

South Australia

Disability Services Act 1993

An Act to provide for the funding and provision of disability services in accordance with certain principles and objectives; and for other related purposes.

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Schedule 1—Principles

Schedule 2—Objectives

Legislative history

The Parliament of South Australia enacts as follows:

1—Short title

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

2—Objects of Act

The objects of this Act are—

- (a) to acknowledge and support the rights of people living with disabilities to exercise choice and control in relation to decision-making; and
- (b) to ensure that disability services provided by the government or funded under this Act are of the highest standard and are provided in a manner that is safe, accountable and responsive to the needs of people living with disabilities, their families and carers; and

- (c) to promote the protection of people living with disabilities from abuse, neglect and exploitation; and
- (d) to set out principles that are to be applied with respect to people living with disabilities; and
- (e) to set out objectives for providers of disability services and for researchers; and
- (f) to provide for the funding of disability services and research or development activities; and
- (g) to ensure that disability services and research or development activities funded under this Act are provided or carried out in a manner that applies those principles and meets those objectives.

3—Interpretation

In this Act, unless the contrary intention appears:

disability in relation to a person means a disability—

- (a) that is attributable to intellectual, psychiatric, cognitive, neurological, sensory or physical impairment, or a combination of any of those impairments; and
- (b) that is, or is likely to be, permanent; and
- (c) that results in the person having—
 - (i) a reduced capacity for social interaction, communication, learning, mobility, decision making or self care; and
 - (ii) a need for continuing support services,

and includes such a disability notwithstanding that it is of an episodic nature;

disability services means services provided, whether wholly or partially, for persons with disabilities or their carers and, without limiting the generality of the expression, includes—

- (a) accommodation services;
- (b) home care and family support services;
- (c) independent living training services;
- (d) information services;
- (e) print disability services;
- (f) recreation services;
- (g) respite care services;
- (h) education or training services;
- (i) advocacy services;
- (j) therapy services;
- (k) equipment services;
- (l) counselling or support services;
- (m) transport services;

prescribed disability service provider means a provider of disability services that—

- (a) is a government department, agency or instrumentality; or
- (b) is funded under this Act;

research or development activities means—

- (a) research in relation to the provision of disability services; or
- (b) investigation of the need for disability services; or
- (c) the planning, development or implementation of disability services; or
- (d) the planning, development or implementation of training programmes—
 - (i) for persons engaged in the provision of disability services; or
 - (ii) for families of persons with disabilities and other persons who care for or assist persons with disabilities; or
- (e) investigation of outcomes achieved by persons with disabilities or their carers through the provision of disability services; or
- (f) any other activities approved by the Minister;

researcher means a person, body or authority conducting research or development activities.

3A—Safeguarding policies

- (1) A prescribed disability service provider must have in place appropriate policies and procedures for ensuring the safety and welfare of persons using the service.

Note—

The nature of these policies and procedures will depend on the nature of the service provided but may include, for example, policies and procedures addressing:

- management of care concerns
- restrictive practices
- supported decision-making and consent
- disclosure of abuse or neglect
- reporting of critical incidents

- (2) A prescribed disability service provider must ensure that the policies and procedures required under this section are reviewed on at least an annual basis.

3B—Complaints policies

A prescribed disability service provider must—

- (a) have in place appropriate policies and procedures for dealing with complaints and grievances; and
- (b) ensure that those policies and procedures refer persons to whom services are provided to relevant statutory complaint or dispute resolution bodies (where appropriate); and
- (c) ensure that information about those policies and procedures is readily accessible by persons to whom services are provided.

4—Funding provisions

- (1) The Minister may approve the funding, out of money provided for the purpose, of—
 - (a) disability services; and
 - (b) research or development activities.
- (2) For the purposes of subsection (1), money may be granted—
 - (a) to any person, body or authority, including any government, non-government or local government body or authority; or
 - (b) to any person with a disability or a carer of such a person, for the purpose of obtaining the care, support or assistance the person with the disability or the carer may need.
- (3) In performing his or her functions under this section, the Minister must seek to further the objects of this Act.

5—Obligations on funded service providers and researchers

- (1) A provider of disability services or researcher funded under this Act must, in providing the services or carrying out the research or development activities, apply the principles and meet the objectives set out in the Schedules to this Act.
- (2) The Minister may, as a condition of approving funding under this Act, require the person, body or authority to whom the money is to be granted to enter into a performance agreement containing such terms and conditions as the Minister thinks will ensure compliance with sections 3A and 3B and subsection (1) of this section.
- (3) An agreement under this section must be in writing and signed by both parties.
- (4) The Minister should include in such an agreement a condition or conditions that will enable the Minister to monitor adequately the other party's performance under the agreement.

5A—Victimisation

- (1) A provider of disability services funded under this Act commits an act of victimisation against another person (the *victim*) if he or she causes detriment to the victim on the ground, or substantially on the ground, that the victim, or a person acting on the victim's behalf—
 - (a) has disclosed or intends to disclose information; or
 - (b) has made or intends to make an allegation,that has given rise, or could give rise, to legal proceedings against the provider of disability services or that may disclose a breach of an agreement entered into under section 5.
- (2) An act of victimisation under this section may be dealt with—
 - (a) as a tort; or
 - (b) as if it were an act of victimisation under the *Equal Opportunity Act 1984*,

but, if the victim commences proceedings in a court seeking a remedy in tort, he or she cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984*, and conversely, if the victim lodges a complaint under that Act, he or she cannot subsequently commence proceedings in a court seeking a remedy in tort.

- (3) Where a complaint alleging an act of victimisation under this section has been lodged with the Commissioner for Equal Opportunity and the Commissioner is of the opinion that the subject matter of the complaint has already been adequately dealt with by a competent authority, the Commissioner may decline to act on the complaint or to proceed further with action on the complaint.
- (4) In this section—

detriment includes—

 - (a) injury, damage or loss; or
 - (b) intimidation or harassment; or
 - (c) discrimination, disadvantage or adverse treatment in relation to the victim's employment or business; or
 - (d) discrimination, disadvantage or adverse treatment in relation to the provision of disability services to the victim; or
 - (e) threats of reprisal.

6—Consultation with persons with disabilities and carers

- (1) Before making any major decisions relating to the development, funding or discontinuance of disability services or research or development activities, the Minister must, to the extent that is practicable, consult with persons with disabilities or carers likely to be affected by the decision.
- (2) The Minister should encourage the informed participation of persons with disabilities and carers in the design, development, management and evaluation of disability services.

7—Review of funded services or activities

- (1) The Minister must cause a disability service or research or development activity funded under this Act to be reviewed at intervals of not more than three years, for the purpose of assessing the extent to which the principles and objectives set out in the Schedules to this Act are being applied and met.
- (2) The Governor may make regulations requiring providers of disability services or researchers funded under this Act to provide specified information, or information of a specified class, to the Minister for the purpose of assessing the outcomes of funding provided under this Act.

8—Power of delegation

- (1) The Minister may, by instrument in writing, delegate any of the Minister's powers or functions under this Act—
 - (a) to a particular person or body; or
 - (b) to the person for the time being occupying a particular position.

- (2) A delegation under this section—
 - (a) may be absolute or conditional; and
 - (b) does not derogate from the power of the Minister to act in any matter; and
 - (c) is revocable by the Minister at will.

9—Act does not give rise to civil liability

Nothing in this Act gives rise to, or can be taken into account in, any civil cause of action.

10—Regulations

- (1) The Governor may make such regulations as are contemplated by this Act or as are necessary or expedient for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), those regulations may—
 - (a) make provision for fines, not exceeding \$10 000, for offences against the regulations; and
 - (b) prescribe expiation fees (not exceeding \$315) for alleged offences against the regulations.
- (3) The regulations may—
 - (a) be of general application or vary in their application according to prescribed factors; and
 - (b) provide that a matter or thing in respect of which regulations may be made is to be determined according to the discretion of the Minister, a specified person or the holder of a specified office.

Schedule 1—Principles

- 1 Persons with disabilities, whatever the origin, nature or degree of their disabilities might be, are individuals—
 - (a) who have the inherent right to respect for their human worth and dignity; and
 - (b) who have the same fundamental human rights and responsibilities as other members of the Australian community; and
 - (c) who have the same right as other members of the Australian community to realise their potential for intellectual, physical, social, emotional, sexual and spiritual development; and
 - (d) who have the same right as other members of the Australian community to choose their own lifestyle and generally to control their own lives.
- 2 Persons with disabilities have a right to protection from neglect, abuse, intimidation and exploitation.
- 3 Persons with disabilities have the same right as other members of the Australian community to the assistance and support that will enable them to exercise their rights, discharge their responsibilities and attain a reasonable quality of life.
- 4 In receiving the services that supply such assistance and support, persons with disabilities—

- (a) have the right to choose between those services, and to choose between the options available within a particular service, so as to provide assistance and support that best meets their individual (including cultural) needs; and
 - (b) have the right to have those services provided in a manner that—
 - (i) involves the least restriction of their rights and opportunities; and
 - (ii) takes into account their individual needs, goals, age and other personal circumstances; and
 - (iii) takes into account any further disadvantage that may be suffered as a result of their gender, ethnic origin, aboriginality, financial situation or location; and
 - (c) have the right to pursue any grievance in relation to those services without fear of the discontinuance of services or of recriminations or retribution from service providers.
- 5 The *United Nations Convention on the Rights of Persons with Disabilities* adopted at New York, United States of America, on 13 December 2006, is recognised as a set of best practice principles that should guide policy development, funding decisions and the administration and provision of disability services.

Schedule 2—Objectives

- 1 Disability services are to be designed and administered so as—
- (a) to achieve positive outcomes for persons with disabilities, such as an enhanced image and level of competence, increased independence, increased education, training and employment opportunities and integration into, and participation in the life of, the community; and
 - (b) to ensure that the conditions of the day-to-day life of persons with disabilities are as close as possible to those of other members of the community; and
 - (c) to meet the individual needs and goals of the persons to whom the services are provided taking into account their age and other personal circumstances and any further disadvantage suffered as a result of their gender, ethnic origin, aboriginality, financial situation or location; and
 - (d) to ensure that no single service provider exercises control over all or most of the aspects of the life of a person with a disability; and
 - (e) to render the service provider accountable to all persons who use the service, the carers and advocates of persons with disabilities who use the service, the Minister and all other interested persons, through the provision of information relating to the services provided and their administration; and
 - (f) to ensure that the persons to whom the services are provided have their right to privacy and confidentiality respected; and
 - (g) to ensure that persons with disabilities who wish to use the services have easy access to advocacy support to facilitate their use of the services and their participation in any decision making relating to their use of the services; and

- (i) to allow, to the extent that is practicable, the persons who use the services the opportunity for informed participation in the design, development, management and evaluation of the services.
- 2 Disability services are to be provided as part of local coordinated service systems and are to be integrated, where it is appropriate and practicable to do so, with services generally available to the community.
- 3 The providers of disability services are to take the following matters into consideration in determining eligibility for and priority of access to the services and in assessing the needs of a person with a disability who is accorded access to a service:
 - (a) the person's wishes;
 - (b) the level of disability and its impact on the person;
 - (c) the needs and capabilities of any carers;
 - (d) the extent of support and assistance (if any) provided or available to the person from all other sources;
 - (e) the implications of any decision for carers and members of the person's family;
 - (f) such other matters as may be considered relevant.
- 4 Disability services are to be provided in compliance with all relevant State and Commonwealth laws.

Legislative history

Notes

- Amendments of this version that are uncommenced are not incorporated into the text.
- For further information relating to the Act and subordinate legislation made under the Act see the Index of South Australian Statutes or www.legislation.sa.gov.au.

Principal Act and amendments

New entries appear in bold.

| Year | No | Title | Assent | Commencement |
|-------------|-----------|---|-------------------|--|
| 1993 | 18 | <i>Disability Services Act 1993</i> | 8.4.1993 | 8.4.1993 |
| 2013 | 66 | <i>Disability Services (Rights, Protection and Inclusion) Amendment Act 2013</i> | 21.11.2013 | 5.12.2013 (Gazette 5.12.2013 p4445) |
| 2013 | 87 | <i>Statutes Amendment (Assessment of Relevant History) Act 2013</i> | 5.12.2013 | Pt 3 (ss 8 & 9)—16.2.2014 (Gazette 13.2.2014 p887) |

Provisions amended

New entries appear in bold.

| Provision | How varied | Commencement |
|--------------|---|------------------------------|
| s 2 | substituted by 66/2013 s 4 | 5.12.2013 |
| s 3 | prescribed disability inserted by 66/2013 s 5 service provider | 5.12.2013 |
| ss 3A and 3B | inserted by 66/2013 s 6 | 5.12.2013 |
| s 5 | s 5(2) amended by 66/2013 s 7 | 5.12.2013 |
| s 5A | inserted by 66/2013 s 8 | 5.12.2013 |
| s 7 | s 7(1) redesignated as s 7(1) by 66/2013 s 9 | 5.12.2013 |
| | s 7(2) inserted by 66/2013 s 9 | 5.12.2013 |
| ss 5B and 5C | inserted by 87/2013 s 8 | uncommenced—not incorporated |
| s 10 | s 10(1) redesignated as s 10(1) by 66/2013 s 10 | 5.12.2013 |
| | s 10(2) and (3) inserted by 66/2013 s 10 | 5.12.2013 |
| s 10 | substituted by 87/2013 s 9 | uncommenced—not incorporated |
| s 11 | deleted by 66/2013 s 11 | 5.12.2013 |
| Sch 1 | cl 5 inserted by 66/2013 s 12 | 5.12.2013 |
| Sch 2 | cl 1 (h) deleted by 66/2013 s 13(1) | 5.12.2013 |
| | cl 4 inserted by 66/2013 s 13(2) | 5.12.2013 |

