

DISABILITY SERVICES ACT 1993

(No. 36 of 1993)

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WESTERN AUSTRALIA

DISABILITY SERVICES ACT 1993

No. 36 of 1993

AN ACT for the establishment of the Disability Services Commission and the Advisory Council for Disability Services, 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.

[Assented to 16 December 1993.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY

Short title

1. This Act may be cited as the *Disability Services Act 1993*.

Commencement

2. This Act comes into operation 7 days after the day on which it receives the Royal Assent.

Interpretation

3. 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;

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

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

“**Commissioner**” means the Commissioner for Equal Opportunity appointed under the *Equal Opportunity Act 1984*;

“**Council**” means the Advisory Council for Disability Services referred to in section 22;

“**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;

“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 organization specified in column 2 of the Schedule to the *Public Service Act 1978*;
- (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 services for people with disabilities;
- (b) researches the provision of services to people with disabilities;

- (c) plans for the provision of services to people with disabilities;
- (d) develops proposals for the provision of services to people with disabilities;
- (e) initiates the provision of services to people with disabilities;
- (f) develops or implements training programmes for people who provide services to people with disabilities;
- (g) researches the effects of providing services to people with disabilities; 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 services to people with disabilities, but does not include a person as defined in section 24 (1) (a).

Legal proceedings to enforce provision of a service

4. (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.

Crown bound

5. This Act binds the Crown.

PART 2 — DISABILITY SERVICES COMMISSION

Division 1 — Establishment and personnel

Commission a body corporate

6. (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.

Board of the Commission

7. (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 —

(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; and
- (d) at least one of whom is to have a relative with a disability.

(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.

Chief executive officer

8. (1) A chief executive officer of the Commission is to be appointed under and subject to the *Public Service Act 1978*.

(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.

Other personnel

9. (1) Other officers who are necessary to enable the Commission to perform its functions may be appointed under and subject to the *Public Service Act 1978*.

(2) The Commission may employ people otherwise than under the *Public Service Act 1978*, and such people are to be employed subject to any relevant industrial award or agreement.

(3) The Commission may, with the approval of the Minister, employ under contracts for services such people to provide professional, technical or other assistance as it considers necessary to enable it to perform its functions.

Use of other government staff etc.

10. (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 Public Service Commissioner agree.

Superannuation etc.

11. Schedule 4 has effect.

Division 2 — Functions**Functions of the Commission**

12. (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 of services to people with disabilities;
 - (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 services specifically for people with disabilities;
 - (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 service plans under Part 5 and to evaluate the effectiveness of such plans;

- (i) to establish guidelines and standards for the provision of services to people with disabilities;
- (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 co-operate and act jointly with people or bodies so far as is necessary for the performance of its functions.

(2) 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 further —

- (a) the principles in Schedule 1; and
- (b) the services and programmes provided meeting the objectives in Schedule 2.

Power to fix fees etc.

13. (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.

Delegation

14. 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**Funds of the Commission**

15. (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.
- (2) The funds referred to in subsection (1) are to be credited to one account called the “Disability Services Commission Account” at either —
- (a) the Treasury and forming part of the Trust Fund constituted under section 9 of the *Financial Administration and Audit Act 1985*; or
 - (b) a bank approved by the Treasurer.
- (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.

Borrowing from Treasurer

16. (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).

Borrowing generally

17. (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.

Treasurer's guarantee

18. (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 Fund, 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 Fund.

(6) The Treasurer may fix charges to be paid by the Commission to the credit of the Consolidated Fund 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.

Application of *Financial Administration and Audit Act 1985*

19. The provisions of the *Financial Administration and Audit Act 1985* regulating the financial administration, audit and reporting of statutory authorities apply to and in respect of the Commission and its operations.

Division 4 — Relationship with the Minister

Minister may give directions

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

Minister to have access to information

21. (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.

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- (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.

PART 3 — ADVISORY COUNCIL FOR DISABILITY SERVICES

Council to be constituted

22. (1) The Advisory Council for Disability Services established under the *Disability Services Act 1992* (repealed in Schedule 6) is continued under and subject to this Act.

(2) The Council is to comprise not more than 14 members, appointed by the Minister, who have disabilities, or who have knowledge of, and experience in, matters relevant to people with disabilities and who have been chosen so as to reflect the interests of the entire spectrum of disabilities.

(3) Schedule 5 has effect.

Council's functions

23. (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 —

(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 services for people with disabilities; 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.

(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.

**PART 4 — FINANCIAL ASSISTANCE FOR MATTERS
RELATING TO PEOPLE WITH DISABILITIES**

Financial assistance may be approved

24. (1) The Commission may approve a grant of financial assistance, out of the Account, to —

- (a) a person with a disability, or to an individual who resides with such a person and —
 - (i) who is related (by blood or marriage) to or is the guardian of such a person; and
 - (ii) who looks after or otherwise provides services to such a person;
- (b) a service provider; or
- (c) 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.

Grant to be subject of agreement

25. (1) A person is not to be paid funds under a grant of financial assistance until the person has entered into an agreement in 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), such an agreement may require the recipient of a grant to report to the Commission —

- (a) the death of any person with a disability; or
- (b) any injury that is not of a trivial nature which is received by a person with a disability.

Minister may review Commission's decisions

26. (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 5 — DISABILITY SERVICE PLANS
BY PUBLIC AUTHORITIES**

Application of Part

27. (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.

Disability service plans to be prepared and implemented

28. (1) Each public authority must prepare and implement a disability service 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.

(2) A disability service plan must be prepared without delay and in any event before 1 January 1996.

(3) When prepared, a disability service plan must be lodged with the Commission.

(4) A disability service plan may be amended at any time and if it is the amendments must be lodged with the Commission.

Annual report about disability service plan

29. A public authority that has lodged a disability service plan with the Commission —

- (a) if required to report under section 62 or 66 of the *Financial Administration and Audit Act 1985* — must include in such a report, a report about the implementation of the disability service plan; or
- (b) otherwise, must report to the Commission before 1 September in each year about the implementation of the disability service plan.

**PART 6 — COMPLAINTS ABOUT SERVICES PROVIDED
TO PEOPLE WITH DISABILITIES**

Division 1 — Preliminary

Interpretation

30. In this Part, unless the contrary intention appears —

“complaint” means a complaint under Division 2;

“disability service” means a service provided specifically to people with disabilities but does not include —

(a) such a service where it is provided wholly or partly from funds provided by the Health Department; or

(b) such a service where it is prescribed by regulation;

“Health Department” means the department assisting the Minister administering the *Health Act 1911*;

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

Parties themselves may resolve complaint

31. (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 Commissioner of the fact without delay.

(2) When the Commissioner becomes aware that a complaint has been resolved, he or she must stop dealing with it under this Part.

Division 2 — Complaints and conciliation

Who may complain

32. (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 Commissioner —

- (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 recognized 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 Commissioner may recognize 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 Commissioner'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.

Who and what can be complained about

33. (1) A complaint may only be about —

- (a) a service provider who or which, at the time the subject matter of the complaint arose —
 - (i) was providing a disability service, whether or not with funds granted under Part 4; and
 - (ii) was subject to an agreement under section 25;
- (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
- (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,

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.

Time for complaining

34. The Commissioner must reject a complaint the subject matter of which occurred more than 12 months before the complaint is made unless, in the Commissioner's opinion, the complainant has shown good reason for the delay.

How to complain

35. (1) A person may complain to the Commissioner orally, including by telephone, or in writing.

(2) If the Commissioner receives an oral complaint the Commissioner must require the complainant to confirm it in writing unless the complainant satisfies the Commissioner that there is good reason why the complaint should not be confirmed in writing.

(3) The Commissioner 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 Commissioner may require a complainant to give more information about the complaint within a time fixed by the Commissioner.

(5) If a complainant does not comply with a requirement of the Commissioner under subsection (2), (3) or (4), the Commissioner may reject the complaint.

Withdrawal of complaint

36. A complainant may at any time withdraw the complaint by notifying the Commissioner and the Commissioner 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.

Preliminary decision by Commissioner

37. (1) Within 28 days after receiving a complaint the Commissioner 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 Commissioner 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 Commissioner to make a decision under subsection (1) the Commissioner may make such inquiries as the Commissioner considers appropriate.

(3) Within 14 days after making a decision under subsection (1), the Commissioner 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 Commissioner.

(4) If the Commissioner 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 Commissioner, in giving written details under subsection (3) (b) or (c), is not to disclose the identity of the complainant.

(5) Where the Commissioner has acted under subsection (4), the Commissioner must disclose the identity of the complainant to the respondent if the Commissioner later becomes satisfied that the circumstances described under that subsection no longer apply.

Rejection, deferral or referral of complaints

38. (1) The Commissioner must reject a complaint that in the Commissioner'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 Commissioner 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 Commissioner 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 Commissioner would be better dealt with under another written law, the Commissioner 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 Commissioner may not refer a complaint to a court.

Conciliation of complaints

39. (1) The Commissioner 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 Commissioner'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 recognized under section 32 (2);
- (b) if the Commissioner is satisfied that the process will not work effectively otherwise, the Commissioner 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 Commissioner, 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.

Division 3 — Investigations**Investigation of complaints and referred matters**

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

(2) The Commissioner must investigate any matter referred to the Commissioner for investigation by the Minister under section 46.

(3) The Commissioner 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 Commissioner to decide whether or not any unreasonable conduct referred to in section 33 (2) has occurred and in so deciding, the Commissioner 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; and
 - (c) any disability service plan lodged under section 28.
- (5) In conducting an investigation the Commissioner —
- (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 Commissioner may make use of officers appointed under the *Equal Opportunity Act 1984* to assist the Commissioner under that Act.

Commissioner's powers on investigation

41. (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 recognized 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 Commissioner may, by notice in writing given to a person, require the person —

- (a) to furnish the Commissioner 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 Commissioner such relevant records as are specified in the notice.

(3) The Commissioner is not to issue a notice under subsection (2) to a person unless the Commissioner 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 Commissioner 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 Commissioner 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.

Division 4 — Consequences of investigation

Commissioner to decide, give reasons etc.

42. After an investigation the Commissioner must decide whether or not any unreasonable conduct referred to in section 33 (2) has occurred and, within 14 days after deciding, must give —

- (a) in the case of a complaint — the complainant and the respondent; or
- (b) in the case of a matter referred by the Minister under section 46 — the Minister and any person affected by the decision,

written notice of the decision which must —

- (c) include the reasons for the decision; and
- (d) if the Commissioner has decided that unreasonable conduct has occurred, set out any action that the Commissioner recommends ought to be taken to remedy the matter by —
 - (i) the respondent;
 - (ii) any other person.

Respondent to report on remedial action

43. (1) If a decision under section 42 recommends remedial action be taken by the respondent, the respondent must, within 42 days after receiving the notice of the decision, report in writing to the Commissioner what action the respondent has taken to remedy the matter.

Penalty: \$2 500.

(2) Within the 42 day period referred to in subsection (1), the respondent may ask the Commissioner to extend the time within which the respondent must report to the Commissioner.

(3) If asked under subsection (2), the Commissioner may extend the time by no more than 14 days.

Report to Parliament where report not made or remedial action not taken

44. (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 Commissioner 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 Commissioner's opinion is reasonable, the Commissioner 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 table both before each House of Parliament.

(4) The Commissioner is not to include the complainant's name in the material given to the Minister under subsection (1) or (2) unless authorized to do so by the complainant.

Division 5 — General

Proceedings to stop if court action etc.

45. (1) The Commissioner must stop dealing with or investigating a complaint if the Commissioner 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 Commissioner stops dealing with a complaint under subsection (1), the Commissioner must, within 14 days of doing so, give written notice of the fact to the complainant and the respondent.

(3) If the Commissioner 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 Commissioner may, with the consent of the complainant, resume dealing with the complaint under this Part.

Minister may refer matters for investigation

46. Where the Minister is of the opinion that circumstances exist in relation to a person with a disability that would justify a complaint being made under this Part, the Minister may refer the matter to the Commissioner to be investigated under Division 3.

Person not to be penalized because of complaining

47. 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 Commissioner 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.

Registers of complaints

48. (1) The Commissioner 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 Commissioner.

(3) The form and contents of the registers are to be determined from time to time by the Commissioner.

Delegation

49. The Commissioner may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to officers appointed under the *Equal Opportunity Act 1984* to assist the Commissioner under that Act, the Commissioner'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.

Confidentiality

50. Section 167 of the *Equal Opportunity Act 1984*, with such modifications as are necessary, applies to the Commissioner and to a delegate under section 49 in respect of information or documents relating to the affairs of another person acquired by the Commissioner or delegate under this Part.

PART 7 — MISCELLANEOUS**Protection**

51. (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.

Confidentiality

52. (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;
- (c) for the purpose of proceedings before the Guardianship and Administration Board established 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.

Offence of ill-treatment

53. 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.

Prosecution of offences

54. (1) A complaint under the *Justices Act 1902* for an offence against this Act may be made or sworn by the chief executive officer or a person authorized in writing to do so by the chief executive officer.

(2) In any proceedings for an offence against this Act the authority of the complainant to make or swear the complaint is to be presumed in the absence of evidence to the contrary.

Parliamentary Commissioner may conduct investigation

55. 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.

Regulations

56. 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.

Review of Act

57. (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 Commissioner to provide a report about the nature of complaints made under Part 6.

(3) If so requested, the Commissioner 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 Commissioner 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.

Repeal, transitional provisions and consequential amendments

58. Schedule 6 has effect.

SCHEDULE 1[ss. 12, 23, 24,
28, 40, 57]**PRINCIPLES APPLICABLE TO
PEOPLE WITH DISABILITIES**

1. People with disabilities are individuals who 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 realize 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 recognizes the role of the family unit.
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 which results in the least restriction of their rights and opportunities.
7. People with disabilities have the same right of pursuit of any grievance in relation to services as have other members of society.
8. People with disabilities have the right to access the type of accommodation and employment that they believe is most appropriate.
9. People with disabilities 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 disabilities who reside in the metropolitan area.

SCHEDULE 2

[ss. 12, 24, 28, 40]

**OBJECTIVES FOR SERVICES AND PROGRAMMES
RELATING TO PEOPLE WITH DISABILITIES**

1. Services are to have as their focus the achievement of positive outcomes for people with disabilities, such as increased independence, employment opportunities and integration into the community.
2. 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. Wherever possible, services are to be integrated with services generally available to members of the community.
4. Services are to be tailored to meet the individual needs and goals of the people with disabilities receiving those services.
5. Programmes and services are to be designed and administered so as to meet the needs of people with disabilities who experience additional disadvantage as a result of their age, gender, ethnic origin, geographical remoteness, or aboriginality.
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 and social integration in that community.
8. Programmes and services are to be designed and administered so as to ensure that no single organization providing services shall exercise control over all or most aspects of the life of a person with disabilities.
9. Organizations providing services, whether those services are provided specifically to people with disabilities or generally to members of the community, are to 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.

Sch. 2

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 generally and are appropriate to their actual age.
11. 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.
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. Services are to be designed and implemented as part of local co-ordinated service systems and integrated with services generally available to members of the community, wherever possible. Units of the public sector are to develop, plan and deliver disability programmes and services in a co-ordinated 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 which 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, carers and advocates of people with disabilities;
 - (b) recognize the demands on the families of people with disabilities; and
 - (c) take into account the implications for, and demands on, the families of people with disabilities.
17. Services are to be designed and administered so as to —
 - (a) provide people with disabilities with, and encourage them to make use of, ways to participate continually in the planning and operation of services they receive; and
 - (b) provide for people with disabilities to be consulted about the development of major policy or programme changes.

SCHEDULE 3

[s. 7 (4)]

**PROVISIONS APPLICABLE TO THE
BOARD OF THE COMMISSION**

Tenure of office

1. (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) 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;
 - (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 Law;
 - (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.
- (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).

Sch. 3**Chairperson**

2. (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.

Meetings

3. (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.

Remuneration

4. 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 Public Service Commissioner.

SCHEDULE 4

[s. 11]

**PROVISIONS APPLICABLE TO
THE COMMISSION'S PERSONNEL**

Superannuation

1. (1) If a person was a contributor within the meaning of the *Superannuation and Family Benefits Act 1938* 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*; 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.

Saving of leave entitlements

2. (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

[s. 22 (3)]

**PROVISIONS APPLICABLE TO THE
ADVISORY COUNCIL FOR DISABILITY SERVICES**

Tenure of office

1. (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; and
 - (c) 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 Law;
 - (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.

Chairperson

2. (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.

Meetings

3. (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.

Remuneration

4. 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 Public Service Commissioner.

SCHEDULE 6

[s. 58]

**REPEALS, CONSEQUENTIAL AMENDMENTS
AND TRANSITIONAL PROVISIONS**

PART 1 — REPEALS

Authority for Intellectually Handicapped Persons Act 1985
repealed

1. The *Authority for Intellectually Handicapped Persons Act 1985* is repealed.

Disability Services Act 1992 repealed

2. The *Disability Services Act 1992* is repealed.

PART 2 — TRANSITIONAL PROVISIONS

Interpretation

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

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

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

Authority for Intellectually Handicapped Persons Account

5. 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).

References to Authority for Intellectually Handicapped Persons

6. 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.

Director and other staff of Authority for Intellectually Handicapped Persons

7. (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.

Funding agreements

8. 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.

Advisory Council members

9. 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.

PART 3 — CONSEQUENTIAL AMENDMENTS

***Constitution Acts Amendment Act 1899* amended**

10. Part 3 of Schedule V to the *Constitution Acts Amendment Act 1899** is amended by inserting after the item referring to the Dental Charges Committee the following item —

“

The Disability Services Commission being the body continued by section 6 of the *Disability Services Act 1993*.

”

[* *Reprinted as at 6 April 1993.*

For subsequent amendments see Acts Nos. 59 and 77 of 1992.]

***Financial Administration and Audit Act 1985* amended**

11. Schedule 1 to the *Financial Administration and Audit Act 1985** is amended by deleting “Authority for Intellectually Handicapped Persons” and inserting in the appropriate alphabetical position the following —

“ Disability Services Commission ”.

[* *Reprinted as at 1 July 1991.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, pp. 73-4 and Acts Nos. 59 and 60 of 1992.]

***Government Employees Superannuation Act 1987* amended**

12. Part B of Schedule 1 to the *Government Employees Superannuation Act 1987** is amended by deleting “Authority for Intellectually Handicapped Persons” and inserting in the appropriate alphabetical position the following —

“ Disability Services Commission ”.

[* *Reprinted as at 15 November 1991.*

For subsequent amendments see 1992 Index to Legislation of Western Australia, Table 1, p. 88.]

Parliamentary Commissioner Act 1971 amended

13. The Schedule to the *Parliamentary Commissioner Act 1971** is amended by deleting “Authority for Intellectually Handicapped Persons established by the *Authority for Intellectually Handicapped Persons Act 1985*.” and inserting after the item relating to the Dairy Industry Authority the following —

“

Disability Services Commission being the body continued by section 6 of the *Disability Services Act 1993*.

”.

[* *Reprinted as at 21 October 1992.*
For subsequent amendment see Act No. 59 of 1992.]