

House of Assembly—No 107

As laid on the table and read a first time, 10 March 2016

South Australia

**Disability Services (Inclusion and Monitoring)
Amendment Bill 2016**

A BILL FOR

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

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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

- 5 This Act may be cited as the *Disability Services (Inclusion and Monitoring) Amendment Act 2016*.

2—Commencement

This Act will come into operation on a day to be fixed by proclamation.

3—Amendment provisions

- 10 In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

Part 2—Amendment of *Disability Services Act 1993*

4—Amendment of section 2—Objects of Act

(1) Section 2—after paragraph (e) insert:

- 5 (ea) to impose requirements ensuring appropriate planning takes place to develop a co-ordinated, whole-of-government approach to creating a more inclusive community and providing equality of access to services and facilities for people living with disabilities; and

(2) Section 2—after paragraph (g) insert:

- 10 (h) to provide for oversight by the Ombudsman in relation to certain incidents involving people with disabilities living in supported group accommodation.

5—Amendment of section 3—Interpretation

(1) Section 3—before the definition of *disability* insert:

council means a council established under the *Local Government Act 1999*;

15 (2) Section 3—after the definition of *prescribed disability service provider* insert:

public authority means—

- (a) an administrative unit; or
(b) a council; or
20 (c) another person or body prescribed by the regulations for the purposes of this definition;

6—Insertion of section 5D

After section 5C insert:

5D—Functions and powers of Ombudsman

25 The Ombudsman has (in addition to the functions and powers under the *Ombudsman Act 1972* and any other Act or law) the functions and powers set out in Schedule 3.

7—Insertion of sections 9A and 9B

After section 9 insert:

9A—State Disability Inclusion Plan

- 30 (1) The Minister must, from the day prescribed by the regulations, have a plan (the *State Disability Inclusion Plan*) that—
(a) sets out whole of government goals that support the inclusion in the community of people with disabilities and improve access to services and facilities by people with
35 disabilities; and

(b) provides for collaboration and co-ordination among administrative units, councils and other entities in the provision of supports and services.

5 (2) In preparing the State Disability Inclusion Plan, the Minister must consult with people with disabilities.

(3) The Minister must table a copy of the State Disability Inclusion Plan in each House of Parliament as soon as practicable after the day prescribed under subsection (1) and must make the Plan publicly available on the Internet.

10 (4) The Minister must review the State Disability Inclusion Plan before the end of each 4-year period after the day prescribed under subsection (1).

15 (5) The purpose of the review is to ensure that the whole of government goals set out in the State Disability Inclusion Plan continue to support the inclusion in the community of people with disabilities and to improve access to services and facilities by people with disabilities.

20 (6) A report on the outcome of the review must be tabled by the Minister in each House of Parliament as soon as practicable after it is completed.

9B—Disability inclusion action plans

25 (1) Each public authority must, from the day prescribed by the regulations, have a plan (a *disability inclusion action plan*) setting out the measures it intends to put in place (in connection with the exercise of its functions) so that people with disabilities can access general supports and services available in the community, and can participate fully in the community.

(2) In preparing its disability inclusion action plan, a public authority—

30 (a) must consult with people with disabilities and have regard to any guidelines issued by the Minister for the purposes of this section; and

(b) may consult with any other persons or bodies as the authority considers appropriate.

(3) A disability inclusion action plan must—

35 (a) specify how the public authority proposes to have regard to the principles set out in Schedule 1 in its dealings with matters relating to people with disabilities; and

(b) include strategies to support people with disabilities, including, for example, strategies about the following:

40 (i) providing access to buildings, events and facilities;

(ii) providing access to information;

(iii) accommodating the specific needs of people with disabilities;

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- (iv) supporting employment of people with disabilities;
 - (v) encouraging and creating opportunities for people with disabilities to access the full range of services and activities available in the community; and
 - (c) include details of the authority's consultation about the plan with people with disabilities; and
 - (d) explain how the plan supports the goals of the State Disability Inclusion Plan (established under section 9A); and
 - (e) include any other matters prescribed by the regulations.
- (4) A public authority must, as soon as practicable after the day it is required to have a disability inclusion action plan—
- (a) provide a copy of the plan to the Minister; and
 - (b) make the plan publicly available on the Internet.
- (5) A public authority that is an administrative unit or a council must, as soon as practicable after preparing its annual report, give the Minister a copy of the part of the annual report relating to the administrative unit's or council's report on the implementation of its disability inclusion action plan.
- (6) A public authority that is not an administrative unit or a council must, as soon as practicable after the end of each financial year, give the Minister a report relating to the authority's implementation of its disability inclusion action plan during the financial year.
- (7) The Minister must table a report about the implementation of disability inclusion action plans in each House of Parliament as soon as practicable after the end of each financial year.
- (8) A public authority must review its disability inclusion action plan before the end of each 4-year period after the day the authority is required to have the plan.
- (9) The purpose of the review is to ensure the disability inclusion action plan fulfils the requirements of this section.
- (10) In reviewing its disability inclusion action plan, the public authority must consult with people with disabilities and have regard to any guidelines referred to in subsection (2)(a).
- (11) In this section—
- annual report*** means—
- (a) in relation to an administrative unit—its annual report under the *Public Sector Act 2009*; and
 - (b) in relation to a council—its annual report under the *Local Government Act 1999*.

8—Insertion of Schedule 3

After Schedule 2 insert:

Schedule 3—Functions and powers of Ombudsman

1—Interpretation

In this Schedule—

Department means the administrative unit that is, under the Minister, responsible for the administration of this Act;

employee of the Department or a funded provider means any individual engaged by the Department or provider, or by another entity under a contract or other arrangement with the Department or provider, to provide services to people with disabilities (including in the capacity of a volunteer or contractor) that involve face to face or physical contact with, or access to the finances of, people with disabilities;

funded provider means a prescribed disability service provider funded under this Act to provide supports and services for people with disabilities living in supported group accommodation;

head of a funded provider means the chief executive officer or other principal officer of the provider;

reportable allegation means an allegation against a person of a reportable incident or an allegation of behaviour that may involve a reportable incident;

reportable conviction means a conviction or finding of guilt of an offence involving a reportable incident;

reportable incident —see clause 2;

supported group accommodation—see clause 3.

2—Meaning of reportable incident

(1) A *reportable incident* means—

(a) an incident involving any of the following in connection with an employee of the Department or a funded provider and a person with a disability living in supported group accommodation:

(i) any sexual offence committed against, with or in the presence of the person with a disability;

(ii) sexual misconduct committed against, with or in the presence of the person with a disability, including grooming of the person for sexual activity;

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- (iii) an assault of the person with a disability, not including the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated under workplace employment procedures;
 - (iv) an offence involving fraud, dishonesty or identity theft committed against the person with a disability;
 - (v) ill-treatment or neglect of the person with a disability; or
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- (b) an incident involving an assault of a person with a disability living in supported group accommodation by another person with a disability living in the same supported group accommodation that—
 - (i) is a sexual offence; or
 - 15 (ii) causes serious injury, including, for example, a fracture, burns, deep cuts, extensive bruising or concussion; or
 - (iii) involves the use of a weapon; or
 - (iv) is part of a pattern of abuse of the person with a disability by the other person; or
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- (c) an incident occurring in supported group accommodation and involving a contravention of an intervention order made for the protection of a person with a disability, regardless of whether the order is contravened by an employee of the Department or a funded provider, a person with a disability living in the supported group accommodation or another person; or
 - 25 (d) an incident involving an unexplained serious injury to a person with a disability living in supported group accommodation.
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- (2) However, a reportable incident does not include an incident of a class exempted by the Ombudsman under clause 6.
 - (3) In this clause—
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- intervention order* means an intervention order under the *Intervention Orders (Prevention of Abuse) Act 2009*.

3—Meaning of supported group accommodation

- (1) In this Schedule *supported group accommodation* means premises in which—
- (a) a person with a disability is living in a shared living arrangement (whether short-term or permanently) with at least 1 other person with a disability, other than an arrangement in which 1 or more of the persons with a disability is living with a guardian of the person or a member of the person’s family who is responsible for the care of the person; and
- (b) support is provided on-site—
- (i) for a fee; or
- (ii) whether or not for a fee if the support is provided as respite care.
- (2) Supported group accommodation includes premises, or a type of premises, prescribed by the regulations to be supported group accommodation.
- (3) However, supported group accommodation does not include premises, or a type of premises, prescribed by the regulations not to be supported group accommodation.
- (4) In this clause—
- respite care* means short-term care for people with disabilities that is provided for the purpose of relieving families or carers from their caring responsibilities in the short-term before resuming their caring responsibilities at the end of the period of care.

4—Ombudsman to keep systems under scrutiny

- (1) The Ombudsman is to keep under scrutiny the systems of the Department and funded providers for preventing, and for handling and responding to, reportable incidents.
- (2) For the purposes of subclause (1), the Ombudsman may require the Chief Executive of the Department or head of a funded provider to give information about the systems to the Ombudsman.

5—Reporting of reportable allegations or reportable convictions

- (1) The Chief Executive of the Department or head of a funded provider must give the Ombudsman notice of a reportable allegation or reportable conviction of which the Chief Executive or head becomes aware.
- (2) The notice must—
- (a) state whether the Department or funded provider intends to take any disciplinary or other action in relation to the reportable allegation or reportable conviction and the reasons for taking or not taking the action; and

(b) include any written submission made to the Chief Executive of the Department or head of the funded provider that a person wished to have considered in determining what, if any, disciplinary or other action should be taken in relation to the person.

(3) The notice must be given to the Ombudsman—

(a) as soon as practicable (but not more than 30 days) after the Chief Executive of the Department or head of the funded provider becomes aware of the reportable allegation or reportable conviction; or

(b) by the later day agreed to by the Ombudsman.

(4) The Chief Executive of the Department or head of the funded provider must make arrangements to require employees of the Department or funded provider to notify the Chief Executive or head of any reportable allegation or reportable conviction of which the employee becomes aware.

6—Ombudsman may exempt incidents from reporting

(1) The Ombudsman may exempt any class or kind of incident from being a reportable incident.

(2) The Ombudsman must notify the Chief Executive of the Department or head of a funded provider of an exemption under this clause.

7—Disclosure of information about reportable incidents

The Chief Executive of the Department, a head of a funded provider or an employee of the Department or a funded provider (each a *relevant person*) may disclose to the Ombudsman or an officer of the Ombudsman any information that leads the relevant person to believe a reportable incident has occurred.

8—Monitoring by Ombudsman of investigations

(1) The Ombudsman may monitor the progress of the investigation by the Department or a funded provider of a reportable allegation or reportable conviction if the Ombudsman considers it is in the public interest to do so.

(2) The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by or on behalf of the Department or funded provider for the purpose of the investigation and may confer with the persons conducting the investigation about its conduct and progress.

(3) The Chief Executive of the Department or head of the funded provider must give the Ombudsman the information or documents relating to the investigation required by the Ombudsman.

9—Results of investigation and action taken to be reported to Ombudsman

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- (1) This clause applies to an investigation of a reportable allegation or reportable conviction that the Ombudsman monitors under this Schedule.
- (2) The Chief Executive of the Department or head of the funded provider must, as soon as practicable after being satisfied that the investigation is concluded—
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- (a) send to the Ombudsman a copy of any report, prepared by or given to the Chief Executive or head, about the progress or results of the investigation and a copy of all statements taken in the course of the investigation and all other documents on which the report is based; and
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- (b) provide the Ombudsman with comments on the report and statements that the Chief Executive or head considers appropriate; and
- (c) inform the Ombudsman of the action taken or proposed to be taken in relation to the reportable allegation or reportable conviction the subject of the investigation.
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- (3) After receiving the material and information referred to in subclause (2), the Ombudsman may require the Chief Executive of the Department, head of the funded provider or any other person involved in the investigation to give the Ombudsman any additional information the Ombudsman considers necessary to determine whether the reportable allegation or reportable conviction was properly investigated and whether appropriate action was taken as a result of the investigation.
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- (4) In subclause (3), *appropriate action* includes any penalty for the making of a reportable allegation that is shown to be false and malicious.
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10—Investigation by Ombudsman

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- (1) The Ombudsman may conduct an investigation concerning any reportable allegation or reportable conviction notified to the Ombudsman under this Schedule or of which the Ombudsman becomes aware.
- (2) The Ombudsman may also conduct an investigation concerning any inappropriate handling of or response to the reportable allegation or reportable conviction, whether on the Ombudsman's own initiative or in response to a complaint.
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- (3) The Ombudsman may exercise any conciliation or other relevant powers under the *Ombudsman Act 1972* in connection with an investigation by the Ombudsman under this Schedule.

5 (4) The Chief Executive of the Department or head of a funded provider is to defer an investigation into a matter if the Ombudsman notifies the Chief Executive or head that the Ombudsman intends to investigate the matter under this Schedule and that the investigation of the matter should be deferred.

10 (5) At the conclusion of an investigation by the Ombudsman, or on a decision by the Ombudsman to refer the matter back to the Department or funded provider, the Ombudsman is to provide the Department or provider with any recommendations for action to be taken in relation to the matter, together with any necessary information relating to the recommendations.

11—Protection and other provisions relating to disclosure of information

15 (1) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent or restrict the disclosure of information (or affect a duty to disclose information) under this Schedule.

20 (2) If a disclosure of information is made under this Schedule, no liability for defamation or other civil liability is incurred because of the disclosure.

(3) This Schedule does not affect an obligation or power to provide information apart from this Schedule.

12—Application of other provisions of *Ombudsman Act 1972*

25 (1) The provisions of the *Ombudsman Act 1972* apply in relation to a matter arising under this Schedule even though the matter may not involve the conduct of an agency to which that Act applies, subject to any modifications prescribed by the regulations.

30 (2) For the purpose of applying the provisions of the *Ombudsman Act 1972* in accordance with subclause (1), a funded provider will be treated as if they were an agency to which that applies.