

Version No. 006
Disability Act 2006

No. 23 of 2006

Version incorporating amendments as at
1 March 2012

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Version No. 006
Disability Act 2006

No. 23 of 2006

Version incorporating amendments as at
1 March 2012

The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to enact a new legislative scheme for persons with a disability which reaffirms and strengthens their rights and responsibilities and which is based on the recognition that this requires support across the government sector and within the community.

2 Commencement

- (1) Section 1 and this section come into operation on the day after the day on which this Act receives the Royal Assent.
- (2) Subject to subsection (3), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (3) If a provision referred to in subsection (2) does not come into operation before 1 July 2007, it comes into operation on that day.

3 Definitions

- (1) In this Act—

Australian Industrial Relations Commission
means the body established by section 61 of the Workplace Relations Act 1996 of the Commonwealth, as in force before its repeal;

S. 3(1) def. of
*Australian
Industrial
Relations
Commission*
inserted by
No. 74/2009
s. 10(1).

authorised officer means a person appointed as an authorised officer under section 207;

Authorised Program Officer means a person appointed under section 139 or 190;

behaviour management plan means a plan developed for a person with a disability which specifies a range of strategies to be used in managing the person's behaviour including proactive strategies to build on the person's strengths and increase their life skills;

benefit to the person means maximising a person's quality of life and increasing their opportunity for social participation;

chemical restraint means the use, for the primary purpose of the behavioural control of a person with a disability, of a chemical substance to control or subdue the person but does not include the use of a drug prescribed by a registered medical practitioner for the treatment, or to enable the treatment, of a mental illness or a physical illness or physical condition;

common area means any area in which facilities are provided for the use of residents otherwise than as part of the room which the resident occupies;

community residential unit means a residential service which is declared to be a community residential unit under section 64;

community visitor means a person appointed under section 28;

Community Visitors Board means the Board established under section 32;

complaint, in Division 5 of Part 6, means a complaint within the meaning of section 109;

compulsory treatment means treatment of a person who is—

- (a) admitted to a residential treatment facility or a residential institution under an order specified in section 152(2); or
- (b) subject to a supervised treatment order;

Department means the Department of Human Services;

detain, in Part 8, includes—

- (a) physically locking a person in any premises; and
- (b) constantly supervising or escorting a person to prevent the person from exercising freedom of movement;

developmental delay means a delay in the development of a child under the age of 6 years which—

- (a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and
- (b) is manifested before the child attains the age of 6 years; and
- (c) results in substantial functional limitations in one or more of the following areas of major life activity—
 - (i) self-care;
 - (ii) receptive and expressive language;
 - (iii) cognitive development;
 - (iv) motor development; and

- (d) reflects the child's need for a combination and sequence of special interdisciplinary, or generic care, treatment or other services which are of extended duration and are individually planned and coordinated;

disability in relation to a person means—

- (a) a sensory, physical or neurological impairment or acquired brain injury or any combination thereof, which—
 - (i) is, or is likely to be, permanent; and
 - (ii) causes a substantially reduced capacity in at least one of the areas of self-care, self-management, mobility or communication; and
 - (iii) requires significant ongoing or long term episodic support; and
 - (iv) is not related to ageing; or
- (b) an intellectual disability; or
- (c) a developmental delay;

disability service means a service specifically for the support of persons with a disability which is provided by a disability service provider;

disability service provider means—

- (a) the Secretary; or
- (b) a person or body registered on the register of disability service providers;

Disability Services Commissioner means the Disability Services Commissioner appointed under section 14 and includes the Acting

Disability Services Commissioner appointed under section 15;

Disability Services Board means the Disability Services Board established under section 20;

facilities means—

- (a) land or buildings intended for use for storage space or car parking;
- (b) laundry facilities;
- (c) cooking facilities;
- (d) recreational areas;
- (e) garbage storage and disposal facilities;
- (f) bathroom, toilet and washing facilities;
- (g) appliances for heating or cooling premises;
- (h) communications facilities;
- (i) lawns, gardens and outhouses;
- (j) stairways—

provided for the use of a resident otherwise than as a part of the room;

Fair Work Australia has the same meaning as in the Fair Work Act 2009 of the Commonwealth;

S. 3(1) def. of
***Fair Work
Australia***
inserted by
No. 74/2009
s. 10(1).

forensic resident has the same meaning as it has in section 3(1) of the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;

intellectual disability, in relation to a person over the age of 5 years, means the concurrent existence of—

- (a) significant sub-average general intellectual functioning; and
- (b) significant deficits in adaptive behaviour—

each of which became manifest before the age of 18 years;

leave of absence means temporary leave from a residential treatment facility under section 156 or from a residential institution under section 170 given to a resident in accordance with the resident's treatment plan;

mechanical restraint means the use, for the primary purpose of the behavioural control of a person with a disability, of devices to prevent, restrict or subdue a person's movement but does not include the use of devices—

- (a) for therapeutic purposes; or
- (b) to enable the safe transportation of the person;

Minister means the Minister for Community Services;

notice of intention to vacate means a notice given under section 80;

notice of temporary relocation means a notice given under section 74;

notice to vacate means a notice given under section 76;

person includes a body or association (corporate or unincorporate) and a partnership;

premises means a structure that is designed to be used for human habitation and the area outside that structure which is part of the

property on which the premises is located and includes—

- (a) the room occupied or to be occupied by a resident;
- (b) any common area;
- (c) any facilities;

prison has the same meaning as in the **Corrections Act 1986**;

Public Advocate means the Public Advocate appointed under section 12 of the **Guardianship and Administration Act 1986**;

region has the same meaning as in the **Health Services Act 1988**;

register of disability service providers means the register of disability service providers kept under section 46;

registered medical practitioner means a person registered under the Health Practitioner Regulation National Law to practise in the medical profession (other than as a student);

S. 3(1) def. of *registered medical practitioner* inserted by No. 13/2010 s. 51(Sch. item 19).

rent component means an amount for the use by a resident of the room, any common area and the premises;

resident means a person who receives disability services in a residential service;

resident's administrator means the resident's attorney appointed under an enduring power of attorney to administer the resident's property or a person appointed by a court or tribunal as the administrator of the resident's property;

resident's guardian means the resident's guardian appointed under the **Guardianship and Administration Act 1986** or appointed by a court and if the resident is a child, includes the child's guardian whether or not the natural parent of the child;

residential charge means a charge comprising the rent component or both the rent component and the services component;

residential institution means any premises which is proclaimed to be, or deemed to be, a residential institution under section 86;

residential service means residential accommodation with rostered staff provided by, or on behalf of, a disability service provider for the purpose of providing disability services to—

- (a) one or more residents in a community residential unit; or
- (b) one or more residents in a residential service other than a community residential unit;

residential treatment facility means a premises or program proclaimed to be a residential treatment facility under section 151;

residential treatment order has the same meaning as it has in section 3(1) of the **Sentencing Act 1991**;

Residents' Trust Fund means the Residents' Trust Fund continued under section 91;

RTO resident means a person who is subject to a residential treatment order;

restraint means chemical restraint or mechanical restraint;

restrictive intervention means any intervention that is used to restrict the rights or freedom of movement of a person with a disability including—

- (a) chemical restraint;
- (b) mechanical restraint;
- (c) seclusion;

room means a room in a premises where the room is occupied or intended to be occupied by a person who has a right to occupy the room for the purpose of a residence together with a right to use in common with others common areas in the premises;

seclusion means the sole confinement of a person with a disability at any hour of the day or night—

- (a) in any room in the premises where disability services are being provided of which the doors and windows cannot be opened by the person from the inside; or
- (b) in any room in the premises where disability services are being provided of which the doors and windows are locked from the outside; or
- (c) to a part of any premises in which disability services are being provided;

Secretary means the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department;

S. 3(1) def. of
Secretary
substituted by
No. 29/2010
s. 7.

security order means a security order made under section 166;

security resident means a person in respect of whom a security order is in force;

Senior Practitioner means the person appointed as the Senior Practitioner under section 23;

services component means an amount for whichever of the following service items are provided to a resident—

- (a) utilities;
- (b) communications including telephone;
- (c) bedding and linen;
- (d) food;
- (e) general household consumable supplies;
- (f) communal furnishings and whitegoods;
- (g) household equipment and utensils;
- (h) replacement of items specified in subparagraphs (b), (c), (e), (f), or (g) following wear and tear or accidental damage;

special leave means leave from a residential treatment facility under section 157 or from a residential institution under section 171;

supervised treatment means treatment used on a person with an intellectual disability under a supervised treatment order;

supervised treatment order means a civil order made in respect of a person with an intellectual disability under section 191;

support plan means a support plan prepared under section 54 for a person with a disability who is receiving on-going disability services;

treatment plan means a plan for the use of treatment on a person with a disability prepared under section 153, 167, 180(6) or 191;

urgent repairs means any work necessary to repair or remedy—

- (a) a burst water service; or
- (b) a blocked or broken lavatory system; or
- (c) a serious roof leak; or
- (d) a gas leak; or
- (e) a dangerous electrical fault; or
- (f) flooding or serious flood damage; or
- (g) serious storm or fire damage; or
- (h) a failure or breakdown of any essential service or appliance provided by a disability service provider for hot water, water, cooking, heating or laundering; or
- (i) a failure or breakdown of the gas, electricity or water supply to a residential service; or
- (j) an appliance, fitting or fixture provided by a disability service provider that uses or supplies water and that is malfunctioning in a way that results or will result in a substantial amount of water being wasted; or
- (k) any fault or damage that makes a room or residential service unsafe or insecure; or
- (l) a serious fault in a staircase; or
- (m) any damage of a prescribed class;

Victorian Disability Advisory Council means the Council established under section 11.

- (2) If under the **Public Administration Act 2004** the name of the Department is changed, the reference in the definition of "Department" in subsection (1) to the "Department of Human Services" is from the date when the name is changed to be taken to be a reference to the Department by its new name.
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PART 2—OBJECTIVES AND PRINCIPLES

4 Objectives of Act

The objectives of this Act are to—

- (a) advance the inclusion and participation in the community of persons with a disability;
- (b) promote a strategic whole of government approach in supporting the needs and aspirations of persons with a disability;
- (c) facilitate the planning, funding and provision of services, programs and initiatives for persons with a disability;
- (d) promote and protect the rights of persons accessing disability services;
- (e) support the provision of high quality disability services;
- (f) make disability service providers accountable to persons accessing those disability services;
- (g) ensure the efficient and effective use of public funds in the provision of disability services.

5 Principles

- (1) Persons with a disability have the same rights and responsibilities as other members of the community and should be empowered to exercise those rights and responsibilities.
- (2) Persons with a disability have the same right as other members of the community to—
 - (a) respect for their human worth and dignity as individuals;
 - (b) live free from abuse, neglect or exploitation;

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- (c) realise their individual capacity for physical, social, emotional and intellectual development;
 - (d) exercise control over their own lives;
 - (e) participate actively in the decisions that affect their lives and have information and be supported where necessary, to enable this to occur;
 - (f) access information and communicate in a manner appropriate to their communication and cultural needs;
 - (g) services which support their quality of life.
- (3) Disability services should—
- (a) advance the inclusion and participation in the community of persons with a disability with the aim of achieving their individual aspirations;
 - (b) be flexible and responsive to the individual needs of persons with a disability;
 - (c) maximise the choice and independence of persons with a disability;
 - (d) be designed and provided in a manner that recognises different models of practice may be required to assist people with different types of disability and at different stages in their lives to realise their physical, social, emotional and intellectual capacities;
 - (e) enable persons with a disability to access services as part of their local community and foster collaboration, coordination and integration with other local services;
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- (f) as far as possible be provided in a manner so that a person with a disability need not move out of his or her local community to access the disability services required;
 - (g) be of high quality and provided by appropriately skilled and experienced staff who have opportunities for on-going learning and development;
 - (h) consider and respect the role of families and other persons who are significant in the life of the person with a disability;
 - (i) acknowledge the important role families have in supporting persons with a disability;
 - (j) acknowledge the important role families have in assisting their family member to realise their individual physical, social, emotional and intellectual capacities;
 - (k) where possible strengthen and build capacity of families who are supporting persons with a disability;
 - (l) have regard for the needs of children with a disability and preserve and promote relationships between the child, their family and other persons who are significant in the life of the child with a disability;
 - (m) be provided in a manner that respects the privacy and dignity of persons accessing the disability services;
 - (n) be provided in a way which reasonably balances safety with the right of persons with a disability to choose to participate in activities involving a degree of risk;
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- (o) have regard for any potential increased disadvantage which may be experienced by persons with a disability as a result of their gender, language, cultural or indigenous background or location;
 - (p) be designed and administered in a manner so as to ensure that persons with a disability have access to advocacy support where necessary to enable adequate decision making about the services they receive;
 - (q) be designed and provided in a manner which continues to reflect the role of the Secretary in providing and funding planning for persons with a disability;
 - (r) be accountable for the quality of those services and for the extent to which the rights of persons with a disability are promoted and protected in the provision of those services.
- (4) If a restriction on the rights or opportunities of a person with a disability is necessary, the option chosen should be the option which is the least restrictive of the person as is possible in the circumstances.
- (5) It is the intention of Parliament that the principles specified in this section should wherever possible be given effect to in the administration of this Act and the provision of disability services.

6 Persons with an intellectual disability

- (1) The following principles apply specifically in respect of persons with an intellectual disability—
- (a) persons with an intellectual disability have a capacity for physical, social, emotional and intellectual development;

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- (b) persons with an intellectual disability have the right to opportunities to develop and maintain skills and to participate in activities that enable them to achieve valued roles in the community;
 - (c) services for persons with an intellectual disability should be designed and provided in a manner which maximises opportunities for persons living in residential institutions to live in community based accommodation;
 - (d) persons with an intellectual disability living in a residential institution have the right to a high quality of care and development opportunities whilst they continue to reside in the institution;
 - (e) services for persons with an intellectual disability should be designed and provided in a manner that ensures developmental opportunities exist to enable the realisation of their individual capacities;
 - (f) services for persons with an intellectual disability should be designed and provided in a manner that ensures that a particular disability service provider cannot exercise control over all or most aspects of the life of a person with an intellectual disability.
- (2) The repeal of the **Intellectually Disabled Persons' Services Act 1986** by this Act does not affect the responsibility of the Minister and the Secretary for the provision, management, development and planning of services for persons with an intellectual disability.

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- (3) For the purposes of determining whether or not a person over the age of 5 years has an intellectual disability—
- (a) if a standardised measurement of intelligence is used to assess general intellectual functioning and it—
 - (i) indicates that the person has an intelligence not higher than 2 standard deviations below the population average, then he or she must be taken to have significant sub-average general intellectual functioning;
 - (ii) indicates that the person has an intelligence not lower than 2 standard deviations below the population average, then he or she must be taken not to have significant sub-average general intellectual functioning;
 - (iii) is inconclusive as to whether or not the person has an intelligence higher or lower than 2 standard deviations below the population average, then the Secretary may take into account other indicators of general intellectual functioning in determining whether or not the person has significant sub-average general intellectual functioning;
 - (b) if a standardised measurement of adaptive behaviour is used to assess adaptive behaviour and it indicates a score at or below the second percentile of people of the same age and cultural group, then he or she must be taken to have significant deficits in adaptive behaviour.
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- (4) In applying a standardised measurement of intelligence for the purposes of subsection (3)(a), the Secretary must consider the test result within the 95% confidence level as determined by the standard error of measurement of the test.
 - (5) Nothing in subsection (3) requires the Secretary to use a standardised measurement in the assessment of intellectual disability.
 - (6) Section 55 provides for planning for persons with an intellectual disability.
 - (7) Sections 86 to 88 provide for residential services for persons with an intellectual disability who require admission to a residential institution.
 - (8) Part 8 provides for persons with an intellectual disability who require compulsory treatment.
 - (9) If the Secretary is satisfied that a person has an intellectual disability, the Secretary may for the purposes of any Act or regulation provide a statement that a person has an intellectual disability within the meaning of this Act.

7 Provision of advice, notification or information under this Act

- (1) The contents of any advice, notice or information given or provided to a person with a disability under this Act must be explained by the person giving the advice, notice or information to the maximum extent possible to the person with a disability in the language, mode of communication and terms which that person is most likely to understand.
- (2) An explanation given under subsection (1) must where reasonable be given both orally and in writing.

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- (3) If a person appears to be incapable of reading and understanding information provided under this Act, a disability service provider must use reasonable endeavours to convey the information to the person in the language, mode of communication or terms which the person is most likely to understand.
- (4) For the purposes of subsection (3), the disability service provider may give a copy of the advice, notice or information—
- (a) to a family member, guardian, advocate or other person chosen by the person with a disability; or
 - (b) if no person is chosen under paragraph (a), to a person who the disability service provider considers can assist the person with a disability and is not employed by, or a representative of, the disability service provider.
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PART 3—ADMINISTRATION

Division 1—The Secretary

8 Role and functions of the Secretary

- (1) For the purposes of this Act, the role of the Secretary is to—
 - (a) plan, develop, provide and fund or purchase comprehensive services, programs and initiatives for persons with a disability;
 - (b) provide and fund programs and initiatives that facilitate persons with a disability exercising their rights and meeting their responsibilities in the community;
 - (c) collect and analyse data for the purpose of enabling the Secretary to achieve the objectives and perform the functions specified in this Act, including complying with reporting requirements for the purposes of this Act and the Commonwealth State Territory Disability Agreement;
 - (d) subject to the general direction and control of the Minister, administer this Act in accordance with the objectives and principles specified in this Act.
- (2) Without limiting the generality of subsection (1), the Secretary has the following functions—
 - (a) to promote awareness and understanding of disability within the community;
 - (b) to advance the inclusion and participation of persons with a disability in the community;
 - (c) to develop policies for disability services;
 - (d) to develop and publish criteria to enable priority of access to disability services to be determined in a fair manner;

- (e) to determine priorities in relation to policy development, resource allocation and the provision of disability services;
- (f) to monitor, evaluate and review disability services;
- (g) to promote the quality of disability services;
- (h) to promote the establishment of appropriate training courses and the availability of on-going training for persons employed in the provision of disability services;
- (i) to foster collaboration, coordination and integration in the provision to persons with a disability of disability services with other local services;
- (j) to make recommendations and reports to the Minister with respect to matters relating to persons with a disability and to advise the Minister on the operation of this Act.

9 Power of Secretary to provide funds

- (1) Subject to the approval of the Minister and having regard to the objectives and principles specified in this Act, the Secretary may allocate funds out of money available for the purpose to persons including municipal councils and non-government organisations.
- (2) The Secretary may allocate funds under subsection (1) to be used for the purposes and subject to the conditions considered by the Secretary to be appropriate.
- (3) Funds under subsection (1) may be provided to a person who has entered into a contract with the Secretary whether under section 10 or under any other Act provided that the contract requires that the funds provided under subsection (1) must be

used for the purposes specified under subsection (2).

10 Power of Secretary to enter into contracts

- (1) Without limiting the powers conferred on the Secretary whether under this or any other Act, the Secretary may, on behalf of the Crown, enter into a contract with a person for the provision of goods or services—

S. 10(1)
substituted by
No. 29/2010
s. 8.

- (a) to persons with a disability; or
- (b) that relate to the administration of this Act.

- (2) A contract under this section—

- (a) remains in force for the period (not exceeding 3 years) specified in the contract;
- (b) may contain any conditions, requirements or other provisions that are not inconsistent with this Act.

10A Secretary's powers in relation to land

S. 10A
inserted by
No. 29/2010
s. 9.

- (1) The Secretary may, on behalf of the Crown and for the purposes of this Act—

- (a) acquire, hold or dispose of land; and
- (b) otherwise deal with any land held by the Secretary.

- (2) Any acquisition or disposition of or other dealing with land by the Secretary under this Act on behalf of the Crown must be made in the name of the "Secretary to the Department of Human Services".

- (3) Without limiting subsections (1) and (2), the Secretary may, on behalf of the Crown, dispose of or otherwise deal with land held by the Secretary and that was acquired under this Act in the name of "Secretary to the Department of Human Services" by any person who previously held,

s. 10B

acted in or performed the duties of, the office of Secretary.

S. 10B
inserted by
No. 29/2010
s. 9.

10B Committee of management

- (1) The Secretary may be a committee of management under the **Crown Land (Reserves) Act 1978** under the name "Secretary to the Department of Human Services".
- (2) Any record relating to a committee of management to which subsection (1) applies must refer to the committee of management in the name of "Secretary to the Department of Human Services".

S. 10C
inserted by
No. 29/2010
s. 9.

10C Record of dealings

- (1) If the Secretary acquires any land on behalf of the Crown for the purposes of this Act, any recordings in the Register by the Registrar of Titles of the acquisition must be in the name of the "Secretary to the Department of Human Services" as registered proprietor.
- (2) If the Secretary, on behalf of the Crown for the purposes of this Act, disposes of or otherwise deals with any land held in the name of "Secretary to the Department of Human Services", any recording in the Register by the Registrar of Titles must be made in the name of "Secretary to the Department of Human Services".
- (3) If the Secretary, on behalf of the Crown, lodges with the Registrar of Titles any dealing in relation to any land for the purposes of this Act, the Registrar must make any recording in relation to that dealing in the name of "Secretary to the Department of Human Services".
- (4) To avoid doubt, land acquired in fee simple by the Secretary on behalf of the Crown for the purposes of this Act is Crown land.

(5) Despite subsection (4) and anything to the contrary in the **Land Act 1958** or the **Transfer of Land Act 1958**, if land acquired by the Secretary on behalf of the Crown for the purposes of this Act—

- (a) is under the operation of the **Transfer of Land Act 1958**, it remains under the operation of that Act; and
- (b) is not under the operation of the **Transfer of Land Act 1958**, it may be brought under the operation of that Act.

10D Secretary's powers in relation to intellectual property

S. 10D
inserted by
No. 29/2010
s. 9.

The Secretary may, on behalf of the Crown—

- (a) acquire (whether by creation, lease, licence, receiving the assignment or grant of, or otherwise), hold, accept as security, or otherwise deal with any intellectual property right (for example, a trade mark, patent, design, copyright (including an associated moral right), plant breeder's right, circuit layout right, trade secret, or right arising from confidential information);
- (b) assign, grant, lease, licence, sell or dispose of, any intellectual property right;
- (c) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit, any intellectual property right;
- (d) seek any remedy in relation to, or do anything necessary to enforce, protect, maintain, register or exploit any Crown copyright.

Division 2—The Victorian Disability Advisory Council

11 Victorian Disability Advisory Council

- (1) There is established a body to be known as the Victorian Disability Advisory Council.
- (2) The Victorian Disability Advisory Council is to consist of not less than 8 members and not more than 14 members as may be appointed by the Minister.
- (3) The Minister must ensure that members of the Victorian Disability Advisory Council are appointed from persons who—
 - (a) reflect the diversity of persons with a disability; and
 - (b) reflect the cultural and indigenous backgrounds of persons with a disability; and
 - (c) have appropriate skills, knowledge and experience in matters relevant to persons with a disability, including children with a disability; and
 - (d) in so far as is possible have personal experience of disability.
- (4) The Minister must ensure that a majority of the members of the Victorian Disability Advisory Council are persons with a disability.
- (5) The Minister must appoint one of the members to be the chairperson of the Victorian Disability Advisory Council.

12 Functions of the Victorian Disability Advisory Council

- (1) The functions of the Victorian Disability Advisory Council are to—
- (a) provide advice to the Minister in respect of—
 - (i) whole of government policy directions and strategic planning and the implementation of initiatives for persons with a disability;
 - (ii) the barriers to full inclusion and participation in the community of persons with a disability and the strategies for the removal of those barriers;
 - (iii) any matter relating to disability referred to the Victorian Disability Advisory Council by the Minister;
 - (b) effectively communicate with persons with a disability, the Government of Victoria and the community;
 - (c) raise community awareness of the rights of persons with a disability and of the role of government, the business sector and the community in promoting those rights;
 - (d) consult and work with other disability advisory councils or bodies whether at a national, state or local government level;
 - (e) monitor the implementation of strategies for promoting inclusion and participation in the community of persons with a disability and for removing barriers to inclusion and participation.

- (2) The Victorian Disability Advisory Council must report annually to the Minister on the performance of its functions.

13 Provisions applying to the Victorian Disability Advisory Council

- (1) A member of the Victorian Disability Advisory Council—
- (a) holds office for the period, not exceeding 3 years, as is specified in the instrument of appointment but, subject to paragraph (b), is eligible for re-appointment;
 - (b) can not hold office for more than 2 consecutive terms;
 - (c) holds office on the terms and conditions specified in the instrument of appointment;
 - (d) is entitled to receive the remuneration and allowances as are fixed by the Governor in Council for the purposes of this section;
 - (e) may resign from the office of member by notice in writing delivered to the Minister;
 - (f) may be removed from the office of member by the Minister in accordance with subsection (2);
 - (g) is in respect of the office of member subject to the **Public Administration Act 2004** (other than Part 3 of that Act).

S. 13(1)(g)
substituted by
No. 80/2006
s. 26(Sch.
item 26).

- (2) The Minister may remove a member of the Victorian Disability Advisory Council from the office of member if—
- (a) the member is unable to perform the duties of office because of illness or absence from Victoria;

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- (b) in the opinion of the Minister the member has misbehaved, neglected the duties of the office or is incompetent;
 - (c) the member is or becomes bankrupt;
 - (d) the Minister is of the opinion that any other act or omission of the Member has adversely affected the operation of the Victorian Disability Advisory Council.
- (3) A majority for the time being of the members of the Victorian Disability Advisory Council constitutes a quorum of the Victorian Disability Advisory Council.
 - (4) The Victorian Disability Advisory Council must keep minutes of its meetings.
 - (5) Subject to the regulations, the Victorian Disability Advisory Council may regulate its own proceedings.

Division 3—The Disability Services Commissioner

14 Disability Services Commissioner

- (1) There shall be a Disability Services Commissioner.
- (2) The Disability Services Commissioner is to be appointed by the Governor in Council.
- (3) The Disability Services Commissioner is to hold office for a term, not exceeding 5 years, specified in the instrument of his or her appointment, but is eligible for re-appointment.
- (4) The Governor in Council may specify other terms and conditions of appointment in the Disability Services Commissioner's instrument of appointment.

- (5) The Disability Services Commissioner is entitled to receive any remuneration or allowances from time to time fixed by the Governor in Council.
- (6) The Disability Services Commissioner is, in respect of that office, not subject to the **Public Administration Act 2004**.
- (7) If immediately before his or her appointment, the Disability Services Commissioner was an officer within the meaning of the **State Superannuation Act 1988**, then while he or she is Disability Services Commissioner, he or she continues, subject to that Act, to be an officer within the meaning of that Act.

15 Acting Disability Services Commissioner

- (1) The Governor in Council may appoint a person to be the Acting Disability Services Commissioner—
 - (a) during a vacancy in the office of Disability Services Commissioner; or
 - (b) during any period when the Disability Services Commissioner is absent or, for any reason, is unable to perform the functions of the Disability Services Commissioner.
- (2) An acting appointment is for the period and on any other terms and conditions determined by the Governor in Council.
- (3) The Acting Disability Services Commissioner is entitled to receive any remuneration or allowances from time to time fixed by the Governor in Council.
- (4) While acting in the place of the Disability Services Commissioner, the Acting Disability Services Commissioner has all the powers, functions and duties of the Disability Services Commissioner.

- (5) The Acting Disability Services Commissioner is, in respect of that office, not subject to the **Public Administration Act 2004**.
- (6) This section does not affect the operation of section 110 of the **Public Administration Act 2004**.

16 Functions of the Disability Services Commissioner

The functions of the Disability Services Commissioner are to—

- (a) investigate complaints relating to disability services;
- (b) review and identify the causes of complaints and to suggest ways of removing and minimising those causes;
- (c) provide advice or inquire into matters referred by the Minister or the Secretary;
- (d) conciliate where a complaint has been made in relation to a disability service provider;
- (e) take steps to publish and make available in an accessible manner details of complaints procedures;
- (f) maintain a record of all complaints received by the Disability Services Commissioner;
- (g) publish at prescribed intervals information about complaints;
- (h) consider ways of improving disability services complaints systems;
- (i) provide advice to the Disability Services Board;
- (j) refer issues to the Disability Services Board for advice;
- (k) develop programs for persons in the handling of complaints;

- (l) determine what action should be taken by a disability service provider where a complaint has been found to be justified;
- (m) subject to the approval of the Minister, to initiate inquiries into—
 - (i) matters referred by the Disability Services Board; and
 - (ii) broader issues concerning services for persons with a disability arising out of complaints received;
- (n) provide education and information about complaints relating to disability services;
- (o) provide training about the prevention and resolution of complaints relating to disability services;
- (p) conduct research into complaints relating to disability services and mechanisms for resolving complaints relating to disability services;
- (q) perform any other functions specified in this Act.

17 Powers of the Disability Services Commissioner

- (1) In performing functions under this Act, the Disability Services Commissioner may do any of the following—
 - (a) consult with any persons or bodies which the Disability Services Commissioner considers appropriate;
 - (b) develop, and suggest ways of implementing, procedures for—
 - (i) dealing with complaints relating to disability services; and

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- (ii) making existing procedures more effective;
 - (c) provide advice to complainants of alternative means for dealing with complaints;
 - (d) provide advice generally on any matter in respect of complaints relating to disability services to—
 - (i) disability service providers;
 - (ii) complainants;
 - (iii) the Minister;
 - (iv) the Secretary;
 - (e) encourage disability service providers to distribute, display or make available material and information produced by the Disability Services Commissioner about the resolution of complaints relating to disability services;
 - (f) seek information from disability service users and disability service providers about the working of the disability services complaints system.
- (2) The Disability Services Commissioner may by instrument delegate to a person or a class of persons employed under section 18 any power, duty or function of the Disability Services Commissioner other than this power of delegation.

18 Provision of staff and contractors

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees that are necessary to assist the Disability Services Commissioner in the performance of his or her powers, duties and functions under this Act.
 - (2) The Disability Services Commissioner may enter into agreements or arrangements with a person or body for the purpose of obtaining appropriate
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expertise to assist the Disability Services Commissioner in the performance of functions and the exercise of powers under this Act.

19 Annual report

- (1) The Disability Services Commissioner must include—
 - (a) information about the number and type of complaints and the outcome of the complaints; and
 - (b) any other information specifically requested in writing by the Minister—

during the financial year in the relevant annual report of operations under Part 7 of the **Financial Management Act 1994**.

- (2) A report made by the Disability Services Commissioner under subsection (1) may name a disability service provider who has unreasonably failed to take action that has been specified in a notice under section 119(1) to remedy a complaint and has been given a notice under section 119(6).
- (3) Before naming a disability service provider in a report under subsection (1), the Disability Services Commissioner must, at least 14 days before naming that disability service provider—
 - (a) notify the disability service provider in writing that the Disability Services Commissioner intends to name that disability service provider in a report; and
 - (b) give the disability service provider an opportunity to object to the naming of that disability service provider in the report within the period specified in the notice.

Division 4—The Disability Services Board

20 Constitution of the Disability Services Board

- (1) There is established a Disability Services Board.
- (2) The Disability Services Board consists of 11 persons appointed by the Minister.
- (3) The members of the Disability Services Board must include—
 - (a) 3 persons who, in the Minister's opinion, have experience of and are able to express the interests of disability service providers;
 - (b) 3 persons with a disability who, in the Minister's opinion, have experience of and are able to express the interests of disability service users;
 - (c) 3 persons who, in the Minister's opinion, have expertise that will benefit the Disability Services Board and are not disability service providers or disability service users or members of any association which acts as a representative, advocate or adviser for disability service providers or disability service users;
 - (d) 1 person who is a representative of the Secretary;
 - (e) 1 person who is a representative of the Health Services Commissioner.
- (4) The Minister must ensure that at least one of the members appointed under subsection (3) is a person who in the Minister's opinion has experience of and can represent the interests of children with a disability.
- (5) The Minister must appoint one of the members to be the President of the Disability Services Board.

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- (6) Each member of the Disability Services Board holds office for 3 years from the date of the member's appointment and is eligible for re-appointment.
 - (7) The Minister may remove a member of the Disability Services Board from the office of member if—
 - (a) the member is unable to perform the duties of office because of illness or absence from Victoria;
 - (b) in the opinion of the Minister the member has misbehaved, neglected the duties of the office or is incompetent;
 - (c) the member is or becomes bankrupt;
 - (d) the Minister is of the opinion that any other act or omission of the member has adversely affected the operation of the Disability Services Board.

21 Procedure of the Disability Services Board

- (1) A question can not be decided at a meeting of the Disability Services Board unless there are at least 6 members present.
- (2) The President is to preside at meetings of the Disability Services Board at which the President is present.
- (3) If the President is not present at a meeting, the members present must elect one of their number to preside at the meeting.
- (4) The Disability Services Board must meet at the times and places that the Minister or the President fixes.
- (5) The decision of the majority of the members present and voting at any meeting is the decision of the Disability Services Board.

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- (6) If there is a tied vote at any meeting, the person presiding at the meeting is to have an additional or casting vote.
 - (7) If a member of the Disability Services Board disagrees with a majority of the Disability Services Board on any decision providing advice to the Minister, the member may require—
 - (a) that his or her view be recorded with reasons; and
 - (b) that his or her view and reasons accompany any presentation of the decision to the Minister.
 - (8) A member of the Disability Services Board who is not an employee in the public service is entitled to receive remuneration and allowances as the Minister determines.
 - (9) Subject to this Act and the regulations, the Disability Services Board may regulate its own procedure.

22 Functions of the Disability Services Board

- (1) The functions of the Disability Services Board are to—
 - (a) advise the Minister on the disability complaints system and the operations of the Disability Services Commissioner under this Act;
 - (b) advise the Disability Services Commissioner on issues referred to the Disability Services Board by the Disability Services Commissioner;
 - (c) provide expertise, guidance and advice to the Disability Services Commissioner;

- (d) promote the Disability Services Commissioner and the operations of the Disability Services Commissioner;
 - (e) subject to the approval of the Minister, refer matters relating to disability services complaints to the Disability Services Commissioner for inquiry.
- (2) The Disability Services Board may perform its functions in any manner that the Disability Services Board determines to be appropriate.
 - (3) The Disability Services Board may require the Disability Services Commissioner to report to the Disability Services Board on any matter relating to the operations of the Disability Services Commissioner under this Act.

Division 5—The Senior Practitioner

23 The Senior Practitioner

- (1) Subject to the **Public Administration Act 2004**, there is to be appointed by the Secretary as the Senior Practitioner a person who in the opinion of the Secretary has the appropriate clinical qualifications and experience to perform the functions and exercise the powers conferred on the Senior Practitioner by or under this Act.
- (2) Subject to the general direction and control of the Secretary, the Senior Practitioner—
 - (a) is generally responsible for ensuring that the rights of persons who are subject to restrictive interventions and compulsory treatment are protected and that appropriate standards in relation to restrictive interventions and compulsory treatment are complied with;

- (b) has the powers, duties, functions and immunities that are conferred or imposed on the Senior Practitioner by or under this or any other Act.

24 Functions of the Senior Practitioner

- (1) The functions of the Senior Practitioner are—

- (a) to develop guidelines and standards with respect to restrictive interventions and compulsory treatment;

Note

The guidelines and standards may include clinical matters.

- (b) to provide education and information with respect to restrictive interventions and compulsory treatment to disability service providers;
- (c) to provide information with respect to the rights of persons with a disability who may be subject to the use of restrictive interventions or compulsory treatment;
- (d) to provide advice to disability service providers to improve practice in relation to restrictive interventions and compulsory treatment;
- (e) to give directions to disability service providers in relation to restrictive interventions and compulsory treatment and behaviour management plans and treatment plans;
- (f) to develop links and access to professionals, professional bodies and academic institutions for the purpose of facilitating knowledge and training in clinical practice for persons working with persons with a disability;

- (g) to undertake research into restrictive interventions and compulsory treatment and provide information on practice options to disability service providers;
 - (h) to evaluate and monitor the use of restrictive interventions across disability services and to recommend improvements in practice to the Minister and the Secretary;
 - (i) to undertake any other function relating to persons with a disability as may be directed in writing by the Secretary;
 - (j) any other functions specified by or under this Act.
- (2) The Senior Practitioner must publish annually—
- (a) information on the performance of the functions of the Senior Practitioner;
 - (b) data relating to the use of restrictive interventions and compulsory treatment.

25 Power of Senior Practitioner to delegate

- (1) Subject to this section, the Senior Practitioner may by instrument delegate to a person employed in the Department under Part 3 of the **Public Administration Act 2004** any power, duty or function of the Senior Practitioner other than—
- (a) this power of delegation; or
 - (b) any power conferred by section 199.
- (2) The Senior Practitioner must only delegate to a person—
- (a) who in the opinion of the Senior Practitioner has sufficient knowledge and expertise in respect of persons with a disability; and

- (b) who has appropriate skills and qualifications in respect of the power, duty or function being delegated.

26 Provision of staff and contractors

- (1) There may be employed under Part 3 of the **Public Administration Act 2004** any employees with the appropriate expertise and experience that are necessary to assist the Senior Practitioner in the performance of his or her powers, duties and functions under this Act.
- (2) Subject to the approval of the Secretary, the Senior Practitioner may enter into agreements or arrangements with a person or body for the purpose of obtaining appropriate expertise to assist the Senior Practitioner in the performance of his or her powers, duties and functions under this Act.

27 Special powers of the Senior Practitioner

- (1) This section applies—
 - (a) in respect of the use of restrictive interventions or compulsory treatment by a disability service provider; or
 - (b) if the Senior Practitioner believes on reasonable grounds that the use of restrictive interventions or compulsory treatment is occurring as part of the provision of a disability service whether or not an order specified in section 152(2) or a supervised treatment order is in effect.
- (2) If this section applies, the Senior Practitioner has the power to—
 - (a) visit and inspect any part of the premises where disability services are being provided, other than any premises or part of any

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- premises used as a private residence that is not a residential service;
- (b) if paragraph (a) applies, see any person who is subject to any restrictive intervention or compulsory treatment;
 - (c) investigate, audit and monitor the use of restrictive interventions and compulsory treatment;
 - (d) inspect and make copies of, or take extracts from, any document relating to any person who is subject to any restrictive intervention or compulsory treatment;
 - (e) see any person involved in the development, implementation or authorisation of any restrictive intervention or compulsory treatment upon request;
 - (f) request information from a disability service provider relating to any restrictive intervention or compulsory treatment;
 - (g) authorise by written order given to the disability service provider the use of a restrictive intervention.
- (3) The Senior Practitioner may by written order direct a disability service provider—
- (a) to discontinue or alter as specified in the order, a practice, procedure or treatment observed or carried out by the disability service provider;
 - (b) to observe or carry out a practice, procedure or treatment specified in the order;
 - (c) to provide a practice, procedure or treatment, or a particular practice, procedure or treatment specified in the order, to a person with a disability who is specified in the order.
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- (4) If the Senior Practitioner gives a direction under subsection (3)(a) to discontinue a practice, procedure or treatment, the Senior Practitioner must provide assistance in developing alternative strategies for the management of the behaviour of the person affected.
 - (5) The Senior Practitioner must as soon as practicable advise in writing the person with a disability of—
 - (a) any authorisation given under subsection (2)(g); or
 - (b) any direction given under subsection (3).
 - (6) If the Senior Practitioner wishes to perform or exercise, or is performing or exercising, any power, duty or function under this Act, the disability service provider and every member of the staff or management of the disability service provider must provide the Senior Practitioner with any reasonable assistance that the Senior Practitioner requires to perform or exercise that power, duty or function effectively.
 - (7) A disability service provider or member of the staff or management of a disability service provider must—
 - (a) reasonably render assistance when required to do so under subsection (6);
 - (b) give full and true answers to the best of that person's knowledge to any questions asked by the Senior Practitioner in the performance or exercise of any power, duty or function under this Act.

Penalty: 60 penalty units.

Division 6—Community visitors

28 Community visitors

- (1) The Governor in Council may on the recommendation of the Public Advocate appoint community visitors for each region.
- (2) Each community visitor—
 - (a) holds office for a period of 3 years;
 - (b) is eligible for re-appointment at the end of the term of office;
 - (c) is entitled to be paid any fees and travelling and other allowances fixed by the Governor in Council;
 - (d) is not in respect of the office of community visitor subject to the provisions of the **Public Administration Act 2004**.
- (3) A person can not be appointed as a community visitor if that person—
 - (a) holds any appointment or employment with the Department; or
 - (b) has any direct interest in any contract with the Department.
- (4) In nominating persons for appointment as community visitors, the Public Advocate must as far as practicable nominate an equal number of males and females.

29 General provisions as to community visitors

- (1) The Governor in Council may specify terms and conditions of appointment in the instrument of appointment of a person as a community visitor.
- (2) The Governor in Council may on the recommendation of the Public Advocate remove a community visitor from office.

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- (3) A person may resign from the office of community visitor by writing signed by that person and delivered to the Governor in Council.
 - (4) The office of a community visitor becomes vacant if that community visitor—
 - (a) becomes bankrupt; or
 - (b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or
 - (c) becomes incapable of performing the duties of the office of community visitor; or
 - (d) is removed from office or resigns from office.

30 Functions of a community visitor

The functions of a community visitor are to visit any premises where a disability service provider is providing residential services in the region for which the community visitor is appointed and to inquire into—

- (a) the appropriateness and standard of premises for the accommodation of residents;
- (b) the adequacy of opportunities for inclusion and participation by residents in the community;
- (c) whether the residential services are being provided in accordance with the principles specified in section 5;
- (d) whether information is being provided to residents as required by this Act;
- (e) any case of suspected abuse or neglect of a resident;
- (f) the use of restrictive interventions and compulsory treatment;

- (g) any failure to comply with the provisions of this Act;
- (h) any complaint made to a community visitor by a resident.

31 Certain persons deemed to be community visitors

- (1) Any person who is appointed by the Minister or the Secretary for the purpose of any investigation in connection with the administration of this Act—
 - (a) is by virtue of that office or appointment deemed to be a community visitor for every region; and
 - (b) has and may exercise all the powers conferred on a community visitor by this Act.
- (2) Subsection (1) does not require a person deemed to be a community visitor to perform any of the functions or duties of a community visitor.

32 Community Visitors Board

- (1) The Community Visitors Board established by section 61 of the **Intellectually Disabled Persons' Services Act 1986** is continued under this Act.
- (2) The Community Visitors Board consists of—
 - (a) the Public Advocate; and
 - (b) 2 community visitors elected in accordance with the regulations by community visitors.
- (3) The functions of the Community Visitors Board are to—
 - (a) represent community visitors;
 - (b) prepare and circulate publications explaining the role of community visitors;

- (c) supervise the training of community visitors;
- (d) report a matter to the Public Advocate or the Minister;
- (e) refer a matter under section 33;
- (f) prepare an annual report.

33 Matter may be referred

Without limiting the discretion of the Community Visitors Board to refer a matter to any other person, the Community Visitors Board may refer a matter reported by a community visitor to whichever of the following the Community Visitors Board considers is the appropriate person to deal with that matter—

- (a) the Secretary;
- (b) the Disability Services Commissioner;
- (c) the Senior Practitioner;
- (d) the Ombudsman.

34 Reports by community visitors

- (1) The community visitors for a region must at least twice a year submit a report to the Community Visitors Board on visits made since the last report.
- (2) The Minister may require the Community Visitors Board to report to the Minister on any matter specified by the Minister at the time and in the manner directed by the Minister.
- (3) The Community Visitors Board may at any time submit a report to the Minister if the Community Visitors Board considers that any matter should be considered personally by the Minister.

- (4) A community visitor may at any time submit a report to the Community Visitors Board containing any recommendations that the community visitor considers should be considered by the Community Visitors Board.

35 Annual report of community visitors

- (1) The Community Visitors Board must as soon as practicable after the end of each financial year but not later than the following 30 September, submit to the Minister a report on the activities of community visitors during the financial year.
- (2) The Minister must cause the annual report of the community visitors to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly as the case may be after the annual report has been received by the Minister.

36 Secrecy provision

- (1) Unless subsection (2) applies, a person who is or has been, at any time, a community visitor must not, either directly or indirectly make a record of, or divulge or communicate to any person, or make use of, any information that is or was acquired by the person because the person is or was appointed as a community visitor, for any purpose, except to the extent necessary for the person—
- (a) to perform any official duties; or
- (b) to perform or exercise any function or power under this Act.

Penalty: 60 penalty units.

- (2) Subsection (1) does not prevent a person from—
- (a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or

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- (b) divulging or communicating to a court, in the course of any proceedings referred to in paragraph (a), any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or in the exercise of a power referred to in subsection (1); or
 - (c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be, if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.
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PART 4—DISABILITY SERVICES

Division 1—General provisions

37 State Disability Plan

- (1) The Minister must ensure that a State Disability Plan is prepared—
 - (a) as at 1 January 2013; and
 - (b) at the end of each period of 4 years thereafter.
- (2) The State Disability Plan 2002-2012 as in existence before the commencement of this section has effect as if it had been prepared under this section.
- (3) The purpose of a State Disability Plan is to establish goals to assist in furthering the objectives and principles specified in this Act.
- (4) Without limiting the generality of subsection (3), a State Disability Plan must—
 - (a) identify the needs of persons with a disability;
 - (b) establish goals and priorities for the support of persons with a disability;
 - (c) identify objectives and policy priorities for the development and delivery of services for persons with a disability;
 - (d) identify strategies for achieving those objectives and priorities.
- (5) In preparing a State Disability Plan, regard must be had to the different needs of persons with different types of disabilities which may require different strategies.

38 Disability Action Plans

- (1) A public sector body must ensure that a Disability Action Plan is prepared for the purpose of—
 - (a) reducing barriers to persons with a disability accessing goods, services and facilities;
 - (b) reducing barriers to persons with a disability obtaining and maintaining employment;
 - (c) promoting inclusion and participation in the community of persons with a disability;
 - (d) achieving tangible changes in attitudes and practices which discriminate against persons with a disability.
- (2) Any plan lodged by a public sector body or a Council with the Human Rights and Equal Opportunity Commission in compliance with Part 3 of the Commonwealth Disability Discrimination Act 1992 is to be taken to be a Disability Action Plan prepared by that public sector body or Council for the purposes of this section.
- (3) A public sector body must report on the implementation of their Disability Action Plan in its annual report.
- (4) If a Council determines to prepare a Disability Action Plan, the Disability Action Plan should be consistent with this section.
- (5) If a Council determines not to prepare a Disability Action Plan, the Council must ensure that the matters referred to in subsection (1) are addressed in the Council Plan prepared under the **Local Government Act 1989**.

(6) In this section—

Council has the same meaning as it has in section 3(1) of the **Local Government Act 1989**;

public sector body means—

- (a) a Department within the meaning of section 4(1) of the **Public Administration Act 2004**;
- (b) a statutory authority which is prescribed for the purposes of this section;
- (c) a statutory corporation which is prescribed for the purposes of this section.

39 Information systems

- (1) The Secretary must ensure that the Department maintains information systems for the purposes of enabling—
 - (a) the planning, monitoring, evaluating, provision and funding of disability services for persons with a disability;
 - (b) the Secretary to achieve the objectives and perform the functions conferred on the Secretary under this Act or any other law relating to disability.
- (2) Subsection (3) applies to—
 - (a) a person who is or has been appointed to any office under this Act or employed or engaged under this Act;
 - (b) a disability service provider or a person who is or has been employed or engaged by a disability service provider or who otherwise provides or has provided services under this Act;

(c) a person who is or has been a member of staff of the public service for the purposes of this Act.

(3) A person to whom this subsection applies must not, directly or indirectly, disclose to any person any information relating to the provision of disability services to any person that is gained by or given to that person in his or her official capacity and that identifies, or is likely to lead to the identification of, the person to whom the information relates.

Penalty: 20 penalty units.

(4) Subsection (3) does not prevent the disclosure of information—

(a) to the extent that is reasonably required in connection with the performance of a duty or the exercise of a power or function under this or any other Act including without limiting the generality of this paragraph—

(i) for the purpose of developing or maintaining and improving the information systems required to be maintained by subsection (1);

(ii) for the purpose of planning, managing, monitoring, evaluating and improving the provision of disability services and which is of a statistical nature;

(b) by a disability service provider to the Secretary of information of a statistical nature which the disability service provider is required to provide under this Act for the purpose of enabling the Secretary to perform functions conferred, and meet obligations imposed, on the Secretary under this Act or any Commonwealth Act;

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- (c) with the consent of the person to whom the information relates or of that person's guardian or of that person's next-of-kin if that person is dead;
 - (d) to another person to whom subsection (3) applies, if the disclosure is reasonably required in connection with the provision by that other person of services under this Act to the person to whom the information relates;
 - (e) to any person to the extent that is necessary in connection with the provision of care or treatment to the person to whom the information relates if the person to whom the information relates is unable to consent to the disclosure and without the disclosure he or she may, in the opinion of the discloser, suffer detriment;
 - (f) to a court or tribunal in the course of a proceeding before it;
 - (g) to the Minister;
 - (h) to the Secretary;
 - (i) to the Disability Services Commissioner;
 - (j) to the Senior Practitioner;
 - (k) to the Public Advocate;
 - (l) to a person to whom in the opinion of the Minister it is in the public interest that the disclosure be made.
- (5) For the purposes of subsection (4)(a), "any other Act" does not include the Health Privacy Principles in the **Health Records Act 2001** or Part 3 or 5 of that Act.
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40 Application for registration as a disability service provider

- (1) A person may apply to the Secretary for registration of the person as a disability service provider.
- (2) A person may apply to the Secretary on behalf of an unincorporated body for registration of the unincorporated body as a disability service provider.
- (3) The Secretary may require a person or an unincorporated body who has applied for funding under this Act to apply for registration as a disability service provider before any funds are provided.
- (4) An application for registration as a disability service provider must be in the form approved by the Secretary.

41 Registration

- (1) The Secretary may register a person or an unincorporated body as a disability service provider if the Secretary is satisfied that—
 - (a) the person or unincorporated body can provide a service for persons with a disability; and
 - (b) the service can be provided in compliance with the requirements of this Act.
- (2) The Secretary may impose any conditions or restrictions that the Secretary considers appropriate on the registration of a disability service provider.
- (3) Without limiting the generality of subsection (2), the Secretary may impose conditions with respect to staffing arrangements and the appointment, numbers and qualifications of persons to be

employed or engaged by the disability service provider in the provision of disability services.

- (4) Unless revoked, the registration of a disability service provider has effect for a period of 3 years or a longer period as determined by the Secretary in each case.

42 Renewal of registration

- (1) A registered disability service provider may apply to the Secretary for renewal of registration as a disability service provider.
- (2) An application for renewal of registration as a disability service provider must be in the form approved by the Secretary.
- (3) Unless revoked, the renewal of registration of a disability service provider has effect for a period of 3 years or a longer period as determined by the Secretary in each case.

43 Revocation of registration

- (1) The Secretary may revoke the registration of a disability service provider if the Secretary considers it appropriate to do so.
- (2) For the purposes of subsection (1), the Secretary may have regard to the following—
 - (a) the Secretary has ceased providing funding to the disability service provider;
 - (b) the Secretary has terminated a contract with the disability service provider for the provision of disability services;
 - (c) the disability service provider has failed to comply with requirements under this Act;
 - (d) any other circumstances that the Secretary considers relevant.

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- (3) The Secretary must revoke the registration of a disability service provider if the disability service provider has ceased to provide disability services.

44 Notice before refusal or revocation

- (1) The Secretary must not refuse an application under section 40 unless the Secretary has given a notice in writing to the person making the application in accordance with subsection (3) and has considered any submission made by the person.
- (2) The Secretary must not refuse an application under section 42 or revoke the registration of a disability service provider under section 43(1) unless the Secretary has given a notice in writing to the disability service provider in accordance with subsection (3) and has considered any submission made by the disability service provider.
- (3) The notice must specify—
- (a) the proposed decision and the reasons for the proposed decision;
 - (b) that the person or the disability service provider may make a submission in writing within 14 days of the notice being given.

45 Application for review

- (1) A person or a disability service provider may apply to VCAT for a review of a decision by the Secretary—
- (a) to refuse an application under section 40; or
 - (b) to refuse an application under section 42; or
 - (c) to revoke the registration of a disability service provider under section 43(1).

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- (2) An application for review must be made within 28 days after the later of—
- (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person or the disability service provider requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the disability service provider or the person or the disability service provider is informed under section 46(5) of that Act that a statement of reasons will not be given.

46 Register of disability service providers

- (1) The Secretary must keep a register of disability service providers.
- (2) The Secretary must make available for public inspection a list of disability service providers.
- (3) The Secretary must include the following information in the register of disability service providers in respect of each disability service provider—
 - (a) the name of the disability service provider;
 - (b) the address of the disability service provider;
 - (c) contact information for the disability service provider.
- (4) The Secretary is not required to include the details of any natural person in the register of disability service providers.

47 Disability service provider to notify changes

A disability service provider must notify the Secretary in writing within 14 days if there is a change to the information recorded in the register of disability service providers in respect of that disability service provider.

Penalty: 10 penalty units.

48 Certain persons or bodies deemed or may be deemed to be registered as disability service providers

- (1) A person or body receiving funds for the provision of a disability service under the **Intellectually Disabled Persons' Services Act 1986** or the **Disability Services Act 1991** immediately before the commencement of section 222 is deemed to be registered as a disability service provider under this Act.
- (2) Unless revoked in accordance with section 43, a registration by virtue of subsection (1) continues in effect until the agreement under which the funds are provided ends or is terminated.
- (3) The Secretary may deem a person or body to be registered as a disability service provider under this Act if the person or body—
 - (a) is a community service within the meaning of section 3(1) of the **Children, Youth and Families Act 2005**; and
 - (b) provides a service specifically for the support of persons with a disability who are children.

Division 2—Accessing disability services

49 Request for disability services

- (1) A person with a disability or a person on behalf of a person with a disability may request disability services from a disability service provider.
- (2) If a disability service provider receives a request under subsection (1), the disability service provider may—
 - (a) agree to the request; or
 - (b) refuse the request.
- (3) For the purpose of making a decision on a request under subsection (1), the disability service provider may require—
 - (a) the person making the request to provide more information;
 - (b) the person with a disability to undergo an assessment.
- (4) If a disability service provider refuses a request under subsection (2)(b), the disability service provider must within 14 days of deciding to refuse the request advise in writing the person making the request—
 - (a) that the request has been refused and the reason for the refusal; and
 - (b) if the reason for the refusal is that the disability service provider is of the opinion that the person for whom the disability services are requested does not have a disability, that the person in respect of whom disability services have been requested has a right to have the issue of whether the person has a disability decided by the Secretary.

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- (5) If a disability service provider agrees to provide disability services without requiring an assessment of the person, the provision of disability services to the person is not of itself to be taken to be evidence that the person to whom the disability services are provided is a person with a disability.

50 Request to Secretary for decision as to disability

- (1) A person to whom section 49(4)(b) applies may request the Secretary to decide whether or not the person has a disability.
- (2) For the purposes of making a decision under this section, the Secretary may require the person making the request and the disability service provider to provide any relevant information.
- (3) The Secretary may determine the appropriate process to enable the Secretary to make a decision as to disability.
- (4) If the Secretary decides that a formal assessment is necessary, the Secretary must ensure that the formal assessment is commenced within 30 days of receiving the request for a decision.
- (5) Despite subsection (4), the Secretary may—
- (a) defer the commencement of a formal assessment for up to 3 months after receiving the request for a decision; or
 - (b) discontinue any uncompleted formal assessment and defer the undertaking of a further formal assessment for up to 3 months after discontinuing the formal assessment—
- if the Secretary believes on reasonable grounds that any formal assessment completed before then is unlikely to establish reliably that the person has a disability.

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- (6) The Secretary must within 14 days of making a decision as to whether a person has a disability advise in writing the person who made the request—
- (a) of the decision; and
 - (b) that the person can apply to VCAT for a review of the decision.
- (7) An application for a review must be made within 28 days after the person receives the advice under subsection (6).
- (8) On an application for a review under subsection (7), VCAT may—
- (a) confirm the decision of the Secretary; or
 - (b) order that the decision of the Secretary be substituted by the decision of the Tribunal; or
 - (c) remit the matter to the Secretary for further consideration in accordance with this section.
- (9) A decision of VCAT under subsection (8)(b) has effect as if it were the decision of the Secretary.

51 Effect of decision of Secretary

A decision by the Secretary under section 50 that a person has a disability does not of itself entitle the person to the provision of disability services.

Division 3—Planning

52 Guiding principles for planning

- (1) Planning for the purposes of this Division should be undertaken to the extent to which it is reasonably practicable in accordance with the principles specified in subsection (2).

(2) Planning should—

- (a) be individualised;
- (b) be directed by the person with a disability;
- (c) where relevant, consider and respect the role of family and other persons who are significant in the life of the person with a disability;
- (d) where possible, strengthen and build capacity within families to support children with a disability;
- (e) consider the availability to the person with a disability of informal support and other support services generally available to any person in the community;
- (f) support communities to respond to the individual goals and needs of persons with a disability;
- (g) be underpinned by the right of the person with a disability to exercise control over their own life;
- (h) advance the inclusion and participation in the community of the person with a disability with the aim of achieving their individual aspirations;
- (i) maximise the choice and independence of the person with a disability;
- (j) facilitate tailored and flexible responses to the individual goals and needs of the person with a disability;

- (k) provide the context for the provision of disability services to the person with a disability and where appropriate coordinate the delivery of disability services where there are more than one disability service providers.

Note

Planning encompasses a range of responses from a brief discussion and agreement about actions required through to an extensive process and the development of a plan across a whole range of life areas documented in a format that is meaningful to the person and their network.

53 Planning

- (1) A person with a disability or a person on their behalf may request the disability service provider to provide assistance with planning.
- (2) The disability service provider must within a reasonable period of receiving the request for assistance arrange for the assistance to be provided.

54 Support plan

- (1) This section applies if a person is receiving on-going disability services.
- (2) If this section applies, the disability service provider must, in consultation with the person with a disability, ensure that a support plan identifying the disability services being provided to that person is prepared within 60 days of the person commencing to regularly access the disability services.

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- (3) While a person is receiving on-going disability services, a support plan—
 - (a) may be reviewed at any time by the disability service provider or at the request of the person with a disability or a person on their behalf;
 - (b) must be reviewed at least once during each period of 3 years commencing from when the support plan is first prepared.
 - (4) If a person ceases to receive on-going disability services, the support plan is terminated.

55 Planning for persons with an intellectual disability

- (1) Without derogating from the general application of section 53, if a person with an intellectual disability or a person on their behalf has requested disability services from a disability service provider, the disability service provider must offer assistance with planning in accordance with the principles specified in section 52.
 - (2) If an offer of assistance under subsection (1) is accepted, the disability service provider must arrange for the assistance to be provided within a reasonable period after the offer is accepted.
 - (3) A person with an intellectual disability residing in a residential institution must have their support plan reviewed at intervals not exceeding 12 months.
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PART 5—RESIDENTIAL SERVICES

Division 1—General provisions

56 Purpose and application of Part

- (1) The purpose of this Part is to create specific rights for persons residing in residential services and to impose specific obligations on disability service providers providing residential services—
 - (a) whilst enabling the support needs of persons with a disability to be met and the obligations of disability service providers to be fulfilled;
 - (b) which balance the rights and needs of individuals and the demands of providing disability services throughout the State of Victoria;
 - (c) which apply regardless of whether the disability service provider is the owner or landlord of the property where the residential services are provided.
- (2) The **Residential Tenancies Act 1997** does not apply in respect of residential services.
- (3) The regulations may provide that a prescribed class of disability service provider is, subject to any prescribed conditions, exempted from complying with prescribed provisions of this Part specified in respect of that prescribed class of disability service provider.
- (4) This Part does not apply in respect of persons residing in residential treatment facilities and the provision of residential services in residential treatment facilities.

57 Residential statement

- (1) A disability service provider providing residential services must—
 - (a) give a person with a disability a residential statement in writing when they commence residing at the residential service; and
 - (b) provide a copy of the residential statement to the resident's guardian or the resident's administrator, if any.
- (2) The residential statement must specify—
 - (a) the period to which the residential statement relates;
 - (b) details of the residential services to be provided;
 - (c) the name and contact details of the disability service provider, and if the disability service provider has an agent, the name and contact details of the agent;
 - (d) a statement as to the amount of the residential charge, what components will be provided and when and how the amount is to be paid;
 - (e) any conditions which apply to the provision of the residential services;

Example

A resident may have a behaviour management plan with which the resident must comply.

 - (f) information relating to a matter which is prescribed for the purposes of this section.
- (3) A residential statement may include other information.
- (4) A residential statement must not include information that is inconsistent with this Act.

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- (5) If any information provided under subsection (3) is inconsistent with this Act or with the information required to be provided under subsection (2), the information cannot be used or relied upon.
 - (6) A statement of the duties of the disability service provider and the rights and duties of residents in the form approved by the Secretary must be attached to the residential statement.
 - (7) The statement of resident's rights and duties must state the rights and duties of a resident under this Act including—
 - (a) the right to see a community visitor;
 - (b) the right to make a complaint;
 - (c) the procedures for making a complaint or seeking a review under this Act.
 - (8) The disability service provider must give the resident reasonable notice in writing of any change in the information provided in the residential statement.
 - (9) If notice of any change in the information provided in the residential statement is given in accordance with another provision of this Act, the notice is also to be taken to have been given under subsection (8).
 - (10) The information provided in a residential statement is to be taken to have been updated to include the information provided under subsection (8).
 - (11) If a disability service provider includes details of their agent in the residential statement, a reference in this Part to the disability service provider includes a reference to their agent.
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- (12) If a disability service provider fails to provide information required under this section or fails to give reasonable notice of any change in the information, the disability service provider cannot rely on that information to enforce a provision of this Act.

58 Duties of disability service provider providing residential services

- (1) A disability service provider providing residential services must—
- (a) take reasonable measures to ensure that residents are treated with dignity and respect and with due regard to their entitlement to privacy;
 - (b) ensure that the premises in which the residential services are provided and any fixtures, furniture and equipment provided are maintained in good repair;
 - (c) minimise any inconvenience or disruption to residents when undertaking repairs or renovations;
 - (d) take reasonable steps to ensure that any repairs or renovations are completed in a timely and reasonable manner;
 - (e) subject to subsection (2), not unreasonably limit or interfere with a resident's access to his or her room or to the toilet, bathroom or other common areas in the premises which are available for the resident's use;
 - (f) not unreasonably interfere with a resident's right to privacy or proper use and enjoyment of the premises;
 - (g) take reasonable measures to ensure the security of a resident's property;

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- (h) be accessible to residents by—
- (i) providing the contact details of the disability service provider or their agent; and
 - (ii) ensuring that the times during which the disability service provider or their agent can be contacted are reasonable having regard to all the circumstances including the kind of support services being provided to residents;
- (i) ensure that residents receive any information which they are required to be given under this Part.
- (2) For the purposes of subsection (1)(e), a resident's access is not unreasonably limited or interfered with if the limitation or restriction is imposed by the disability service provider in accordance with—
- (a) the resident's behaviour management plan which has been lodged with the Senior Practitioner; or
 - (b) the resident's treatment plan; or
 - (c) a direction in respect of the resident given to the disability service provider by the Senior Practitioner, including a direction requiring an amendment to the resident's behaviour management plan or treatment plan.
- (3) A disability service provider must implement strategies to minimise the impact on other residents in the residential service of a limitation or restriction to which subsection (2) applies.
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- (4) The duties imposed on a disability service provider by this section are to be given effect to having regard to the need to ensure that there is a reasonable balance between the rights of residents and the safety of all the residents in the residential service.

59 Duties of residents

- (1) A resident must—
- (a) use the premises for residential purposes only unless the resident has obtained the consent in writing of the disability service provider to the use by the resident of the room for another purpose;
 - (b) pay the specified charges on the due date and in the specified manner;
 - (c) maintain their room and any common areas in a manner that does not create a fire, health or safety hazard;
 - (d) notify the disability service provider of any damage caused knowingly and intentionally which is not the result of fair wear and tear;
 - (e) contribute to the cost of repairing damage notified under paragraph (d).
- (2) A resident must not—
- (a) use the premises for a purpose that is illegal at common law or under an Act;
 - (b) knowingly and intentionally do anything which interferes with the right of other residents to privacy or the proper use and enjoyment of the premises;
 - (c) knowingly and intentionally damage or destroy any part of the premises;

- (d) install any fixtures in the premises without first obtaining the consent in writing of the disability service provider.

60 Entry to a resident's room

- (1) After giving the resident 24 hours notice in writing of the intention to do so and the reason, a disability service provider may enter a resident's room—
 - (a) to undertake refurbishment, maintenance or repairs or for the purpose of preparing for refurbishment, maintenance or repairs;
 - (b) for the purpose of showing the room to a prospective resident;
 - (c) for the purpose of showing the room to a prospective buyer or lender because the residential service is to be sold or used as security for a loan;
 - (d) for valuation or insurance purposes.
- (2) A disability service provider may enter a resident's room without giving notice only if—
 - (a) the resident agrees to the entry at the time entry is sought; or
 - (b) there is an emergency; or
 - (c) if the disability service provider believes on reasonable grounds that entry is necessary to protect the health or safety of the resident or of any other person on the premises; or
 - (d) if the disability service provider believes on reasonable grounds that the resident has abandoned the room; or
 - (e) it is necessary to do so to undertake urgent repairs; or

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- (f) it is necessary to do so to provide support services or to provide support as otherwise specified in the resident's support plan; or
 - (g) entry is required to implement the resident's behaviour management plan or treatment plan.
- (3) For the purposes of subsection (2)(f), ***support services*** means—
- (a) assistance with one or more of the following—
 - (i) health needs; or
 - (ii) bathing, showering or personal hygiene; or
 - (iii) toileting; or
 - (iv) dressing or undressing; or
 - (v) meals; or
 - (b) physical assistance for persons with mobility problems; or
 - (c) assistance for persons who are mobile but require some form of supervision or assistance; or
 - (d) development of independent living skills; or
 - (e) provision of developmental or emotional support.
- (4) This section does not affect the exercise of a right of entry conferred on the Senior Practitioner, a Community Visitor, the Disability Services Commissioner or the Secretary by or under this Act.
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61 Manner of entry

A disability service provider exercising a right of entry under this Division—

- (a) must do so in a reasonable manner; and
- (b) must not stay in the room longer than is necessary to achieve the purpose of the entry without the resident's consent.

62 Offences relating to interference with rights

- (1) Except in accordance with this Act, a person must not—

- (a) require or force or attempt to require or force a resident to vacate his or her room; or
- (b) take or attempt to take possession of a room in which a resident resides.

Penalty: 20 penalty units.

- (2) Except in accordance with this Act, a person must not, for the purposes of causing a resident to abandon a room—

- (a) interfere with the proper use and enjoyment by the resident of the room; or
- (b) do any other act or thing intended or designed to cause the resident to abandon the room.

Penalty: 20 penalty units.

- (3) This section does not apply to a restriction or limitation to which section 58(2) applies.

Division 2—Community residential units

63 Application of Division

This Division applies in respect of a community residential unit in addition to any other provisions that apply generally in respect of the provision of residential services.

64 Declaration of residential service as a community residential unit

- (1) The Minister may by a notice published in the Government Gazette declare a residential service to be a community residential unit.
- (2) If a residential service declared to be a community residential unit is managed by the Secretary, the Secretary is the disability service provider in respect of that community residential unit for the purposes of this Division.

65 Residential charge

- (1) A disability service provider may charge a residential charge for the provision to a resident of residential services in a community residential unit.
- (2) The residential charge is to consist of an amount for the components which are provided to the resident in accordance with the residential statement.
- (3) The Secretary may make and publish guidelines with respect to residential charges.

66 Notice of increase in residential charge

- (1) A disability service provider must give at least 60 days notice in writing of a proposed increase in the residential charge to a resident in a community residential unit and the resident's guardian or the resident's administrator, if any.

- (2) Subject to subsection (3), a disability service provider must not increase the rent component of the residential charge payable by a resident at intervals of less than 6 months.
- (3) If a disability service provider provides an additional service item to the resident at the resident's request, the disability service provider may increase the residential charge without complying with this section if the amount of the increase relates only to the services component.
- (4) Any proposed increase in the residential charge made in contravention of this section is invalid.

67 Limit on payment in advance

A disability service provider must not require a resident to pay the residential charge more than 30 days in advance.

68 Method of payment

A resident may pay the residential charge in the form agreed with the disability service provider.

Note

The form of payment may include cash, cheque, electronic payment or direct debit.

69 Receipts for payment

- (1) A disability service provider must give a written receipt in accordance with this section to the person making a payment of the residential charge—
 - (a) immediately, if the payment is made in person;
 - (b) if the payment is not made in person and a written receipt is requested at the time the payment is made, within 30 days of receiving the payment.

Penalty: 10 penalty units.

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- (2) A receipt under this section must—
- (a) be signed by the disability service provider;
 - (b) state—
 - (i) the name of the resident;
 - (ii) the name of the disability service provider;
 - (iii) the location of the community residential unit;
 - (iv) the date the payment is received;
 - (v) the period in respect of which the payment was made;
 - (vi) the amount paid;
 - (vii) whether the payment was made for the rent component or the services components or both components.
- (3) If the payment is not made in person and a written receipt is not requested, the disability service provider must keep a record of the payment of a residential charge until the earlier of—
- (a) the end of 12 months after receiving the payment; or
 - (b) if a resident requests a copy of the record before the end of 12 months after making the payment, the provision of a copy of the record to the resident.

Penalty: 5 penalty units.

- (4) The disability service provider must provide a copy of a record requested in accordance with subsection (3)(b) within 30 days of receiving the request.

Penalty: 5 penalty units.

- (5) For the purposes of subsection (3), a record must contain information which enables the details specified in subsection (2)(b) to be identified.
- (6) The regulations may provide that a prescribed class of disability service provider is exempted from complying with subsection (1), (2) or (3) subject to any conditions which may be prescribed.

70 Residential charge must be reduced if service items are reduced

- (1) If a disability service provider reduces the service items provided in the services component included in a residential charge, the disability service provider must reduce the residential charge by—
 - (a) the amount agreed between the disability service provider and the resident; or
 - (b) if agreement cannot be reached, an amount determined by VCAT on an application by the disability service provider or the resident.
- (2) In determining an amount under subsection (1)(b), VCAT must have regard to—
 - (a) what other residents in the community residential unit are being charged for those service items;
 - (b) guidelines issued by the Secretary for the purposes of section 65.
- (3) If VCAT determines an amount under subsection (1)(b), it may also order that—
 - (a) the reduction in the residential charge is to take effect from the time the disability service provider reduced the service items provided to the resident;

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- (b) the disability service provider is to refund to the resident any excess residential charge paid by the resident from the time the disability service provider reduced the service items provided to the resident until the date of the order.
 - (4) In this section, a reduction in the service items provided in the services component included in a residential charge includes—
 - (a) a reduction of a service item by reducing the level or range of services provided in that item;
 - (b) a termination in the provision of a service item.

71 Disputes relating to notice of increase in residential charge

- (1) If a resident has a dispute in respect of a notice of increase in the residential charge, the resident may apply to VCAT for a review of the decision of the disability service provider to issue the notice of increase in the residential charge.
- (2) An application to VCAT under subsection (1) must be made within 28 days of the issue of the notice of increase under section 66.

72 What can VCAT order on an application under section 71?

- (1) On an application made under section 71, VCAT may—
 - (a) make an order declaring that the proposed residential charge is excessive;
 - (b) make an order directing that for the period specified in the order the residential charge cannot exceed the amount specified in the order;

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- (c) make orders under paragraphs (a) and (b);
 - (d) dismiss the application.
- (2) For the purposes of subsection (1), VCAT must have regard to—
- (a) the amount paid by other residents in the same premises for the rent component and the service items provided in the services component included in the proposed residential charge;
 - (b) the amount payable by residents of similar community residential units in similar locations for similar premises and service items provided in the services component;
 - (c) the state of repair and general condition of the premises and the room;
 - (d) the number of increases in the preceding 24 months, the amount of each increase and the timing of those increases;
 - (e) any changes in the condition of the room or the service items provided in the services component since the resident commenced residency;
 - (f) any variation in the cost of providing the service items provided in the services component;
 - (g) any improvements made to the room that should not result in an increase because they were made by or on behalf of the resident;
 - (h) guidelines issued by the Secretary for the purposes of section 65.
- (3) For the purposes of subsection (1)(a), a residential charge is not to be considered to be excessive if it does not exceed the relevant prescribed amount.
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- (4) An order cannot be made under subsection (1)(b) which specifies an amount that is less than the amount which the resident was being charged before notice of the proposed increase was given.
 - (5) For the purposes of subsection (3), the regulations may—
 - (a) prescribe relevant amounts as a percentage of any specified pension payable under Commonwealth law; and
 - (b) specify different relevant amounts which may be charged for the rent component and for service items provided in the services component that can be included in a residential charge.

73 Payment of increased amount pending VCAT decision

- (1) Pending the decision of VCAT under section 72, the resident must pay, from the time the proposed increase is to apply whichever is the lesser of—
 - (a) the increased residential charge specified in the notice of increase under section 66; or
 - (b) 110% of the residential charge payable immediately before the notice of increase under section 66 was given.
- (2) If VCAT makes an order under section 72, VCAT may also make an order—
 - (a) requiring that any excess residential charge paid by the resident from the time that the increase took effect until the date of the order be refunded; and
 - (b) specifying the procedure for the refund to the resident.

74 Notice of temporary relocation

- (1) A disability service provider may give a resident a written notice of temporary relocation from a community residential unit if—
- (a) the resident by act or omission endangers the safety of other residents or staff of the community residential unit;
 - (b) the resident is causing serious disruption to the proper use and enjoyment of the premises by other residents;
 - (c) the resident is a danger to themselves and the disability service provider cannot continue to support the resident in the community residential unit;
 - (d) it is for the resident's safety or well-being;
 - (e) the resident has knowingly or intentionally damaged the room or the premises;
 - (f) the resident has used the premises for a purpose that is illegal at common law or under an Act;
 - (g) the premises is not suitable for the provision of disability services;
 - (h) the disability service provider intends to repair the room immediately after the notice of temporary relocation has effect and has obtained all necessary permits and consents to carry out the work and the work cannot be properly carried out unless the resident vacates the room;
 - (i) the level and kind of support services provided in the community residential unit is not appropriate to the needs of the resident because of a change in the resident's support needs.

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- (2) A notice of temporary relocation—
- (a) has effect immediately it is given or from the time specified in the notice of temporary relocation;
 - (b) must specify a relocation period ending not more than 90 days after the date on which the notice has effect.
- (3) If—
- (a) the proposed repairs will affect a resident's room but will not affect all the rooms in a community residential unit; and
 - (b) a room equivalent to the resident's room at an equivalent residential charge is available in the community residential unit—
- the disability service provider must not give the notice under subsection (1)(h) unless the disability service provider has first offered an equivalent room to the resident and the resident has refused to occupy that room in place of the resident's current room.
- (4) The disability service provider must notify the Secretary and the Public Advocate of the details of a notice of temporary relocation within 24 hours of the notice of temporary relocation being given.
- (5) During the relocation period specified under subsection (2), the resident is excluded from the room or the community residential unit as specified in the notice of temporary relocation and is to be relocated by the disability service provider in alternative accommodation.
- (6) The disability service provider may seek the assistance of the Secretary to obtain suitable alternative accommodation for the resident who is to be relocated.
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- (7) Except as provided in subsection (8), a disability service provider must not use the room for another resident during the relocation period specified in the notice of temporary relocation.
 - (8) If the notice of temporary relocation was given on a ground other than the ground specified in subsection (1)(h), the room may be used for respite or emergency purposes only.
 - (9) At the expiry of a notice of temporary relocation, a resident is entitled to return to the community residential unit unless a notice to vacate has been given under section 76.
 - (10) If the notice of temporary relocation was given on a ground other than the ground specified in subsection (1)(h), the disability service provider must ensure that if a review of the resident's support plan has not been conducted in the period of 3 months before the notice of temporary relocation was given, a review of the resident's support plan is completed under section 54 before the notice of temporary relocation expires.
 - (11) If the notice of temporary relocation was given on a ground specified in subsection (1)(a), (1)(b), (1)(c), (1)(e) or (1)(f), the disability service provider must ensure that—
 - (a) if a review of the resident's behaviour management plan has not been conducted in the period of 3 months before the notice of temporary relocation was given, that a review of the resident's behaviour management plan is completed before the notice of temporary relocation expires; or
 - (b) if the resident does not have a behaviour management plan, that a behaviour management plan is prepared before the notice of temporary relocation expires.
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- (12) During the period that a resident is relocated to alternative accommodation, including another community residential unit, the resident is to be taken to be accommodated in emergency or transitional housing and Division 2 does not apply in respect of that accommodation.
 - (13) The disability service provider must take reasonable steps to resolve the matter giving rise to the issue of the notice of temporary relocation as soon as is reasonably possible in the circumstances.
 - (14) The taking of reasonable steps to resolve the matter giving rise to the issue of the notice of temporary relocation does not affect the continued application of that matter as the ground for the issue of the notice of temporary relocation.

75 Termination of residency

A residency in a community residential unit is terminated—

- (a) by agreement in writing between the disability service provider and the resident;
- (b) by a notice to vacate given to the resident by the disability service provider in accordance with section 76;
- (c) by notice of intention to vacate given to the disability service provider by, or on behalf of, the resident in accordance with section 80;
- (d) if the resident dies;
- (e) if the resident has abandoned the room;
- (f) if the resident moves to another principal place of residence without giving notice of intention to vacate to the disability service provider;

- (g) if the resident becomes subject to a criminal order or a supervised treatment order which prevents the resident from residing in the premises for a period of more than 3 months;
- (h) if VCAT makes an order terminating the residency.

76 Notice to vacate by disability service provider

- (1) A disability service provider may give a resident a written notice to vacate a community residential unit if—
 - (a) the resident by act or omission endangers the safety of other residents or staff of the community residential unit;
 - (b) the resident is causing serious disruption to the proper use and enjoyment of the premises by other residents;
 - (c) the resident is a danger to themselves and the disability service provider cannot continue to support the resident in the community residential unit;
 - (d) it is for the resident's safety or well-being;
 - (e) the resident has knowingly or intentionally damaged the room or the premises;
 - (f) the resident has used the premises for a purpose that is illegal at common law or under an Act;
 - (g) the resident has failed to pay the residential charge;
 - (h) the disability service provider intends to repair, renovate, reconstruct or demolish the premises immediately after the termination date and has obtained all necessary permits and consents to carry out the work and the work cannot be properly carried out unless

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- the resident vacates the community residential unit;
- (i) disability services will not continue to be provided at the premises;
 - (j) the premises is not suitable for the provision of disability services;
 - (k) the level and kind of support services provided in the community residential unit is not appropriate to the needs of the resident because of a change in the resident's support needs;
 - (l) the premises is to be sold or offered for sale with vacant possession;
 - (m) no reason is to be specified.
- (2) A notice to vacate on a ground specified under paragraph (a), (b), (c), (d), (e), (f), (j) or (k) of subsection (1)—
- (a) cannot be given unless a temporary relocation notice issued on any ground has already been given at least 24 hours previously; and
 - (b) may specify a termination date that is not less than 28 days after the date on which the notice is given.
- (3) A notice to vacate on a ground specified under paragraph (g), (h), (i) and (l) of subsection (1) may specify a termination date that is not less than 60 days after the date on which the notice is given.
- (4) A notice to vacate under paragraph (m) of subsection (1) may specify a termination date that is not less than 120 days after the date on which the notice is given.
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(5) If—

- (a) the proposed repairs, renovations or reconstruction will affect a resident's room but will not affect all the rooms in a community residential unit; and
- (b) a room equivalent to the resident's room at an equivalent residential charge is available in the community residential unit—

the disability service provider must not give the notice under subsection (1)(h) unless the disability service provider has first offered an equivalent room to the resident and the resident has refused to occupy that room in place of the resident's current room.

(6) A notice to vacate under this section—

- (a) must specify the ground on which the notice is given;
- (b) must state the termination date in accordance with this section;
- (c) must be signed by the disability service provider or their agent;
- (d) may be addressed to the resident and to the resident's guardian or the resident's administrator, if any.

(7) The disability service provider must notify the Secretary and the Public Advocate of the details of a notice to vacate within 24 hours of the notice to vacate being given.

(8) For the purposes of subsection (1)(k), "support services" has the same meaning as it has in section 60(3).

77 Effect of notice to vacate

- (1) If a notice to vacate is issued while a notice of temporary relocation is in force—
 - (a) the temporary notice to relocate continues in force only until the end of the period of notice applying to the notice to vacate;
 - (b) the disability service provider must continue to provide alternative accommodation for the resident until—
 - (i) the end of the period of notice applying to the notice to vacate; or
 - (ii) if a review or appeal is lodged, until the review or appeal is determined.
- (2) Until the end of the relevant period under subsection (1)(b), the disability service provider cannot accommodate another resident in the vacancy in the room in the community residential unit created by a notice of temporary relocation or notice to vacate.

78 Notice of no effect

A notice to vacate given under section 76(1)(m) is of no effect if it was given in response to the exercise, or proposed exercise, by the resident of a right under this Act.

79 What if 2 or more notices can be given?

If a person is or becomes entitled to give 2 or more notices of intention to vacate or notices to vacate under this Division—

- (a) the invalidity of any of the notices does not affect the validity of any other notice; and
- (b) each valid notice has full force and effect.

80 Notice of intention to vacate by resident

- (1) A resident may give a notice of intention to vacate to the disability service provider at any time.
- (2) A notice of intention to vacate must—
 - (a) be given in writing;
 - (b) specify the date on which the resident intends to vacate their room.
- (3) A notice of intention to vacate may be given in writing on behalf of the resident by the resident's guardian or resident's administrator, if any.
- (4) The disability service provider must notify the Secretary of the details of a notice of intention to vacate within 24 hours of the notice of intention to vacate being received by the disability service provider.

81 Withdrawal of notice

- (1) A notice of temporary relocation, a notice to vacate or a notice of intention to vacate can only be withdrawn if a notice of withdrawal is given.
- (2) A notice of withdrawal may be given at any time before the resident has vacated the room.
- (3) A notice of withdrawal must be—
 - (a) in writing;
 - (b) signed by the person who gave the notice that is being withdrawn;
 - (c) given to the person who was given the notice that is being withdrawn.

82 Application to VCAT for review of notice to vacate

- (1) A resident may apply to VCAT for a review of the issue of a notice to vacate on the ground that the notice to vacate is not valid because—

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- (a) of a defect on the face of the notice to vacate; or
 - (b) the notice to vacate was not issued in accordance with this Act; or
 - (c) the ground on which the notice was issued is not established.
- (2) An application to VCAT under subsection (1) must be made within 28 days of the day on which the notice to vacate was received.
 - (3) On an application under this section, VCAT may only determine whether or not the notice to vacate is valid.
 - (4) VCAT may—
 - (a) if it determines that the notice to vacate is valid, confirm the notice to vacate; or
 - (b) if it determines that the notice to vacate is not valid, declare that the notice to vacate is invalid; or
 - (c) dismiss the application.
 - (5) If subsection (4)(a) applies, VCAT may make a possession order in accordance with section 84.

83 Application to VCAT for possession order

- (1) A disability service provider may apply to VCAT for a possession order for a room if the disability service provider has given the resident a notice of temporary relocation or a notice to vacate the room.
- (2) An application under subsection (1) may be made at any time after the notice of temporary relocation or the notice to vacate is given but not later than 30 days after the termination date specified in the notice of temporary relocation or the notice to vacate.

84 Possession orders

- (1) VCAT must make a possession order under section 82 or 83 requiring a resident to vacate the room and community residential unit on the day specified in the order if VCAT is satisfied that—
 - (a) the disability service provider was entitled to give the notice of temporary relocation or the notice to vacate; and
 - (b) the notice of temporary relocation or the notice to vacate has not been withdrawn.
- (2) The day specified in the order of VCAT under subsection (1) cannot be earlier than the termination date specified in the notice of temporary relocation or the notice to vacate.
- (3) VCAT may dismiss or adjourn an application for a possession order under section 83 if—
 - (a) the application is supported with a notice to vacate under section 76(1)(g); and
 - (b) VCAT considers that satisfactory arrangements have been or can be made to avoid financial loss to the disability service provider.
- (4) An adjournment may be on any terms VCAT considers appropriate.
- (5) On the resumption of an adjourned hearing, VCAT—
 - (a) may make a possession order if the resident has continued to accrue arrears of residential charge during the adjournment period; and
 - (b) must dismiss the application if the resident—
 - (i) has paid all the arrears which were the subject of the original application; and

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- (ii) has accrued no further arrears of residential charge from the time of the application to the date of resumption of the adjourned hearing.
 - (6) A possession order must include—
 - (a) the day (being a day not more than 30 days after the day on which the possession order is made) by which the resident must vacate the room and community residential unit; and
 - (b) a direction to the resident to vacate the room and community residential unit by the day specified in the order; and
 - (c) a direction to the principal registrar to issue a warrant of possession in accordance with section 85 on the application of the person who obtained the possession order.
 - (7) A possession order for a room in a community residential unit must also include a warning that if the resident fails to comply with the direction in subsection (6)(b), he or she may be forcibly vacated from the room and community residential unit by a member of the police force or an authorised person carrying out a warrant of possession.

85 Issue of warrant of possession

- (1) A person who obtains a possession order under section 82 or 83 may apply to the principal registrar for a warrant of possession—
 - (a) immediately if the possession order so provides; or
 - (b) within 6 months after the date of the possession order if the resident fails to comply with the possession order.

- (2) An application under this section must be accompanied by the prescribed fee, if any.
- (3) A warrant must be executed within the time stated in the possession order which must not exceed 30 days after the date of issue of the warrant.

Division 3—Residential institutions

86 Proclamation of residential institutions

- (1) The Governor in Council may on the advice of the Minister by a proclamation published in the Government Gazette proclaim any premises used to provide residential services to be a residential institution.
- (2) The institutions operated by the Department at the commencement of this section and known as Sandhurst, Colanda and Kew Residential Services are deemed to have been proclaimed under this section to be residential institutions.

87 Admission to residential institutions

- (1) A person with an intellectual disability may be admitted to a residential institution if the Secretary is satisfied that—
 - (a) the person requires services which can be provided by admission to the residential institution; and
 - (b) one or more of the criteria specified in subsection (2) applies to the person.
- (2) The criteria is—
 - (a) admission to a residential institution provides the best possible choice of services for enhancing the person's independence and self-sufficiency and is least likely to produce regression, loss of skills or other harm to that person; or

- (b) admission to a residential institution is the option which is the least restrictive of the person as is possible in the circumstances; or
 - (c) unless the person is admitted to a residential institution the person or any person with whom he or she resides will suffer serious physical or emotional harm.
- (3) An admission to a residential institution is to be for such period as the Secretary considers appropriate.
 - (4) Subsection (3) does not prevent the re-admission of a person to a residential institution as often as is necessary.
 - (5) Any person who is a resident in a residential institution at the commencement of this section is to be taken to have been admitted to a residential institution under this section.

88 Review by VCAT

- (1) A person may apply to VCAT for the review of a decision to admit a person to a residential institution under section 87 other than in accordance with Part 8.
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the person is notified of the decision; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the person requests a statement of reasons for the decision, the day on which the statement of reasons is given to the person or the person is informed under section 46(5) of that Act that a statement of reasons will not be given.

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- (3) On an application under this section, VCAT must determine the review having regard to the criteria specified in sections 87(1) and 87(2).
- (4) VCAT may—
- (a) if it determines that the admission satisfies the criteria specified in sections 87(1) and 87(2), confirm the admission and dismiss the application; or
 - (b) if it determines that the admission does not satisfy the criteria specified in sections 87(1) and 87(2), make an order directing the Secretary to move the person from the residential institution within 28 days of the date of the order.
- (5) If subsection (4)(b) applies, the Secretary must obtain suitable alternative accommodation for the person.
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PART 6—RIGHTS AND ACCOUNTABILITY

Division 1—Provision of information

89 Disability service provider must provide information

- (1) A disability service provider must, as soon as a person commences to use disability services, provide the person with written information which is relevant to the services provided by the disability service provider to that person.
- (2) For the purposes of this section, relevant information includes information—
 - (a) about the disability services being provided to that person and any associated costs;
 - (b) about conditions that may apply to the disability services being provided to that person;
 - (c) explaining the procedures for making a complaint to the disability service provider and to the Disability Services Commissioner;
 - (d) setting out legal rights, entitlements and obligations under this Act;
 - (e) which the Secretary or the Senior Practitioner by notice in writing may require;
 - (f) required to be provided in an order made by VCAT.
- (3) If a person using disability services is a resident in a residential service, a disability service provider is not required to provide information under this section if the information required by this section is included in the residential statement required under section 57.
- (4) This section does not limit the information that a disability service provider can provide.

Division 2—Provisions relating to the management of money

90 Management of money

- (1) Except in accordance with this Division, a disability service provider, or a person employed by a disability service provider, must not act as a financial administrator for a person with a disability provided with disability services by that disability service provider.

Penalty: 60 penalty units.

- (2) Subsection (1) does not apply if the disability service provider is the Secretary providing a service in the performance of a function or the exercise of a power in accordance with another Act.

91 Residents' Trust Fund

- (1) The Residents' Trust Fund established under section 45 of the **Intellectually Disabled Persons' Services Act 1986** is continued under this Act.
- (2) The Secretary must maintain the Residents' Trust Fund for money held in trust on behalf of a resident in a residential service.
- (3) The money in the Residents' Trust Fund must be held in one or more of the following ways—
- (a) in an account or accounts at an authorised deposit-taking institution in the name of the Secretary;
 - (b) as an investment or investments in accordance with section 94;
 - (c) as cash in a secure place at a residential service.
- (4) The Secretary must ensure that money is only held under subsection (3)(c) to cover likely withdrawals from the Residents' Trust Fund and

that the amount held does not exceed the limit specified by the Secretary.

92 Money to be paid into the Residents' Trust Fund by the Secretary

The Secretary must ensure that there is paid into the Residents' Trust Fund as soon as is practicable—

- (a) any money that is received by any officer or employee of the Department from, or on behalf of, a person with a disability residing at a residential service for the benefit or use of the person with a disability; and
- (b) all income earned on any money in the Residents' Trust Fund.

93 Management of money of a resident

- (1) A disability service provider providing residential services may manage or control an amount of money of a resident, being not greater than the prescribed amount, if the disability service provider has written consent to do so from the resident or the resident's guardian or the resident's administrator.
- (2) If at any time the amount of the money of a resident held by a disability service provider under subsection (1) exceeds the prescribed amount and the money of the resident is not to be used within the next 14 days, the money must be—
 - (a) held on trust on behalf of the resident; and
 - (b) deposited in a trust account until it is dealt with on behalf of the resident.

Penalty: 60 penalty units.

- (3) If a disability service provider providing residential services manages or controls the money of a resident, the disability service provider must—
- (a) keep a copy of the consent for that management or control;
 - (b) keep the money of the resident in a secure place;
 - (c) maintain an accurate and up to date financial management system which provides a record of—
 - (i) the money of the resident;
 - (ii) the receipt and expenditure by the disability service provider of the money of the resident;
 - (iii) any investment of the money of the resident;
 - (d) ensure that records kept under paragraph (c) individually itemise each transaction made on behalf of the resident.

Penalty: 60 penalty units.

- (4) A disability service provider who manages or controls the money of a resident must provide a statement at the end of each month to the resident or the resident's guardian or the resident's administrator specifying—
- (a) the current balance held on behalf of the resident;
 - (b) any income received and expenditure incurred on behalf of the resident since the previous statement;

- (c) the current status of any liabilities incurred on behalf of the resident.

Penalty: 60 penalty units.

- (5) The disability service provider must, upon request, give access to the resident's financial records held by the disability service provider to the resident or the resident's guardian or the resident's administrator.

Penalty: 60 penalty units.

- (6) The disability service provider or a person employed by the disability service provider must not accept appointment as a resident's guardian or resident's administrator in respect of any resident of the residential service.

Penalty: 60 penalty units.

- (7) In this section, *money of a resident* does not include money—

- (a) payable to the disability service provider in relation to services provided by the disability service provider; or
(b) paid by the Secretary to a person to purchase disability services to be provided to the resident.

94 Investment of money

- (1) The Secretary may invest any money in the Residents' Trust Fund that is not immediately required for use.
- (2) A disability service provider, other than the Secretary, may invest any money held on behalf of a resident that is not immediately required for use by the resident.
- (3) Money invested under this section may be invested in any manner in which money may be invested under the **Trustee Act 1958**.

95 Limit on amount held

- (1) The amount standing to the credit of a resident in that person's trust account must not exceed the amount prescribed for the purposes of this section.
- (2) If the Secretary or the disability service provider considers that an amount to be credited to a person's trust account will result in the amount standing to the credit of the person exceeding the amount prescribed under subsection (1), the Secretary or the disability service provider must advise the person, or arrange for the person or the person's representative to be advised, to invest the money in an appropriate manner.

96 Trust money must be paid when person leaves

- (1) When a person ceases to reside at a residential service, the Secretary must pay all money standing to the credit of the person in the Residents' Trust Fund to the person or the person's representative.
- (2) When a person ceases to reside at a residential service, the disability service provider must pay all money standing to the credit of the person in any trust account kept in respect of the person by the disability service provider to the person or the person's representative.

Division 3—Standards and monitoring of performance

97 Minister must determine standards

- (1) The Minister must determine standards to be met by disability service providers in the provision of disability services under this Act.

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- (2) Without limiting the generality of subsection (1), a determination made under subsection (1) may specify standards in respect of the provision of disability services including with respect to—
- (a) service delivery;
 - (b) support plans;
 - (c) complaints management;
 - (d) information management and privacy and confidentiality.
- (3) Standards specified for the purposes of subsection (2)(d) must not be lower than the standards that would apply if the **Health Records Act 2001** and the **Information Privacy Act 2000** applied in respect of the provision of disability services by disability service providers.
- (4) The Minister must ensure that a determination made under subsection (1) is published in the Government Gazette.
- (5) A determination made under subsection (1)—
- (a) has effect—
 - (i) on the day that is 30 days after the day that the determination is published in the Government Gazette; or
 - (ii) on any later day specified in the determination;
 - (b) may be amended or revoked by another determination made in accordance with this section.
- (6) A disability service provider must comply with the relevant standards applicable to the disability service provider.

Penalty: 60 penalty units.

98 Secretary to specify performance measures and monitor performance

- (1) The Secretary must by notice published in the Government Gazette specify in respect of standards determined under section 97 different performance measures for different categories of disability service providers and different categories of disability services.
- (2) The Secretary may monitor the compliance of a disability service provider with the relevant performance measures in respect of the standards.
- (3) For the purposes of this section, the Secretary may in writing authorise a person or body as an assessor to conduct an independent review of the compliance of the disability service provider with relevant performance measures.
- (4) A disability service provider must ensure that an assessor authorised under subsection (3) is provided with reasonable assistance and access to enable the assessor to conduct the independent review.

Penalty: 60 penalty units.

99 Power of Secretary to give directions

- (1) This section applies if the Secretary considers that a disability service provider has breached or failed to comply with—
 - (a) any relevant performance measure under section 98; or
 - (b) any condition subject to which funding for the disability service is provided by the Secretary under section 9 or 10; or
 - (c) this Act or any other requirement made in accordance with this Act.

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- (2) If this section applies, the Secretary may by notice in writing direct the disability service provider—
- (a) to remedy the breach or comply with the relevant performance measure, condition or requirement within the period specified in the direction; or
 - (b) to provide the disability service in accordance with conditions specified in the notice.
- (3) A direction under subsection (2)(a) may include advice as to measures to be taken to remedy the breach or comply with the condition or requirement.
- (4) A disability service provider must comply with a direction given under subsection (2).

Penalty: 60 penalty units.

100 Further powers of Secretary

- (1) This section applies if the Secretary considers that a disability service provider has failed to comply with a direction under section 99.
- (2) If this section applies, the Secretary may—
- (a) stop any payments under section 9 or 10 until the breach is remedied or the condition complied with; or
 - (b) terminate the contract; or
 - (c) take action to remove the committee of management of the disability service provider in accordance with the legislation under which the committee of management was appointed.

Division 4—Appointment of administrator

101 Displacement of other laws

- (1) The provisions of this Division are declared to be Corporations legislation displacement provisions for the purposes of section 5G of the Corporations Act in relation to the provisions of Chapter 5 of that Act.

Note

Section 5G of the Corporations Act provides that if a State law declares a provision of a State law to be a Corporations legislation displacement provision for the purposes of that section, any provision of the Corporations legislation with which the State provision would otherwise be inconsistent does not operate to the extent necessary to avoid the inconsistency.

- (2) This Division applies despite anything to the contrary in the **Co-operatives Act 1996** and the **Associations Incorporation Act 1981** or any other Act establishing a body that is a disability service provider under this Act.

102 Appointment of administrator

- (1) This section applies if in the opinion of the Minister a disability service provider—
- (a) is inefficiently or incompetently managed; or
 - (b) has breached or failed to comply with a relevant standard under section 97; or
 - (c) has breached or failed to comply with any condition subject to which funding is provided by the Secretary under section 9 or 10; or
 - (d) has requested the Minister to appoint a person as administrator to take over the functions of the disability service provider under this Act or under a contract or agreement under this Act.

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- (2) If this section applies, the Governor in Council may, on the recommendation of the Minister, by Order in Council published in the Government Gazette appoint a person as administrator to take over the functions of the disability service provider under this Act or under a contract or agreement under this Act.
- (3) If the request has been made under subsection (1)(a), (1)(b) or (1)(c), the Minister must not make a recommendation under subsection (2) unless the Minister—
- (a) has given reasonable notice in the circumstances to the disability service provider specifying in writing—
 - (i) the ground on which it is intended to make a recommendation to appoint an administrator; and
 - (ii) the extent to which the Minister considers it is necessary for the purpose of performing functions under this Act or under a contract or agreement under this Act for the administrator to replace the committee of management or other governing body; and
 - (iii) that the disability service provider may object in writing within the period specified in the notice and may request to be represented at a hearing into the objection; and
 - (b) has considered any objection made under paragraph (a).
- (4) An administrator appointed under this section—
- (a) is deemed to be the committee of management or other governing body of the disability service provider to the extent that the Minister considers necessary for the
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- purpose of performing functions under this Act or under a contract or agreement under this Act; and
- (b) for the purposes of those functions has all the powers and may exercise any of the duties of the committee of management or other governing body or its members; and
 - (c) is subject to all the duties of the committee of management or other governing body or its members.
- (5) On the day on which an administrator is appointed under this section in respect of a disability service provider for the purposes of its functions under this Act or under a contract or agreement under this Act, the members of the committee of management or other governing body cease to constitute the committee of management or other governing body to the extent that the administrator is deemed to be the committee of management or other governing body.
- (6) If an administrator is appointed in respect of part of the business of the disability service provider, the administrator and the committee of management or other governing body must ensure that there is in place a process for consultation and decision-making to enable the continuity of operation of the whole of the business of the disability service provider.
- (7) If an administrator appointed under this section recommends that a contract under section 10 with a disability service provider should be terminated, the Secretary may terminate that contract with immediate effect.
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- (8) The salary of the administrator and any expenses of the administrator necessarily incurred in an administration under this section are to be paid by the Secretary.
 - (9) The Governor in Council may, on the recommendation of the Minister, by Order in Council published in the Government Gazette extend the appointment of an administrator appointed under this section for a further period as is specified in the Order in Council.
 - (10) The Governor in Council may by Order in Council published in the Government Gazette declare that on the day specified in the Order in Council—
 - (a) the committee of management or other governing body is re-instated as the committee of management or governing body of the disability service provider, or if its members ceased to hold office, is to be re-established by appointment or election as the case may be; and
 - (b) the administrator ceases to be the administrator.

103 Additional provisions if disability service provider is providing residential services

- (1) This section applies if an administrator is appointed under section 102 in respect of a disability service provider providing residential services.
- (2) If this section applies, while the appointment of an administrator has effect, an administrator, in the name of, or as agent of, the disability service provider, may do any thing necessary or desirable for the purpose of carrying out his or her function as an administrator in respect of the residential service.

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- (3) Without limiting the generality of subsection (2), the administrator may—
- (a) enter and occupy the residential service;
 - (b) manage and operate the residential service;
 - (c) put into place a financial management system in relation to the residential service including—
 - (i) receiving residential charges from or on behalf of a resident;
 - (ii) receiving money from or on behalf of a resident as an allowance for a resident and appropriately distributing that money to the resident or using it for the benefit of the resident;
 - (iii) establishing and maintaining a trust account with a financial institution into which money received from or on behalf of residents may be paid;
 - (iv) making payments in relation to the exercise of any power referred to in this section;
 - (d) inspect and take possession of any document in connection with the operation and management of the residential service;
 - (e) use, repair or replace any equipment or facilities in the residential service;
 - (f) prepare and distribute to the residents for consumption any food stored at the residential service;
 - (g) enter into or renew any contract for the provision of goods or services or any lease contract or any contract of insurance in relation to the operation and management of the residential service;
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- (h) engage additional members of staff to work at the residential service.
- (4) In carrying out his or her function as an administrator in respect of the residential service and in exercising a power under this section, an administrator must comply with—
- (a) any direction given by the Secretary; and
 - (b) any guidelines issued by the Secretary in relation to administrators of residential services.
- (5) If a person is appointed as administrator of a residential service any contract, agreement or arrangement for the provision of equipment or services or the use of premises for the purposes of carrying on the disability service continues in force despite the appointment.
- (6) If a person is appointed as administrator of a residential service, a person must not, without the consent of the administrator, remove from the residential service any equipment or other property (whether or not owned by the disability service provider) which is reasonably necessary for the proper and efficient functioning of the disability service.

Penalty: 120 penalty units.

- (7) A person who suffers loss as a result of—
- (a) the appointment of an administrator; and
 - (b) the operation of subsection (5) or (6)—
- is entitled to be paid the amount of compensation as the Minister, on the recommendation of the Secretary, determines.

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- (8) Any liability of the Secretary under this section is to be paid from the Consolidated Fund which is hereby to the necessary extent appropriated accordingly.
- (9) A person who is or has been the disability service provider of a residential service of which an administrator has been appointed is liable to pay to the Secretary the amount determined by the Secretary as the amount of costs incurred—
- (a) in connection with the appointment of the administrator; or
 - (b) by the administrator in connection with the carrying on of the disability service.
- (10) If a person has been appointed as an administrator of a residential service under this section, a resident of the residential service may make payments of residential charges to the administrator.

Division 5—Complaints to disability service providers

104 Internal process for complaints

A disability service provider must institute and operate a system to receive and resolve complaints received by the disability service provider in respect of disability services provided by the disability service provider.

Penalty: 120 penalty units.

105 Report on complaints

A disability service provider must report annually to the Disability Services Commissioner in the form required by the Disability Services Commissioner specifying the number of complaints received and how the complaints were resolved.

106 Duty of disability service provider to take all reasonable steps

A disability service provider must take all reasonable steps to ensure that a person with a disability is not adversely affected because a complaint has been made by them or on their behalf.

Division 6—Complaints to Disability Services Commissioner

107 Purpose of Division

The purpose of this Division is to provide for an independent and accessible process for dealing with complaints about the provision of services by disability service providers.

108 Application of Division

This Division does not apply to a complaint about a matter that could be the subject of a complaint to—

- (a) the Health Services Commissioner under the **Health Records Act 2001**; or
- (b) the Privacy Commissioner under the **Information Privacy Act 2000**.

109 What matters can be the subject of a complaint?

A complaint may be made to the Disability Services Commissioner if the complaint—

- (a) arises out of the provision of a disability service; or
- (b) is that a disability service provider has acted unreasonably by not properly investigating, or not taking proper action upon, a complaint made to the disability service provider.

110 Who may make a complaint?

Any person may make a complaint to the Disability Services Commissioner.

111 How do you make a complaint?

- (1) A person may make a complaint to the Disability Services Commissioner—
 - (a) orally; or
 - (b) in writing; or
 - (c) by any other means which is appropriate in the circumstances.
- (2) If the Disability Services Commissioner receives an oral complaint, the Disability Services Commissioner must require the person who made the complaint to confirm the complaint in writing unless the Disability Services Commissioner is satisfied that there is good reason why the complaint should not be confirmed in writing.
- (3) The Disability Services Commissioner may require a person who makes a complaint to the Disability Services Commissioner to give more information about the complaint in a form and within a time fixed by the Disability Services Commissioner.
- (4) Subject to subsection (6), a person who complains to the Disability Services Commissioner must give their name and any other information relating to their identity as the Disability Services Commissioner may require.
- (5) The Disability Services Commissioner may determine to keep information given to the Disability Services Commissioner under subsection (4) confidential if the Disability Services Commissioner considers that—
 - (a) there are special circumstances; and

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- (b) it is in the complainant's interest to keep the information confidential.
- (6) The Disability Services Commissioner may determine to consider a complaint despite the person making the complaint refusing to comply with subsection (4) if the Disability Services Commissioner is satisfied that the complaint requires investigation.
- (7) If subsection (6) applies, the Disability Services Commissioner is not required to comply with any provision of this Division requiring notice of any matter to be given to the person making the complaint unless the Disability Services Commissioner becomes aware of the identity of the person who made the complaint.
- (8) It is the duty of the Disability Services Commissioner to provide appropriate assistance to a person who wishes to make a complaint and requires assistance to formulate the complaint.

112 Withdrawal of complaint

- (1) The person who made a complaint to the Disability Services Commissioner may at any time withdraw the complaint by notifying the Disability Services Commissioner.
- (2) Subject to subsection (3), if the Disability Services Commissioner is notified under subsection (1), the Disability Services Commissioner must then stop dealing with the complaint.
- (3) The Disability Services Commissioner may continue to investigate a complaint despite the complaint being withdrawn under subsection (1) if the Disability Services Commissioner considers that—

- (a) the health, safety or welfare of the person accessing the disability service may be affected; or
- (b) the complaint may have been withdrawn due to victimisation, coercion or duress.

113 Preliminary assessment of complaint

- (1) The Disability Services Commissioner must within the specified period decide whether to consider the complaint.
- (2) For the purpose of making a decision under subsection (1), the Disability Services Commissioner may by written notice invite a person to—
 - (a) attend before the Disability Services Commissioner to discuss the complaint; or
 - (b) produce a document specified in the notice.
- (3) The Disability Services Commissioner may attempt to resolve the complaint informally if the Disability Services Commissioner considers it appropriate to do so.
- (4) For the purposes of subsection (1), *specified period* means—
 - (a) the period of 28 days; or
 - (b) a period as the Disability Services Commissioner considers reasonable not exceeding 90 days—after the complaint is received by the Disability Services Commissioner.

114 Circumstances in which the Disability Services Commissioner may decline to consider a complaint

- (1) The Disability Services Commissioner may decline to consider a complaint if—
- (a) the person has not complied with a requirement under section 111; or
 - (b) the Disability Services Commissioner considers that the complaint—
 - (i) is frivolous; or
 - (ii) is vexatious; or
 - (iii) is misconceived; or
 - (iv) is lacking in substance; or
 - (v) does not warrant investigation; or
 - (c) the complaint has already been determined by a court, board or tribunal and does not raise any matter or issue that was not considered in that determination; or
 - (d) the complaint is being considered by a court, board or tribunal; or
 - (e) the complaint relates to an incident which occurred more than 12 months before the complaint is made and the Disability Services Commissioner considers the person who made the complaint has not shown a good reason for the delay; or
 - (f) the Disability Services Commissioner considers that the Disability Services Commissioner does not have the jurisdiction to consider the complaint under this Act; or
 - (g) the Disability Services Commissioner considers that the complaint raises issues which require investigation by another person, court, board or tribunal.

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- (2) If subsection (1)(f) or (1)(g) applies, the Disability Services Commissioner may refer the complaint and any relevant information to the person, court, board or tribunal which the Disability Services Commissioner considers has power to resolve or deal with the matter.
 - (3) Unless subsection (4) applies, the Disability Services Commissioner must not conciliate or investigate a complaint unless the Disability Services Commissioner is satisfied that all reasonable steps have been taken to resolve the matter with the disability service provider.
 - (4) Despite subsection (3), the Disability Services Commissioner may refer a complaint for conciliation or investigate a complaint if the Disability Services Commissioner considers that if he or she does not do so—
 - (a) the health, safety or welfare of the person accessing the disability service may be affected; or
 - (b) there is a risk that the person accessing the disability service may be victimised or intimidated because the matter has been raised with the disability service provider.

115 Notice of decision to consider or not to consider complaint

- (1) Within 14 days of deciding not to consider a complaint, the Disability Services Commissioner must give written notice of the decision to the person who made the complaint.
- (2) Unless section 120 applies, within 14 days after deciding to consider a complaint, the Disability Services Commissioner must give written notice of the decision to the disability service provider concerned.

116 Consideration of complaint suitable for conciliation

(1) If—

- (a) the Disability Services Commissioner decides to consider a complaint in whole or in part; and
- (b) the Disability Services Commissioner considers that the complaint is suitable for conciliation—

the Disability Services Commissioner must make all reasonable endeavours to conciliate the complaint.

(2) The purpose of conciliation is to encourage the settlement of the complaint by—

- (a) arranging for the disability service provider and the person who made the complaint to hold informal discussions about the complaint; and
- (b) facilitating those discussions; and
- (c) if possible, assisting the disability service provider and the person who made the complaint to reach agreement.

(3) Unless section 120 applies, within 14 days after the Disability Services Commissioner decides to conciliate the complaint, the Disability Services Commissioner must—

- (a) give written notice of the decision to conciliate the complaint to the disability service provider and the person who made the complaint; and
- (b) include in the notice details of the arrangements made for conciliation discussions between the disability service provider and the person who made the complaint; and

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- (c) state in the notice that a disability service provider may make submissions for the conciliation to the Disability Services Commissioner.
- (4) The Disability Services Commissioner may require the person who made the complaint and the disability service provider to attend a conciliation either personally or by a representative who has authority to settle the matter on their behalf.
- (5) If agreement with respect to the subject matter of the complaint is reached following the conciliation, the person who made the complaint or the disability service provider may within 30 days after agreement is reached request a written record of the conciliation agreement.
- (6) If a written record of the conciliation agreement is requested—
- (a) the Disability Services Commissioner must prepare the record;
 - (b) the record must be signed by or on behalf of the person who made the complaint and the disability service provider;
 - (c) the Disability Services Commissioner must certify the record signed under paragraph (b);
 - (d) the Disability Services Commissioner must give a copy of the certified record to the person who made the complaint and the disability service provider.
- (7) Evidence of anything said or admitted during the conciliation process is not admissible in proceedings before a court or tribunal.
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117 Dealing with a complaint

- (1) The Disability Services Commissioner may stop dealing with a complaint if the Disability Services Commissioner is of the view that—
 - (a) the complaint cannot be conciliated; or
 - (b) no further action is warranted.
- (2) If a person who made a complaint and the disability service provider have resolved the matter by agreement and the Disability Services Commissioner becomes aware that the complaint has been resolved, the Disability Services Commissioner must stop dealing with the complaint under this Division unless the Disability Services Commissioner considers that the person making the complaint has been subjected to victimisation, coercion or duress.
- (3) At any time after the Disability Services Commissioner has received a complaint, the person who made it and the disability service provider may resolve the matter by agreement, whether through the conciliation process or not.
- (4) If the person who made a complaint and the disability service provider resolve the matter by agreement, the person who made the complaint must without delay give notice of the fact to the Disability Services Commissioner.
- (5) The Disability Services Commissioner may re-open any complaint that the Disability Services Commissioner has stopped dealing with under subsection (1) if—
 - (a) the person who made the complaint has provided new or additional information; and
 - (b) the Disability Services Commissioner considers that the person who made the complaint is able to show good reason as to

why the information was not previously provided.

118 Investigation of a complaint

- (1) The Disability Services Commissioner must—
 - (a) investigate a complaint which—
 - (i) the Disability Services Commissioner has decided to accept and the Disability Services Commissioner considers is not suitable for conciliation; or
 - (ii) the Disability Services Commissioner is of the view that conciliation has failed and further action is required; and
 - (b) decide whether or not the complaint is justified.
- (2) Unless section 120 applies, within 14 days after starting to investigate a complaint the Disability Services Commissioner must give written notice of the investigation and details of the complaint to the disability service provider concerned.
- (3) In conducting an investigation—
 - (a) the procedure is in the discretion of the Disability Services Commissioner;
 - (b) the Disability Services Commissioner must proceed with as little formality and technicality and with as much expedition as the requirements of this Act and proper investigation of the matter permit;
 - (c) the Disability Services Commissioner is not bound by the rules of evidence but may be informed of any matter in any manner the Disability Services Commissioner considers appropriate;
 - (d) the Disability Services Commissioner is bound by the rules of natural justice.

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- (4) If—
- (a) the Disability Services Commissioner considers that the person who made the complaint and the disability service provider cannot resolve the complaint; and
 - (b) after investigating the complaint the Disability Services Commissioner determines that the complaint is justified—
- the Disability Services Commissioner must decide what action should be taken to remedy the complaint.
- (5) If the Disability Services Commissioner determines that a complaint is justified, the Disability Services Commissioner must give the appropriate notice under section 119.
 - (6) The Disability Services Commissioner must not determine whether a complaint is justified or what action is to be taken in a way which conflicts with the provisions of any Act or subordinate instrument or any rule of law or practice.
 - (7) The Disability Services Commissioner must in determining whether a complaint is justified or what action is to be taken have regard to the impact on the disability service provider and any other person accessing the services of the disability service provider who may be affected.
 - (8) If, in the course of investigating a complaint, the Disability Services Commissioner determines the complaint is suitable for conciliation, the Disability Services Commissioner must make all reasonable endeavours to conciliate the complaint in accordance with section 116.
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119 Notice of decision and procedures

- (1) Within 14 days after deciding whether or not a complaint is justified the Disability Services Commissioner must—
 - (a) give written notice of the decision to the person who made the complaint and the disability service provider; and
 - (b) include in the written notice the reasons for the decision; and
 - (c) if the Disability Services Commissioner decides that the complaint is justified, specify in the written notice any action which the Disability Services Commissioner considers ought to be taken to remedy the complaint.
- (2) A written notice under subsection (1) must also advise the person who made the complaint and the disability service provider that the Disability Services Commissioner may conduct an inquiry into what action the disability service provider has taken upon the complaint.
- (3) A disability service provider must—
 - (a) within 45 days after receiving a written notice under subsection (1); or
 - (b) before the end of any extension of time not exceeding 15 days granted by the Disability Services Commissioner under subsection (5)—

report in writing to the Disability Services Commissioner about what action the disability service provider has taken upon the complaint.

Penalty: 60 penalty units.

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- (4) Within the 45 day period mentioned in subsection (3) or a period specified in a written notice given under subsection (6), a disability service provider may request the Disability Services Commissioner to extend the time within which the disability service provider must report or produce information to the Disability Services Commissioner.
 - (5) The Disability Services Commissioner may on a request under subsection (4) extend the time within which the disability service provider must report or produce information by no more than 15 days.
 - (6) At the end of the relevant period under subsection (3), the Disability Services Commissioner may, by notice in writing, require a disability service provider to produce to the Disability Services Commissioner information about what action the disability service provider has taken upon the complaint, including action to remedy the complaint within the period specified in the notice.
 - (7) The Disability Services Commissioner may require a disability service provider to produce information by a notice given under subsection (6)—
 - (a) in addition to any report received by the Disability Services Commissioner under subsection (3) or even if no report has been received under subsection (3); and
 - (b) any number of times until the Disability Services Commissioner is satisfied that the disability service provider has taken appropriate action to remedy the complaint.
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- (8) A disability service provider must comply with a notice given under subsection (6) within the period specified in the notice.

Penalty: 60 penalty units.

- (9) The Disability Services Commissioner may conduct an inquiry into what action the disability service provider has taken upon a complaint, including action taken to remedy the complaint, following a notice of a decision under subsection (6) requiring action to be taken.
- (10) Section 118 applies for the purposes of the conduct of an inquiry by the Disability Services Commissioner under subsection (9) as if the inquiry were an investigation.

120 Circumstances in which notice is not to be given

- (1) The Disability Services Commissioner need not comply with section 115(2), 116(3) or 118(2) if the Disability Services Commissioner considers that if a notice or document under that section is given to a disability service provider—
- (a) the health, safety or welfare of the person accessing the disability service may be affected; or
 - (b) the proper investigation of the complaint would be prejudiced.
- (2) If subsection (1) applies, the Disability Services Commissioner must give written notice to the disability service provider without delay after the Disability Services Commissioner is satisfied that—
- (a) the risk is at an end; or

(b) there is no further likelihood of prejudice to the proper investigation of the complaint—

but in any case not later than 6 months after the complaint was made or, if the investigation ends before that time, before the end of the investigation.

121 Duty to stop proceedings

- (1) The Disability Services Commissioner must stop dealing with an issue raised in a complaint if—
 - (a) the Disability Services Commissioner becomes aware that the person who made the complaint or the disability service provider has begun legal proceedings which relate to that issue; or
 - (b) the Disability Services Commissioner becomes aware that proceedings relating to that specific issue have been initiated before Fair Work Australia or the Australian Industrial Relations Commission; or
 - (c) the Disability Services Commissioner considers that the issue should properly be dealt with by a court or VCAT.
- (2) Within 14 days after the Disability Services Commissioner stops dealing with a complaint under subsection (1), the Disability Services Commissioner must give written notice that the Disability Services Commissioner has stopped dealing with the complaint to the person who made the complaint and the disability service provider.
- (3) Despite subsection (1)(a), the Disability Services Commissioner may, with the consent of—
 - (a) the person who made the complaint; and

S. 121(1)(b)
amended by
No. 74/2009
s. 10(2).

- (b) the disability service provider—
continue dealing with the matter, but only by
conciliation.
- (4) If subsection (3) applies, the Disability Services
Commissioner must stop dealing with the matter
when the Disability Services Commissioner
becomes aware that a court has commenced to
hear a proceeding relating to the complaint.
- (5) If subsection (1)(a) applies and the Disability
Services Commissioner subsequently becomes
aware that the legal proceedings relating to the
complaint have been withdrawn, the Disability
Services Commissioner may on the request of the
person who made the complaint re-open
proceedings under this Division.

S. 122
amended by
No. 69/2009
s. 97(Sch. Pt 2
item 19).

122 Powers to compel attendance and call for evidence and documents

Sections 14, 15 and 16 of the **Evidence
(Miscellaneous Provisions) Act 1958** apply to—

- (a) any inquiry by the Disability Services
Commissioner into matters referred to the
Disability Services Commissioner by the
Minister;
- (b) the investigation of a complaint by the
Disability Services Commissioner;
- (c) any inquiry by the Disability Services
Commissioner into actions taken by a
provider following a notice of a decision
under section 119(1) requiring action to be
taken—

as if the Disability Services Commissioner were a
board appointed by the Governor in Council.

123 Restrictions on powers

- (1) The Disability Services Commissioner cannot exercise the powers under section 122 while a complaint is being conciliated.
- (2) Nothing in section 122 or the provisions of the **Evidence (Miscellaneous Provisions) Act 1958** applied by that section prevents a person from—

S. 123(2)
amended by
No. 69/2009
s. 97(Sch. Pt 2
item 19).

- (a) refusing to answer a question or produce a document because the answer would relate to, or the document contains, information in respect of which the person claims legal professional privilege or client legal privilege; or
- (b) refusing to answer a question or produce a document if the answer, or the information in the document, would tend to incriminate the person.

S. 123(2)(a)
amended by
No. 69/2009
s. 97(Sch. Pt 1
item 16.1).

124 Warrants

- (1) The Disability Services Commissioner may apply to a magistrate for a warrant to be issued under this section in respect of premises.
- (2) An application for a warrant—
 - (a) must be in writing; and
 - (b) must set out the grounds for seeking the warrant; and
 - (c) must describe the premises which are to be entered; and
 - (d) must give a general description of the class of persons living at the premises (if any) whom it is proposed to examine.

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- (3) A magistrate may require the Disability Services Commissioner to give more information about an application for a warrant.
 - (4) A magistrate to whom an application is made under this section must refuse it if the application does not comply with this section or if, when required to do so by the magistrate, the Disability Services Commissioner does not give to the magistrate more information about the application.
 - (5) The information in an application or given to a magistrate under this section must be verified before the magistrate on oath or affirmation or by affidavit, and the magistrate may for that purpose administer an oath or affirmation or take an affidavit.
 - (6) A magistrate to whom an application is made under this section may, if satisfied that there are reasonable grounds for believing that entry and inspection of the premises are necessary to enable the Disability Services Commissioner to investigate a complaint under this Division, issue a warrant authorising the Disability Services Commissioner or a person employed for the purposes of this Division and named in the warrant—
 - (a) to enter and inspect premises named in the warrant; and
 - (b) if the application for a warrant describes a class of persons whom it is proposed to examine, to examine a person who is a member of that class, with the consent of that person or, if that person is unable to consent, with the consent of that person's representative; and
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- (c) to require a person on the premises to answer questions or produce documents in the person's possession concerning the complaint; and
 - (d) to inspect and take copies of or extracts from documents produced in compliance with a requirement made under paragraph (c).
- (7) There must be stated in a warrant—
 - (a) the purpose for which the warrant is issued; and
 - (b) the name of the person to whom the warrant is issued; and
 - (c) a general description of the classes of persons (if any) who may be examined; and
 - (d) a description of the premises which may be entered.
- (8) A magistrate who issues a warrant must cause a record to be made of particulars of the grounds the magistrate has relied on to justify the issue of the warrant.
- (9) If asked by the occupier or a person in charge of the premises, the person executing a warrant must produce it for inspection.
- (10) Nothing in this section or a warrant issued under this section or a requirement made in executing a warrant prevents a person from—
 - (a) refusing to answer a question or produce a document because the answer would relate to, or the documents contain, information in respect of which the person claims legal professional privilege or client legal privilege; or

S. 124(10)(a)
amended by
No. 69/2009
s. 97(Sch. Pt 1
item 16.2).

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- (b) refusing to answer a question or produce a document, if the answer or the information in the document would tend to incriminate the person.
- (11) A warrant ceases to have effect—
- (a) at the end of the period of a month after its issue; or
 - (b) if it is withdrawn by the magistrate who issued it; or
 - (c) when it is executed—
- whichever occurs first.
- (12) The person to whom a warrant is issued must give a report in writing to the magistrate who issued the warrant—
- (a) stating whether or not the warrant was executed; and
 - (b) if the warrant was executed, setting out the results of the execution of the warrant; and
 - (c) if the warrant was not executed, setting out the reason why the warrant was not executed.
- (13) A report under subsection (12) must be made within 10 days after the warrant is executed or expires, whichever occurs first.
- (14) If the magistrate who issued the warrant has died, has ceased to be a magistrate or is absent—
- (a) the report under subsection (12) may be given to; or
 - (b) the warrant may be withdrawn by—
- another magistrate.
- (15) This section does not limit the provisions of any other Act relating to warrants.
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- (16) A disability service provider and a disability service provider's officers, employees and agents must give the Disability Services Commissioner or a person executing a warrant any reasonable assistance which the Disability Services Commissioner or person needs and they are able to give to help the Disability Services Commissioner or person to execute a warrant under this section.

Penalty: 60 penalty units.

- (17) A person who intentionally obstructs the Disability Services Commissioner or a person executing a warrant in executing a warrant under this section is guilty of an offence and liable to a penalty not exceeding 60 penalty units.
- (18) A person who, without reasonable excuse, after being advised by the Disability Services Commissioner or a person executing a warrant as to the person's obligations in relation to the execution of a warrant—
- (a) does not answer a question asked by, or produce a document required by, the person executing the warrant; or
 - (b) in answer to a question gives information which the person knows to be false or misleading—

is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

125 False statements

A person who makes a statement in a complaint, report or return under this Division which the person knows to be false or misleading in a material respect is guilty of an offence and liable to a penalty not exceeding 60 penalty units.

126 Person not to be penalised for making a complaint

A person who—

- (a) by threats or intimidation persuades or attempts to persuade another person not to make a complaint to the Disability Services Commissioner or not to continue discussion with or proceedings before the Disability Services Commissioner; or
- (b) refuses to employ or dismisses another person or subjects another person to any detriment, because the other person intends to make a complaint, or has made a complaint, to the Disability Services Commissioner, or intends to take part, is taking part, or has taken part, in discussions with or proceedings before the Disability Services Commissioner—

is guilty of an offence and liable to a penalty not exceeding 120 penalty units.

S. 127
amended by
No. 69/2009
s. 97(Sch. Pt 2
item 19).

127 Protection for Disability Services Commissioner, officers and parties to proceedings

Section 21A of the **Evidence (Miscellaneous Provisions) Act 1958** applies to conciliation and investigation proceedings and inquiries under this Division and the reports of the Disability Services Commissioner as if the Disability Services Commissioner or a delegate of the Disability Services Commissioner were a board appointed by the Governor in Council.

128 Secrecy

- (1) A person who is, or has been, the Disability Services Commissioner, an acting Disability Services Commissioner, a delegate of the Disability Services Commissioner, an employee in the office of the Disability Services Commissioner or a consultant engaged by the Disability Services

Commissioner must not, directly or indirectly, make a record of, disclose or communicate to any person any information relating to the affairs of any individual or organisation acquired in the performance of functions or duties or the exercise of powers under this Act, unless—

- (a) it is necessary to do so for the purposes of, or in connection with, the performance of a function or duty or the exercise of a power under this Act; or
- (b) the individual or organisation to whom the information relates gives written consent to the making of the record, disclosure or communication.

Penalty: 60 penalty units.

- (2) Without limiting subsection (1), the Disability Services Commissioner must not disclose or communicate to any person, other than a person employed in the office of the Disability Services Commissioner, any information given to the Disability Services Commissioner pursuant to a requirement made under this Division (including information contained in a document required to be produced to the Disability Services Commissioner) unless—

- (a) the Disability Services Commissioner has—
 - (i) advised the person from whom the information was obtained of the proposal to disclose or communicate that information; and
 - (ii) given that person a reasonable opportunity to consent to the disclosure or communication; and

- (b) the person from whom the information was obtained has consented to the proposal to disclose or communicate that information.

Penalty: 60 penalty units.

Division 7—Visits by community visitors

129 Visiting of residential service

- (1) A community visitor may visit any premises at which a disability service provider is providing a residential service with or without any previous notice at the times and periods that the community visitor thinks fit.
- (2) A residential institution must be visited at least once every month by a community visitor for the region in which the residential institution is located.
- (3) The Minister may direct a community visitor to visit the premises at which a disability service provider is providing a residential service at the times that the Minister directs.

130 Powers of inspection

- (1) A community visitor is entitled when visiting a disability service provider providing a residential service to—
 - (a) inspect any part of the premises in which the residential service is being provided;
 - (b) see any resident;
 - (c) make enquiries relating to the provision of services to the residents;
 - (d) inspect any document relating to any resident which is not a medical record and any records required to be kept by or under this Act;

- (e) inspect any medical record relating to a resident with the consent of the resident or the resident's guardian.
- (2) If a community visitor wishes to perform or exercise, or is performing or exercising, any power, duty or function under this Act, the disability service provider and any member of the staff or management of the residential service must provide the community visitor with such reasonable assistance as the community visitor requires to perform or exercise that power, duty or function effectively.
- (3) A disability service provider or member of the staff or management of a residential service must—
 - (a) reasonably render assistance when required to do so under subsection (2);
 - (b) give full and true answers to the best of that person's knowledge to any questions asked by a community visitor in the performance or exercise of any power, duty or function under this Act.

Penalty: 60 penalty units.

131 Request to see a community visitor

- (1) Any resident in a residential service or any person on behalf of the resident may request the disability service provider to arrange for the resident to be seen by a community visitor.
- (2) The disability service provider must within 72 hours of receiving a request under subsection (1) advise the Community Visitors Board that a request has been made.

Penalty: 5 penalty units.

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- (3) Unless subsection (4) applies, the Community Visitors Board must ensure a request is responded to within 7 days of the request being received under subsection (2).
 - (4) For the purposes of subsection (3), if the Community Visitors Board considers that it would be appropriate in the circumstances, the Community Visitors Board may arrange for the Public Advocate to respond to the request.
 - (5) The Community Visitors Board may refuse a request under subsection (2) if the Community Visitors Board considers that the request is—
 - (a) vexatious; or
 - (b) frivolous; or
 - (c) lacking in substance.

132 Record of visits

A disability service provider providing a residential service must keep a record in the prescribed form of visits by community visitors to the residential service.

Penalty: 5 penalty units.

PART 7—RESTRICTIVE INTERVENTIONS

133 Purpose of Part

The purpose of this Part is to protect the rights of persons with a disability who are subject to restrictive interventions by ensuring that restrictive interventions are only used if the requirements imposed by this Part are complied with.

134 Use of restrictive interventions

A disability service provider must not use a restrictive intervention unless there is in force an approval under section 135.

Penalty: 240 penalty units.

135 Approval to use restrictive interventions

- (1) A disability service provider, other than the Secretary, who proposes to use restrictive interventions in the provision of a disability service must apply to the Secretary for approval.
- (2) An application for approval must include—
 - (a) the prescribed details; and
 - (b) a request for approval of the title and rank of any position and the name of the holder of the position to be appointed as an Authorised Program Officer for the disability service provider.
- (3) The Secretary may grant an application for approval subject to any conditions that the Secretary considers appropriate.

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- (4) In the case of a disability service in respect of which the disability service provider is the Secretary, the Secretary—
- (a) is to be taken to be approved to use restrictive interventions; and
 - (b) must ensure that an Authorised Program Officer is appointed for the disability service; and
 - (c) must approve the title and rank of any position and the name of the holder of the position to be appointed as the Authorised Program Officer.

136 Revocation of approval

- (1) The Secretary may revoke the approval of a disability service provider to use restrictive interventions if the Secretary considers it appropriate to do so.
- (2) For the purposes of subsection (1), the Secretary may have regard to the following—
 - (a) the registration of the disability service provider has been revoked;
 - (b) the disability service provider has failed to comply with requirements under this Act;
 - (c) any other circumstances that the Secretary considers relevant.

137 Notice before refusal or revocation

- (1) The Secretary must not refuse an application under section 135 or revoke the approval of a disability service provider to use restrictive interventions under section 136(1) unless the Secretary has given a notice in writing to the disability service provider in accordance with subsection (2) and has considered any submission made by the disability service provider.

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- (2) The notice must specify—
- (a) the proposed decision and the reasons for the proposed decision;
 - (b) that the disability service provider may make a submission in writing within 14 days of the notice being given.

138 Application for review

- (1) A disability service provider may apply to VCAT for a review of a decision by the Secretary—
 - (a) to refuse an application under section 135; or
 - (b) to revoke the approval of a disability service provider to use restrictive interventions under section 136(1).
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the disability service provider requests a statement of reasons for the decision, the day on which the statement of reasons is given to the disability service provider or the disability service provider is informed under section 46(5) of that Act that a statement of reasons will not be given.

139 Authorised Program Officers

- (1) An Authorised Program Officer must ensure that any restrictive intervention used in the provision of a disability service for which the Authorised Program Officer is responsible is administered in accordance with this Part.

- (2) A disability service provider must advise the Senior Practitioner of the name and qualifications of any person appointed as an Authorised Program Officer in the manner and within the period determined by the Senior Practitioner.

Penalty: 10 penalty units.

- (3) The Senior Practitioner must keep a register of the name and qualifications of each Authorised Program Officer.

140 Use of restraint and seclusion

Unless section 147 applies, restraint or seclusion can only be used—

- (a) if the use of restraint or seclusion is necessary—
 - (i) to prevent the person from causing physical harm to themselves or any other person; or
 - (ii) to prevent the person from destroying property where to do so could involve the risk of harm to themselves or any other person; and
- (b) if the use and form of restraint or seclusion is the option which is the least restrictive of the person as is possible in the circumstances; and
- (c) if the use and form of restraint or seclusion—
 - (i) is included in the person's behaviour management plan; and
 - (ii) is in accordance with the person's behaviour management plan; and
 - (iii) is only applied for the period of time that has been authorised by the Authorised Program Officer; and

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- (d) if seclusion is to be used—
 - (i) the person is supplied with bedding and clothing which is appropriate in the circumstances; and
 - (ii) the person has access to adequate heating or cooling as is appropriate in the circumstances; and
 - (iii) the person is provided with food and drink at the appropriate times; and
 - (iv) the person is provided with adequate toilet arrangements; and
 - (e) if any other requirements imposed by the Senior Practitioner are complied with.

141 Use of restraint and seclusion must be included in behaviour management plan

- (1) This section applies if a disability service provider providing a disability service to a person with a disability—
 - (a) is satisfied that the criteria specified in sections 140(a) and 140(b) apply; and
 - (b) proposes to use restraint or seclusion on the person with a disability.
- (2) The disability service provider must develop a behaviour management plan for the person with a disability that includes provisions which—
 - (a) state the circumstances in which the proposed form of restraint or seclusion is to be used for behaviour management;
 - (b) explain how the use of restraint or seclusion will be of benefit to the person;

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- (c) demonstrate that the use of restraint or seclusion is the option which is the least restrictive of the person as is possible in the circumstances.
 - (3) In preparing the behaviour management plan, the disability service provider must consult with—
 - (a) the person with a disability;
 - (b) if the person with a disability has a guardian, the guardian;
 - (c) if other disability service providers provide disability services to the person with a disability, a representative of each disability service provider;
 - (d) any other person that the disability service provider considers integral to the development of the behaviour management plan.

142 Review of behaviour management plan by disability service provider

- (1) A behaviour management plan prepared under section 141 must be reviewed by the disability service provider at intervals of not more than—
 - (a) 12 months; or
 - (b) if the Authorised Program Officer or the Senior Practitioner specify a shorter period, the shorter period.
- (2) A person with a disability may at any time request the disability service provider to review the behaviour management plan prepared under section 141.

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- (3) In reviewing the behaviour management plan, the disability service provider must consult with—
- (a) the person with a disability;
 - (b) if the person with a disability has a guardian, the guardian;
 - (c) if other disability service providers provide disability services to the person with a disability, a representative of each disability service provider;
 - (d) any other person that the disability service provider considers integral to the review of the behaviour management plan.

143 Independent person

- (1) An Authorised Program Officer must ensure that an independent person is available to explain to a person with a disability—
- (a) the inclusion of the proposed use of restraint or seclusion in the person's proposed behaviour management plan;
 - (b) that the person with a disability can seek a review of the decision to include the proposed use of restraint or seclusion in the person's proposed behaviour management plan if the person wants to do so;
 - (c) if the person is currently subject to a behaviour management plan, how the proposed behaviour management plan is different;
 - (d) in the case of a review of the behaviour management plan by the disability service provider, any matter related to the inclusion of restraint or seclusion in the behaviour management plan.

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- (2) If the independent person considers that—
- (a) a person with a disability is not able to understand the inclusion of the use of restraint or seclusion in the person's behaviour management plan; and
 - (b) the requirements of this Part are not being complied with—
- the independent person may report the matter to the Public Advocate.
- (3) An independent person assisting a person with a disability must not—
- (a) be a disability service provider or a representative of a disability service provider; or
 - (b) have any interest in a disability service provider which is providing, or has provided, disability services to the person with a disability.
- (4) If a person with a disability advises the disability service provider or the Authorised Program Officer that he or she does not consider that the person assisting him or her is an independent person, the Authorised Program Officer must arrange for an independent person to assist the person with a disability.

144 Powers of Public Advocate

- (1) After considering a report received under section 143, the Public Advocate may—
- (a) refer the matter to the Senior Practitioner; or
 - (b) within 28 days of receiving the report, initiate an application to VCAT to review the decision to include the use of restraint or seclusion in the behaviour management plan.

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- (2) This section is in addition to the powers of the Public Advocate under the **Guardianship and Administration Act 1986**.

145 Requirements for the use of restraint and seclusion

- (1) Before any restraint or seclusion can be used on a person with a disability, the inclusion of the use of restraint or seclusion in the behaviour management plan prepared under section 141 or reviewed under section 142 must be approved by the Authorised Program Officer.
- (2) The Authorised Program Officer must not approve the inclusion of the proposed use of restraint or seclusion in the behaviour management plan unless the Authorised Program Officer is satisfied that the behaviour management plan has been prepared or reviewed in accordance with this Act.
- (3) If the Authorised Program Officer has approved the inclusion of the proposed use of restraint or seclusion in the behaviour management plan under subsection (1), the disability service provider must at least 2 days before the proposed use of restraint or seclusion notify in writing the person with a disability—
- (a) that the Authorised Program Officer has approved the inclusion of the proposed use of restraint or seclusion in the person's behaviour management plan; and
 - (b) the person with a disability has a right to apply to VCAT for a review of the decision to include the use of restraint or seclusion in the person's behaviour management plan.

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- (4) The Authorised Program Officer must within 2 working days of approving the inclusion of restraint or seclusion in the behaviour management plan under subsection (1) provide to the Senior Practitioner—
- (a) a copy of the behaviour management plan; and
 - (b) the name and details of the independent person who assisted the person with a disability.

146 Review by VCAT

- (1) An application to VCAT by a person with a disability for review of the inclusion of the use of restraint or seclusion in the person's behaviour management plan must be made within 28 days after the day on which the person is notified under section 145 of the decision to approve the inclusion of the proposed use of restraint or seclusion in the person's behaviour management plan.
- (2) On an application under this section, VCAT must determine the review having regard to the requirements of this Part.
- (3) VCAT may—
 - (a) confirm the decision to include the use of restraint or seclusion in the person's behaviour management plan and dismiss the application; or
 - (b) order the disability service provider to prepare a new behaviour management plan for the person with a disability in accordance with the order; or

- (c) direct that the use of restraint or seclusion is to be removed from the behaviour management plan for the person with a disability.

147 Use of restraint or seclusion in an emergency

- (1) This section applies if—
 - (a) a person with a disability does not have a behaviour management plan approved by an Authorised Program Officer which provides for the use of restraint or seclusion; and
 - (b) an approved disability service provider is of the opinion that there is an emergency because—
 - (i) there is an imminent risk of a person with a disability causing serious physical harm to themselves or any other person; and
 - (ii) it is necessary to use restraint or seclusion to prevent that risk.
- (2) If this section applies, the approved disability service provider may use restraint or seclusion on the person with a disability—
 - (a) if the use and form of restraint or seclusion is the option which is the least restrictive of the person as is possible in the circumstances;
 - (b) the use of restraint or seclusion is authorised by the person in charge of the disability service;
 - (c) the Authorised Program Officer is notified without delay of the use of restraint or seclusion.

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- (3) The Authorised Program Officer must within 7 days after the end of each month prepare and send to the Senior Practitioner a report in respect of the use of restraint or seclusion in an emergency to which this section applies in accordance with subsection (4).
 - (4) A report under subsection (3) must specify for each month—
 - (a) the form of restraint used or the period of time during which seclusion was used;
 - (b) the reasons why restraint or seclusion was used;
 - (c) the effect on the person's behaviour;
 - (d) the name of the person who approved the use of restraint or seclusion;
 - (e) the name of the person who applied the restraint or kept the person in seclusion.

148 Reports

- (1) The Senior Practitioner must—
 - (a) monitor whether the use of the restraint or seclusion is in accordance with this Part; and
 - (b) subject to any guidelines issued under subsection (3), advise the Authorised Program Officer authorising the restraint or seclusion as to the intervals, not exceeding 12 months, within which the Authorised Program Officer is to provide a report on the implementation of a person's behaviour management plan in accordance with subsection (2) to the Senior Practitioner.

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- (2) A report required under subsection (1) must—
- (a) be provided within 7 days after the end of the interval advised under subsection (1);
 - (b) contain the information required in a report under section 147;
 - (c) include a record of all instances in which restraint or seclusion has been applied during the period for which the report is prepared;
 - (d) specify any details required by the Senior Practitioner in respect of each instance included under paragraph (b);
 - (e) have attached a copy of the person's current behaviour management plan if the use of restraint or seclusion is being continued.
- (3) For the purposes of this section, the Senior Practitioner may make and issue guidelines relating to the preparation of reports including enabling the preparation of a consolidated report by an Authorised Program Officer where more than one approved disability service providers are providing disability services to a person with a disability involving the use of restraint or seclusion.

149 Offence

A disability service provider who, except as provided in section 140 or 147, applies restraint or seclusion to a person with a disability is guilty of an offence against this Act.

Penalty: 240 penalty units.

150 Use of other restrictive interventions

- (1) In this section, *other restrictive interventions* means restrictive interventions other than restraint or seclusion.
- (2) The Senior Practitioner may in respect of other restrictive interventions used by disability service providers—
 - (a) require a disability service provider to provide a report to the Senior Practitioner on the use of other restrictive interventions in disability services provided by the disability service provider;
 - (b) require a disability service provider to develop a behaviour management plan for a person with a disability in respect of whom the disability service provider is using other restrictive interventions;
 - (c) develop guidelines and standards in relation to the use of other restrictive interventions;

Note

The guidelines and standards may include clinical guidelines and standards.

- (d) audit and evaluate the use of other restrictive interventions;
- (e) give written directions to disability service providers—
 - (i) prohibiting the use of a specified other restrictive intervention;
 - (ii) regulating the use of a specified other restrictive intervention;
- (f) undertake research and provide advice to disability service providers in relation to the use of other restrictive interventions.

PART 8—COMPULSORY TREATMENT

Division 1—Residential treatment facilities

151 Proclamation of residential treatment facility

- (1) The Governor in Council may, by proclamation published in the Government Gazette, proclaim—
 - (a) a premises (including part of any building or place) used by the Secretary to provide residential services; or
 - (b) a program provided on a premises (including part of any building or place) used by the Secretary to provide residential services—to be a residential treatment facility.
- (2) A proclamation under subsection (1) may classify the residential treatment facility as—
 - (a) a short-term residential treatment facility; or
 - (b) a long-term residential treatment facility.
- (3) The purpose of a residential treatment facility is to provide compulsory treatment to persons with an intellectual disability admitted to the residential treatment facility in accordance with this Division.
- (4) Subject to subsection (5), for the purposes of this Division, a person with an intellectual disability can only be admitted to a short-term residential treatment facility for a period not exceeding 5 years.
- (5) If a new order of the type specified in section 152(2) applies to a person with an intellectual disability, subsection (4) does not prevent the person with an intellectual disability being re-admitted to a short-term residential treatment facility.

- (6) The facility operated by the Secretary at the commencement of this section and known as the Intensive Residential Treatment Program of the Statewide Forensic Service is deemed to have been proclaimed under this section to be a residential treatment facility and classified as a short-term residential treatment facility.
- (7) A residential treatment facility can only be operated by the Secretary through the Department.
- (8) The Secretary must appoint an Authorised Program Officer in respect of each residential treatment facility.

152 Admission to a residential treatment facility

- (1) A person with a disability may only be admitted to a residential treatment facility if the Secretary is satisfied that—
 - (a) the person has an intellectual disability; and
 - (b) the person presents a serious risk of violence to another person; and
 - (c) all less restrictive options have been tried or considered and are not suitable; and
 - (d) the residential treatment facility can provide services for the treatment of the person with a disability and that treatment is suitable for that person; and
 - (e) the Senior Practitioner has been notified of the proposed admission; and
 - (f) an order specified under subsection (2) applies to the person enabling compulsory treatment to be provided.

- (2) For the purposes of subsection (1)(f), the following orders are specified—
- (a) a residential treatment order made under the **Sentencing Act 1991**;
 - (b) a parole order made under the **Corrections Act 1986**;
 - (c) a custodial supervision order made under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**;
 - (d) an order transferring the person from a prison under section 166;
 - (e) an extended supervision order made under the **Serious Sex Offenders Monitoring Act 2005**;
 - (f) a supervision order or interim supervision order within the meaning of the **Serious Sex Offenders (Detention and Supervision) Act 2009**.
- (3) An order specified in subsection (2)(b), (2)(e) or (2)(f) cannot provide for the admission of the person in respect of whom it is made to a residential treatment facility unless the Secretary has provided a statement to the relevant person or body specifying that—
- (a) treatment is available in the residential treatment facility; and
 - (b) the person satisfies the criteria specified in subsections (1)(a) to (1)(e); and
 - (c) admission to the residential treatment facility is appropriate in the circumstances.

S. 152(2)(e)
amended by
No. 91/2009
s. 219(Sch. 3
item 1.1).

S. 152(2)(f)
inserted by
No. 91/2009
s. 219(Sch. 3
item 1.2),
amended by
No. 29/2011
s. 3(Sch. 1
item 28.1).

S. 152(3)
amended by
No. 91/2009
s. 219(Sch. 3
item 1.3).

s. 153

S. 152(4)
inserted by
No. 91/2009
s. 219(Sch. 3
item 1.4).

- (4) In subsection (3), *relevant person or body* means—
- (a) in the case of an order specified in subsection (2)(b) or (2)(e)—the Adult Parole Board; and
 - (b) in the case of an order specified in subsection (2)(f)—the Secretary to the Department of Justice.

153 Authorised Program Officer must prepare treatment plan

S. 153(1)
amended by
No. 91/2009
s. 219(Sch. 3
item 1.5).

- (1) Within 28 days after a person with a disability is admitted to a residential treatment facility under an order specified in section 152(2)(a), 152(2)(b), 152(2)(d), 152(2)(e) or 152(2)(f), the Authorised Program Officer must prepare a treatment plan.
- (2) A treatment plan must include provisions which—
 - (a) specify the treatment that will be provided to the resident in the residential treatment facility during the period that the order under which the person is detained remains in force;
 - (b) state the benefit to the person that the resident is expected to receive from the treatment;
 - (c) specify any restrictive interventions that are to be used;
 - (d) specify the process and criteria applying in respect of the resident obtaining leave of absence from the residential treatment facility;
 - (e) set out a proposed process for the transition from being a resident in a residential treatment facility to living in the community.

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- (2A) When preparing a treatment plan under subsection (1), the Authorised Program Officer must ensure that the treatment plan is consistent with the order under which the person with a disability is admitted to the residential treatment facility.
- (3) Within 2 days of the treatment plan being prepared, the Authorised Program Officer must—
- (a) give a copy of the treatment plan to the person with a disability; and
 - (b) lodge a copy of the treatment plan with the Senior Practitioner.
- (4) An Authorised Program Officer must provide a report on the implementation of a treatment plan to the Senior Practitioner at the intervals, not exceeding 6 months, specified by the Senior Practitioner.
- (5) Subject to subsection (6), a material change can not be made to a treatment plan unless the change is approved by the Senior Practitioner.
- (6) Unless subsection (7) applies, if a material change to a treatment plan relates to an increase in the level of supervision or restriction—
- (a) the Senior Practitioner cannot approve the change; and
 - (b) the Authorised Program Officer must apply to VCAT for a variation of the treatment plan under section 155.
- (7) Despite subsection (6), if the Senior Practitioner considers that an increase in the level of supervision or restriction of a person with a disability is necessary because of an emergency, the Senior Practitioner—

S. 153(2A)
inserted by
No. 83/2011
s. 18.

- (a) may approve a material change to the treatment plan of the person with a disability relating to the increase in the level of supervision or restriction; and
 - (b) must immediately apply to VCAT for a variation of the treatment plan under section 155.
- (8) The Senior Practitioner must, as soon as practicable before the change has effect, notify in writing the person who is subject to the treatment plan of the change to the treatment plan approved by the Senior Practitioner.

154 Annual review of treatment plan

S. 154(1)
amended by
No. 91/2009
s. 219(Sch. 3
item 1.6).

- (1) While an order specified in section 152(2)(a), 152(2)(b), 152(2)(e) or 152(2)(f) is in force, the Authorised Program Officer must—
 - (a) within 6 months of the person subject to the treatment plan being admitted to the residential treatment facility; and
 - (b) at intervals of not more than 12 months since the last review of the treatment plan by VCAT—

apply to VCAT for a review of the treatment plan.
- (2) In conducting a review of a treatment plan, VCAT must determine whether the treatment plan is appropriate having regard to the criteria specified in section 153(2).
- (3) After reviewing a treatment plan, VCAT may—
 - (a) subject to subsection (4), confirm the treatment plan; or
 - (b) subject to subsection (4), vary the treatment plan as specified in its determination; or
 - (c) require the Authorised Program Officer to prepare a new treatment plan.

- (4) VCAT must not confirm or vary a treatment plan unless VCAT is satisfied that the residential treatment facility can implement the treatment plan.
- (5) VCAT can only vary a treatment plan if the variation is consistent with the order specified in section 152(2)(a), 152(2)(b), 152(2)(e) or 152(2)(f).
- (6) After reviewing a treatment plan, VCAT must set a date not later than 12 months for the next review.

S. 154(5)
amended by
No. 91/2009
s. 219(Sch. 3
item 1.7).

155 Application for review of treatment plan

- (1) The Authorised Program Officer or the resident may at any time apply to VCAT for a review of a treatment plan.
- (2) In conducting a review of a treatment plan, VCAT must determine whether the treatment plan is appropriate having regard to the criteria specified in section 153(2).
- (3) After reviewing a treatment plan, VCAT may—
 - (a) subject to subsection (4), confirm the treatment plan; or
 - (b) subject to subsection (4), vary the treatment plan as specified in its determination; or
 - (c) require the Authorised Program Officer to prepare a new treatment plan.
- (4) VCAT must not confirm or vary a treatment plan unless VCAT is satisfied that the residential treatment facility can implement the treatment plan.
- (5) VCAT can only vary a treatment plan if the variation is consistent with the order under section 152(2)(a), 152(2)(b), 152(2)(e) or 152(2)(f).

S. 155(5)
amended by
No. 91/2009
s. 219(Sch. 3
item 1.8).

- (6) After reviewing a treatment plan, VCAT must set a date not later than 12 months for the next review.

156 Leave of absence

S. 156(1)
amended by
No. 91/2009
s. 219(Sch. 3
item 1.9).

- (1) Subject to this section, the Authorised Program Officer may allow a resident detained in a residential treatment facility under an order specified in section 152(2)(a), 152(2)(b), 152(2)(d), 152(2)(e) or 152(2)(f) to be absent from the residential treatment facility—
- (a) for the period; and
 - (b) subject to any conditions—
- that the Authorised Program Officer considers appropriate.
- (2) Leave of absence under this section must be granted—
- (a) in accordance with the process and criteria specified in the resident's treatment plan; and
 - (b) subject to any directions given by VCAT or the Senior Practitioner.
- (3) The Authorised Program Officer must not allow a resident leave of absence unless the Authorised Program Officer is satisfied on reasonable grounds that the safety of members of the public will not be seriously endangered as a result of the resident being allowed leave of absence.
- (4) The Authorised Program Officer may—
- (a) from time to time extend the period of leave of absence; or
 - (b) revoke the leave of absence and require the resident to return to the residential treatment facility.

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- (5) The Authorised Program Officer of a residential treatment facility must provide a report for the period of 6 months ending on 30 June and 31 December to the Senior Practitioner specifying in respect of the residential treatment facility—
- (a) the number of leaves of absence allowed;
 - (b) in any case where leave of absence was considered by VCAT, details of the hearing and the decision.

157 Special leave

- (1) A resident detained in a residential treatment facility under an order specified in section 152(2)(a), 152(2)(b), 152(2)(d), 152(2)(e) or 152(2)(f) may apply to the Authorised Program Officer for special leave of absence specifying the special circumstances for which the special leave is required.

S. 157(1)
amended by
No. 91/2009
s. 219(Sch. 3
item 1.10).

Note

Special leave of absence may be applied for in relation to unplanned, one-off or emergency situations in special circumstances such as attending a medical appointment or a funeral in the community.

- (2) The Authorised Program Officer must grant an application for special leave of absence if the Authorised Program Officer is satisfied that—
- (a) there are special circumstances; and
 - (b) the safety of members of the public will not be seriously endangered.
- (3) If the Authorised Program Officer refuses to grant special leave of absence to a resident detained in a residential treatment facility, the resident may apply to VCAT for a review of the decision.

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- (4) On an application under subsection (3), VCAT may order that—
 - (a) special leave of absence should be allowed; or
 - (b) special leave of absence should not be allowed.
 - (5) Special leave of absence—
 - (a) must not exceed 24 hours except in the case of special leave of absence for medical treatment; and
 - (b) may be subject to any conditions as the Authorised Program Officer or VCAT may specify.
 - (6) The Authorised Program Officer of a residential treatment facility must provide a report for the period of 6 months ending on 30 June and 31 December to the Senior Practitioner specifying in respect of the residential treatment facility—
 - (a) the number of special leaves of absence granted;
 - (b) the special circumstances for which they were granted.

158 Suspension of leave of absence or special leave

- (1) Leave of absence or special leave of absence granted to a resident detained in a residential treatment facility may be suspended wholly or partly at any time by the Secretary or the Authorised Program Officer if the Secretary or the Authorised Program Officer is satisfied on reasonable grounds that the safety of the person on leave or members of the public will be seriously endangered if leave or part of the leave is not suspended.

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- (2) If leave of absence or special leave of absence is suspended, the Secretary or the Authorised Program Officer must as soon as is practicable confirm the suspension in writing to the person in respect of whom the leave of absence or special leave of absence is suspended.
 - (3) If the Secretary or the Authorised Program Officer is satisfied that the reason for the suspension no longer exists, the Secretary or the Authorised Program Officer must lift the suspension immediately.
 - (4) A person whose leave of absence or special leave of absence is wholly suspended under this section is deemed not to have leave of absence or special leave of absence during the period of suspension.
 - (5) A person whose leave of absence or special leave of absence is partly suspended under this section is deemed not to have the suspended part of the leave of absence or special leave of absence during the period of suspension.

159 Security conditions

- (1) A resident detained in a residential treatment facility or absent from a residential treatment facility on leave is subject to such security conditions as the Authorised Program Officer considers necessary.
- (2) A resident detained in a residential treatment facility may be transported to and from any places as may be necessary for the administration of this Act in accordance with those security conditions.
- (3) A resident detained in a residential treatment facility is in the custody of the person in charge of the residential treatment facility until the order under which the resident is detained ceases or is terminated.

160 Apprehension of resident absent without leave

A resident detained in a residential treatment facility who is absent from the residential treatment facility without leave of absence or special leave of absence may be apprehended at any time by—

- (a) a member of the police force; or
- (b) the person in charge of the residential treatment facility or any person employed under the **Public Administration Act 2004** and authorised by the person in charge of the residential treatment facility—

for the purpose of being returned to the residential treatment facility.

161 Transfer of resident to another residential treatment facility or a residential institution

- (1) The Secretary at the request of the Senior Practitioner or the Authorised Program Officer may by order direct the transfer of a resident detained in a residential treatment facility to another residential treatment facility or to a residential institution if the Secretary is satisfied that the transfer will enable that person's treatment plan to be more effectively implemented.
- (2) If a resident detained in a residential treatment facility is transferred to another residential treatment facility or to a residential institution any documents relevant to the detention and care of the resident must be forwarded at the same time to that residential treatment facility or residential institution.

Division 2—Provisions applying to RTO residents

162 Extended leave

- (1) In this section, *extended leave* means leave for a RTO resident to be absent from the residential treatment facility—
 - (a) for the period, not exceeding 12 months; and
 - (b) subject to the conditions (if any)—
specified by the court which made the residential treatment order.
- (2) The purpose of extended leave is to enable the RTO resident to be re-integrated within the community while still subject to conditions specified by the court that made the residential treatment order.
- (3) An application for extended leave for a RTO resident may be made to the court that made the residential treatment order to which they are subject—
 - (a) by the RTO resident; or
 - (b) by the Secretary.
- (4) If an application is made to the court for extended leave, a leave plan must be prepared and filed with the court by the Secretary.
- (5) The court may grant an application under subsection (3) if the court is satisfied on reasonable grounds that the safety of the RTO resident or members of the public will not be seriously endangered as a result of the RTO resident being allowed extended leave.
- (6) An application for extended leave can be made and granted more than once.

163 Appeals regarding extended leave

- (1) A person may appeal against a refusal to grant the person extended leave under section 162—
 - (a) if the original court making the decision was the Magistrates' Court, to the County Court; or
 - (b) if the original court making the decision was the County Court or the Supreme Court, to the Court of Appeal.
- (2) The Secretary may appeal to the Court of Appeal against a grant of extended leave if he or she considers that—
 - (a) extended leave should not have been granted; and
 - (b) an appeal should be brought in the public interest.
- (3) The Director of Public Prosecutions or the Attorney-General may appeal to the Court of Appeal against a grant of extended leave if he or she—
 - (a) was a party to the proceeding in which extended leave was granted; and
 - (b) considers that extended leave should not have been granted; and
 - (c) considers that an appeal should be brought in the public interest.
- (4) On an appeal against a refusal to grant extended leave, the Court of Appeal may—
 - (a) confirm the refusal to grant extended leave; or
 - (b) grant extended leave in accordance with section 162; or

- (c) remit the matter, with or without directions, to the court that refused to grant extended leave.
- (5) On an appeal against a grant of extended leave, the Court of Appeal may—
 - (a) confirm the grant of extended leave; or
 - (b) quash the grant and order that extended leave be refused; or
 - (c) quash the grant and remit the matter, with or without directions, to the court that made the grant.
- (6) If the Court of Appeal remits a matter to a court under subsection (4)(c) or (5)(c), that court must hear and determine the matter in accordance with this Act and any directions given by the Court of Appeal.

164 Suspension and revocation of extended leave

- (1) Extended leave for a RTO resident granted under section 162 may be suspended at any time by the Secretary if the Secretary is satisfied on reasonable grounds that the safety of the person on leave or members of the public will be seriously endangered if leave is not suspended.
- (2) If extended leave is suspended, the Secretary must—
 - (a) as soon as is practicable confirm the suspension in writing to the person formerly on leave; and
 - (b) subject to subsection (5), within 48 hours after the suspension—
 - (i) make an application to the court that granted the leave for revocation of the leave; or
 - (ii) lift the suspension.

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- (3) The court must hear an application referred to in subsection (2)(b)(i) as soon as possible.
 - (4) On an application under subsection (2)(b)(i) the court may—
 - (a) if satisfied on reasonable grounds that the safety of the RTO resident or members of the public will be seriously endangered if the suspension is not confirmed or leave is not revoked, revoke the leave; or
 - (b) if not satisfied, lift the suspension.
 - (5) If the Secretary is satisfied that the reason for the suspension no longer exists, the Secretary must lift the suspension immediately.
 - (6) A person whose leave is suspended under this section is deemed not to have leave of absence during the period of suspension.

165 Appeals regarding revocation of extended leave

- (1) A person may appeal to the Court of Appeal against a revocation of the extended leave granted to the person under section 162.
- (2) The Secretary may appeal to the Court of Appeal against a refusal to revoke extended leave granted under section 162 if the Secretary considers that—
 - (a) the extended leave should have been revoked; and
 - (b) an appeal should be brought in the public interest.
- (3) The Director of Public Prosecutions or the Attorney-General may appeal to the Court of Appeal against a refusal to revoke extended leave granted under section 162 if he or she—
 - (a) was a party to the proceeding for revocation of extended leave; and

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- (b) considers that the extended leave should have been revoked; and
 - (c) considers that an appeal should be brought in the public interest.
- (4) On an appeal against a revocation of extended leave, the Court of Appeal may—
- (a) confirm the revocation of extended leave; or
 - (b) quash the revocation and restore the extended leave; or
 - (c) remit the matter, with or without directions, to the court that revoked the leave.
- (5) On an appeal against a refusal to revoke extended leave, the Court of Appeal may—
- (a) confirm the refusal to revoke extended leave; or
 - (b) revoke the extended leave in accordance with section 164(4)(a); or
 - (c) revoke the extended leave and remit the matter, with or without directions, to the court that made the grant.
- (6) If the Court of Appeal remits a matter to a court under subsection (4)(c) or (5)(c), that court must hear and determine the matter in accordance with this Act and any directions given by the Court of Appeal.

Division 3—Provisions applying to security residents

166 Transfer of person with an intellectual disability from a prison

- (1) The Secretary to the Department of Justice may by a security order transfer a person who—
 - (a) is lawfully imprisoned or detained in a prison or other place of confinement; and

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- (b) is a person who has an intellectual disability—
to a residential treatment facility or residential institution as a security resident.
- (2) Subsection (1) does not apply to a person who is detained under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** in a prison whether on remand or under a supervision order.
- (3) The Secretary to the Department of Justice must not make a security order unless—
- (a) the Secretary to the Department of Justice has received a statement that the person has an intellectual disability and a treatment plan from the Secretary; and
 - (b) the Secretary to the Department of Justice is satisfied as to the matters specified in subsection (7); and
 - (c) the Secretary has agreed to accept the person as a security resident in a residential treatment facility or a residential institution specified in the order.
- (4) The Secretary to the Department of Justice may make an interim order to enable the Secretary to assess whether the person specified in the order has an intellectual disability.
- (5) A person in respect of whom an interim order is made may be conveyed to and detained in a residential treatment facility or residential institution for the period not exceeding 28 days specified in the order.
- (6) On the application of the Secretary, the Secretary to the Department of Justice may extend the duration of an interim order for a further period not exceeding 28 days.
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- (7) The Secretary to the Department of Justice must be satisfied that the making of a security order is in the best interests of the person and the community having regard to—
- (a) whether any physical, mental or emotional risk to which the person has been or may be exposed if detained in a prison is significantly greater than the risk to which a person who does not have an intellectual disability would be exposed; and
 - (b) whether the person would be more appropriately placed in a residential treatment facility or residential institution instead of a prison; and
 - (c) whether programs are offered by the residential treatment facility or residential institution which are designed to reduce the likelihood of the person committing further criminal offences; and
 - (d) any other matters the Secretary to the Department of Justice considers relevant.
- (8) If a person who is on remand is transferred to a residential treatment facility or residential institution under this section, the Secretary to the Department of Justice must notify the Director of Public Prosecutions of the transfer.

167 Preparation of treatment plan

- (1) If the Secretary issues a statement that a person has an intellectual disability for the purposes of section 166, the Secretary must prepare a treatment plan in respect of that person.
- (2) Within 2 days of the treatment plan being prepared, the Authorised Program Officer must—
 - (a) give a copy of the treatment plan to the person with an intellectual disability; and

- (b) lodge a copy of the treatment plan with the Senior Practitioner.
- (3) An Authorised Program Officer must provide a report on the implementation of a treatment plan to the Senior Practitioner at the intervals, not exceeding 6 months, specified by the Senior Practitioner.

168 Annual review of security order and treatment plan

- (1) While a security order is in force, the Authorised Program Officer must at intervals of not more than 12 months apply to VCAT for a review of the treatment plan and the security order.
- (2) In conducting a review of the treatment plan and security order, VCAT must determine whether—
 - (a) the treatment plan is appropriate having regard to the criteria specified in section 153(2); and
 - (b) the security order is appropriate having regard to the criteria specified in section 166(7).
- (3) After conducting a review under this section, VCAT may—
 - (a) subject to subsection (4), confirm the treatment plan; or
 - (b) subject to subsection (4), vary the treatment plan as specified in its determination; or
 - (c) require the Authorised Program Officer to prepare a new treatment plan; or
 - (d) recommend that the security order be terminated in accordance with section 175.
- (4) VCAT must not confirm or vary a treatment plan unless VCAT is satisfied that the residential treatment facility or residential institution can implement the treatment plan.

- (5) VCAT can only vary a treatment plan if the variation is consistent with the security order.
- (6) After reviewing a treatment plan, VCAT must set a date within the next 12 months for the next review.

169 Application for review of treatment plan

- (1) The Authorised Program Officer or the security resident may at any time apply to VCAT for a review of a treatment plan.
- (2) In conducting a review of a treatment plan, VCAT must determine whether the treatment plan is appropriate having regard to the criteria specified in section 153(2).
- (3) After reviewing a treatment plan, VCAT may—
 - (a) subject to subsection (4), confirm the treatment plan; or
 - (b) subject to subsection (4), vary the treatment plan as specified in its determination; or
 - (c) require the Authorised Program Officer to prepare a new treatment plan.
- (4) VCAT must not confirm or vary a treatment plan unless VCAT is satisfied that the residential treatment facility or residential institution can implement the treatment plan.

170 Leave of absence

- (1) Subject to this section, the Authorised Program Officer may allow a security resident detained in a residential institution to be absent from the residential institution—
 - (a) for the period; and
 - (b) subject to any conditions—that the Authorised Program Officer considers appropriate.

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- (2) Leave of absence under this section must be granted—
- (a) in accordance with the process and criteria specified in the security resident's treatment plan; and
 - (b) subject to any directions given by VCAT or the Senior Practitioner.
- (3) The Authorised Program Officer must not allow a security resident leave of absence unless the Authorised Program Officer is satisfied on reasonable grounds that the safety of members of the public will not be seriously endangered as a result of the security resident being allowed leave of absence.
- (4) The Authorised Program Officer may—
- (a) from time to time extend the period of leave of absence; or
 - (b) revoke the leave of absence and require the security resident to return to the residential institution.
- (5) The Authorised Program Officer of a residential institution must provide a report for the period of 6 months ending on 30 June and 31 December to the Senior Practitioner specifying in respect of the residential institution—
- (a) the number of leaves of absence allowed;
 - (b) in any case where leave of absence was considered by VCAT, details of the hearing and the decision.

171 Special leave

- (1) A security resident detained in a residential institution may apply to the Authorised Program Officer for special leave of absence specifying the special circumstances for which the special leave is required.

Note

Special leave of absence may be applied for in relation to unplanned, one-off or emergency situations in special circumstances such as attending a medical appointment or a funeral in the community.

- (2) The Authorised Program Officer must grant an application for special leave of absence if the Authorised Program Officer is satisfied that—
- (a) there are special circumstances; and
 - (b) the safety of members of the public will not be seriously endangered.
- (3) If the Authorised Program Officer refuses to grant special leave of absence to a security resident detained in a residential institution, the security resident may apply to VCAT for a review of the decision.
- (4) On an application under subsection (3), VCAT may order that—
- (a) special leave of absence should be allowed; or
 - (b) special leave of absence should not be allowed.
- (5) Special leave of absence—
- (a) must not exceed 24 hours except in the case of special leave of absence for medical treatment; and

- (b) may be subject to any conditions as the Authorised Program Officer or VCAT may specify.
- (6) The Authorised Program Officer of a residential institution must provide a report for the period of 6 months ending on 30 June and 31 December to the Senior Practitioner specifying in respect of the residential institution—
 - (a) the number of special leaves of absence granted;
 - (b) the special circumstances for which they were granted.

172 Suspension of leave of absence or special leave

- (1) Leave of absence or special leave of absence granted to a security resident detained in a residential institution may be suspended wholly or partly at any time by the Secretary or the Authorised Program Officer if the Secretary or the Authorised Program Officer is satisfied on reasonable grounds that the safety of the person on leave or members of the public will be seriously endangered if leave or part of the leave is not suspended.
- (2) If leave of absence or special leave of absence is suspended, the Secretary or the Authorised Program Officer must as soon as is practicable confirm the suspension in writing to the person in respect of whom the leave of absence or special leave of absence is suspended.
- (3) If the Secretary or the Authorised Program Officer is satisfied that the reason for the suspension no longer exists, the Secretary or the Authorised Program Officer must lift the suspension immediately.

- (4) A person whose leave of absence or special leave of absence is wholly suspended under this section is deemed not to have leave of absence or special leave of absence during the period of suspension.
- (5) A person whose leave of absence or special leave of absence is partly suspended under this section is deemed not to have the suspended part of the leave of absence or special leave of absence during the period of suspension.

173 Security conditions

- (1) A security resident detained in a residential institution or absent from a residential institution on leave is subject to such security conditions as the Authorised Program Officer considers necessary.
- (2) A security resident detained in a residential institution may be transported to and from any places as may be necessary for the administration of this Act in accordance with those security conditions.
- (3) A security resident detained in a residential institution is in the custody of the person in charge of the residential institution until the security order under which the security resident is detained in the residential institution ceases or is terminated.

174 Apprehension of security resident absent without leave

A security resident detained in a residential institution who is absent from the residential institution without leave of absence or special leave of absence may be apprehended at any time by—

- (a) a member of the police force; or

- (b) the person in charge of the residential institution or any person employed under the **Public Administration Act 2004** and authorised by the person in charge of the residential institution—

for the purpose of being returned to the residential institution.

175 Termination of a security order

- (1) A security order—
 - (a) may be terminated by the Secretary at any time on the recommendation of VCAT; or
 - (b) in the case of a person serving a sentence of imprisonment, terminates upon the expiry of the sentence.
- (2) If a security order is terminated the following provisions apply—
 - (a) if the security resident has not completed serving a sentence of imprisonment, the person is to be transferred to a prison;
 - (b) if the security resident has completed a sentence of imprisonment, the person is to be released.
- (3) The Secretary to the Department of Justice must notify the Secretary when the sentence of imprisonment of a security resident is to expire.

176 Death of security resident

If a security resident dies during detention, the person in charge of the residential treatment facility or residential institution must advise the Secretary to the Department of Justice as to the circumstances in which the death occurred.

177 Request for transfer to prison

- (1) A security resident detained in a residential treatment facility or residential institution under section 166 may at any time apply to VCAT for VCAT to make a recommendation to the Secretary that the security resident be transferred to a prison.
- (2) If VCAT after receiving a report from the Secretary to the Department of Justice makes a recommendation for the transfer of a security resident to a prison, the Secretary may terminate the security order.
- (3) If the Secretary terminates the security order under subsection (2), the person is to be discharged as a security resident upon being placed in the legal custody of the Secretary to the Department of Justice under the **Corrections Act 1986**.

178 Transfer of security resident to another residential institution or a residential treatment facility

- (1) The Secretary at the request of the Senior Practitioner or the Authorised Program Officer may by order direct the transfer of a security resident detained in a residential institution to another residential institution or to a residential treatment facility if the Secretary is satisfied that the transfer will enable that person's treatment plan to be more effectively implemented.
- (2) If a security resident detained in a residential institution is transferred to another residential institution or to a residential treatment facility any documents relevant to the detention and care of the resident must be forwarded at the same time to that residential institution or residential treatment facility.

179 Notice of transfer of security resident to another residential treatment facility or residential institution

If a security resident is transferred to another residential treatment facility under section 161 or to another residential institution under section 178, the Secretary must notify the Secretary to the Department of Justice that the security resident has been transferred.

Division 4—Provisions applying to forensic residents

180 Transfer of persons detained in prison under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

- (1) The Secretary to the Department of Justice may, by order, transfer a person who—
 - (a) is detained in a prison whether on remand or under a supervision order under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997**; and
 - (b) is a person who has an intellectual disability—to a residential treatment facility or residential institution as a forensic resident.
- (2) The Secretary to the Department of Justice must not transfer a person under subsection (1) unless—
 - (a) the Secretary to the Department of Justice has received a statement that the person has an intellectual disability and a treatment plan from the Secretary; and
 - (b) the Secretary to the Department of Justice is satisfied as to the matters specified in subsection (7); and

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- (c) the Secretary has agreed to accept the person as a forensic resident in the residential treatment facility or residential institution specified in the transfer order.
- (3) The Secretary to the Department of Justice may make an interim order to enable the Secretary to assess whether the person specified in the order has an intellectual disability.
- (4) A person in respect of whom an interim order is made may be conveyed to and detained in a residential treatment facility or residential institution for the period, not exceeding 28 days, specified in the interim order.
- (5) On the application of the Secretary, the Secretary to the Department of Justice may extend the duration of an interim order for a further period not exceeding 28 days.
- (6) If the Secretary issues a statement that a person has an intellectual disability under this section, the Secretary must prepare a treatment plan in respect of that person.
- (7) The Secretary to the Department of Justice must be satisfied that the making of a transfer order is in the best interests of the person or the community having regard to—
- (a) whether any physical, mental or emotional risk to which the person has been or may be exposed if detained in a prison is significantly greater than the risk to which a person who does not have an intellectual disability would be exposed; and
 - (b) whether the person would be more appropriately placed in a residential treatment facility or residential institution instead of a prison; and
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- (c) any other matters the Secretary to the Department of Justice considers relevant.
- (8) If a person who is on remand is transferred to a residential treatment facility or residential institution under this section, the Secretary to the Department of Justice must notify the Director of Public Prosecutions of the transfer.

181 Status of forensic residents

A forensic resident is to be provided with services under this Act in a residential treatment facility or residential institution.

182 Leave of absence for forensic resident

A forensic resident who is subject to a supervision order under the **Crimes (Mental Impairment and Unfitness to be Tried) Act 1997** may apply for and be granted leave of absence in accordance with Part 7 of that Act.

Division 5—Supervised treatment orders

183 Purpose of Division

The purpose of this Division is to provide for the making of a civil order, a supervised treatment order, to enable the detention of a person with an intellectual disability who poses a significant risk of serious harm to others.

184 Restrictions on liberty or freedom of movement

A disability service provider must not detain a person with an intellectual disability otherwise than in accordance with this Division.

Penalty: 240 penalty units.

185 Use of supervised treatment

A disability service provider must not use supervised treatment unless there is in force an approval under section 186.

Penalty: 240 penalty units.

186 Approval to use supervised treatment

- (1) A disability service provider who proposes to use supervised treatment in the provision of a disability service must apply to the Secretary for approval.
- (2) An application for approval must include—
 - (a) the prescribed details; and
 - (b) a request for approval of the title and rank of any position and the name of the holder of the position to be appointed as an Authorised Program Officer for the disability service provider.
- (3) The Secretary may grant an application for approval subject to any conditions that the Secretary considers appropriate.
- (4) In the case of a disability service in respect of which the disability service provider is the Secretary, the Secretary—
 - (a) is to be taken to be approved to use supervised treatment; and
 - (b) must ensure that an Authorised Program Officer is appointed for the disability service; and
 - (c) must approve the title and rank of any position and the name of the holder of the position to be appointed as the Authorised Program Officer.

187 Revocation of approval

- (1) The Secretary may revoke the approval of a disability service provider to use supervised treatment if the Secretary considers it appropriate to do so.
- (2) For the purposes of subsection (1), the Secretary may have regard to the following—
 - (a) the registration of the disability service provider has been revoked;
 - (b) the disability service provider has failed to comply with requirements under this Act;
 - (c) any other circumstances that the Secretary considers relevant.

188 Notice before refusal or revocation

- (1) The Secretary must not refuse an application under section 186 or revoke the approval of a disability service provider to use supervised treatment under section 187(1) unless the Secretary has given a notice in writing to the disability service provider in accordance with subsection (2) and has considered any submission made by the disability service provider.
- (2) The notice must specify—
 - (a) the proposed decision and the reasons for the proposed decision;
 - (b) that the disability service provider may make a submission in writing within 14 days of the notice being given.

189 Application for review

- (1) A disability service provider may apply to VCAT for a review of a decision by the Secretary—
 - (a) to refuse an application under section 186; or
 - (b) to revoke the approval of a disability service provider to use supervised treatment under section 187(1).
- (2) An application for review must be made within 28 days after the later of—
 - (a) the day on which the decision is made; or
 - (b) if, under the **Victorian Civil and Administrative Tribunal Act 1998**, the disability service provider requests a statement of reasons for the decision, the day on which the statement of reasons is given to the disability service provider or the disability service provider is informed under section 46(5) of that Act that a statement of reasons will not be given.

190 Authorised Program Officers

- (1) An Authorised Program Officer must ensure that any supervised treatment used in the provision of a disability service for which the Authorised Program Officer is responsible is administered in accordance with this Division.
- (2) A disability service provider must advise the Senior Practitioner of the name and qualifications of any person appointed as an Authorised Program Officer in the manner and within the period determined by the Senior Practitioner.

Penalty: 10 penalty units.
- (3) The Senior Practitioner must keep a register of the name and qualifications of each Authorised Program Officer.

191 Application for a supervised treatment order

- (1) An Authorised Program Officer may apply to VCAT for a supervised treatment order to be made in respect of a person—
 - (a) who has an intellectual disability;
 - (b) who is receiving residential services;
 - (c) in respect of whom the disability service provider has prepared a treatment plan approved by the Senior Practitioner;
 - (d) who meets the criteria specified in subsection (6).
- (2) The Senior Practitioner may direct an Authorised Program Officer to make an application under subsection (1) in respect of a person if the Senior Practitioner considers that the person—
 - (a) has an intellectual disability;
 - (b) is receiving residential services;
 - (c) is being detained to prevent a significant risk of serious harm to another person without a supervised treatment order applying.
- (3) An application under subsection (1) must include a certificate given by the Senior Practitioner which specifies that the person in respect of whom the application is made—
 - (a) has an intellectual disability;
 - (b) is receiving residential services;
 - (c) has a treatment plan approved by the Senior Practitioner.
- (4) An Authorised Program Officer must notify the Public Advocate that the Authorised Program Officer has made an application under subsection (1).

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- (5) On the application of the Public Advocate, VCAT may join the Public Advocate as a party to a proceeding relating to an application under subsection (1).
- (6) VCAT can only make a supervised treatment order if VCAT is satisfied that—
- (a) the person has previously exhibited a pattern of violent or dangerous behaviour causing serious harm to another person or exposing another person to a significant risk of serious harm;
 - (b) there is a significant risk of serious harm to another person which cannot be substantially reduced by using less restrictive means;
 - (c) the services to be provided to the person in accordance with the treatment plan will be of benefit to the person and substantially reduce the significant risk of serious harm to another person;
 - (d) the person is unable or unwilling to consent to voluntarily complying with a treatment plan to substantially reduce the significant risk of serious harm to another person;
 - (e) it is necessary to detain the person to ensure compliance with the treatment plan and prevent a significant risk of serious harm to another person.
- (7) The treatment plan must include provisions which—
- (a) specify the treatment that will be provided to the person during the period of the supervised treatment order;
 - (b) state the expected benefit to the person of the treatment;
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- (c) specify any restrictive interventions that are to be used;
- (d) state the level of supervision which will be required to ensure that the person participates in the treatment;
- (e) set out a proposed process for transition of the person to lower levels of supervision and, if appropriate, to living in the community without a supervised treatment order being required.

192 Interim supervised treatment order by VCAT

- (1) If an application for a supervised treatment order has been made under section 191, VCAT may at the request of the Authorised Program Officer make an interim supervised treatment order having effect until the application for a supervised treatment order is determined.
- (2) VCAT can only make an interim supervised treatment order if VCAT is satisfied that it is necessary to detain the person to ensure compliance with the treatment plan and prevent a significant risk of serious harm to another person until the application for a supervised treatment order is determined.

193 Supervised treatment order

- (1) On an application under section 191, VCAT may—
 - (a) if it is satisfied that the matters specified in section 191(1) apply in respect of the person who is the subject of the application, make a supervised treatment order; or

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- (b) subject to subsection (2), if it is satisfied that the matters specified in section 191(1) apply in respect of the person who is the subject of the application but considers that the treatment plan should be varied, make a supervised treatment order subject to the treatment plan being varied as specified by VCAT; or
 - (c) if it is not satisfied that the matters specified in section 191(1) apply in respect of the person who is the subject of the application, dismiss the application.
 - (2) VCAT must not make a supervised treatment order under subsection (1)(b) unless VCAT is satisfied that the disability service provider can implement the supervised treatment order and the variation of the treatment plan.
 - (3) A supervised treatment order must—
 - (a) state that the Authorised Program Officer is responsible for the implementation of the supervised treatment order;
 - (b) require the person to whom the supervised treatment order applies to reside in premises approved by the Authorised Program Officer;
 - (c) refer to the treatment plan which must be attached to the supervised treatment order;
 - (d) specify the period for which the supervised treatment order is to continue in force, being a period not exceeding 1 year.
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- (4) A supervised treatment order may—
- (a) specify conditions to which the person is subject;
 - (b) require the person to participate in treatment specified in the treatment plan or in treatment specified in the supervised treatment order;
 - (c) state the intervals at which the supervised treatment order is to be reviewed.
- (5) Subsection (3)(d) does not prevent the making of another supervised treatment order before the expiry of the current supervised treatment order.
- (6) There is no limit on the number of applications that can be made for a supervised treatment order.

194 Application by the Public Advocate

- (1) If—
- (a) the Authorised Program Officer has not made an application under section 191 for a supervised treatment order to be made in respect of a person; and
 - (b) the Public Advocate considers that the person is being detained to prevent a significant risk of serious harm to another person without a supervised treatment order applying—

the Public Advocate may apply to VCAT for an order directing the Authorised Program Officer to make an application under section 191 in respect of that person.

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- (2) If on an application under subsection (1) VCAT considers that the matters referred to in subsection (1)(b) may be satisfied, VCAT may make an order directing that—
- (a) the Authorised Program Officer make an application under section 191 within 28 days of the date that the order is made; and
 - (b) the Public Advocate is to be a party to the application.

195 Supervision of supervised treatment order

- (1) The Senior Practitioner is responsible for supervising the implementation of a supervised treatment order.
- (2) An Authorised Program Officer must provide a report on the implementation of a supervised treatment order to the Senior Practitioner at the intervals, not exceeding 6 months, specified by the Senior Practitioner.
- (3) Subject to subsection (4), a material change cannot be made to a treatment plan unless the change is approved by the Senior Practitioner.
- (4) Unless subsection (5) applies, if a material change to a treatment plan relates to an increase in the level of supervision or restriction—
 - (a) the Senior Practitioner cannot approve the change; and
 - (b) the Authorised Program Officer must apply to VCAT for a variation of the treatment plan under section 196.

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- (5) Despite subsection (4), if the Senior Practitioner considers that an increase in the level of supervision or restriction of a person who is subject to a supervised treatment order is necessary because of an emergency, the Senior Practitioner—
- (a) may approve a material change to the treatment plan of the person subject to the supervised treatment order relating to the increase in the level of supervision or restriction; and
 - (b) must immediately apply to VCAT for a variation of the treatment plan under section 196.
- (6) The Senior Practitioner must, as soon as is practicable before the change has effect, notify in writing the person who is subject to the supervised treatment order of the change to the treatment plan approved by the Senior Practitioner.

196 Application for review, variation or revocation

- (1) The Senior Practitioner, the Authorised Program Officer or the person subject to a supervised treatment order may apply to VCAT—
 - (a) for a review of the supervised treatment order or the treatment plan;
 - (b) to vary the supervised treatment order or the treatment plan as specified in the application;
 - (c) to have the supervised treatment order revoked.
 - (2) The Senior Practitioner or the Authorised Program Officer must notify the Public Advocate that the Senior Practitioner or the Authorised Program Officer has made an application under subsection (1).
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- (3) If the Public Advocate considers that a supervised treatment order should be reviewed by VCAT, the Public Advocate may request the Senior Practitioner to make an application under subsection (1).
 - (4) If the Senior Practitioner declines to make an application under subsection (1) requested by the Public Advocate, the Public Advocate may make an application under subsection (1).
 - (5) On an application under subsection (1)(a) for a review of the supervised treatment order or the treatment plan, VCAT may—
 - (a) if VCAT is satisfied that the matters specified in section 191(1) continue to apply—
 - (i) confirm the supervised treatment order or treatment plan; or
 - (ii) confirm the supervised treatment order or treatment plan subject to any variation that VCAT considers appropriate; or
 - (b) if VCAT is not satisfied that the matters specified in section 191(1) continue to apply, revoke the supervised treatment order.
 - (6) On an application under subsection (1)(b) to vary the supervised treatment order or the treatment plan, VCAT may—
 - (a) if VCAT is satisfied that the variation is appropriate—
 - (i) subject to subsection (7), confirm the variation to the supervised treatment order or treatment plan; or

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- (ii) subject to subsection (7), confirm the variation to the supervised treatment order or treatment plan subject to any further variation that VCAT considers appropriate; or
 - (b) if VCAT is not satisfied that the variation is appropriate reject the application.
 - (7) VCAT must not confirm the variation of a supervised treatment order or treatment plan under subsection (6)(a) unless VCAT is satisfied that the disability service provider can implement the variation of the supervised treatment order or the treatment plan.
 - (8) On an application under subsection (1)(c) for the supervised treatment order to be revoked, VCAT may—
 - (a) if VCAT is satisfied that any of the matters specified in section 191(1) have ceased to apply, revoke the supervised treatment order; or
 - (b) if VCAT is satisfied that the matters specified in section 191(1) continue to apply—
 - (i) subject to subsection (9), confirm the supervised treatment order; or
 - (ii) subject to subsection (9), confirm the supervised treatment order subject to any variation that VCAT considers appropriate.
 - (9) VCAT must not confirm a supervised treatment order under subsection (8)(b) unless VCAT is satisfied that the disability service provider can implement the supervised treatment order or variation.
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197 Application for rehearing

- (1) If VCAT has determined an application under this Division, the Senior Practitioner, the Authorised Program Officer or the person subject to the supervised treatment order may apply to VCAT for a rehearing of the application.
- (2) An application for a rehearing, or for leave to apply for a rehearing, must be made within 28 days after the day on which VCAT made the determination.
- (3) If VCAT gives oral reasons for making an order and a person then requests written reasons under section 117 of the **Victorian Civil and Administrative Tribunal Act 1998**, the day on which the written reasons are given to the person is deemed to be the day on which VCAT made the determination for the purposes of subsection (2).
- (4) Subject to subsection (5), the making of an application for a rehearing does not affect the operation of any supervised treatment order to which the application relates or prevent the taking of action to enforce the supervised treatment order.
- (5) VCAT may make an order staying the operation of a supervised treatment order pending the determination of the rehearing of the application.

198 Rehearing

- (1) On an application under section 197, VCAT must rehear the matter and, for that purpose, VCAT has all the functions and powers that VCAT had with respect to the matter at first instance.

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- (2) In determining a rehearing, VCAT may—
- (a) affirm the determination of VCAT at first instance; or
 - (b) vary the determination of VCAT at first instance; or
 - (c) set aside the determination of VCAT at first instance and make another determination in substitution for it.

199 Senior Practitioner may make assessment order

- (1) An Authorised Program Officer may apply to the Senior Practitioner for an assessment order to be made in respect of a person to enable a treatment plan to be prepared for that person.
- (2) An Authorised Program Officer may only make an application under subsection (1) in respect of a person if the Authorised Program Officer considers that—
 - (a) the person has an intellectual disability;
 - (b) the person is receiving residential services;
 - (c) it is necessary to detain the person to prevent a significant and imminent risk of serious harm to another person;
 - (d) an assessment needs to be undertaken to enable the urgent development of a treatment plan for the purpose of making an application for a supervised treatment order.
- (3) The Senior Practitioner can only make an assessment order if the Senior Practitioner is satisfied that the criteria specified in subsection (2) applies.

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- (4) An assessment order—
- (a) may specify conditions to which the person is subject;
 - (b) continues in force for the period not exceeding 28 days specified in the assessment order;
 - (c) can not be extended or renewed.
- (5) On the expiry of an assessment order, the Authorised Program Officer must—
- (a) make an application to VCAT for a supervised treatment order; or
 - (b) cease the detention of the person who was subject to the assessment order.
- (6) Only one application can be made under this section in respect of any person.

200 Supervised treatment order to prevail over guardianship order

If a person who is subject to a supervised treatment order is a represented person in respect of whom a guardianship order in force under the **Guardianship and Administration Act 1986**, the supervised treatment order prevails over the guardianship order to the extent of any inconsistency.

201 Apprehension of person subject to a supervised treatment order absent without approval

- (1) A person who is subject to a supervised treatment order who is absent without approval from the residential service at which the person is required to reside may be apprehended at any time by—
- (a) a member of the police force; or

- (b) the person in charge of the residential service or any person employed by the disability service provider providing the residential service and authorised by the person in charge of the residential service—

for the purpose of being returned to the residential service.

- (2) For the purposes of subsection (1), a person who is subject to a supervised treatment order is absent without approval from the residential service at which the person is required to reside if—
 - (a) the absence is contrary to the conditions specified in the supervised treatment order; or
 - (b) the absence is in breach of the treatment plan; or
 - (c) the absence requires the prior approval of the Authorised Program Officer and no approval has been given.

PART 9—GENERAL PROVISIONS

202 False and misleading statements

- (1) A person must not, in purported compliance with this Act, give information or make a statement that is false or misleading in a material particular.

Penalty: 60 penalty units.

- (2) A person must not make a false or misleading entry in a document required by this Act to be kept by a disability service provider.

Penalty: 60 penalty units.

- (3) It is a defence in proceedings under this section to prove that the person did not know that the information, statement or entry was false or misleading.

203 Defacing documents

A person must not, without lawful authority, destroy or damage any notice or document given or prepared or kept in accordance with this Act.

Penalty: 120 penalty units.

204 Delegation

- (1) The Secretary may, by instrument, delegate to any officer or employee of the Department any power, duty or function of the Secretary under this Act (other than this power of delegation) or under regulations made under this Act.
- (2) The Secretary may, by instrument, delegate to any officer or employee of the Department any power, duty or function of the Secretary under any other Act or under regulations made under any other Act that relates to or affects persons with a disability.

S. 204
substituted by
No. 29/2010
s. 10.

205 Provision of staff services

- (1) The Secretary may having regard to the objectives and functions of the Secretary under this Act, make available to a disability service provider providing disability services the services of any person or class of persons employed in the Department under the **Public Administration Act 2004**.
- (2) A person or class of persons whose services are made available under subsection (1) to a disability service provider remains subject to the **Public Administration Act 2004** but may be subject to the direction and control of the disability service provider for the purposes of duty in the assigned role to the extent and subject to any conditions determined and agreed to by the Secretary which cannot be less favourable than under the **Public Administration Act 2004**.

206 Special powers of Secretary

- (1) The Secretary may at any time the Secretary thinks fit visit any disability service provider.
- (2) The Secretary is entitled when visiting any disability service provider to—
 - (a) inspect any part of the premises;
 - (b) see any person to whom disability services are being provided;
 - (c) make inquiries in relation to any person to whom disability services are being provided;
 - (d) inspect any document or record relating to—
 - (i) the provision of disability services; or
 - (ii) any person to whom disability services are being provided.

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- (3) The Secretary may by order in writing require the person in charge of a disability service provider to allow a person authorised by the Secretary to see a person to whom disability services are being provided.
 - (4) The person in charge and every member of the staff or management of a disability service provider must provide the Secretary with any reasonable assistance that the Secretary may require to perform or exercise a power, duty or function under this Act effectively.
 - (5) A person in charge or member of the staff or management of a disability service provider must—
 - (a) reasonably render assistance when required to do so under subsection (4);
 - (b) give full and true answers to the best of that person's knowledge to any question asked by the Secretary in the performance or exercise of any power, duty or function under this Act.

Penalty: 60 penalty units.

207 Appointment of authorised officers

- (1) The Secretary may, by instrument, appoint as authorised officers any employees or class of employees employed under Part 3 of the **Public Administration Act 2004**.
- (2) The Secretary must not appoint a person as an authorised officer under this section unless the Secretary is satisfied that the person is appropriately qualified or has successfully completed appropriate training.

208 Identity cards

- (1) The Secretary must issue an identity card to each authorised officer.
- (2) An identity card must contain a photograph of the authorised officer to whom it is issued.

209 Production of identity card

An authorised officer must produce his or her identity card for inspection—

- (a) before exercising a power under this Act other than a requirement made by post; and
- (b) at any time during the exercise of a power under this Act, if asked to do so.

Penalty: 10 penalty units.

210 Powers of authorised officers

- (1) For the purpose of ascertaining whether this Act and the regulations are being complied with, an authorised officer, with such assistance as he or she reasonably requires, may at any time visit and inspect any part of the premises where disability services are being provided, other than any premises or part of any premises used as a private residence that is not a residential service, and may—
 - (a) see and ask questions of a person to whom disability services are being provided;
 - (b) make enquiries in relation to any person to whom disability services are being provided;
 - (c) inspect, make copies of or take extracts from, any document relating to—
 - (i) the provision of disability services; or
 - (ii) any person to whom disability services are being provided;

- (d) require a disability service provider or any member of staff of the disability service provider—
 - (i) to answer a question to the best of that person's knowledge, information and belief;
 - (ii) to take reasonable steps to produce documents.
- (2) If an authorised officer requires a person referred to in subsection (1)(d) to answer a question to the best of that person's knowledge, information and belief, the authorised officer must advise the person that it is a reasonable excuse for that person to refuse to comply with the request if it would tend to incriminate that person.

211 Offence to give false or misleading information

A person must not—

- (a) give information to an authorised officer under this Act that the person believes to be false or misleading in any material particular; or
- (b) produce a document to an authorised officer under this Act that the person knows to be false or misleading in a material particular without indicating the respect in which it is false or misleading and, if practicable, providing correct information.

Penalty: 60 penalty units.

212 Offence to hinder or obstruct authorised officer

- (1) A person must not, without reasonable excuse, hinder or obstruct an authorised officer who is exercising a power under this Act.

Penalty: 60 penalty units.

- (2) A person is not guilty of an offence under subsection (1) if the authorised officer exercising a power under this Act—
- (a) failed to produce their identity card in accordance with section 209; or
 - (b) failed to warn the person of the effect of subsection (1).

213 Offence to impersonate authorised officer

A person who is not an authorised officer must not, in any way, hold himself or herself out to be an authorised officer.

Penalty: 60 penalty units.

214 Protection against self-incrimination

It is a defence to an offence against this Act for a natural person to refuse or fail to give information or do any other thing that the person is required to do by or under this Act, if the giving of the information or the doing of that other thing would tend to incriminate the person.

S. 215
(Heading)
amended by
No. 69/2009
s. 97(Sch. Pt 1
item 16.3).
S. 215
amended by
No. 69/2009
s. 97(Sch. Pt 1
item 16.4).

215 Legal professional privilege or client legal privilege

It is a defence to an offence against this Act for a person to refuse or fail to give information or do any other thing that the person is required to do by or under this Act, if the giving of the information or the doing of that other thing would be a breach of legal professional privilege or client legal privilege.

216 Offences by bodies corporate

- (1) If a person charged with an offence against this Act is a body corporate, any person who is concerned or takes part in the management of that body corporate may be charged with a like offence.

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- (2) It is a defence to a charge brought under subsection (1) against a person who is concerned in or takes part in the management of a body corporate if that person proves that—
- (a) the offence was committed by the body corporate without the consent or knowledge of that person; and
 - (b) that person exercised due diligence to prevent the commission of the offence.

217 Persons who are liable for offences

- (1) If two or more persons are responsible for the same offence against this Act each of those persons is liable to the penalty provided by this Act for that offence and the liability of each of them is independent of the liability of any other person.
- (2) If a person who is guilty of an offence is a partnership or an unincorporated body the reference to a person must be construed as a reference to each member of the partnership or of the committee of management of the unincorporated body, as the case may be.
- (3) It is a defence to a prosecution or other legal proceeding under this Act if the person charged with the offence proves that—
 - (a) he or she did not know that an offence was being committed or consent to or connive in the commission of the offence; and
 - (b) he or she used due diligence to prevent the commission of an offence.

218 Power to bring proceedings

- (1) The Secretary or a member of the police force may bring proceedings for an offence under this Act.

- (2) The Disability Services Commissioner may also bring proceedings for an offence under Division 6 of Part 6.

219 Evidentiary

- (1) In proceedings under this Act, no proof is required—
- (a) of an order or authority to bring proceedings; or
 - (b) of the appointment of the Secretary or an authorised officer.
- (2) A copy of an order, direction, authority, decision or notice made or given under this Act by the Minister or the Secretary and signed and certified by the Minister or the Secretary to be a true copy and to have been so made or given is evidence of the making or giving of the order, direction, authority, decision or notice.

220 Recapture of person

This Act does not affect the application of any law enabling the recapture of a person for the purpose of being returned to a prison.

221 Regulations

- (1) The Governor in Council may make regulations for or with respect to—
- (a) prescribing forms to be used for the purposes of this Act;
 - (b) prescribing fees for the purposes of this Act;
 - (c) prescribing the maximum amount that may be charged as a residential charge in respect of different kinds of residential services;
 - (d) matters to be included in a residential statement;

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- (e) prescribing charges, if any, for the accommodation or care of, or for services, including food and utilities, provided to, a resident in a residential service other than a community residential unit;
 - (f) prescribing the keeping and form of any records, registers or other documents as may be necessary for the administration of this Act;
 - (g) any matter or thing authorised or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
- (2) Regulations made under this Act—
- (a) may be of general or of specially limited application;
 - (b) may differ according to differences in time, place or circumstance;
 - (c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, municipal council or public authority or any officer thereof;
 - (d) may confer powers or impose duties in connection with the regulations on any government department, municipal council or public authority;
 - (e) may apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time;
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- (f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made;
 - (g) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.
 - (3) A power conferred by this Act to make regulations providing for the imposition of fees or charges may be exercised by providing for all or any of the following matters—
 - (a) specific fees or charges;
 - (b) maximum or minimum fees or charges;
 - (c) maximum and minimum fees or charges;
 - (d) scales of fees or charges according to the value of goods or services provided for the fees or charges;
 - (e) the payment of fees or charges either generally or under specified conditions or in specified circumstances;
 - (f) the reduction, waiver or refund, in whole or in part, of the fees or charges.
 - (4) If under subsection (3)(f) regulations provide for a reduction, waiver or refund, in whole or in part, of a fee or charge, the reduction, waiver or refund may be expressed to apply either generally or specifically—
 - (a) in respect of certain matters or transactions or classes of matters or transactions; or
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- (b) in respect of certain documents or classes of documents; or
 - (c) when an event happens; or
 - (d) in respect of certain persons or classes of persons; or
 - (e) in respect of any combination of matters, transactions, documents, events or persons—
- and may be expressed to apply subject to specified conditions or in the discretion of any specified person or body.
- (5) A fee or charge that may be imposed by regulation is not limited to an amount that is related to the cost of providing a service.
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PART 10—MISCELLANEOUS

Division 1—Savings and transitional

222 Repeals and Savings

See:
Act No.
53/1986.
Reprint No. 5
as at
25 September
2003
and
amending
Act Nos
108/2004,
18/2005 and
97/2005.
LawToday:
www.
legislation.
vic.gov.au

- (1) The **Intellectually Disabled Persons' Services Act 1986** is repealed.

See:
Act Nos
62/1992 and
76/1994.

- (2) The **Intellectually Disabled Persons' Services (Trust Money) Act 1992** and the **Intellectually Disabled Persons' Services (Amendment) Act 1994** are repealed.

See:
Act No.
80/1991.
Reprint No. 1
as at
30 April 1998
and
amending
Act Nos
46/1998,
19/2000,
51/2001 (as
amended by
Act No.7/2002)
and 108/2004.
LawToday:
www.
legislation.
vic.gov.au

- (3) The **Disability Services Act 1991** is repealed.

- (4) Except as in this Act expressly or by necessary implication provided all persons, things and circumstances appointed or created by or under

the **Intellectually Disabled Persons' Services Act 1986** or the **Disability Services Act 1991** or existing or continuing under those Acts immediately before the commencement of this section continue under and subject to this Act to have the same status, operation and effect as they respectively would have had if those Acts had not been so repealed.

- (5) On and after the commencement of this section, any reference in any Act (other than this Act), regulation, subordinate instrument or other document whatsoever to the **Intellectually Disabled Persons' Services Act 1986** or the **Disability Services Act 1991** is to be construed as a reference to this Act, unless the contrary intention appears.
- (6) Nothing in this section limits or otherwise affects the operation of the **Interpretation of Legislation Act 1984**.

223 Transitional provisions

- (1) If on the commencement of this section a person with an intellectual disability has an individual program plan prepared under the **Intellectually Disabled Persons' Services Act 1986**, the individual program plan continues to have effect for the purposes of this Act until the next review as specified in the individual program plan.
- (2) When a review of an individual program plan referred to in subsection (1) is conducted, a support plan may be prepared.
- (3) If on the commencement of this section a person with an intellectual disability has a general service plan prepared under the **Intellectually Disabled Persons' Services Act 1986**, the general service plan continues to have effect for the purposes of

this Act until the next review as specified in the general service plan.

- (4) When a review of a general service plan referred to in subsection (3) is conducted, if the person with an intellectual disability is receiving on-going disability support a support plan must be prepared.
- (5) When a review of a general service plan referred to in subsection (3) is conducted, if a person with an intellectual disability is not receiving on-going disability support, the person must be offered assistance with planning in accordance with section 55.
- (6) If on the commencement of this section a person with a disability which is not an intellectual disability is receiving on-going disability support and has a plan for the provision of disability services, the plan continues to have effect until the next review as specified in the plan or the expiry of a period of 12 months after the commencement of this section, whichever occurs first.
- (7) If a person to whom subsection (6) applies is still receiving on-going disability support when the plan ceases to have effect under subsection (6), a support plan must be prepared.
- (8) If a person with an intellectual disability is a resident in a short-term residential treatment facility as at the commencement of this section, that person is to be taken to have been admitted to the short-term residential treatment facility on that commencement for the purposes of section 151(4).
- (9) If on the commencement of this section, a registered service within the meaning of section 3(1) of the **Intellectually Disabled Persons' Services Act 1986** is not receiving funds

S. 223(9)
amended by
No. 25/2007
s. 34(1).

under section 24 of that Act, the registration of the registered service ceases on that commencement.

224 Intellectual Disability Review Panel

(1) In this section—

annual report means the annual report required by section 35A of the **Intellectually Disabled Persons' Services Act 1986**;

commencement date means the date on which this section comes into operation;

extended date means the 30 September first occurring after the commencement date;

Panel means the Intellectual Disability Review Panel established under section 27 of the **Intellectually Disabled Persons' Services Act 1986**;

repealed provisions means Division 1 of Part 5 and Schedules 1 and 2 of the **Intellectually Disabled Persons' Services Act 1986** as in force immediately before the commencement date.

(2) Despite the commencement of this section, the repealed provisions continue to have effect until the extended date as if they had not been repealed for the purposes of enabling—

(a) the completion of any proceedings before the Panel which was commenced before the commencement date; and

(b) the annual report to be submitted to the Minister.

(3) The Minister must cause the annual report to be laid before the Legislative Council and the Legislative Assembly before the expiration of the 7th sitting day of the Legislative Council or the

Legislative Assembly, as the case may be, after it is received by the Minister.

225 Transitional regulations

- (1) The Governor in Council may make regulations containing provisions of a savings or transitional nature consequent on the enactment of this Act.
- (2) A provision mentioned in subsection (1) may be retrospective in operation to the commencement of section 222.
- (3) Regulations made under this section have effect despite anything to the contrary in any Act other than this Act or in any subordinate instrument.

S. 225A
inserted by
No. 29/2010
s. 11.

225A Order specifying land, leases, licences and interests in land to be transferred to Secretary

- (1) The Governor in Council, on the recommendation of the Minister, may by order published in the Government Gazette, specify—
 - (a) the land to be vested in fee simple in the Secretary; and
 - (b) the leases for which the Secretary is taken to be the lessee; and
 - (c) the licences for which the Secretary is taken to be the licensee; and
 - (d) the legal and equitable interests in land (whether protected by caveat under the **Transfer of Land Act 1958** or not) to be vested in the Secretary—under section 225B.
- (2) The Minister, before making a recommendation to the Governor in Council under subsection (1), must be satisfied that—

- (a) the land to be vested in fee simple in the Secretary is vested in fee simple in the body corporate known as the Secretary to the Department of Human Services; and
- (b) the leases for which the Secretary is taken to be the lessee are held by the body corporate known as the Secretary to the Department of Human Services as lessee; and
- (c) the licences for which the Secretary is taken to be the licensee are held by the body corporate known as the Secretary to the Department of Human Services as licensee; and
- (d) the interests in land to be vested in the Secretary are vested in the body corporate known as the Secretary to the Department of Human Services.

225B Vesting of land, leases, licences and interests in land in the Secretary

S. 225B
inserted by
No. 29/2010
s. 12.

- (1) Despite section 246A of the **Public Health and Wellbeing Act 2008**, on the commencement of section 6 of the **Health and Human Services Legislation Amendment Act 2010**—
 - (a) all land vested in fee simple in the body corporate known as the Secretary to the Department of Human Services and specified in an order made under section 225A(1)(a) vests in fee simple in the Secretary, whether the land is registered—
 - (i) in the name of "Secretary to the Department of Human Services"; or
 - (ii) in the name of "Secretary to the Department of Health and Community Services"; or

s. 225B

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- (iii) in the name of "Department of Human Services"; or
 - (iv) in the name of "Secretary, the Department of Human Services"; or
 - (v) in the name of "Chief General Manager of the Department of Health"; or
 - (vi) in the name of "Health Commission of Victoria"; or
 - (vii) in a name that is substantially the same as any name referred to in subparagraphs (i) to (vi); and
- (b) the Secretary is taken to be the lessee under the leases specified in an order made under section 225A(1)(b); and
 - (c) the Secretary is taken to be the licensee under the licences specified in an order made under section 225A(1)(c); and
 - (d) all interests in land specified in an order made under section 225A(1)(d) vest in the Secretary.
- (2) All land that vests in fee simple in the Secretary under this section is taken to have been acquired by the Secretary on behalf of the Crown for the purposes of this Act.
 - (3) All leases referred to in subsection (1) are taken to be held by the Secretary on behalf of the Crown for the purposes of this Act.
 - (4) All licences referred to in subsection (1) are taken to be held by the Secretary on behalf of the Crown for the purposes of this Act.
 - (5) All interests in land referred to in subsection (1) are taken to have been acquired by the Secretary on behalf of the Crown for the purposes of this Act.
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- (6) Nothing effected by this section is to be regarded as placing any person in breach of or as constituting a default under any provision of a lease or licence, including any provision prohibiting, restricting or regulating the assignment of the lease or licence.
- (7) For the avoidance of doubt, the Secretary, on behalf of the Crown, is the successor in law to the body corporate known as the Secretary to the Department of Human Services in relation to any lease, licence or other interest given by the body corporate over land referred to in subsection (1).

225C Action by Registrar of Titles

On being requested to do so and on delivery of any relevant instrument or document, the Registrar of Titles must make any recordings in the Register that are necessary because of the operation of section 225B.

S. 225C
inserted by
No. 29/2010
s. 12.

225D Taxes

No duty or other tax is chargeable under any Act in respect of anything done under section 225B or in respect of any act or transaction connected with or necessary to be done by reason of section 225B, including a transaction entered into or an instrument made, executed, lodged or given, for the purpose of, or connected with, the transfer of property to the Secretary.

S. 225D
inserted by
No. 29/2010
s. 12.

225E Land etc. vests subject to encumbrances

- (1) If land vests in fee simple in the Secretary under section 225B, the land so vested is subject to the encumbrances (if any) to which the land was subject immediately before so vesting.
- (2) If leases are taken to be held by the Secretary under section 225B, the leases are subject to the same encumbrances (if any) to which the leases

S. 225E
inserted by
No. 29/2010
s. 12.

s. 225E

were subject immediately before they were held by the Secretary.

- (3) If licences are taken to be held by the Secretary under section 225B, the licences are subject to the same encumbrances (if any) to which the licences were subject immediately before they were held by the Secretary.
- (4) If an interest in land vests in the Secretary under section 225B, the interest so vested is subject to the encumbrances (if any) to which the interest was subject immediately before so vesting.

Pt 10 Div 2
(Heading and
ss 226–230)
repealed by
No. 29/2011
s. 3(Sch. 1
item 28.2).

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Pt 10 Div. 3
(Heading and
s. 231)
amended by
No. 25/2007
s. 34(2),
repealed by
No. 29/2011
s. 3(Sch. 1
item 28.2).

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Pt 10 Div 4
(Heading and
ss 232–250)
repealed by
No. 29/2011
s. 3(Sch. 1
item 28.2).

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ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 1 March 2006

Legislative Council: 4 April 2006

The long title for the Bill for this Act was "to enact a new legislative scheme for persons with a disability, to repeal the **Intellectually Disabled Persons' Services Act 1986** and the **Disability Services Act 1991**, to amend certain other Acts and for other purposes."

The **Disability Act 2006** was assented to on 16 May 2006 and came into operation as follows:

Sections 1, 2 on 17 May 2006: section 2(1); rest of Act on 1 July 2007: section 2(3).

2. Table of Amendments

This Version incorporates amendments made to the **Disability Act 2006** by Acts and subordinate instruments.

Public Sector Acts (Further Workplace Protection and Other Matters) Act 2006, No. 80/2006

Assent Date: 10.10.06
Commencement Date: S. 26(Sch. item 26) on 11.10.06: s. 2(1)
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

Health Professions Registration Amendment Act 2007, No. 25/2007

Assent Date: 26.6.07
Commencement Date: S. 34 on 27.6.07: s. 2(1)
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

Statute Law Amendment (Evidence Consequential Provisions) Act 2009, No. 69/2009

Assent Date: 24.11.09
Commencement Date: S. 54(Sch. Pt 1 item 16), (Sch. Pt 2 item 19) on 1.1.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

Fair Work (Commonwealth Powers) Amendment Act 2009, No. 74/2009

Assent Date: 1.12.09
Commencement Date: S. 10 on 1.1.10: Government Gazette 10.12.09 p. 3215
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

Serious Sex Offenders (Detention and Supervision) Act 2009, No. 91/2009

Assent Date: 15.12.09
Commencement Date: S. 219(Sch. 3 item 1) on 1.1.10: Government Gazette 24.12.09 p. 3397
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

Statute Law Amendment (National Health Practitioner Regulation) Act 2010, No. 13/2010

Assent Date: 30.3.10
Commencement Date: S. 51(Sch. item 19) on 1.7.10: s. 2(2)
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

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Health and Human Services Legislation Amendment Act 2010, No. 29/2010

Assent Date: 8.6.10
Commencement Date: S. 11 on 23.6.10; ss 7–10, 12 on 1.7.10: Special Gazette (No. 235) 23.6.10 p. 1
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

Statute Law Revision Act 2011, No. 29/2011

Assent Date: 21.6.11
Commencement Date: S. 3(Sch. 1 item 28) on 22.6.11: s. 2(1)
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

Serious Sex Offenders (Detention and Supervision) Amendment Act 2011, No. 83/2011

Assent Date: 21.12.11
Commencement Date: S. 18 on 1.3.12: Special Gazette (No. 45) 21.2.12 p. 1
Current State: This information relates only to the provision/s amending the **Disability Act 2006**

Endnotes

3. Explanatory Details

No entries at date of publication.