the opinion of the Minister may adversely affect the functioning of the Council.

*[Clause 1 amended by No. 10 of 2001 s. 220; No. 57 of 2004 s. 34(2) and (3).]*

**2. Chairperson**

- (1) The Minister is to appoint one of the members of the Council to be the chairperson.
- (2) The Council is to elect one member to be the deputy chairperson.
- (3) The deputy chairperson is to perform the functions of the chairperson when the chairperson is unable to do so by reason of illness, absence or other cause, or when the office of chairperson is vacant.

**3. Meetings**

- (1) The Council, subject to this Schedule, is to determine the procedure for convening and conducting its meetings.
- (2) At a meeting of the Council —
  - (a) the chairperson, or in his or her absence the deputy chairperson, is to preside; or
  - (b) in the absence of both of those members, a member elected by the members present is to preside.
- (3) The Council must keep minutes of its meetings.

**4. Remuneration**

A member of the Council is entitled to such remuneration and allowances as are determined by the Minister from time to time on the recommendation of the Minister for Public Sector Management.

*[Clause 4 amended by No. 44 of 1999 s. 26.]*

*[Schedule 6 omitted under the Reprints Act 1984 s. 7(4)(e).]*

### Notes

- <sup>1</sup> This is a compilation of the *Disability Services Act 1993* and includes the amendments made by the other written laws referred to in the following table <sup>1a</sup>. The table also contains information about any reprint.

#### Compilation table

Short title	Number and year	Assent	Commencement
<i>Disability Services Act 1993</i> <sup>4</sup>	36 of 1993	16 Dec 1993	23 Dec 1993 (see s. 2)
<i>Acts Amendment (Public Sector Management) Act 1994</i> s. 19	32 of 1994	29 Jun 1994	1 Oct 1994 (see s. 2 and <i>Gazette</i> 30 Sep 1994 p. 4948)
<i>Health Services (Conciliation and Review) Act 1995</i> s. 80(2)	75 of 1995	9 Jan 1996	16 Aug 1996 (see s. 2 and <i>Gazette</i> 16 Aug 1996 p. 4007)
<i>Financial Legislation Amendment Act 1996</i> s. 64	49 of 1996	25 Oct 1996	25 Oct 1996 (see s. 2(1))
<i>Disability Services Amendment Act 1999</i> <sup>5</sup>	44 of 1999	25 Nov 1999	25 Nov 1999 (see s. 2)
<b>Reprint of the <i>Disability Services Act 1993</i> as at 26 May 2000</b> (includes amendments listed above)			
<i>Corporations (Consequential Amendments) Act 2001</i> s. 220	10 of 2001	28 Jun 2001	15 Jul 2001 (see s. 2 and <i>Gazette</i> 29 Jun 2001 p. 3257 and <i>Cwlth Gazette</i> 13 Jul 2001 No. S285)
<i>Children and Community Services Act 2004</i> s. 251	34 of 2004	20 Oct 2004	1 Mar 2006 (see s. 2 and <i>Gazette</i> 14 Feb 2006 p. 695)
<i>Carers Recognition Act 2004</i> Pt. 5 Div. 1	37 of 2004	28 Oct 2004	1 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7127)
<i>Disability Services Amendment Act 2004</i> <sup>6</sup>	57 of 2004	18 Nov 2004	s. 1 and 2: 18 Nov 2004; Act other than s. 1 and 2: 15 Dec 2004 (see s. 2 and <i>Gazette</i> 14 Dec 2004 p. 5999)
<i>Courts Legislation Amendment and Repeal Act 2004</i> s. 141	59 of 2004	23 Nov 2004	1 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7128)

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004</i> s. 467 <sup>7</sup>	55 of 2004	24 Nov 2004	24 Jan 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7130)
<i>Criminal Procedure and Appeals (Consequential and Other Provisions) Act 2004</i> s. 80	84 of 2004	16 Dec 2004	2 May 2005 (see s. 2 and <i>Gazette</i> 31 Dec 2004 p. 7129 (correction in <i>Gazette</i> 7 Jan 2005 p. 53))
<i>Financial Administration Legislation Amendment Act 2005</i> s. 38	5 of 2005	27 Jun 2005	1 Jan 2006 (see s. 2 and <i>Gazette</i> 23 Dec 2005 p. 6243)
<b>Reprint 2: The Disability Services Act 1993 as at 15 Jul 2005</b> (includes amendments listed above except those in the <i>Children and Community Services Act 2004</i> and the <i>Financial Administration Legislation Amendment Act 2005</i> )			
<i>Planning and Development (Consequential and Transitional Provisions) Act 2005</i> s. 15	38 of 2005	12 Dec 2005	9 Apr 2006 (see s. 2 and <i>Gazette</i> 21 Mar 2006 p. 1078)
<i>Machinery of Government (Miscellaneous Amendments) Act 2006</i> Pt. 5 Div. 1	28 of 2006	26 Jun 2006	1 Jul 2006 (see s. 2 and <i>Gazette</i> 27 Jun 2006 p. 2347)
<i>Volunteers (Protection from Liability) Amendment Act 2006</i> s. 12(2)	53 of 2006	26 Oct 2006	2 Dec 2006 (see s. 2 and <i>Gazette</i> 1 Dec 2006 p. 5297)
<i>Financial Legislation Amendment and Repeal Act 2006</i> s. 4 and 17	77 of 2006	21 Dec 2006	1 Feb 2007 (see s. 2(1) and <i>Gazette</i> 19 Jan 2007 p. 137)
<b>Reprint 3: The Disability Services Act 1993 as at 21 Sep 2007</b> (includes amendments listed above)			
<i>Standardisation of Formatting Act 2010</i> s. 4	19 of 2010	28 Jun 2010	11 Sep 2010 (see s. 2(b) and <i>Gazette</i> 10 Sep 2010 p. 4341)

<sup>1a</sup> On the date as at which this compilation was prepared, provisions referred to in the following table had not come into operation and were therefore not included in this compilation. For the text of the provisions see the endnotes referred to in the table.

**Provisions that have not come into operation**

<b>Short title</b>	<b>Number and year</b>	<b>Assent</b>	<b>Commencement</b>
<i>State Superannuation (Transitional and Consequential Provisions) Act 2000 s. 75</i> <sup>8</sup>	43 of 2000	2 Nov 2000	To be proclaimed (see s. 2(2))
<i>Health and Disability Services Legislation Amendment Act 2010 Pts. 3</i> <sup>9</sup>	33 of 2010	30 Aug 2010	To be proclaimed (see s. 2(b))

<sup>2</sup> The *Child Welfare Act 1947* was repealed by the *Children and Community Services Act 2004* s. 250. Under the *Children and Community Services Act 2004* Sch. 1 cl. 24 a reference to the *Child Welfare Act 1947* is, unless the context otherwise requires, to be read as if it had been amended to be a reference to the *Children and Community Services Act 2004*.

<sup>3</sup> The *Superannuation and Family Benefits Act 1938* was repealed by the *State Superannuation Act 2000* s. 39, but its provisions continue to apply to and in relation to certain schemes because of the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 26.

<sup>4</sup> The *Disability Services Act 1993* Sch. 6 Pt. 2 reads as follows:

“

**Part 2 — Transitional provisions**

**3. Interpretation**

In this Part “**repealed Act**” means the *Authority for Intellectually Handicapped Persons Act 1985*.

**4. Members of the Authority for Intellectually Handicapped Persons cease to hold office**

On the commencement of this Act, members of the Authority for Intellectually Handicapped Persons cease to hold office.

**5. Authority for Intellectually Handicapped Persons Account**

On the commencement of this Act the account called the “Authority for Intellectually Handicapped Persons Account” (referred to in section 21 of the repealed Act) is to be renamed the “Disability Services Commission Account” (referred to in section 15(2) of this Act).

**6. References to Authority for Intellectually Handicapped Persons**

On the commencement of this Act a reference in any written law or in any document to the Authority for Intellectually Handicapped Persons is to be construed as if it had been amended to be a reference to the Disability Services Commission, unless because of the context it would be inappropriate to do so.

**7. Director and other staff of Authority for Intellectually Handicapped Persons**

- (1) Notwithstanding section 8 of this Act, on the commencement of this Act the person who immediately before then held the office of Director under section 15 of the repealed Act, becomes, by force of this subsection, the chief executive officer of the Disability Services Commission.
- (2) Notwithstanding section 9 of this Act, on the commencement of this Act all people who immediately before then were appointed or engaged under section 16(1) or (2) of the repealed Act, become, by force of this subsection, appointed or engaged (as the case may be) under section 9(1) or (2) of this Act.
- (3) Notwithstanding section 9 of this Act, on the commencement of this Act all people who immediately before then were engaged under section 17 of the repealed Act, become, by force of this subsection, engaged under section 9(3) of this Act.
- (4) On the commencement of this Act —
  - (a) the terms and conditions, including remuneration payable, on which any person referred to in subsection (1), (2) or (3) was appointed or engaged immediately before then continue; and
  - (b) there is no break or interruption in the employment of any such person by reason of this Act commencing and nothing in this Act affects any entitlement of such a person existing immediately before then.
- (5) The appointment or engagement of any person referred to in subsection (1), (2) or (3) is capable of termination, and the terms and conditions are capable of variation, after the commencement of this Act in the same manner and to the same extent as before then.

**8. Funding agreements**

On the commencement of this Act, an agreement made with the Minister under Part 2 of the *Disability Services Act 1992* before the commencement of this Act —

- (a) is to be taken as being made with the Commission; and

(b) continues to have effect as if made under Part 4 of this Act.

**9. Advisory Council members**

Notwithstanding section 22(2) of this Act, on the commencement of this Act all people who immediately before then were members of the Advisory Council for Disability Services established under the *Disability Services Act 1992*, become, by force of this section, appointed to the Advisory Council for Disability Services continued by this Act.

”

<sup>5</sup> The *Disability Services Amendment Act 1999* s. 27 is a transitional provision that is of no further effect.

<sup>6</sup> The *Disability Services Amendment Act 2004* s. 11(2) and (3) and s. 20(2) read as follows:

“

**11. Section 22 replaced and transitional provision**

(2) Each member of the old Council immediately before commencement day is to be taken to have been appointed under section 22 of the *Disability Services Act 1993* as inserted by this section to the new Council for the term of his or her appointment to the old Council.

(3) In subsection (2) —  
*commencement day* means the day on which this section comes into operation;  
*new Council* means the Ministerial Advisory Council on Disability established under section 22 of the *Disability Services Act 1993* as inserted by subsection (1);  
*old Council* means the Advisory Council for Disability Services established under the *Disability Services Act 1992* and continued by section 22 of the *Disability Services Act 1993*.

**20. Section 28 replaced and transitional provision**

(2) A public authority that had a disability service plan immediately before commencement of this section is taken to have a disability access and inclusion plan for the purposes of section 28 of the *Disability Services Act 1993* as inserted by this section.

”

<sup>7</sup> The *State Administrative Tribunal (Conferral of Jurisdiction) Amendment and Repeal Act 2004* Pt. 5, the *State Administrative Tribunal Act 2004* s. 167 and 169, and the *State Administrative Tribunal Regulations 2004* r. 28 and 42 deal with certain transitional issues some of which may be relevant for this Act.

<sup>8</sup> On the date as at which this compilation was prepared, the *State Superannuation (Transitional and Consequential Provisions) Act 2000* s. 75 had not come into operation. It reads as follows:

“

**75. Various provisions repealed**

The provisions listed in the Table to this section are repealed.

**Table of provisions repealed**

<b>Act</b>	<b>Provision</b>
.....	.....
<i>Disability Services Act 1993</i>	Sch. 4, cl. 1
.....	.....

”

<sup>9</sup> On the date as at which this compilation was prepared, the *Health and Disability Services Legislation Amendment Act 2010* Pt. 3 had not come into operation. It reads as follows:

**Part 3 — *Disability Services Act 1993* amended**

**31. Act amended**

This Part amend the *Disability Services Act 1993*.

**32. Section 3 amended**

In section 3 delete the definition of **Director** and insert:

**Director** means the Director of the Health and Disability Services Complaints Office appointed under the *Health and Disability Services (Complaints) Act 1995*;

**33. Section 3A amended**

In section 3A(3)(b) delete “*Child Welfare Act 1947*” and insert:

*Children and Community Services Act 2004*

**34. Section 30 amended**

(1) In section 30 delete the definitions of:

***member of the staff***

***OHR***

- (2) In section 30 insert in alphabetical order:

**Complaints Office** means the Health and Disability Services Complaints Office continued by section 6(1) of the *Health and Disability Services (Complaints) Act 1995*;

**member of the staff** has the meaning given to that term by section 3(1) of the *Health and Disability Services (Complaints) Act 1995*;

**35. Section 30AA inserted**

After section 30 insert:

**30AA. This Part to be read with *Health and Disability Services (Complaints) Act 1995***

This Part is to be read with the *Health and Disability Services (Complaints) Act 1995*.

**36. Section 30A amended**

In section 30A(1):

- (a) delete “Part are —” and insert:

Part are as follows —

- (b) delete paragraph (a) and insert:

- (a) to deal with complaints in accordance with this Part;

- (c) in paragraph (b) before “to review” insert:

in collaboration with groups of service providers or groups of persons to whom disability services are provided or both,

- (d) in paragraph (f) delete “OHR” and insert:

Complaints Office

(e) in paragraph (f) delete “time; and” and insert:

time;

(f) in paragraph (g)(ii) delete “complaints.” and insert:

complaints; and

(g) after paragraph (g)(ii) insert:

(ii) advice about removing or minimising the causes of complaints.

**37. Section 31 amended**

In section 31(1) delete “through conciliation provided for under this Part,” and insert:

with the help of the Complaints Office,

**38. Section 32 amended**

In section 32(2):

(a) in paragraph (b)(ii) delete “complaint.” and insert:

complaint;

(b) after paragraph (b) insert:

or

(c) a person not chosen by the person with a disability if —

(i) the person with a disability has died; and

(ii) in the Director’s opinion, the prospective advocate is a person who has a sufficient interest in the subject matter of the complaint.

**39. Section 33 amended**

(1) In section 33(2):

(a) in paragraph (b) delete “complainant;” and insert:

complainant, whether the service was requested by the complainant or a third party; or

(b) in paragraph (f) delete “Charter,” and insert:

Charter; or

(c) after paragraph (f) insert:

(g) in respect of a complaint about a matter mentioned in paragraphs (a) to (e) made to the provider or Commission by a person with a disability, acted unreasonably by —

(i) not properly investigating the complaint or causing it to be properly investigated; or

(ii) not taking, or causing to be taken, proper action on the complaint;

or

(h) acted unreasonably by charging the complainant an excessive fee; or

(i) acted unreasonably with respect to a fee,

(d) after paragraphs (a), (c), (d) and (e) insert:

or

(2) Delete section 33(3) and the Penalty provision after it.

**40. Section 33A amended**

In section 33A delete “*Health Services (Conciliation and Review) Act 1995.*” and insert:

*Health and Disability Services (Complaints) Act 1995.*

**41. Section 36 amended**

In section 36(a) delete “or investigating”.

**42. Section 37 amended**

(1) Delete section 37(1)(a) and (b) and insert:

- (a) to accept it; or
- (b) to reject, defer or refer it under section 38,

(2) After section 37(3) insert:

(4A) If under subsection (1) a complaint is accepted, the Director may give the respondent a written notice requiring the respondent to give the Director a written response to the complaint in accordance with section 39A.

(4B) If under subsection (1) a complaint is accepted, the Director must then —

- (a) attempt to settle it in accordance with section 39B; or
- (b) refer it for conciliation under section 39 if the Director is of the opinion it is suitable to be dealt with under that section; or
- (c) investigate it if the Director is of the opinion that —
  - (i) it is not suitable to be dealt with under either section 39B or 39; and
  - (ii) an investigation is warranted, taking into account the likely costs and benefits of the investigation.

(3) After section 37(5) insert:

(6) If the Director decides that a complaint is not suitable to be dealt with under either section 39B or 39 and does not warrant investigating, the Director must advise the complainant in writing of the decision and that the Director will take no further action on the complaint.

(7) While performing functions under this section in relation to a complaint, the Director must not try to settle the complaint.

**43. Sections 39A and 39B inserted**

After section 38 insert:

**39A. Response by respondent**

- (1) A respondent who is given a notice under section 37(3)(c) may give the Director a written response to the complaint concerned.
- (2) A respondent who is given a notice under section 37(4A) must give the Director a written response to the complaint concerned.
- (3) Any response given under subsection (1) or (2) must be given to the Director within 28 days, or any longer period allowed under subsection (4), after the date on which the provider receives a notice given under section 37(3)(c) or (4A), as the case requires.
- (4) The Director may extend that 28 day period for good reason.
- (5) If a respondent does not comply with subsection (2), the Director may nevertheless deal with the complaint under this Part.
- (6) A respondent who does not comply with subsection (2) does not commit an offence.
- (7) The Director must include in the annual report of the Complaints Office required by the *Financial Management Act 2006* Part 5 the details of any breach of subsection (2) that, in the Director's opinion, was committed without a reasonable excuse.
- (8) Evidence of anything said in a response given by a respondent under this section is not admissible in proceedings before a court or tribunal.
- (9) Despite the *Parliamentary Commissioner Act 1971* section 20(3), evidence referred to in subsection (8) may be disclosed to the Parliamentary Commissioner for Administrative Investigations for the purposes of an investigation under that Act.

**39B. Resolving complaints by negotiation**

- (1) Having accepted a complaint and complied with section 37(3)(c), the Director may, by negotiating with the complainant and the respondent, attempt to bring about a settlement of the complaint that is acceptable to the parties to it.
- (2) For the purposes of subsection (1) the Director may make any inquiries the Director considers appropriate.
- (3) If within 56 days, or any longer period allowed under subsection (4), after the date of complying with section 37(3)(c) the complaint has not been settled under subsection (1), the Director must —

- (a) refer it for conciliation under section 39 if the Director is of the opinion it is suitable to be dealt with under that section; or
  - (b) investigate it if the Director is of the opinion that —
    - (i) it is not suitable to be dealt with under section 39; and
    - (ii) an investigation is warranted, taking into account the likely costs and benefits of the investigation.
- (4) The Director may extend that 56 day period if it is for the benefit of the complainant to do so.
  - (5) If the Director decides a complaint is not suitable to be dealt with under section 39 and does not warrant investigating, the Director must advise the complainant in writing of the decision and that the Director will take no further action on the complaint.
  - (6) Evidence of anything said or admitted during any negotiation conducted under subsection (1) is not admissible in proceedings before a court or tribunal.
  - (7) Despite the *Parliamentary Commissioner Act 1971* section 20(3), evidence referred to in subsection (6) may be disclosed to the Parliamentary Commissioner for Administrative Investigations for the purposes of an investigation under that Act.

**44. Section 39 amended**

- (1) Delete section 39(1) and insert:
  - (1) On referring a complaint for conciliation the Director must assign the task of conciliating the complaint to a member of the staff whose duties consist of or include the conciliation of complaints.
- (2) In section 39(2) delete “The Director’s function as conciliator” and insert:

A conciliator’s function
- (3) In section 39(4) delete “Director,” and insert:

conciliator,

- (4) After section 39(5) insert:
  
- (6) If the conciliation process fails to result in the settlement of a complaint between the complainant and the respondent, the Director must investigate the complaint, unless of the opinion that an investigation is not warranted due to the likely costs and benefits of the investigation.

**45. Section 40 amended**

- (1) Delete section 40(1).
- (2) In section 40(3):
  - (a) after “time” insert:

during an investigation
  - (b) delete “complaint by means of conciliation.” and insert:

complaint.

**46. Section 41 amended**

After section 41(7) insert:

- (8) A person who has been given a notice under this section must not, without reasonable excuse, proof of which is on the person, furnish relevant information, or produce a relevant record, that the person knows is false or misleading in a material respect.  
Penalty: \$2 500.

**47. Section 42A inserted**

At the end of Part 6 Division 3 insert:

**42A. Conciliator must not investigate**

A person who under section 39 has conciliated a complaint or attempted to do so must not investigate that complaint.

**48. Section 42 amended**

After section 42(3) insert:

- (4A) Before making a decision under subsection (1) to recommend any action that ought to be taken to remedy the matter, the Director must —
- (a) consult the respondent; and
  - (b) if any action that the Director considers ought to be taken to remedy the matter is likely to have an impact on people other than the respondent, consult a group of those people.

**49. Section 44A amended**

In section 44A(4) delete “OHR” and insert:

Complaints Office

**50. Section 44B amended**

In section 44B(2)(c) delete “OHR” and insert:

Complaints Office

**51. Section 46B inserted**

After section 46A insert:

**46B. False or misleading statements**

A person must not make a statement in a complaint, statement or report given to the Director under this Part that the person knows to be false or misleading in a material respect.

Penalty: \$2 500.

**52. Section 50 amended**

In section 50 delete “*Health Services (Conciliation and Review) Act 1995*,” and insert:

*Health and Disability Services (Complaints) Act 1995*,

