

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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Legislative history

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**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.

### **5B—Powers and obligations of responsible authority in respect of relevant history**

- (1) The responsible authority for a prescribed disability service provider must ensure that, before a person is appointed to, or engaged to act in, a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in the provider, an assessment of the person's relevant history is undertaken in accordance with the regulations.
- Maximum penalty: \$10 000.
- (2) The responsible authority for a prescribed disability service provider may, at any time, as the authority thinks necessary or desirable for the purpose of ensuring the safety and welfare of persons for whom disability services are provided, cause an assessment of the person's relevant history to be undertaken in accordance with the regulations of any person who—
- (a) occupies or acts in a prescribed position (whether as an employee, volunteer, agent, contractor or subcontractor) in the provider; or
  - (b) carries out, or is to carry out, as an indirect service provider, prescribed functions for the purposes of the provider.

- (3) The Chief Executive may, at the request of the responsible authority for a prescribed disability service provider, exercise powers of the responsible authority under this section if satisfied that—
- (a) the responsible authority has sought, but failed to obtain, the cooperation of a person in respect of whom the responsible authority is required or authorised to cause a relevant history assessment to be undertaken in accordance with the regulations; or
  - (b) there is some other good reason for doing so.
- (4) The regulations may (without limitation)—
- (a) make provision in relation to the manner in which an assessment of a person's relevant history may be undertaken; and
  - (b) provide for the authorisation of persons or bodies to undertake assessments of a person's relevant history for the purposes of this section or section 5C, or any other purpose prescribed by regulation and relating to the provision of disability services; and
  - (c) require a specified prescribed disability service provider, or a prescribed disability service provider of a specified class, to use a specified person or body to undertake relevant history assessments for the purposes of this section; and
  - (d) make provision in relation to the issue of certificates relating to assessments of a person's relevant history; and
  - (e) make provision in relation to the release of information relating to a person's relevant history to another jurisdiction; and
  - (f) make provision in relation to the use of information relating to a person's relevant history received from another jurisdiction; and
  - (g) make provision in relation to confidentiality of information relating to, or obtained in the course of an assessment of, a person's relevant history.
- (5) The Chief Executive may develop and issue standards to be observed in dealing with information obtained in connection with an assessment of a person's relevant history (whether under this section, section 5C or otherwise).

- (6) In this section—

**Chief Executive** means the chief executive of the administrative unit of the Public Service that is, under the Minister, responsible for the administration of this Act;

**indirect service provider**—a person carries out functions as an indirect service provider if the person carries out the functions for some other body or person which, in turn, makes the person's services available to the prescribed disability service provider;

**managing authority** of a prescribed disability service provider, means the board, committee or other body or person in which the management of the provider is vested (and, in the case of a board, committee or body that is not incorporated, each member of the board, committee or body will be taken to be a managing authority of the provider);

**prescribed functions** means—

- (a) regular contact with people with a disability or working in close proximity to people with a disability on a regular basis, unless the contact or work is directly supervised at all times; or
- (b) supervision or management of people in positions requiring or involving regular contact with people with a disability or working in close proximity to people with a disability on a regular basis; or
- (c) access to records of a kind prescribed by regulation relating to people with a disability; or
- (d) functions of a type prescribed by regulation;

**prescribed position**, in a prescribed disability service provider, means—

- (a) a position that requires or involves the performance of 1 or more prescribed functions; or
- (b) a position, or position of a class, in a government department, agency or instrumentality designated (by notice in the Gazette) by the responsible authority for the government department, agency or instrumentality as a prescribed position for the purposes of this section;

**relevant history**, of a person, means—

- (a) in the case of an assessment of a person's relevant history undertaken by a person or body authorised by the regulations to undertake relevant history assessments—information of the following kinds:
  - (i) findings of guilt for offences committed by the person in South Australia or elsewhere (whether those findings of guilt relate to offences committed before or after the commencement of this section);
  - (ii) offences alleged to have been committed (whether before or after the commencement of this section) by the person in South Australia or elsewhere and with which the person has been charged but which have not yet been finally determined;
  - (iii) information relating to findings of guilt and charges referred to in a preceding subparagraph;
  - (iv) information relating to charges for offences alleged to have been committed by the person in South Australia or elsewhere (whether those charges relate to offences alleged to have been committed before or after the commencement of this section and regardless of the outcome of those charges);
  - (v) information lawfully obtained or held for any purpose by a person or body prescribed by regulation (being information that is relevant to whether a person is a suitable person to perform prescribed functions);
  - (vi) information provided by the person for the purposes of an assessment of his or her relevant history; or

- (b) in the case of an assessment of a person's relevant history undertaken by a person or body other than a person or body authorised by the regulations to undertake relevant history assessments—information of the following kinds:
  - (i) findings of guilt for offences committed by the person in South Australia or elsewhere (whether those findings of guilt relate to offences committed before or after the commencement of this section);
  - (ii) offences alleged to have been committed (whether before or after the commencement of this section) by the person in South Australia or elsewhere and with which the person has been charged but which have not yet been finally determined;
  - (iii) information provided by the person for the purposes of an assessment of his or her relevant history,

but does not, in respect of a relevant history assessment of a kind specified in the regulations, include information, or information of a class, declared by the regulations to be excluded from the ambit of this definition;

*responsible authority* means—

- (a) for a government department—the chief executive of that department;
  - (b) for a government agency or instrumentality—the managing authority of that agency or instrumentality;
  - (c) for any other prescribed disability service provider—
    - (i) the managing authority of the provider; or
    - (ii) if the managing authority has delegated its responsibilities under this section to a body approved by regulation for the purposes of this definition—that body.
- (7) Information of a kind referred to in paragraph (b) of the definition of *relevant history* may, despite any other Act or law, be disclosed to a person or body that is undertaking an assessment of a person's relevant history (whether under this section or otherwise).
- (8) Any information (whether of a kind referred to in the definition of *relevant history* or otherwise) may, despite any other Act or law, be disclosed to a person or body authorised by the regulations to undertake relevant history assessments.

### **5C—Obligations of certain performers of prescribed functions in respect of relevant history**

- (1) This section applies to the following persons:
- (a) a natural person who is a prescribed disability service provider and who, in the course of carrying on a business as a sole trader or in partnership, performs 1 or more prescribed functions;
  - (b) a natural person who is a prescribed disability service provider and who, as a volunteer, performs a prescribed function;
  - (c) a responsible authority for a prescribed disability service provider who is a natural person.



- (2) This section does not apply to the following persons:
- (a) a person appointed to, or engaged to act in, a prescribed position (within the meaning of section 5B(1));
  - (b) a person, or person of a class, declared by the regulations to be a person or class of persons to whom this section does not apply.
- (3) A person to whom this section applies must not perform a prescribed function unless—
- (a) an assessment of the person's relevant history has been undertaken in accordance with the regulations within the preceding 3 years; or
  - (b) the person has obtained a criminal history report prepared by South Australia Police or CrimTrac within the preceding 3 years.

Maximum penalty: \$10 000.

- (4) An assessment referred to in subsection (3)(a) must be undertaken by a person or body authorised by the regulations to undertake assessments of a person's relevant history for the purposes of this section or section 5B.
- (5) A person to whom this section applies must, on request made—
- (a) by a person who is, or purports to be, a prescribed person; and
  - (b) while the person to whom this section applies is performing the prescribed function; and
  - (c) in accordance with the regulations,

produce for inspection evidence of a prescribed kind of his or her compliance with subsection (3).

Maximum penalty: \$10 000.

- (6) In this section—

***CrimTrac*** means the CrimTrac Agency established under the *Public Service Act 1999* of the Commonwealth;

***prescribed disability service provider*** includes a person, or person of a class, declared by the regulations to be included in the ambit of this definition;

***prescribed function*** has the same meaning as in section 5B;

***prescribed person*** means—

- (a) a person with a disability; or
- (b) a parent, guardian or carer of a person with a disability,

in respect of whom a prescribed function is, or may be, performed;

***responsible authority*** has the same meaning as in section 5B.

## 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, or necessary or expedient for the purposes of, this Act.
- (2) Without limiting the generality of subsection (1), the regulations may make provision for or relating to—
  - (a) exemptions (conditional or unconditional) from specified provisions of this Act; and
  - (b) fees in respect of any matter under this Act and their payment, recovery or waiver; and
  - (c) fines, not exceeding \$10 000, for offences against the regulations; and
  - (d) expiation fees (not exceeding \$315) for alleged offences against the regulations; and
  - (e) facilitation of proof of the commission of offences against the regulations.

- (3) The regulations may—
  - (a) be of general application or vary in their application according to prescribed factors;
  - (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.
- (4) The regulations may refer to or incorporate, wholly or partially and with or without modification, a code, standard or other document prepared or published by a prescribed body, either as in force at the time the regulations are made or as in force from time to time.
- (5) 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—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

- Please note—References in the legislation to other legislation or instruments or to titles of bodies or offices are not automatically updated as part of the program for the revision and publication of legislation and therefore may be obsolete.
- Earlier versions of this Act (historical versions) are listed at the end of the legislative history.
- 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](http://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 ( <i>Gazette 5.12.2013 p4445</i> )
<b>2013</b>	<b>87</b>	<b><i>Statutes Amendment (Assessment of Relevant History) Act 2013</i></b>	<b>5.12.2013</b>	<b>Pt 3 (ss 8 &amp; 9)—16.2.2014 (<i>Gazette 13.2.2014 p887</i>)</b>

### 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 service provider	inserted by 66/2013 s 5	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)	s 7 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
<b>ss 5B and 5C</b>	<b>inserted by 87/2013 s 8</b>	<b>16.2.2014</b>
s 10		
s 10(1)	s 10 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
<b>s 10</b>	<b>substituted by 87/2013 s 9</b>	<b>16.2.2014</b>
s 11	<i>deleted by 66/2013 s 11</i>	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

## Historical versions

5.12.2013