

South Australia

Disability Inclusion Act 2018

An Act to promote the full inclusion in the community of people with disability; to assist people with disability to achieve their full potential as equal citizens; to promote improved access to mainstream supports and services by people with disability; to provide for the screening of persons who want to work or volunteer with people with disability and to prohibit those who pose an unacceptable risk to people with disability from working or volunteering with them; to provide for a community visitor scheme; to provide for responsibilities of the State during and following the transition to the National Disability Insurance Scheme; and for other purposes.

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Legislative history

The Parliament of South Australia enacts as follows:

Part 1—Preliminary

1—Short title

This Act may be cited as the *Disability Inclusion Act 2018*.

2—Commencement

- (1) This Act will come into operation on a day to be fixed by proclamation.
- (2) Section 7(5) of the *Acts Interpretation Act 1915* does not apply to this Act or to a provision of this Act.

3—Interpretation

- (1) In this Act, unless the contrary intention appears—

Chief Executive means the Chief Executive of the administrative unit of the Public Service that is responsible for assisting a Minister in the administration of this Act;

community visitor means a community visitor appointed under Part 7;

disability, in relation to a person, includes long-term physical, psycho-social, intellectual, cognitive, neurological or sensory impairment, or a combination of any of these impairments, which in interaction with various barriers may hinder the person's full and effective participation in society on an equal basis with others;

disability access and inclusion plan, in relation to a State authority, means the disability access and inclusion plan, as in force from time to time, prepared by the State authority under section 16;

National Disability Insurance Scheme or *NDIS* means the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

State authority means—

- (a) an administrative unit (within the meaning of the *Public Sector Act 2009*); or
- (b) an agency or instrumentality of the Crown, or agency or instrumentality of the Crown of a class, prescribed by the regulations for the purposes of this paragraph; or
- (c) a local council constituted under the *Local Government Act 1999*; or
- (d) any other person or body, or person or body of a class, declared by the regulations to be included in the ambit of this paragraph for the purposes of this Act,

but does not include a person or body, or person or body of a class, declared by the regulations to be excluded from the ambit of this definition for the purposes of this Act;

State Disability Inclusion Plan means the State Disability Inclusion Plan prepared under section 13, as in force from time to time.

- (2) For the purposes of this Act, a reference to *mainstream supports and services* will be taken to be a reference to supports and services (however described) that are not NDIS-funded supports and services.

4—Interaction with other laws

Except where the contrary intention appears, the provisions of this Act are in addition to, and do not derogate from, any other Act or law.

5—Act to bind, and impose criminal liability on, the Crown

- (1) This Act binds the Crown in right of this jurisdiction and, in so far as the legislative power of the Parliament permits, the Crown in all its other capacities.
- (2) The Crown is liable for an offence against this Act.
- (3) If the Crown is guilty of an offence against this Act, the penalty that may be imposed on the Crown is the penalty that may be imposed on a body corporate.

6—Part 2 etc not to create legally enforceable rights etc

Part 2 of this Act, the State Disability Inclusion Plan and disability access and inclusion plans are an expression of policy and do not in themselves—

- (a) create legally enforceable rights or entitlements; or
- (b) affect existing rights or liabilities (whether of a substantive, procedural or other nature).

Part 2—Objects and principles

7—Act to support United Nations Convention on the Rights of Persons with Disabilities etc

It is the intention of the Parliament of South Australia that, to such an extent as may be reasonably practicable, the operation, administration and enforcement of this Act is to support and further the principles and purposes of the *United Nations Convention on the Rights of Persons with Disabilities*, as well any other relevant international human rights instruments affecting people with disability, as in force from time to time.

8—Objects

The objects of this Act include—

- (a) acknowledging that people with disability have the same human rights as other members of the community and that the State and the community have a responsibility to facilitate the exercise of those rights; and
- (b) promoting the independence and social and economic inclusion of people with disability; and
- (c) providing safeguards in relation to the delivery of all supports and services for people with disability; and
- (d) providing a framework to support a whole of Government approach to improving the inclusion of all South Australians with disability in all areas of life in this State; and

- (e) articulating and facilitating the roles of the State during and following the transition to the National Disability Insurance Scheme.

9—Principles

- (1) The following principles are to be observed in the operation, administration and enforcement of this Act:
 - (a) people with disability have the same fundamental human rights and responsibilities, and the same right to autonomy, as other members of the community;
 - (b) people with disability have an inherent right to respect for their worth and dignity as individuals;
 - (c) people with disability have the right to participate in and contribute to social and economic life and should be supported to develop and enhance their ability to do so;
 - (d) people with disability have the right to realise their physical, social, sexual, reproductive, emotional and intellectual capacities;
 - (e) people with disability have the right to make decisions that affect their lives including decisions involving risk to the full extent of their capacity to do so;
 - (f) in cases where a person with disability wants or requires assistance in making a decision, supported decision-making is to be preferred over substituted decision-making;
 - (g) people with disability have the right to access information in a way that is appropriate for their disability and cultural background, to enable them to make informed choices;
 - (h) people with disability have the right to respect for their cultural or linguistic diversity, age, gender, sexual orientation and religious beliefs;
 - (i) people with disability have the same rights to privacy and confidentiality as other members of the community;
 - (j) people with disability have the right to live free from neglect, abuse and exploitation;
 - (k) people with disability have the same rights as other members of the community to pursue complaints and access justice;
 - (l) the crucial role of families, carers and other significant persons in the lives of people with disability, and the importance of preserving relationships with families, carers and other significant persons, is to be acknowledged and respected;
 - (m) people with disability are free to associate with families, carers and other persons as they see fit, and should be supported where necessary to engage in family, social and friendship activities;
 - (n) the needs of children with disability as they develop, and their rights as equal members of the community, are to be acknowledged and respected;
 - (o) the changing abilities, strengths, goals and needs of people with disability as they age are to be acknowledged and respected.

- (2) In addition to the principles set out in any other provision of this section, the following risks and principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to women with disability:
- (a) many women with disability face multiple disadvantages and are potentially more vulnerable to risk of abuse or exploitation;
 - (b) the provision of mainstream supports and services to women with disability should recognise and seek to address such disadvantage and vulnerability, and should be informed by working in partnership with women with disability to enhance their lives.
- (3) In addition to the principles set out in any other provision of this section, the following risks and principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to children with disability:
- (a) children with disability have the right to a full life in conditions that ensure the child's dignity, promote self-reliance and facilitate the child's active and full participation in family, cultural and social life;
 - (b) decisions affecting children with disability under this Act should be child-centred;
 - (c) without limiting paragraph (b), the responsibilities, rights and duties of a parent or other person legally responsible for a child with disability must also be considered in relation to giving appropriate direction and guidance for the child's welfare;
 - (d) the views of a child with disability will be listened to, and they should be given developmentally appropriate opportunities to participate in decisions that affect them;
 - (e) children with disability are more vulnerable to risk of abuse or exploitation;
 - (f) the developmental needs of children with disability must be taken into account, with particular focus on critical periods in their childhood and adolescence;
 - (g) the provision of mainstream supports and services to children with disability should recognise and seek to address such risks and vulnerabilities, and should be informed by working in partnership with children with disability, and in consultation with their parents and other persons responsible for them, to enhance their lives.
- (4) In addition to the principles set out in any other provision of this section, the following risks and principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to Aboriginal and Torres Strait Islander people with disability:
- (a) Aboriginal and Torres Strait Islander people with disability have a right to respect and acknowledgment as the first peoples of Australia and for their unique history, culture and kinship relationships and connection to their traditional land and waters;
 - (b) many Aboriginal and Torres Strait Islander people with disability face multiple disadvantages;

- (c) the provision of mainstream supports and services to Aboriginal and Torres Strait Islander people with disability should recognise and seek to address such disadvantage, and should be informed by working in partnership with Aboriginal and Torres Strait Islander people with disability to enhance their lives.
- (5) In addition to the principles set out in any other provision of this section, the following risks and principles are to be acknowledged and addressed in the operation, administration and enforcement of this Act as it relates to people with disability from culturally and linguistically diverse backgrounds:
 - (a) cultural, language and other differences create barriers to providing supports and services to people with disability from culturally and linguistically diverse backgrounds;
 - (b) the provision of mainstream supports and services to people with disability from culturally and linguistically diverse backgrounds should recognise and seek to address those barriers, and should be informed by working in partnership with people with disability from culturally and linguistically diverse backgrounds, and in consultation with their communities, to enhance their lives.
- (6) Each person or body engaged in the administration, operation or enforcement of this Act must exercise their powers and perform their functions so as to give effect to the principles set out in this section.

Part 3—Administration

10—Functions of Chief Executive

- (1) The functions of the Chief Executive under this Act include—
 - (a) preparing and publishing guidelines for the purposes of this Act; and
 - (b) preparing such reports as may be required under this Act or by the Minister; and
 - (c) monitoring the extent to which the objects and principles of this Act are being achieved; and
 - (d) monitoring the extent to which the State Disability Inclusion Plan and the disability access and inclusion plans have been, or are being, implemented; and
 - (e) monitoring the compliance of State authorities with the requirements under Part 5; and
 - (f) making recommendations to the Minister in relation to the compliance of State authorities with the requirements under Part 5; and
 - (g) advising the Minister on any matters related to the operation, administration and enforcement of this Act; and
 - (h) such other functions as may be assigned to the Chief Executive under this or any other Act or by the Minister.
- (2) The Chief Executive has such powers as may be necessary or expedient for the performance of the Chief Executive's functions.

11—Powers of delegation

- (1) The Minister or Chief Executive may delegate a function or power (other than a prescribed function or power) under this Act to a specified person or body (including a person for the time being holding or acting in a specified office or position).
- (2) A delegation under this section—
 - (a) must be by instrument in writing; and
 - (b) may be absolute or conditional; and
 - (c) does not derogate from the ability of the Minister or Chief Executive (as the case requires) to act in any matter; and
 - (d) is revocable at will.
- (3) A function or power delegated under this section may, if the instrument of delegation so provides, be further delegated.

12—Guidelines

- (1) The Minister may—
 - (a) publish guidelines in relation to the preparation and contents of disability access and inclusion plans; and
 - (b) publish such other guidelines as the Minister thinks appropriate for the purposes of this Act.
- (2) The Minister may vary, substitute or revoke guidelines under this section.
- (3) The Minister must cause guidelines under this section to be published on a website determined by the Minister.

Part 4—State Disability Inclusion Plan

13—State Disability Inclusion Plan

- (1) There is to be a *State Disability Inclusion Plan*.
- (2) The State Disability Inclusion Plan is to be prepared by the Minister in accordance with this section.
- (3) The State Disability Inclusion Plan—
 - (a) must set out whole-of-government policies and measures for achieving the objects of this Act throughout the State (and, in particular, measures that further the goal of achieving full inclusion in the community, and the achievement of their full potential as equal citizens, of people with disability); and
 - (b) must provide for collaboration and coordination among State authorities and other entities in relation to the provision of mainstream supports and services to people with disability; and
 - (c) must contain such other provisions as may be required by the regulations.

- (4) In preparing the State Disability Inclusion Plan, the Minister—
- (a) must, in accordance with any requirements set out in the regulations, consult with people with disability and persons or bodies representing the interests of people with disability (and may consult with any other persons or bodies that the Minister thinks fit); and
 - (b) must call for submissions from members of the public in accordance with a scheme set out in the regulations (and must have regard to the submissions made in response to the call); and
 - (c) must comply with any other requirements prescribed by the regulations.
- (5) The Minister may vary the State Disability Inclusion Plan at any time in accordance with any requirements set out in the regulations for the purposes of this subsection.
- (6) The Minister must cause the State Disability Inclusion Plan, and any variation of the plan, to be published in the Gazette.
- (7) The State Disability Inclusion Plan, and any variation of the plan, has effect from the day on which it is published in the Gazette.
- (8) The Minister must, within 6 sitting days after the State Disability Inclusion Plan or any variation is published in the Gazette, cause a copy of the State Disability Inclusion Plan, or the plan as varied, (as the case requires) to be laid before both Houses of Parliament.
- (9) The Minister must publish the State Disability Inclusion Plan, and any variation of the plan, on a website determined by the Minister.
- (10) However, a failure to comply with a provision of this section does not affect the validity of the State Disability Inclusion Plan.
- (11) Each prescribed person or body must, in carrying out its functions or exercising its powers, have regard to, and seek to give effect to, the State Disability Inclusion Plan (however, a prescribed person or body will be taken not to be in breach of this subsection if the State authority is acting in accordance with a requirement under this or any other Act or law).
- (12) In this section—
- prescribed person or body* means—
- (a) each State authority; and
 - (b) each public sector agency (within the meaning of the *Public Sector Act 2009*); and
 - (c) any other person or body, or person or body of a class, prescribed by the regulations for the purposes of this paragraph.

14—Annual report on operation of State Disability Inclusion Plan

- (1) The Chief Executive must, on or before 31 December in each year, report to the Minister on the operation of the State Disability Inclusion Plan during the preceding financial year.
- (2) The Minister must, within 6 sitting days after receiving a report from the Chief Executive, have copies of the report laid before both Houses of Parliament.

15—Review of State Disability Inclusion Plan

- (1) The Minister must cause a review of the State Disability Inclusion Plan to be undertaken at least once in each 4 year period, and a report on the review to be prepared and submitted to the Minister.
- (2) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

Part 5—Disability access and inclusion plans

16—Disability access and inclusion plans

- (1) There is to be a *disability access and inclusion plan* for each State authority.
- (2) A disability access and inclusion plan is to be prepared by the relevant State authority in accordance with this section.
- (3) A disability access and inclusion plan—
 - (a) must set out the measures that the State authority intends to put in place to ensure that people with disability can access the mainstream supports and services provided by or on behalf of the State authority; and
 - (b) must explain how the State authority proposes to give effect to the objects and principles set out in Part 2; and
 - (c) must explain how the State authority proposes to give effect to the State Disability Inclusion Plan; and
 - (d) must include strategies to support people with disability in the following areas:
 - (i) access to built environs, events and facilities;
 - (ii) access to information and communications;
 - (iii) addressing the specific needs of people with disability in its programs and services;
 - (iv) employment; and
 - (e) must contain such other provisions as may be required by the guidelines published under section 12(1)(a) or the regulations.
- (4) Subject to this section, in preparing a disability access and inclusion plan, a State authority—
 - (a) must comply with the guidelines published under section 12(1)(a); and
 - (b) must, in accordance with any requirements set out in the regulations, consult with people with disability and persons or bodies representing the interests of people with disability (and may consult with any other persons or bodies that the State authority thinks fit); and
 - (c) must call for submissions from members of the public in accordance with the scheme set out in the regulations (and must have regard to the submissions made in response to the call); and
 - (d) must comply with any other requirements prescribed by the regulations.

- (5) Despite a preceding subsection, a local council may, with the approval of the Minister and in accordance with any requirements set out in the regulations, prepare a single disability access and inclusion plan to be the disability access and inclusion plan for—
 - (a) that local council; and
 - (b) 1 or more specified local councils,(and the plan will, for the purposes of this Act, be taken to be the disability access and inclusion plan for each such council).
- (6) A State authority may vary its disability access and inclusion plan at any time in accordance with any requirements prescribed by the regulations.
- (7) A State authority must publish (in a format that is accessible to people with disability) its disability access and inclusion plan, and any variation of the plan, on a website determined by the State authority.

17—Annual report on operation of disability access and inclusion plan

- (1) Each State authority must, on or before 31 October in each year, report to the Chief Executive on the operation of its disability access and inclusion plan during the preceding financial year (including a summary of the extent to which the disability access and inclusion plan has been implemented by the State authority).
- (2) The Chief Executive must, on or before 31 December in each year, provide to the Minister a report summarising the reports received under subsection (1) in respect of the preceding financial year.
- (3) A report under subsection (2) may be combined with a report under section 14(1).
- (4) The Minister must, within 6 sitting days after receiving a report from the Chief Executive under subsection (2), have copies of the report laid before both Houses of Parliament (and, if the report is combined with a report under section 14(1), then the requirement of this subsection will be satisfied on the report being laid before Houses of Parliament in accordance with that section).

18—Review of disability access and inclusion plans

- (1) A State authority must cause a review of its disability access and inclusion plan to be undertaken at least once in each 4 year period, and a report on the review to be prepared and submitted to the State authority.
- (2) The State authority must cause a copy of the report submitted under subsection (1) to be provided to the Minister as soon as is reasonably practicable after receiving the report.

Part 6—Screening of persons working with people with disability

19—Interpretation

- (1) *In this Part—*

excluded person means a person, or a person of a class, declared by the regulations to be an excluded person for the purposes of this definition;

prescribed offence means an offence, or offence of a class, prescribed by the regulations for the purposes of this Part;

prescribed position means—

- (a) a position in which a person works, or is likely to work, with people with disability; or
- (b) any other position, or a position of a class, prescribed by the regulations for the purposes of this definition;

prohibition notice means a notice prohibiting a specified person from working with people with disability issued to a person in accordance with the regulations;

screening check—see section 23(1).

- (2) For the purposes of this Part, a reference to a person being **employed** will be taken to include a reference to a person who—
 - (a) is a self-employed person; or
 - (b) carries out work under a contract for services; or
 - (c) carries out work as a minister of religion or as part of the duties of a religious or spiritual vocation; or
 - (d) undertakes practical training as part of an educational or vocational course; or
 - (e) carries out work as a volunteer; or
 - (f) performs unpaid community work in accordance with an order of a court,and a reference to an **employer**, **employee** or **employment** is to be construed accordingly.

20—Working with people with disability

For the purposes of this Act, a person **works with people with disability** if the person—

- (a) in the course of their employment provides a service, or undertakes an activity, of a kind prescribed by the regulations for the purposes of this section; or
- (b) carries on a business in the course of which an employee provides a service, or undertakes an activity, of a kind referred to in paragraph (a) (whether or not the person themselves provides such a service, or undertakes such an activity).

21—Certain persons prohibited from working with people with disability

- (1) The following persons (**prohibited persons**) are prohibited from working with people with disability:
 - (a) a person to whom a prohibition notice has been issued;
 - (b) a person who, under a law of the Commonwealth, or of another State or Territory, is prohibited from working with people with disability (however described);
 - (c) a person who has been found guilty of a prescribed offence committed as an adult.

- (2) *Subsection (1)(c) applies in relation to a prescribed offence—*
- (a) *whether the offence was committed before or after the commencement of this section; and*
 - (b) *whether the finding of guilt was made before or after the commencement of this section.*
- (3) *A person who works with a person with disability in contravention of subsection (1) is guilty of an offence.*
Maximum penalty: \$50 000 or imprisonment for 1 year.
- (4) *An employer who employs, or continues to employ, a prohibited person in a prescribed position is guilty of an offence.*
Maximum penalty:
- (a) *in the case of a natural person—\$50 000 or imprisonment for 1 year; or*
 - (b) *in the case of a body corporate—\$120 000.*

22—Working with people with disability without current screening check prohibited

- (1) *Subject to this section, a person must not work with people with disability unless a screening check has been conducted in relation to the person within the preceding 5 years.*
Maximum penalty:
- (a) *for a first or second offence—\$20 000;*
 - (b) *for a third or subsequent offence—\$50 000 or imprisonment for 1 year.*
- (2) *Subsection (1) does not apply to an excluded person.*

23—Regulations to set out scheme for screening checks

- (1) *The Governor may, by regulation, establish a scheme for the screening of persons working with, or who are to work with, people with disability (a **screening check**).*
- (2) *Without limiting the matters that may be the subject of regulations under this section, the regulations may make provisions—*
- (a) *requiring that screening checks be undertaken by a specified person or body;*
 - (b) *exempting a specified person, or specified class of persons, from the operation of section 22(1) in specified circumstances (including, to avoid doubt, where an application for a screening check is not processed within a specified period);*
 - (c) *prescribing information, or classes of information, that may or must, or must not, be assessed in the course of a screening check;*
 - (d) *recognising working with children checks under the Child Safety (Prohibited Persons) Act 2016, or other assessments of a person's criminal or other history under any other Act, as a screening check for the purposes of this Part;*
 - (e) *providing for, or limiting, procedural fairness to be afforded in the conduct of screening checks;*

- (f) *imposing requirements in relation to the confidentiality of information;*
 - (g) *imposing requirements in respect of the keeping of records;*
 - (h) *providing for reviews of, or appeals against, decisions made in the course of a screening check;*
 - (i) *of an evidentiary nature relating to the operation of this Part.*
- (3) *Without limiting a preceding subsection, the regulations may make such provisions as may be necessary or appropriate to make the screening check scheme under this Part consistent with the working with children check scheme under the Child Safety (Prohibited Persons) Act 2016.*

Note—

Part 6 had not come into operation at the date of the publication of this version.

Part 7—Community Visitor Scheme

24—Community Visitor Scheme

- (1) The Governor may, by regulation, establish a scheme for a community visitor or visitors.
- (2) Without limiting the matters that may be the subject of regulations under this section, the regulations may make provisions—
 - (a) relating to the appointment and removal of community visitors;
 - (b) conferring functions and powers on community visitors;
 - (c) providing for the delegation of the functions and powers of community visitors;
 - (d) requiring reports to be provided to the Minister on the operation of the community visitor scheme during a specified period, and requiring such reports to be laid before Parliament.

Part 8—National Disability Insurance Scheme

25—Regulations for the purpose of implementing etc the National Disability Insurance Scheme

- (1) The Governor may make regulations providing for, or relating to, the transition to the National Disability Insurance Scheme.
- (2) Without limiting the matters that may be the subject of regulations under this section, the regulations may make provisions—
 - (a) providing for the exchange of records or information for the purposes of the NDIS;
 - (b) of a saving or transitional nature consequent on the enactment of the *National Disability Insurance Scheme Act 2013* of the Commonwealth, on the amendment of that Act or on the making of regulations under that Act.

Part 9—Information gathering and sharing

26—Chief Executive may require State authority to provide report

- (1) The Chief Executive may, if the Chief Executive is of the opinion that it is necessary or would otherwise assist in the performance of functions under this Act, require a State authority to prepare and provide a report to the Chief Executive in relation to the matters, and in accordance with any requirements, specified in the notice.
- (2) If a State authority refuses or fails to comply with a requirement under subsection (1), the Chief Executive may require the State authority to provide to the Chief Executive within a specified period a report setting out the reasons for noncompliance.
- (3) The Chief Executive may, on receiving a report under subsection (2), submit a copy of the report to the Minister setting out the views of the Chief Executive in respect of the State authority's noncompliance.
- (4) The Minister must, on receiving a report under subsection (3), prepare a report to Parliament setting out—
 - (a) the Minister's response to the Chief Executive's report; and
 - (b) any other information required by the regulations.
- (5) The Minister must, within 6 sitting days after completing a report under subsection (4), cause a copy of both the report and the Chief Executive's report under subsection (3) to be laid before both Houses of Parliament.

27—Sharing of information between certain persons and bodies

- (1) This section applies to the following persons and bodies:
 - (a) a State authority;
 - (b) a community visitor;
 - (c) any other person or body prescribed by the regulations.
- (2) Despite any other Act or law, a person or body to whom this section applies (the *provider*) may, in accordance with any requirement set out in the regulations, provide prescribed information and documents to another person or body to whom this section applies (the *recipient*) if the provider reasonably believes that the provision of the information or documents would assist the recipient—
 - (a) to perform functions relating to people with disability; or
 - (b) to manage any risk to a person with disability, or class of people with disability, that might arise in the recipient's capacity as an employer or provider of services.
- (3) Subject to this section, but despite any other Act or law, information or documents that do not directly or indirectly disclose the identity of any person may be provided by one person or body to whom this section applies to another without restriction.
- (4) Subsection (3) applies—
 - (a) whether or not the information or documents consist of or include prescribed information and documents; and

- (b) whether or not the information or document ever disclosed the identity of a person, or has been redacted so as to de-identify it.
- (5) Information may be provided under this section whether or not the provider has been requested to provide the information.
- (6) Despite section 29, the recipient of information or documents under this section must not disclose information or documents received under this section except—
 - (a) to another person or body to whom this section applies; or
 - (b) as may be authorised by the regulations.
- (7) In this section—

prescribed information and documents means—

- (a) information or documents relating to the health, safety, welfare or wellbeing of a particular person with disability, or class of people with disability; or
- (b) any other information or document of a kind prescribed by the regulations for the purposes of this definition.

28—Interaction with *Public Sector (Data Sharing) Act 2016*

Nothing in this Part affects the operation of the *Public Sector (Data Sharing) Act 2016*.

Part 10—Miscellaneous

29—Confidentiality

- (1) Subject to this Act, a person engaged or formerly engaged in the administration, operation or enforcement of this Act must not disclose personal information obtained (whether by that person or otherwise) in the course of performing functions or exercising powers under this Act except—
 - (a) as required or authorised by or under this Act or any other Act or law; or
 - (b) with the consent of the person to whom the information relates; or
 - (c) in connection with the administration or enforcement of this or any other Act; or
 - (d) for the purposes of referring the matter to a law enforcement agency, or a person or agency exercising official duties under an Act relating to the care or protection of people with disability; or
 - (e) to an agency or instrumentality of this State, the Commonwealth or another State or a Territory of the Commonwealth for the purposes of the proper performance of its functions; or
 - (f) if the disclosure is reasonably necessary for the protection of the lawful interests of that person.

Maximum penalty: \$10 000.

- (2) Subsection (1) does not prevent disclosure of statistical or other data that could not reasonably be expected to lead to the identification of any person to whom it relates.

- (3) Information that has been disclosed under subsection (1) for a particular purpose must not be used for any other purpose by—
- (a) the person to whom the information was disclosed; or
 - (b) any other person who gains access to the information (whether properly or improperly and whether directly or indirectly) as a result of that disclosure.
- Maximum penalty: \$10 000.
- (4) The regulations may make further provision in respect of the disclosure of information obtained in the course of the administration of this Act.

30—Victimisation

- (1) A person who causes detriment to another on the ground, or substantially on the ground, that the other person or a third person has provided, or intends to provide, information under this Act commits an act of victimisation.
- (2) However, causing detriment on the ground that a person—
- (a) has made a false allegation; or
 - (b) has not acted in good faith,
- does not constitute an act of victimisation.
- (3) An act of victimisation under this Act 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, the victim cannot subsequently lodge a complaint under the *Equal Opportunity Act 1984* and, conversely, if the victim lodges a complaint under that Act, the victim cannot subsequently commence proceedings in a court seeking a remedy in tort.
- (4) If a complaint alleging an act of victimisation under this Act 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.
- (5) In proceedings against a person seeking a remedy in tort for an act of victimisation committed by an employee or agent of the person, it is a defence to prove that the person exercised all reasonable diligence to ensure that the employee or agent would not commit an act of victimisation.
- (6) A person who personally commits an act of victimisation under this Act is guilty of an offence.
- Maximum penalty: \$10 000.
- (7) Proceedings for an offence against subsection (6) may only be commenced by a police officer or a person approved by either the Commissioner of Police or the Director of Public Prosecutions.

(8) 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 a person's employment; or
- (d) threats of reprisal.

31—Service

Except where this Act requires otherwise, a notice or other document required or authorised to be given to or served on a person under this Act may—

- (a) be given to the person personally; or
- (b) be left for the person at the person's place of residence or business with someone apparently over the age of 16 years; or
- (c) be posted to the person at the person's last known place of residence or business; or
- (d) be transmitted by fax or email to a fax number or email address provided by the person (in which case the notice or other document will be taken to have been given or served at the time of transmission); or
- (e) if the person is a company or registered body within the meaning of the *Corporations Act 2001* of the Commonwealth, be served in accordance with that Act.

32—Review of Act

- (1) The Minister must cause a review of the operation of this Act to be conducted and a report on the review to be prepared and submitted to the Minister.
- (2) The review and the report must be completed after the third, but before the fourth, anniversary of the commencement of this Act.
- (3) The Minister must cause a copy of the report submitted under subsection (1) to be laid before both Houses of Parliament within 6 sitting days after receiving the report.

33—Regulations

- (1) The Governor may make such regulations as are contemplated by, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may—
 - (a) exempt a person, or a class of persons, from the operation of a specified provision or provisions of this Act; and
 - (b) fix fees or charges in respect of any matter under this Act and their payment, recovery or waiver; and
 - (c) provide for fines, not exceeding \$10 000, for offences against the regulations; and

- (d) provide for expiation fees, not exceeding \$315, for offences against the regulations; and
 - (e) provide for the facilitation of proof of the commission of offences against the regulations.
- (3) The regulations may—
- (a) be of general or limited application; and
 - (b) make different provision according to the matters or circumstances to which they are expressed to apply; and
 - (c) make provisions of a saving or transitional nature consequent on the enactment of this Act or on the making of regulations under this Act; and
 - (d) 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 or a specified person or body; and
 - (e) apply or incorporate, wholly or partially and with or without modification, a code, standard, policy or other document prepared or published by the Minister or a specified person or body.
- (4) If a code, standard or other document is referred to or incorporated in the regulations—
- (a) a copy of the code, standard or other document must be kept available for public inspection, without charge and during ordinary office hours, at an office or offices specified in the regulations; and
 - (b) evidence of the contents of the code, standard or other document may be given in any legal proceedings by production of a document apparently certified by the Minister to be a true copy of the code, standard or other document.

Schedule 1—Related amendments, transitional provisions and repeal

Part 1—Preliminary

1—Amendment provisions

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

Part 2—Amendment of *Carers Recognition Act 2005*

2—Amendment of section 5—Meaning of carer

Section 5(1)(a)—delete "*Disability Services Act 1993*" and substitute:

Disability Inclusion Act 2018

Part 3—Amendment of *Disability Services Act 1993*

3—Repeal of sections 5B and 5C

Sections 5B and 5C—delete sections 5B and 5C

Note—

Schedule 1 Part 3 had not come into operation at the date of the publication of this version.

Part 4—Amendment of *Intervention Orders (Prevention of Abuse) Act 2009*

4—Amendment of section 3—Interpretation

Section 3(1), definition of *relevant public sector agency*—delete "*Disability Services Act 1993*"

Part 5—Repeal of *Disability Services Act 1993*

5—Repeal of *Disability Services Act 1993*

The Disability Services Act 1993 is repealed.

Note—

Schedule 1 Part 5 had not come into operation at the date of the publication of this version.

Legislative history

Notes

- In this version provisions that are uncommenced appear in italics.
- 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
2018	1	<i>Disability Inclusion Act 2018</i>	14.6.2018	1.7.2018 (<i>Gazette 28.6.2018 p2618</i>) except Sch 1 (cl 3)—1.2.2021 (<i>Gazette 17.12.2020 p5743</i>) and except Pt 6 & Sch 1 (cl 5)—uncommenced
2019	9	<i>Statutes Amendment (Screening) Act 2019</i>	16.5.2019	Pt 4 (ss 18 to 20 & 24)—1.2.2021 (<i>Gazette 17.12.2020 p5744</i>) and except ss 21 to 23 & 25—uncommenced