

Western Australia

Disability Services Amendment Act 2004

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No. 57 of 2004

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Disability Services Amendment Act 2004

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Western Australia

Disability Services Amendment Act 2004

No. 57 of 2004

An Act to amend the *Disability Services Act 1993* and to consequentially amend various other Acts.

[Assented to 18 November 2004]

The Parliament of Western Australia enacts as follows:

1. Short title

This Act may be cited as the *Disability Services Amendment Act 2004*.

2. Commencement

- (1) This Act comes into operation on a day fixed by proclamation.
- (2) Different days may be fixed under subsection (1) for different provisions.

3. The Act amended

The amendments in this Act, other than sections 35 and 36, are to the *Disability Services Act 1993**.

[* *Reprinted as at 26 May 2000.*

*For subsequent amendments see Western Australian
Legislation Information Tables for 2003, Table 1, p. 105.]*

4. Long title amended

The long title is amended by deleting “for Disability Services,” and inserting instead —

“ **on Disability,** ”.

5. Section 3 amended

Section 3 is amended as follows:

- (a) by inserting in the appropriate alphabetical positions —

“

“**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 section 6 of the *Metropolitan Region Town Planning Scheme Act 1959*;

”;

- (b) in the definition of “Council” by deleting “for Disability Services referred to in section 22;” and inserting instead —
- “ on Disability established under section 22; ”;
- (c) in the definition of “service developer” —
- (i) in paragraph (a) by deleting “services for people with disabilities;” and inserting instead —
- “
- disability services other than disability services provided by carers;
- ”; and
- (ii) by deleting “services to people with disabilities;” in each place where it occurs and inserting instead —
- “
- disability services other than disability services provided by carers;
- ”;
- (d) in the definition of “service provider” by deleting “services to people with disabilities, but does not include a person as defined in section 24(1)(a).” and inserting instead —
- “
- disability services other than disability services provided by carers.
- ”.

6. Section 6 amended

After section 6(4) the following subsection is inserted —

“

- (5) The Commission is to be taken to be a department established under section 35 of the *Public Sector Management Act 1994*.

”.

7. Section 7 amended

(1) Section 7(2) is amended as follows:

- (a) after “appointed by the Minister” by inserting —
“ from persons nominated under subsection (2a) ”;
- (b) after paragraph (c) by deleting “and”;
- (c) at the end of paragraph (d) by deleting the full stop and inserting instead —

“

; and

- (e) at least 2 of whom have had recent experience in matters relevant to people with disabilities outside the metropolitan region.

”.

(2) After section 7(2) the following subsection is inserted —

“

- (2a) The Minister is to seek nominations, in accordance with the regulations, of persons for appointment as members of the Board.

”.

8. Section 12 amended

(1) Section 12(1) is amended as follows:

- (a) in paragraph (b) by deleting “of services to people with disabilities;” and inserting instead —

“

, encouragement and facilitation of disability services;

”;

- (b) in paragraph (d) by deleting “services specifically for people with disabilities;” and inserting instead —

- “ disability services; ”;
- (c) in paragraph (h) by deleting “disability service plans” and inserting instead —
 - “ disability access and inclusion plans ”;
- (d) in paragraph (i) by deleting “services to people with disabilities;” and inserting instead —
 - “
disability services other than disability services
provided by carers;
”.

- (2) Section 12(3) is repealed and the following subsection is inserted instead —

- “
 - (3) In performing its functions the Commission is to —
 - (a) further the principles in Schedule 1; and
 - (b) meet the objectives in Schedule 2.”.

9. Section 21B amended

Section 21B(b) is amended by deleting “or service providers.” and inserting instead —

“ service providers or carers. ”.

10. Heading to Part 3 amended

The heading to Part 3 is amended by deleting “for Disability Services” and inserting instead —

“ **on Disability** ”.

11. Section 22 replaced and transitional provision

- (1) Section 22 is repealed and the following section is inserted instead —

“

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.

”.

- (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*.

12. Section 23 amended

(1) Section 23(1)(b) is amended by deleting “services for people with disabilities;” and inserting instead —

“

disability services other than disability services provided by carers;

”.

(2) After section 23(1) the following subsection is inserted —

“

(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).

”.

13. Section 24 amended

Section 24(1) is repealed and the following subsection is inserted instead —

“

(1) The Commission may approve a grant of financial assistance, from moneys standing to the credit of the Account, to —

s. 14

- (a) a person with a disability;
- (b) a carer;
- (c) a service provider; or
- (d) a service developer.

”.

14. Section 25 amended

Section 25(4) is amended as follows:

- (a) by deleting “section 24(1)(b) or (c)” and inserting instead —
“ section 24(1)(c) or (d) ”;
- (b) by deleting the full stop at the end of the subsection and inserting instead —

“

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

”.

15. Heading to Part 4A amended

The heading to Part 4A is amended by deleting “services for people with disabilities” and inserting instead —

“ **some disability services** ”.

16. Section 26A amended

Section 26A is amended by inserting after the definition of “commencement day” —

“

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

”.

17. Section 26B amended

Section 26B(1) is repealed and the following subsection is inserted instead —

“

- (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.

”.

18. Section 26C amended

Section 26C(1) is amended as follows:

- (a) by inserting before “service” —
“ disability ”;
- (b) by deleting “referred to in section 26B(1)”.

19. Heading to Part 5 amended

The heading to Part 5 is amended by deleting “Disability service plans” and inserting instead —

“ **Disability access and inclusion plans** ”.

20. Section 28 replaced and transitional provision

- (1) Section 28 is repealed and the following section is inserted instead —

“

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.

”.

- (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.

21. Section 29 amended

- (1) Section 29(1), (2) and (3) are amended by deleting “disability service plan” and inserting instead —

“ disability access and inclusion plan ”.

- (2) After section 29(3) the following subsection is inserted —

“

- (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.

”.

22. Sections 29A to 29C inserted

After section 29 the following sections are inserted in Part 5 —

“

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.

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.

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.

”

23. Heading to Part 6 amended

The heading to Part 6 is amended by deleting “services provided to people with disabilities” and inserting instead —

“ **some disability services** ”.

24. Section 30 amended

Section 30 is amended in the definition of “disability service” as follows:

(a) by deleting “means a service provided specifically to people with disabilities” and inserting instead —

“ has the meaning given by section 3 ”;

(b) after paragraph (aa) by deleting “or”;

(c) after paragraph (aa) by inserting —

“

(ab) such a service where it is provided by a carer; or

”;

(d) by inserting in the appropriate alphabetical position —

“

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

”.

25. Section 30A inserted

After section 30 the following section is inserted —

“

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.

”.

26. Section 40 amended

- (1) Section 40(2) is repealed.
- (2) Section 40(4)(c) is amended by deleting “disability service plan” and inserting instead —
“ disability access and inclusion plan ”.

27. Section 42 replaced by sections 42 and 42A

Section 42 is repealed and the following sections are inserted instead —

“

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.

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 II Division 14 of the *Financial Administration and Audit Act 1985*.
- (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.

”.

28. Section 44 amended

Section 44(3) is amended by deleting “table” and inserting instead —

“ lay ”.

29. Part 6 Division 4A inserted

After section 44 the following Division is inserted —

“

Division 4A — Director’s relationship with the Minister

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 section 66 of the *Financial Administration and Audit Act 1985*.

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.

”.

30. Section 46 replaced

Section 46 is repealed and the following section is inserted instead —

“

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.

”.

31. Section 46A inserted

After section 46 the following section is inserted —

“

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.

”.

32. Schedule 1 replaced

Schedule 1 is repealed and the following Schedule is inserted instead —

“

Schedule 1 — Principles applicable to people with disabilities

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

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.

”.

33. Schedule 2 replaced

Schedule 2 is repealed and the following Schedule is inserted instead —

“

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

[s. 12, 24, 28, 40]

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.

”.

34. Schedule 5 amended

- (1) Schedule 5 is amended by deleting the headings to the Schedule and inserting instead —

“

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

”.

- (2) Schedule 5 clause 1(b) is amended by deleting “terms;” and inserting instead —

“ terms unless subclause (1a) applies; ”.

- (3) After Schedule 5 clause 1(1) the following subclause is inserted —

“

- (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).

”.

35. Consequential amendment to the *Constitution Acts Amendment Act 1899*

- (1) The amendment in this section is to the *Constitution Acts Amendment Act 1899**.

[* *Reprint 12 as at 3 October 2003.*
For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 77 and Act No. 35 of 2003.]

- (2) Schedule V Part 3 is amended by deleting “The Ministerial Advisory Council for Disability Services established under the *Disability Services Act 1993*.” and inserting instead —

“

The Ministerial Advisory Council on Disability established under the *Disability Services Act 1993*.

”.

36. Consequential amendment to the *Health Services (Conciliation and Review) Act 1995*

- (1) The amendment in this section is to the *Health Services (Conciliation and Review) Act 1995**.

[* *Reprinted as at 1 June 2001.*
For subsequent amendments see Western Australian Legislation Information Tables for 2003, Table 1, p. 173.]

(2) After section 11(3) the following subsection is inserted —

“

(4) In subsection (1) —

“functions of the Director” does not include the
functions of the Director under the *Disability
Services Act 1993*.

”.

=====