

**DISABILITY SERVICES
ACT 1992**

(No. 77 of 1992)

ARRANGEMENT

PART 1 — PRELIMINARY

Section	Page
1. Short title	2
2. Commencement	2
3. Interpretation	2
4. Crown bound	4

**PART 2 — FINANCIAL ASSISTANCE FOR MATTERS
RELATING TO PEOPLE WITH DISABILITIES**

5. Financial assistance may be approved	5
6. Grant to be subject of agreement	6
7. Minister may delegate	6

**PART 3 — DISABILITY SERVICE PLANS
BY PUBLIC AUTHORITIES**

Section	Page
8. Application of Part	7
9. Disability service plans to be prepared and implemented	7
10. Annual report about disability service plan	8

**PART 4 — ADVISORY COUNCIL FOR
DISABILITY SERVICES**

11. Council to be constituted	9
12. Council's functions	9

**PART 5 — COMPLAINTS ABOUT SERVICES
PROVIDED TO PEOPLE WITH DISABILITIES**

Division 1 — Preliminary

13. Interpretation	11
14. Parties themselves may resolve complaint	11

Division 2 — Complaints and conciliation

15. Who may complain	11
16. Who and what can be complained about	12
17. Time for complaining	13
18. How to complain	13
19. Withdrawal of complaint	14
20. Preliminary decision by Director	14
21. Rejection, deferral or referral of complaints	16
22. Conciliation of complaints	17

Division 3 — Investigations

23. If conciliation fails, Director to refer for investigation	18
24. Commissioner to investigate referred complaints and matters	19
25. Commissioner's powers on investigation	20
26. Information etc. that may be withheld	20

Disability Services Act 1992

Division 4 — Consequences of investigation

Section	Page
27. Commissioner to decide, give reasons etc.	21
28. Service provider to report on remedial action	22
29. Report to Parliament where report not made or remedial action not taken	22

Division 5 — General

30. Proceedings to stop if court action etc.	23
31. Minister may refer matters for investigation	24
32. Person not to be penalized because of complaining	24
33. Registers of complaints	25
34. Delegation	25

PART 6 — MISCELLANEOUS

35. Protection	26
36. Confidentiality	26
37. Prosecution of offences	27
38. Ombudsman may conduct investigation	27
39. Regulations	28
40. Review of Act	28
41. <i>Constitution Acts Amendment Act 1899</i> amended	28

SCHEDULE 1

PRINCIPLES APPLICABLE TO PEOPLE WITH DISABILITIES	29
--	-----------

SCHEDULE 2

OBJECTIVES FOR SERVICES AND PROGRAMMES RELATING TO PEOPLE WITH DISABILITIES	30
--	-----------

SCHEDULE 3

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

Section	Page
1. Tenure of office	32
2. Chairperson	32
3. Meetings	33
4. Remuneration	33

WESTERN AUSTRALIA

**DISABILITY SERVICES
ACT 1992**

No. 77 of 1992

AN ACT providing for the furtherance of principles applicable to people with disabilities, for the funding of services to people with disabilities that further certain objectives, for the resolution of complaints by such people, for the establishment of the Advisory Council for Disability Services, and for related purposes.

[Assented to 18 December 1992.]

The Parliament of Western Australia enacts as follows:

PART 1 — PRELIMINARY**Short title**

1. This Act may be cited as the *Disability Services Act 1992*.

Commencement

2. (1) This Act, other than Part 5, comes into operation 6 months after the day on which it receives the Royal Assent or on such sooner day as is, or sooner days as are respectively fixed by proclamation.

- (2) Part 5 comes into operation on such day as is fixed by proclamation but the proclamation is not to fix a day that is earlier than the day on which the *Health Services (Conciliation and Review) Act 1992* comes into operation.

Interpretation

3. In this Act, unless the contrary intention appears —

“**Bureau**” means the Bureau for Disability Services or the department or sub-department (as those terms are defined in the *Public Service Act 1978*) principally assisting the Minister with the administration of this Act;

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

“**Council**” means the Advisory Council for Disability Services established under section 11 (1);

“**Director**” means the Director of the Bureau or the person who is principally responsible to the Minister for the general management of the Bureau;

“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;

“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 service providers;
- (g) researches the effects of providing services to people with disabilities; or
- (h) does any prescribed activity;

“service provider” means a person who or which provides services to people with disabilities.

Crown bound

4. This Act binds the Crown.

**PART 2 — FINANCIAL ASSISTANCE FOR MATTERS
RELATING TO PEOPLE WITH DISABILITIES**

Financial assistance may be approved

5. (1) The Minister may approve grants of financial assistance, out of moneys appropriated by Parliament for the purpose, to —

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

(2) A grant of financial assistance shall not be approved under subsection (1) unless the Minister 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 (2), the Minister may, until 31 December 1994, 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

6. (1) A person shall not be paid funds under a grant of financial assistance until the person has entered into an agreement in writing with the Minister 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) shall 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) An agreement entered into by the Minister under subsection (1) may be signed on the Minister's behalf by a delegate of the Minister.

Minister may delegate

7. (1) The Minister may, by a written instrument, either generally or as otherwise provided by the instrument, delegate his or her functions in this Part, other than this power of delegation, to —

- (a) the Director or to officers employed in the Bureau; or
- (b) the Authority for Intellectually Handicapped Persons established under the *Authority for Intellectually Handicapped Persons Act 1985* or to the Director appointed under that Act or to a person on the staff of that Authority.

(2) Notwithstanding the *Authority for Intellectually Handicapped Persons Act 1985*, when functions are delegated under subsection (1) (b), the person to whom they are delegated is to perform them in accordance with this Act.

**PART 3 — DISABILITY SERVICE PLANS
BY PUBLIC AUTHORITIES**

Application of Part

8. (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**

9. (1) Each public authority shall prepare and implement a disability service plan to ensure that the services provided by the public authority —

(a) further the principles in Schedule 1; and

(b) meet the objectives in Schedule 2.

(2) A disability service plan shall be prepared without delay and in any event before 1 January 1995.

(3) Once prepared, a disability service plan shall be lodged with the Director.

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

(5) The Director shall —

(a) advise and assist public authorities in relation to the preparation of disability service plans;

(b) evaluate the effectiveness of disability service plans;
and

- (c) report to the Minister about the effectiveness and implementation of disability service plans.

Annual report about disability service plan

10. A public authority that has lodged a disability service plan with the Director shall include a report about the implementation of the plan in the annual report prepared under section 62 or 66, as the case may be, of the *Financial Administration and Audit Act 1985*.

PART 4 — ADVISORY COUNCIL FOR DISABILITY SERVICES

Council to be constituted

11. (1) The Advisory Council for Disability Services is established.

(2) The Council shall comprise —

(a) the Director; and

(b) not more than 14 people, 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 3 has effect with respect to the Council.

Council's functions

12. (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 about, and promote the acceptance by the general public 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 shall be complied with.

**PART 5 — COMPLAINTS ABOUT SERVICES PROVIDED
TO PEOPLE WITH DISABILITIES**

Division 1 — Preliminary

Interpretation

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

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

“**disability service**” means a service provided to people with disabilities by a service provider but does not include a health service (as defined in the *Health Services (Conciliation and Review) Act 1992*).

Parties themselves may resolve complaint

14. (1) Nothing in this Part prevents the complainant and the service provider resolving a complaint by agreement at any time, whether or not through conciliation provided for under this Part, but if that occurs the complainant must notify the Director of the fact without delay.

(2) When the Director or 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

15. (1) A complaint about a person referred to in section 16 (1) alleging one or more of the matters set out in section 16 (2) may be made to the Director —

(a) personally by a person with a disability; or

- (b) on behalf of a person with a disability, by a person who under subsection (2) is recognized as an advocate for the person.

(2) The Director 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 Director's opinion —
 - (i) the person with a disability is unable personally to complain and is unable personally to choose a person to be his or her advocate; and
 - (ii) the prospective advocate is a person who has a sufficient interest in the subject matter of the complaint.

(3) A member of the family of a person with a disability may be his or her advocate.

Who and what can be complained about

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

- (a) a service provider who at the time the subject matter of the complaint arose was the subject of a grant of financial assistance under section 5 (1); or
- (b) a service provider that is a public authority and that, at the time the subject matter of the complaint arose, was providing people with disabilities with services specifically designed for them.

(2) A complaint must allege that one or more of the following matters has occurred after the date on which section 5 comes into operation:

- (a) That a service provider acted unreasonably by not providing a disability service to the complainant.
- (b) That a service provider acted unreasonably by providing a disability service to the complainant.
- (c) That a service provider acted unreasonably in the manner of providing a disability service to the complainant.
- (d) That a service provider acted unreasonably by denying or restricting the complainant's access to records kept by the provider and relating to the complainant.
- (e) That a service provider acted unreasonably in disclosing records or confidential information relating to the complainant.

(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

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

How to complain

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

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

(3) The Director must require a complainant to give his or her name and may require the complainant to give other information relating to the complainant's identity.

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

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

Withdrawal of complaint

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

- (a) stop dealing with the complaint;
- (b) if details have been given under section 20 (3), notify the service provider of the withdrawal; and
- (c) if the complaint has been referred under section 21 (4) or (5) or 23, notify the person to whom it has been referred.

Preliminary decision by Director

20. (1) Within 28 days after receiving a complaint the Director must decide whether, and to what extent —

- (a) to reject, defer, or refer it under section 21;

- (b) to accept it and conciliate it under section 22,

but the Director may extend the 28 day period for a further period not exceeding 28 days if it is for the benefit of the complainant to do so.

(2) To enable the Director to make a decision under subsection (1) the Director may make such inquiries as the Director considers appropriate.

(3) Within 14 days after making a decision under subsection (1), the Director must —

- (a) if the complaint is rejected — give to the complainant written details of the decision;

- (b) if the complaint is deferred or referred —

- (i) give to the complainant — written details of the decision; and

- (ii) give to the service provider — 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 service provider; and

- (ii) give to the service provider — written details of the complaint, of the decision, and of the arrangements made for conciliation discussions between the complainant and the service provider and a written statement that the service provider may make submissions to the Director.

(4) If the Director considers that on account of particular circumstances the disclosure of the complainant's identity —

- (a) may result in the health, safety or welfare of the complainant being put at risk; or
- (b) would prejudice the proper investigation of the complaint,

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

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

Rejection, deferral or referral of complaints

21. (1) The Director must reject a complaint that in the Director's opinion —

- (a) is vexatious, trivial or without substance;
- (b) does not warrant any further action; or
- (c) does not comply with this Part.

(2) If an issue raised in a complaint has already been dealt with under another written law or by a court, the Director must reject the complaint to the extent to which it relates to that issue.

(3) If an issue raised in a complaint is being dealt with under another written law or by a court, the Director must defer dealing with the complaint to the extent to which it relates to that issue.

(4) If a complaint raises issues that in the opinion of the Director would be better dealt with under another written law, the Director may, with the written consent of the complainant, refer the complaint to the appropriate person to be dealt with under that other written law, but the Director may not refer a complaint to a court.

(5) If a complaint is about a person who is both a provider (as defined in the *Health Services (Conciliation and Review) Act 1992*) and a service provider and alleges matters that are properly the subject of complaint under both that Act and this Act, the Director shall refer the complaint to the Director of the Office of Health Services Conciliation and Review.

Conciliation of complaints

22. (1) The Director is to conciliate complaints that are accepted, but if he or she delegates this duty, it must be to a person whose duties consist of or include the conciliation of complaints.

(2) The Director's function as conciliator is to encourage the settlement of the complaint by —

- (a) arranging for the complainant and the service provider to hold informal discussions about the complaint;
- (b) helping in the conduct of those discussions;
- (c) if possible, assisting the complainant and the service provider to reach agreement.

(3) During the conciliation process neither the complainant nor the service provider may be represented by another person, but —

- (a) the complainant may be represented by his or her advocate recognized under section 15 (2);

- (b) if the Director is satisfied that the process will not work effectively otherwise, the Director may allow either party to be represented.

(4) Nothing in subsection (3) prevents the personal attendance of any other person who may, in the opinion of the Director, help in the conciliation.

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

Division 3 — Investigations

If conciliation fails, Director to refer for investigation

23. (1) If the conciliation process fails to result in the settlement of the complaint between the complainant and the service provider, the Director must refer the complaint to the Commissioner for investigation.

(2) On referring a complaint to the Commissioner the Director must —

- (a) give the Commissioner written details of the complaint and a written report about the conciliation process; and
- (b) give the complainant and the service provider written notice of the referral and a copy of the written report about the conciliation process.

**Commissioner to investigate
referred complaints and matters**

24. (1) The Commissioner must investigate —
- (a) complaints referred under section 23; and
 - (b) any matter referred to the Commissioner for investigation by the Minister under section 31.
- (2) The Commissioner may at any time try to encourage the settlement of a complaint by means of conciliation.
- (3) The purpose of an investigation is to enable the Commissioner to decide whether or not any unreasonable conduct referred to in section 16 (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 6; and
 - (c) any disability service plan lodged under section 9.
- (4) 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.

(5) 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

25. (1) For the purposes of conducting an investigation under section 24 the Commissioner may —

- (a) by notice in writing given to a person, require the person —
 - (i) to attend at a place and time specified in the notice;
 - (ii) to produce at a place and time specified in the notice any book, document or record that is in the possession or under the control of the person and that is relevant to the investigation;
- (b) inspect any book, document or record produced and retain it for such reasonable period as he or she thinks fit, and make copies of it or any of its contents;
- (c) require a person to take an oath or make an affirmation, and may administer an oath or affirmation to a person.

(2) A person required to attend or to produce documents under subsection (1) must do so in person but may be represented by another person.

Information etc. that may be withheld

26. (1) Nothing in this Part prevents a person from —

- (a) refusing to produce any book, document or record because it contains information in respect of which the person claims legal professional privilege;

- (b) refusing to produce medical records unless —
 - (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.

(2) In subsection (1) (b) (ii) **“the person's representative”** means —

- (a) the person's advocate recognized under section 15 (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.

Division 4 — Consequences of investigation

Commissioner to decide, give reasons etc.

27. After an investigation the Commissioner must decide whether or not any unreasonable conduct referred to in section 16 (2) has occurred and, within 14 days after deciding, must give —

- (a) in the case of a complaint — the Director, the complainant and the service provider; or
- (b) in the case of a matter referred by the Minister under section 31 — the Minister, the Director 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 service provider;
 - (ii) any other person.

Service provider to report on remedial action

28. (1) If a decision under section 27 recommends remedial action be taken by the service provider, the service provider must, within 42 days after receiving the notice of the decision, report in writing to the Commissioner what action the service provider has taken to remedy the matter.

Penalty: \$2 500.

(2) Within the 42 day period referred to in subsection (1), the service provider may ask the Commissioner to extend the time within which the service provider 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

29. (1) If a decision under section 27 recommends remedial action be taken by the service provider and the service provider does not report in accordance with section 28, the Commissioner must give the Minister a copy of the decision and a written report about the refusal or failure by the service provider to so report.

(2) If a decision under section 27 recommends remedial action be taken by the service provider and the service provider 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 service provider 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) If the complainant so requests and the Commissioner thinks it is in the complainant's interest to do so, the Commissioner may omit the complainant's name from the material given to the Minister under subsection (1) or (2).

Division 5 — General

Proceedings to stop if court action etc.

30. (1) The Director must stop dealing with a complaint if the Director becomes aware that the complainant or the service provider has begun proceedings under another written law or in a court, which relate to an issue raised by the complaint.

(2) If the Director stops dealing with a complaint under subsection (1), the Director must, within 14 days of doing so, give written notice of the fact to the complainant and the service provider.

(3) If the Director has stopped dealing with a complaint under subsection (1) and later becomes aware that the proceedings under another written law or in a court have been discontinued or abandoned, the Director may, with the consent of the complainant, resume dealing with the complaint under this Part.

(4) This section, with such modifications as are necessary, applies to the Commissioner in relation to the investigation of a complaint referred for investigation.

Minister may refer matters for investigation

31. 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

32. 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;
 - (ii) not to provide information to or not to otherwise assist the Commissioner in conducting an investigation under Division 3;
- (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

33. (1) The Director is to establish and maintain a register of complaints.

(2) The Commissioner is to establish and maintain a register of complaints and matters referred for investigation.

(3) The registers may be established and maintained in such manner as is determined from time to time by the Director or the Commissioner, as the case may be.

(4) The form and contents of each of the registers are to be determined from time to time by the Director or the Commissioner, as the case may be.

Delegation

34. (1) The Director may, by instrument in writing, either generally or as otherwise provided by the instrument, delegate to officers employed in the Bureau, the Director's functions in this Part, other than this power of delegation.

(2) 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 27 to decide if unreasonable conduct has occurred and the power to recommend remedial action.

PART 6 — MISCELLANEOUS**Protection**

35. (1) 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.

(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.

Confidentiality

36. (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 for an offence against this Act;
- (d) with the written authority of the Minister or the person to whom the information relates; or
- (e) in other prescribed circumstances.

Penalty: \$2 500.

(2) Subject to subsection (1) (c), (d) or (e), the prohibition in subsection (1) extends to the giving of evidence or the production of a book, document or record to a court.

(3) This section does not apply to the disclosure of statistical or other information that could not reasonably be expected to lead to the identification of any person to whom it relates.

(4) The situations to which this section applies are —

- (a) holding the office of Director;
- (b) holding the office of Commissioner and performing functions under this Act;
- (c) being a person acting under the authority or direction of the Director or the Commissioner, and performing functions under this Act; or
- (d) being a complainant, or a service provider against whom a complaint is made, under Part 5.

Prosecution of offences

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

(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.

Ombudsman may conduct investigation

38. For the purposes of section 14 (4) of the *Parliamentary Commissioner Act 1971* the right to make a complaint under Part 5 is not to be regarded as a right of appeal, reference or review to or before a tribunal.

Regulations

39. 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

40. (1) The Minister shall carry out a review of the operation and effectiveness of this Act not later than 5 years after its commencement and every 5 years thereafter, and in the course of that review the Minister shall consider and have regard to —

- (a) the effectiveness of grants under section 5 in furthering the principals in Schedule 1;
- (b) the effectiveness of the Council and its functions;
- (c) the effectiveness of Part 5; and
- (d) such other matters as appear to the Minister to be relevant to the operation and effectiveness of this Act.

(2) The Minister shall prepare a report based on the review and shall, as soon as practicable after it is prepared, cause that report to be tabled before each House of Parliament.

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

41. The *Constitution Acts Amendment Act 1899** is amended by inserting in Part 3 of Schedule V, in the appropriate alphabetical position, the following item —

“ The Advisory Council for Disability Services established under the *Disability Services Act 1992*. ”.

[* *Reprinted as at 16 March 1989.*

For subsequent amendments see 1991 Index to Legislation of Western Australia, pp. 42-4 and Acts Nos. 22, 44, 60 and 62 of 1991 and 5, 29, 34 and 35 of 1992.]

SCHEDULE 1

[ss. 5 (2) (a),
9 (1) (a),
12 (1) (a),
24 (3) (a)]

**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. 5 (2) (b),
9 (1) (b),
24 (3) (a)]

**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.

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.

SCHEDULE 3

[s. 11 (3)]

**PROVISIONS APPLICABLE TO THE
ADVISORY COUNCIL FOR DISABILITY SERVICES****Tenure of office**

1. (1) A member of the Council appointed by the Minister —
 - (a) shall hold 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 shall not hold office for more than 2 consecutive terms;
 - (c) may resign from office by notice in writing delivered to the Minister.
- (2) The Minister may terminate the appointment of a member of the Council appointed by the Minister —
 - (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;
 - (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 shall appoint one of the members, other than the Director, to be the chairperson.
- (2) The Council shall elect one member, other than the Director, to be the deputy chairperson.
- (3) The deputy chairperson shall 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 shall, subject to this Schedule, 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, shall preside; or
 - (b) in the absence of both of those members, a member elected by the members present shall preside.
- (3) The Director does not have a vote at a meeting of the Council.
- (4) The Council shall 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.

=====

