

Western Australia

## **Disability Services Amendment Act 2012**

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As at 22 Nov 2012

No. 40 of 2012

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## Disability Services Amendment Act 2012

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Western Australia

## **Disability Services Amendment Act 2012**

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**No. 40 of 2012**

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**An Act to amend the *Disability Services Act 1993*.**

*[Assented to 22 November 2012]*

The Parliament of Western Australia enacts as follows:

**s. 1**

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**1. Short title**

This is the *Disability Services Amendment Act 2012*.

**2. Commencement**

This Act comes into operation as follows —

- (a) sections 1 and 2 — on the day on which this Act receives the Royal Assent;
- (b) the rest of the Act — on a day fixed by proclamation, and different days may be fixed for different provisions.

**3. Act amended**

This Act amends the *Disability Services Act 1993*.

**4. Section 3 amended**

In section 3 insert in alphabetical order:

*Disability Services Standards* are those standards prescribed in accordance with section 12(1)(i);

**5. Section 7 amended**

(1) In section 7(2):

- (a) in paragraph (b)(iii) delete “in caring for” and insert:

as a carer of

- (b) in paragraph (d) delete “is to have a relative” and insert:

has recent experience as a carer of a person

- (2) In section 7(2):
  - (a) after each of paragraphs (a) to (c) insert:  
  
and
  - (b) after each of paragraph (b)(i) and (ii) insert:  
  
or

**6. Section 12 amended**

- (1) Delete section 12(1)(i) and insert:
  - (i) to adopt Disability Services Standards as prescribed, and with such modification as is prescribed, and ensure that those standards are met by service providers; and
- (2) In section 12(1) after each of paragraphs (a) to (h) and (j) insert:  
  
and

**7. Section 22 amended**

- (1) After section 22(4)(b) insert:
  - (ca) at least 2 of them have had recent experience as a carer of a person with disability; and
- (2) After section 22(4)(a) insert:  
  
and

**8. Section 23 amended**

- (1) In section 23(1)(b) delete “standards” and insert:

quality

- (2) In section 23(1a) delete “undertake public consultation in accordance with the procedure specified in the regulations” and insert:

ensure that the interests of the public generally, and the interests of affected stakeholders in particular, are considered

**9. Section 25 amended**

In section 25(5):

- (a) delete “a disability” and insert:

disability

- (b) in paragraph (a) delete “a disability” (first occurrence) and insert:

disability

- (c) in paragraph (b) delete “a disability” and insert:

disability



**10. Section 29A amended**

In section 29A delete “disabilities,” and insert:

disability,

**11. Section 30A amended**

In section 30A(2) delete “42A.” and insert:

43B.

**12. Section 32 amended**

(1) After section 32(1) insert:

(2A) A complaint may be made to the Director under this section by a professional registration Board where that Board becomes aware of one or more of the matters set out in section 33(2) in relation to a member of its profession.

(2) In section 32(3) delete “to a” and insert:

to, or is in a de facto relationship with, a

**13. Section 33 amended**

After section 33(2)(f) insert:

(ga) failed to comply with the Disability Services Standards, or failed to ensure that those standards were met by service providers; or

**14. Section 38 amended**

After section 38(4) insert:

- (5) If a complaint raises issues that in the opinion of the Director would be better dealt with by a professional registration Board, the Director may, with the written consent of the complainant, refer the complaint to the appropriate Board to be dealt with by that Board's disciplinary powers.

**15. Section 39 amended**

In section 39(6) delete “must investigate the complaint, unless of the opinion that an investigation is not warranted due to” and insert:

may investigate the complaint, if of the opinion that an investigation is warranted, taking into account

**16. Section 40 amended**

- (1) In section 40(4):

- (a) delete “to —” and insert:

to the following —

- (b) in paragraph (d) delete “standard” and insert:

quality

(c) delete paragraph (e) and insert:

(e) the Disability Services Standards;

(2) After section 40(6) insert:

(7) If the conciliation process is successful in the settlement of a complaint between the complainant and the respondent, the conciliator must make a final report to the Director on the result of that process.

(8) A report made under subsection (7) is to include details of any agreement reached.

**17. Section 43A inserted**

After section 42 insert:

**43A. Warrants**

(1) If the Director considers it necessary or appropriate for a particular investigation under this Act, the Director may apply for a warrant under the *Health and Disability Services (Complaints) Act 1995* section 63 to further that investigation.

(2) If a warrant is issued as a result of that application, the Director may act upon the warrant issued under that Act in accordance with, and subject to the provisions of, Part 4 of that Act.

**18. Section 42A (second occurrence) renumbered and amended**

(1) Renumber section 42A (inserted by Act No. 57 of 2004 section 27) as section 43B.

**s. 19**

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- (2) In section 43B(3)(a) delete “a disability; or” and insert:

disability; or

**19. Section 46A amended**

In section 46A(2) delete “immediately.” and insert:

and report the result of the investigation to the presiding officer of the House or committee within any time limit set out in the referral.

**20. Section 48A inserted**

After section 47 insert:

**48A. Prescribed service provider must give certain information**

- (1) Within the prescribed time after 30 June in each year a prescribed service provider or a service provider that belongs to a prescribed class of service providers must give to the Director a return concerning complaints received and action taken by the service provider during the year that ended on that 30 June.  
Penalty: a fine of \$1 000.
- (2) The return is to be in the prescribed form or the form prescribed for the class of service providers, as the case may require.

**21. Section 57 amended**

- (1) Delete section 57(2) and insert:
  - (2) The review is to consider whether the policy objectives of the Act remain valid and whether the provisions of the Act are still appropriate for securing those objectives.
- (2) Delete section 57(3) and (4).

**22. Schedules 1 and 2 replaced**

Delete Schedules 1 and 2 and insert:

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

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

1. People with disability are individuals who have the inherent right to respect for their human worth and dignity without discrimination and with equality of opportunity.
2. People with disability, whatever the origin, nature, type or degree of disability, have the same human rights as other members of society and should be enabled to exercise those human rights.
3. People with disability have the same rights as other members of society to realise their individual capacities for physical, social, emotional, intellectual, cultural and spiritual development.
4. People with disability have the same right as other members of society to access services that will support their choices, assist them to be as independent as possible and enable them to participate in all aspects of life.

5. People with disability have the same right as other members of society to participate in, direct and implement the decisions that affect their lives.
6. People with disability have the same right as other members of society to receive services in a manner that respects and protects their rights and opportunities and is the least restrictive option in the circumstances.
7. People with disability have the right to pursue any grievance concerning services.
8. People with disability have the right to access the type of services and supports that they believe are most appropriate to meet their needs.
9. People with disability who reside in country areas have a right, as far as is reasonable to expect, to have access to similar services provided to people with disability who reside in the metropolitan area.
10. People with disability have a right to an environment free from neglect, abuse, violence, intimidation and exploitation.

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

[s. 12, 24, 28 and 40]

1. Programmes and services are to focus on achieving positive outcomes for people with disability, such as increased independence, employment opportunities and inclusion and participation within the community.
2. Programmes and services are to contribute to ensuring that the conditions of the every day life of people with disability are the same as 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 flexible and responsive to the individual choices and needs of people with disability, their families, carers and significant others.

5. Programmes and services are to be designed and administered so as to be sensitive and responsive to the individual and diverse needs of all people with disability taking into account their age, gender, religion, Aboriginality, cultural or linguistically diverse backgrounds or geographic location.
6. Programmes and services are to be designed and administered to promote awareness of the abilities and contributions of people with disability and foster respect for their rights and dignity.
7. Programmes and services are to be designed and administered so as to promote the participation of people with disability in the life of the local community through physical, social, economic, emotional, intellectual, cultural 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 disability who use their services, their families and carers, their advocates, 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 disability to reach goals and enjoy lifestyles that support their choices and are valued by the community.
11. Programmes and services are to be designed and administered so as to ensure that people with disability have access to advocacy support, to enable them to make choices and participate in decisions about the services they receive or are seeking.
12. Programmes and services are to be designed and administered so as to ensure that avenues exist for people

- with disability to raise, and have resolved, any grievances about services.
13. Programmes and services are to be designed and implemented in an accessible manner.
  14. Programmes and services are to be designed and administered so as to respect the rights of people with disability to privacy and confidentiality.
  15. Programmes and services are to begin as early as possible so as to prevent the occurrence of, or minimise, disability so people with disability can be as independent as possible and participate in all aspects of life.
  16. Programmes and services are to be designed and implemented to —
    - (a) acknowledge, recognise, respect and respond to the role of families, carers and significant others in supporting people with disability; and
    - (b) respond to the views and needs of families, carers and significant others; and
    - (c) strengthen and build the capacity of families, carers and significant others in supporting people with disability.
  17. Programmes and services are to provide —
    - (a) people with disability and their families and carers with opportunities for participating continually in the planning and operation of services they receive; and
    - (b) opportunities for people with disability, their families and their carers to be consulted about the development of major policy, programme or operational changes.



**23. Schedule 5 amended**

After Schedule 5 clause 1(1a) insert:

- (1B) Despite subclauses (1) and (1a), the deputy chairperson may have his or her appointment extended for up to a year, at the discretion of the Minister.

**24. Various references to “disability” amended**

In the provisions listed in the Table:

- (a) delete “**disabilities**” and insert:

**disability**

- (b) delete “disabilities” (each occurrence) and insert:

disability

- (c) delete “**disabilities**” and insert:

**disability**

- (d) delete “a disability” (each occurrence) and insert:

disability

**Table**

Long Title	s. 3 def. of <i>disability service</i>
s. 3A(1), (3)(a) and (b)	s. 4(1)
s. 7(2)(b), (c), (d) and (e)	s. 7(3)(b)
s. 12(1)(a), (e), (f), (g) and (j)	s. 21(4)(a)

**s. 24**

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s. 21B(b)	s. 22(4)
s. 23(1)(a)	Pt. 4 heading
s. 24(1)(a)	s. 25(4)
s. 30A(1)(c), (e) and (g) and (2)	s. 32(1), (2) and (3)
s. 33(2)(g)	s. 42(4)(a)
s. 46(a)	s. 53

Note: Heading to section 26B to read:

**Method of contracting to provide services for people with  
disability**

