

House of Assembly—No 184

As laid on the table and read a first time, 12 September 2013

South Australia

**Disability Services (Rights, Protection and
Inclusion) Amendment Bill 2013**

A BILL FOR

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

Contents

Part 1—Preliminary

- 1 Short title
- 2 Commencement
- 3 Amendment provisions

Part 2—Amendment of *Disability Services Act 1993*

- 4 Substitution of section 2
 - 2 Objects of Act
 - 5 Amendment of section 3—Interpretation
 - 6 Insertion of sections 3A and 3B
 - 3A Safeguarding policies
 - 3B Complaints policies
 - 7 Amendment of section 5—Obligations on funded service providers and researchers
 - 8 Insertion of section 5A
 - 5A Victimisation
 - 9 Amendment of section 7—Review of funded services or activities
 - 10 Amendment of section 10—Regulations
 - 11 Repeal of section 11
 - 12 Amendment of Schedule 1—Principles
 - 13 Amendment of Schedule 2—Objectives
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The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Disability Services (Rights, Protection and Inclusion) Amendment Act 2013*.

5 2—Commencement

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

3—Amendment provisions

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—Substitution of section 2

Section 2—delete the section and substitute:

2—Objects of Act

5 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
- 10 (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
- 15 (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
- 20 (f) to provide for the funding of disability services and research or development activities; and
- 25 (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.

5—Amendment of section 3—Interpretation

Section 3—after the definition of *disability services* insert:

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

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

6—Insertion of sections 3A and 3B

After section 3 insert:

3A—Safeguarding policies

- 5 (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—

10 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
- 15 • 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

20 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
- 25 (c) ensure that information about those policies and procedures is readily accessible by persons to whom services are provided.

7—Amendment of section 5—Obligations on funded service providers and researchers

30 Section 5(2)—delete "subsection (1)" and substitute:

sections 3A and 3B and subsection (1) of this section

8—Insertion of section 5A

After section 5 insert:

5A—Victimisation

- 5 (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,
- 10 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*,
- 15 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.
- 20 (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.
- 25 (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.
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9—Amendment of section 7—Review of funded services or activities

Section 7—after its present contents (now to be designated as subsection (1)) insert:

- 5 (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.

10—Amendment of section 10—Regulations

Section 10—after its present contents (now to be designated as subsection (1)) insert:

- 10 (2) Without limiting the generality of subsection (1), those regulations may—
- 15 (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
- 20 (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.

11—Repeal of section 11

Section 11—delete the section

12—Amendment of Schedule 1—Principles

Schedule 1—after clause 4 insert:

30 **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.

13—Amendment of Schedule 2—Objectives

- (1) Schedule 2, clause 1(h)—delete paragraph (h)
- (2) Schedule 2—after clause 3 insert:

35 **4.** Disability services are to be provided in compliance with all relevant State and Commonwealth laws.