

## Disability Services Act 2011

### Long Title

#### Part 1 - Preliminary

1. Short title
2. Commencement
3. Objects
4. Interpretation
5. Principles
6. Designated standards

#### Part 2 - Planning and Reporting

##### *Division 1 - Planning and budgetary oversight*

7. Strategic plan
8. Operational plans
9. Budgetary oversight

##### *Division 2 - Individual plans*

10. Contents of individual plans
11. Approval of individual plans required by term or condition of grant to funded private persons
12. Approval of individual plans required by term or condition of grant to provider

#### Part 3 - Funding

13. Provision of specialist disability services
14. Grants
15. Funding agreements with disability services providers
16. Funding agreements with disability research providers
17. Funding agreements with funded private persons
18. Amendment of funding agreement

#### Part 4 - Monitoring of Grants

##### *Division 1 - Review of grants*

19. Review of grants to funded disability services providers
20. Review of grants to funded disability research providers
21. Review of use being made of grant to funded private person

##### *Division 2 - Monitoring*

22. Provision of assistance to enable compliance with terms and conditions of grant
23. Requirements must be imposed on entity if non-compliance continues
24. Failure of entity to comply with requirement

##### *Division 3 - Entry of premises*

25. Secretary may authorise entry of premises
26. Rights of authorised officers to enter premises
27. Additional requirements where private funded premises entered
28. Rights of authorised officers after entry of premises

#### Part 5 - Senior Practitioner

29. Senior Practitioner to be appointed
30. Functions and powers of Senior Practitioner
31. Annual report
32. Senior Practitioner may delegate functions, &c.
33. Persons to provide assistance to Senior Practitioner, &c.

#### Part 6 - Regulation of Restrictive Interventions

##### *Division 1 - Preliminary provisions*

34. Interpretation of Part 6
35. Functions of Senior Practitioner in relation to restrictive interventions
36. Use of unauthorised restrictive intervention prohibited

##### *Division 2 - Approvals by Secretary*

37. Applications for approvals to carry out restrictive interventions
38. Approvals to carry out restrictive interventions
39. Provisions in respect of approvals by Secretary
40. Review, amendment and revocation of approval by Secretary of restrictive interventions

##### *Division 3 - Approvals by Guardianship and Administration Board*

41. Applications for approvals to carry out restrictive interventions
-

- 42. Approvals to carry out restrictive interventions
- 43. Circumstances in which approvals may be granted
- 44. Provisions in respect of approvals by Guardianship and Administration Board
- 45. Review, amendment and revocation of approval by Guardianship and Administration Board

#### **Division 4 - Investigations and directions**

- 46. Senior Practitioner to investigate, &c., use of restrictive interventions
- 47. Directions may be issued in relation to restrictive interventions

#### **Part 7 - Miscellaneous**

- 48. Review by Magistrates Court (Administrative Appeals Division)
- 49. Secretary to be responsible for coordination of services
- 50. Sharing of information
- 51. Immunity
- 52. Regulations
- 53. Review of Act
- 54. Administration of Act
- 55. Savings and transitional

#### **Part 8 - Children, Young Persons and Their Families Act 1997 Amended**

- 56. Principal Act
- 57. Section 3 amended (Interpretation)

#### **Part 9 - Mental Health Act 1996 Amended**

- 58. Principal Act
- 59. Section 73 amended (Mail)

#### **Part 10 - Obstetric and Paediatric Mortality and Morbidity Act 1994 Amended**

- 60. Principal Act
- 61. Section 3 amended (Interpretation)

#### **Part 11 - Poisons Regulations 2008 Amended**

- 62. Principal Regulations
- 63. Regulation 3 amended (Interpretation)

#### **Part 12 - Legislation repealed**

- 64. Legislation repealed

#### **Schedule 1 - Legislation repealed** **Disability Services Act 2011**

This is the Act as passed by Parliament on 21 September 2011 (accessed 6 May 2025 at 22:46)



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## **Disability Services Act 2011**

**An Act relating to the funding of the provision of specialist disability services, and other goods or services, in relation to persons with disability, the regulation of the use of restrictive interventions in relation to such persons, the repeal of the Disability Services Act 1992 , the consequential amendment of certain legislation, and for related purposes**

**[Royal Assent 21 September 2011]**

Be it enacted by His Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

# PART 1 - Preliminary

## 1. Short title

This Act may be cited as the Disability Services Act 2011 .

## 2. Commencement

- (1) The provisions of this Act commence on a day to be proclaimed.
- (2) However, if the provisions of this Act have not commenced before 1 January 2012, the provisions of this Act commence on that day.

## 3. Objects

The objects of this Act are –

- (a) to provide for the funding of –
  - (i) the provision of specialist disability services and certain other goods or services; and
  - (ii) research or development activities; and
- (b) to provide for the effective planning, prioritisation and scrutiny of the provision of specialist disability services and grants under this Act; and
- (c) to set out principles that are to be applied in relation to the performance or exercise of functions or powers under this Act and in relation to certain activities to which this Act relates; and
- (d) to enable the setting of standards that are to be met by funded disability services providers in providing, or ensuring the provision of, specialist disability services; and
- (e) to ensure that funded disability services providers provide, or ensure the provision of, specialist disability services in a manner that meets those standards; and
- (f) to regulate the use of restrictive interventions by disability services providers and funded private persons.

## 4. Interpretation

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

**accommodation support services** means services which –

- (a) provide accommodation to persons with disability; or
- (b) provide the support needed to enable a person with disability to remain in the person's existing accommodation;

**associated area**, in relation to a funded provider's premises, means –

- (a) the area, outside those premises, which is part of the property on which the premises are located; or
- (b) a room occupied, or to be occupied, by a resident of the premises; or
- (c) any common area; or
- (d) any facilities that are connected to the premises;

**authorised officer** means a person who is authorised to enter premises under section 25 ;

**community visitor services** means inspection of the provision of specialist disability services by disability services providers so as to ensure that –

- (a) the needs of persons with disability are being appropriately met in the provision of such services; or
- (b) the rights of persons with disability are being respected in the provision of such services;

**designated standards** means –

- (a) the standards that are prescribed in regulations in accordance with section 6(1) ; or
- (b) if those standards have not been prescribed, the standards referred to in section 6(3) ;

**disability**, in relation to a person, means a disability of the person which –

- (a) is attributable to a cognitive, intellectual, psychiatric, sensory or physical impairment or a combination of those impairments; and
- (b) is permanent or likely to be permanent; and
- (c) results in –
  - (i) a substantial restriction in the capacity of the person to carry on a profession, business or occupation, or to participate in social or cultural life; and
  - (ii) the need for continuing significant support services; and
- (d) may or may not be of a chronic episodic nature;

**disability research provider** means a person or organisation that carries out research or development activities;

**disability services provider** means a person or organisation that provides, whether or not for profit, specialist disability services but does not include –

- (a) a relative or friend of a person with disability who provides specialist disability services to the person; or
- (b) a prescribed person or body;

**employee**, in relation to a funded provider, means –

- (a) an employee or agent of the funded provider; or
- (b) a person providing services voluntarily on behalf of the funded provider;

**funded disability research provider** means a disability research provider that is receiving a grant under section 14(1)(b) ;

**funded disability services provider** means a disability services provider that is receiving a grant under section 14(1)(a) ;

***funded entity*** means –

- (a) a funded provider; or
- (b) a funded private person;

***funded private person*** means a person who is receiving a grant under section 14(1)(c) ;

***funded provider*** means –

- (a) a funded disability services provider; or
- (b) a funded disability research provider;

***funded provider's premises*** means premises –

- (a) that are owned, leased or occupied by a funded disability services provider and that are used by a disability services provider as a place in or from which to provide specialist disability services; or
- (b) in which research or development activities are being carried out by a funded disability research provider –

and includes an associated area;

***funding agreement*** means a funding agreement entered into under Part 3 ;

***grant*** means a grant under this Act;

***Guardianship and Administration Board*** means the Guardianship and Administration Board established under the Guardianship and Administration Act 1995 ;

***individual plan***, in relation to a person with disability, means an individual plan approved under section 11 or 12 in relation to the person;

***intake and assessment services*** means –

- (a) initial assessment of persons to determine if they are eligible to be provided with specialist disability services; and
- (b) the identification of which specialist disability services may be required by a person who is determined to be eligible to be provided with such services;

***intermediary services*** means the provision of assistance –

- (a) in the determination of the needs of a person with disability; or
- (b) in organising the delivery, by a disability services provider, of specialist disability services to a person with disability; or
- (c) to a person to whom a grant under section 14(1)(c) relates, to enable the grant to be effectively managed;

***operational area*** means an area determined under section 8 ;

***operational plan***, in relation to an operational area, means the plan for that area approved under section 8 , as the plan is amended and in force from time to time;

***private funded premises*** means –

- (a) premises in which resides a person to whom a grant under section 14(1)(c) is made; or
- (b) premises in which resides a person with disability to whom a grant under section 14(1)(c) relates –

but does not include supported accommodation;

***research or development activities*** means –

- (a) research in relation to the provision of specialist disability services; or
- (b) investigation of the need for specialist disability services; or
- (c) the planning, development or implementation of specialist disability services; or
- (d) the planning, development or implementation of training programs –
  - (i) for persons engaged in the provision of specialist disability services; or
  - (ii) for families of persons with disability and other persons who care for or assist persons with disability; or
- (e) investigation of outcomes achieved by persons with disability, or persons referred to in paragraph (d)(ii) , through the provision of specialist disability services or other goods or services; or
- (f) any other activities approved by the Minister under subsection (3) in relation to specialist disability services;

***restrictive intervention*** means any action that is taken to restrict the rights or freedom of movement of a person with disability for the primary purpose of the behavioural control of the person but does not include such an action that is –

- (a) taken for therapeutic purposes; or
- (b) taken to enable the safe transportation of the person; or
- (c) authorised under any enactment relating to the provision of mental health services or to guardianship;

***Secretary*** means the Secretary of the Department;

***specialist disability services*** means services specifically for, or related to, the support of persons with disability and includes, but is not limited to including, the following:

- (a) accommodation support services;
- (b) home care and family support services;
- (c) in-home community-based services;
- (d) intake and assessment services;
- (e) independent living training services;
- (f) information services and print disability services;

- (g) recreation services;
- (h) respite care services;
- (i) education or training services;
- (j) counselling, support or advocacy services;
- (k) community visitor services;
- (l) therapy services;
- (m) equipment services;
- (n) transport services;
- (o) intermediary services –

but does not include a prescribed service;

**strategic plan** means the strategic plan, approved under section 7 , as the plan is in force from time to time;

**supported accommodation** means premises –

- (a) at which a person with disability resides permanently or temporarily; and
- (b) that are owned, leased or occupied, in whole or in part, by a disability services provider.

(2) In this Act, a person or organisation to which a grant is made under section 14(1) is to be taken to be receiving the grant for the period specified in the funding agreement in relation to the grant as the period for which the agreement is to be in force.

(3) The Minister, in writing, may approve an activity as a research or development activity for the purposes of this Act.

(4) A reference in this Act to a person nominated by a person with disability –

- (a) includes, if the person with disability is a child, a reference to a parent of the child and a person acting in loco parentis; and
- (b) includes a reference to a guardian or trustee of the person with disability or a person who is an administrator, within the meaning of the Guardianship and Administration Act 1995 , in relation to the person with disability.

## 5. Principles

(1) In this section –

**relevant activities** means –

- (a) the performance or exercise of a function or power under this Act by the Minister, the Secretary, the Senior Practitioner, the Guardianship and Administration Board, a delegate of, or a person authorised by, such a person, or an authorised officer; or
- (b) the formulation of designated standards to be submitted to the Governor for the Governor to make as regulations; or
- (c) the design, administration and provision of specialist disability services by a funded disability services provider; or
- (d) the preparation and approval of individual plans by disability services providers or the preparation of such plans by a person nominated by a person with disability; or
- (e) the carrying out of research or development activities by funded disability research providers.

(2) The following principles are to be applied in respect of relevant activities:

- (a) the needs and best interests of persons with disability are to be promoted;
- (b) so far as is practicable, and having regard to the intellectual capacity of the person with disability, decisions or actions that may directly affect a person with disability –
  - (i) should only be taken after the person has been consulted; and
  - (ii) should take into account the wishes of the person, to the extent that they are consistent with the needs and best interests of the person and the safety of the person and others; and
  - (iii) should only result in the restriction of the freedom of decision and action of the person, if at all, to the smallest extent that is practicable in the circumstances;
- (c) the inherent dignity of persons with disability and their individual autonomy, including the freedom to make their own choices and their right to independence, is to be respected;
- (d) persons with disability are not to be discriminated against;
- (e) persons with disability are to be given the opportunity for full and effective participation and inclusion in society;
- (f) there is to be respect for persons being different, and acceptance of persons with disability, as part of human diversity and humanity;
- (g) persons with disability are to be given opportunities that are equal, or equivalent, to the opportunities available to persons without disability;
- (h) specialist disability services are to be as physically and technologically accessible as possible to persons with disability;
- (i) equality between men and women is to be promoted;
- (j) the fact that the capacities of children with disability may evolve as they mature, and the right of children with disability to preserve their identities as equal citizens, are to be respected.

## 6. Designated standards

(1) The regulations are to prescribe standards that are to apply in relation to funded disability services providers.

(2) Regulations for the purposes of subsection (1) may prescribe standards that are to apply to –

- (a) all funded disability services providers in respect of the design, administration and provision of specialist disability services by disability services providers; and
- (b) a particular kind of funded disability services provider in respect of the design, administration and provision of specialist disability services by such disability services providers.

(3) Until designated standards are prescribed in regulations made under this Act, the designated standards for the purposes of this Act are to be the standards contained in Schedule 3 to the Disability Services Act 1992 as in force immediately before the commencement of this Act.

## PART 2 - Planning and Reporting

### *Division 1 - Planning and budgetary oversight*

#### **7. Strategic plan**

- (1) The Minister must approve a plan (the "strategic plan") by 1 January in the first year after this section commences and by 1 January of every third year after that year.
- (2) The Minister, before approving the strategic plan, is to consult with –
  - (a) the persons or bodies that, in the opinion of the Minister, have experience or expertise in the provision of specialist disability services; and
  - (b) persons with disability and persons who care for such persons; and
  - (c) the persons or bodies that, in the opinion of the Minister, represent the interests of persons with disability.
- (3) The strategic plan is to set out –
  - (a) the outcomes intended to be achieved in the State in relation to –
    - (i) the administration of this Act; and
    - (ii) the provision of specialist disability services; and
    - (iii) grants provided under this Act; and
  - (b) how it is proposed that the outcomes are to be achieved.
- (4) The strategic plan is to set out –
  - (a) the objectives that are to be achieved across the State as a whole; and
  - (b) the objectives that are to be achieved in particular parts of the State set out in the strategic plan.
- (5) The strategic plan is to set out –
  - (a) the proportion of any funding, appropriated by Parliament in relation to persons with disability, that is to be used in the administration of this Act; and
  - (b) the proportion of any funding, appropriated by Parliament in relation to persons with disability, that is to be used to enable grants to be made.
- (6) The strategic plan is to set out how the proportion of funding referred to in subsection (5)(b) is to be distributed between –
  - (a) grants to disability services providers under section 14(1)(a) ; and
  - (b) grants to disability research providers under section 14(1)(b) ; and
  - (c) grants to persons under section 14(1)(c) .
- (7) The strategic plan is to set out how the proportion of funding that is to be distributed as grants under section 14(1)(a) is to be distributed between different kinds of specialist disability services.
- (8) The strategic plan is to set out how the proportion of funding that is to be distributed for the purposes set out in subsection (6)(a) , (b) and (c) is to be distributed for those purposes between the particular parts of the State set out in the strategic plan in accordance with subsection (4)(b) .
- (9) The strategic plan may include other matters that the Minister thinks fit in respect of matters to which this Act relates.
- (10) The Secretary is to ensure that an up-to-date copy of the strategic plan is available for viewing or purchase by the public.

#### **8. Operational plans**

- (1) The Secretary is to determine whether –
  - (a) the State is to be regarded as one operational area for the purposes of this Act; or
  - (b) the State is to be divided into more than one operational area for the purposes of this Act.
- (2) The Secretary is to approve, and review and amend from time to time as he or she thinks fit, a plan (the "operational plan") for the operational area, or each of the operational areas, determined under subsection (1) .
- (3) The Secretary, before approving or amending an operational plan, and in reviewing such a plan, is to consult with –
  - (a) the persons or bodies that, in the opinion of the Secretary, have experience or expertise in the provision of specialist disability services; and
  - (b) persons with disability and persons who care for such persons; and
  - (c) the persons or bodies that, in the opinion of the Secretary, represent the interests of persons with disability.
- (4) An operational plan in relation to an operational area is to set out –
  - (a) how the strategic plan is to be implemented in the operational area; and
  - (b) how funding that is to be used in respect of the operational area in accordance with the strategic plan is to be distributed between –
    - (i) the costs of administering this Act in that operational area; and
    - (ii) the making of grants to persons or organisations in the operational area; and
  - (c) how funding that is to be distributed in respect of the operational area in the making of grants to persons or organisations in the operational area is to be distributed between –
    - (i) grants to disability services providers under section 14(1)(a) ; and
    - (ii) grants to disability research providers under section 14(1)(b) ; and
    - (iii) grants to persons under section 14(1)(c) .
- (5) The operational plan in relation to an operational area is to set out how the proportion of funding that is to be distributed in respect of the operational area as grants to disability services providers under section 14(1)(a) is to be distributed between different kinds of specialist disability services.
- (6) The operational plan for an operational area is to include –

(a) how the objectives that are specified in the strategic plan to be objectives to be achieved across the State as a whole are to be implemented in the operational area; and

(b) how the objectives that are specified in the strategic plan to be objectives to be achieved in a particular part of the State, specified in the strategic plan, that is in the operational area are to be implemented in that part of the State.

(7) The Secretary is to ensure that an up-to-date copy of each operational plan is available for viewing or purchase by the public.

(8) An operational plan may form part of a document containing plans in relation to matters other than matters to which this Act relates.

## **9. Budgetary oversight**

(1) The Secretary, as soon as practicable after the end of a financial year, must prepare an annual report in respect of the financial year.

(2) The annual report in respect of a financial year is to –

(a) set out how the strategic plan as in force for the financial year was implemented, in each of the operational areas, in accordance with the operational plan for that operational area; and

(b) set out the extent to which the outcomes, referred to in section 7(3), set out in the strategic plan as in force for the financial year, have been achieved, if at all; and

(c) specify the amount appropriated by Parliament that was used for the purposes of the administration of this Act and the amount appropriated by Parliament that was used in the making of grants; and

(d) detail how the amount used for the purposes of the administration of this Act was distributed between the operational areas; and

(e) detail how the amount that was used in the making of grants was distributed during that year between –

(i) different kinds of specialist disability services; and

(ii) research or development activities; and

(iii) grants to persons under section 14(1)(c); and

(iv) each operational area; and

(f) specify, in relation to each funded entity, the amounts that were provided by way of grants under this Act; and

(g) contain the prescribed information, if any.

(3) The annual report is not to contain the name or address of a person with disability.

(4) The Minister is to lay a copy of the annual report before each House of Parliament by 31 October next following the end of the financial year to which the annual report relates.

(5) If the Minister is unable to comply with subsection (4) within the period referred to in that subsection because either House of Parliament is not sitting at the expiration of that period, the Minister is to –

(a) forward a copy of the annual report to the Clerk of that House of Parliament before the expiration of that period; and

(b) lay a copy of the annual report before that House within the next 7 sitting-days of that House.

## ***Division 2 - Individual plans***

## **10. Contents of individual plans**

An individual plan in relation to a person with disability is a plan that includes –

(a) the outcomes that it is intended be attained by the person through the provision to the person of specialist disability services or the provision of other goods or services; and

(b) the specialist disability services, and other goods or services, that may be required in order to attain those outcomes; and

(c) any specialist disability services, or other goods or services, that may require financing under a grant; and

(d) the rights and responsibilities of the person and any disability services provider or funded private person that provides specialist disability services to the person; and

(e) the period for which the plan is to be in force; and

(f) the prescribed matters, if any.

## **11. Approval of individual plans required by term or condition of grant to funded private persons**

(1) This section applies to a person if a term or condition, imposed in accordance with section 17(3), of a grant to the person requires that there be an individual plan in relation to the person with disability to whom the grant relates.

(2) A proposed individual plan in relation to a person with disability to whom this section applies, or an amendment to such a plan, is to be prepared by or on behalf of the person after consultation between –

(a) the person, or if a person is nominated by the person with disability, the nominated person; and

(b) the Secretary.

(3) A person to whom this section applies or, if a person is nominated by the person with disability, the nominated person, may provide to the Secretary a copy of –

(a) a proposed individual plan in relation to the person with disability; or

(b) a proposed amendment to an individual plan approved under subsection (4) in relation to the person.

(4) The Secretary may approve in relation to a person with disability –

(a) an individual plan in relation to the person that is provided to the Secretary under subsection (3); or

(b) an amendment, to an individual plan in relation to the person, that is provided to the Secretary under subsection (3).

## **12. Approval of individual plans required by term or condition of grant to provider**



- (1) This section applies to a person with disability and a funded disability services provider if –
- (a) the provider is providing specialist disability services to the person; and
  - (b) a term or condition, imposed in accordance with section 15(3) , of a grant to the provider requires that there be an individual plan in relation to the person.
- (2) A proposed individual plan in relation to a person with disability to whom this section applies, or an amendment to such a plan, is to be prepared by or on behalf of the person after consultation between –
- (a) the person, or, if a person is nominated by the person with disability, the nominated person; and
  - (b) the funded disability services provider.
- (3) A person with disability to whom this section applies, or, if a person is nominated by the person with disability, the nominated person, may provide to the funded disability services provider a copy of –
- (a) a proposed individual plan in relation to the person; or
  - (b) a proposed amendment to an individual plan approved under subsection (4) in relation to the person.
- (4) A person authorised by a funded disability services provider to approve individual plans may approve in relation to a person with disability –
- (a) an individual plan in relation to the person that is provided to the funded disability services provider under subsection (3) ; or
  - (b) an amendment, to an individual plan in relation to a person with disability, that is provided to the funded disability services provider under subsection (3) .

## PART 3 - Funding

### 13. Provision of specialist disability services

- (1) The Secretary may provide assistance in respect of the provision of specialist disability services to a person with disability.
- (2) In providing assistance to a person with disability the Secretary may –
  - (a) provide specialist disability services –
    - (i) indirectly to the person through disability services providers; or
    - (ii) directly to the person; or
  - (b) take the necessary action to encourage persons and organisations to provide specialist disability services to persons with disability who require the services.
- (3) The Secretary must not provide specialist disability services directly to any person under subsection (2)(a)(ii) unless the Secretary is satisfied that the provision of the services complies with –
  - (a) the principles set out in section 5 ; and
  - (b) the designated standards that apply to a disability services provider that provides such services.

### 14. Grants

- (1) The Secretary may make a grant to –
  - (a) a person or organisation for the purpose of enabling the person or organisation to provide specialist disability services; or
  - (b) a person or organisation for the purpose of enabling the person or organisation to carry out any research or development activity; or
  - (c) a person with disability, or a person nominated by a person with disability to whom the grant is to relate, for the purpose of enabling the provision of –
    - (i) specialist disability services; or
    - (ii) other goods or services –  
necessary or desirable to remediate the disadvantage, or difficulties, associated with the person's disability, that are experienced by the person with disability to whom the grant relates or persons who care for the person.
- (2) A grant may only be made under subsection (1)(a) to a person or organisation if –
  - (a) the person or organisation has entered into a funding agreement under section 15 in relation to the grant; and
  - (b) the Secretary is satisfied that the person or organisation will comply with –
    - (i) the principles set out in section 5 ; and
    - (ii) the designated standards that apply to disability services providers providing such services.
- (3) A grant may only be made under subsection (1)(b) to a person or organisation if –
  - (a) the person or organisation has entered into a funding agreement under section 16 in relation to the grant; and
  - (b) the Secretary is satisfied that the person or organisation will, in conducting the research or development to which the grant relates, comply with the principles set out in section 5 .
- (4) A grant may only be made under subsection (1)(c) to a person if –
  - (a) the person has entered into a funding agreement under section 17 in relation to the grant; and
  - (b) the Secretary is satisfied that any specialist disability services that are to be purchased using the grant will be purchased from disability services providers who will comply with –
    - (i) the principles set out in section 5 ; and
    - (ii) the designated standards that apply to disability services providers providing such services.
- (5) Grants under subsection (1) are to be made out of money appropriated by Parliament for the purpose.
- (6) A grant may be made by way of –
  - (a) a lump sum; or
  - (b) periodic payments as determined by the Secretary.

### 15. Funding agreements with disability services providers

- (1) A person or organisation may enter into a funding agreement with the Secretary in relation to a grant to the person or organisation for the purposes of enabling the person or organisation to provide specialist disability services.
- (2) A funding agreement, with a person or organisation referred to in subsection (1) , in relation to a grant must specify –
  - (a) the specialist disability services to be provided by the person or organisation for the purposes of the grant; and
  - (b) that it is a condition of the grant that the person or organisation, so far as is practicable, must, in the design, administration and provision of any specialist disability services for the purposes of the grant, comply with –
    - (i) the principles set out in section 5 ; and
    - (ii) the designated standards that apply to disability services providers providing such services; and
  - (c) the terms and other conditions of the grant with which the person or organisation must comply in providing specialist disability services for the purposes of the grant; and
  - (d) the period for which the agreement is to be in force.
- (3) Without limiting the generality of subsection (2)(c) , a funding agreement with a person or organisation in relation to a grant may specify that it is a term or condition of the grant that the person or organisation will ensure that there is, or will be, an individual plan in relation to –

(a) each person with disability to whom specialist disability services are provided by the person or organisation; or

(b) each person with disability who will be receiving specialist disability services of a kind, specified in the term or condition, that are provided by the person or organisation.

(4) A funded disability services provider, as soon as practicable after each 12-month period in which there is an individual plan in relation to a person with disability because of a term or condition of the kind referred to in subsection (3) , must review the plan to determine if the plan may require amendment.

#### **16. Funding agreements with disability research providers**

(1) A person or organisation may enter into a funding agreement with the Secretary in relation to a grant to the person or organisation for the purposes of carrying out any research or development activity.

(2) A funding agreement, with a person or organisation referred to in subsection (1) , in relation to a grant must specify –

(a) the research or development activities to be carried out by the person or organisation for the purposes of the grant; and

(b) that it is a condition of the grant that the person or organisation, so far as is practicable, must, in carrying out the research or development activities, comply with the principles set out in section 5 ; and

(c) the terms and other conditions of the grant with which the person or body must comply in respect of the research or development activity; and

(d) the period for which the agreement is to be in force.

#### **17. Funding agreements with funded private persons**

(1) A person may enter into a funding agreement with the Secretary in relation to a grant to the person under section 14(1)(c) for the purpose of enabling the provision of –

(a) specialist disability services; or

(b) other goods or services –

necessary or desirable to remediate the disadvantage, or difficulties, associated with the person's disability, that are experienced by the person with disability to whom the grant relates or persons who care for the person.

(2) A funding agreement in relation to a grant to a person under section 14(1)(c) must specify –

(a) the specialist disability services, or other goods or services, that are to be financed in whole or in part by the grant; and

(b) the outcomes that it is intended are to be achieved by the provision of the specialist disability services or other goods or services; and

(c) the terms and conditions of the grant; and

(d) the rights under the funding agreement of the person with whom the agreement is entered into and the person with disability to whom the grant relates; and

(e) the period for which the agreement is to be in force.

(3) Without limiting the generality of subsection (2)(c) , a funding agreement in relation to a grant to the person under section 14(1)(c) may specify that it is a term or condition of the grant that there is, or will be, an individual plan in respect of the person with disability to whom the grant relates.

#### **18. Amendment of funding agreement**

(1) The Secretary, by notice in writing to a person or organisation, may amend a funding agreement entered into by the person or organisation.

(2) A funding agreement may only be amended under subsection (1) with the approval of the person or organisation that entered into the agreement.

## **PART 4 - Monitoring of Grants**

### ***Division 1 - Review of grants***

#### **19. Review of grants to funded disability services providers**

- (1) The Secretary, at least once every 3 years during a period in which a funded disability services provider is receiving a grant, must conduct a review of the grant.
- (2) In reviewing a grant to a funded disability services provider the Secretary must consider, in addition to any other matters the Secretary thinks fit, whether the provider has –
  - (a) so far as is practicable, complied with the principles set out in section 5 ; and
  - (b) complied with the designated standards that apply to such funded disability services providers; and
  - (c) otherwise complied with the terms and conditions of the grant set out in the financial agreement in relation to the grant.
- (3) In reviewing a grant to a funded disability services provider, the Secretary must consider, in addition to any other matters the Secretary thinks fit, the extent to which the grant has enabled the quality of life of persons with disability to be improved.

#### **20. Review of grants to funded disability research providers**

- (1) The Secretary must conduct a review of a grant that is being or has been received by a funded disability research provider.
- (2) In reviewing a grant to a funded disability research provider the Secretary must consider, in addition to any other matters the Secretary thinks fit, whether the provider has –
  - (a) so far as is practicable, complied with the principles set out in section 5 ; and
  - (b) otherwise complied with the terms and conditions of the grant.

#### **21. Review of use being made of grant to funded private person**

- (1) The Secretary, at least once each year during which a funding agreement is in force in relation to a grant to a funded private person, must conduct a review of the grant.
- (2) In reviewing a grant to a funded private person, the Secretary must consider, in addition to any other matters the Secretary thinks fit –
  - (a) the use that has been made of the grant; and
  - (b) the extent to which the person has complied with the terms and conditions of the grant; and
  - (c) the extent to which the quality of life of the person with disability to whom the grant relates has been improved by the grant; and
  - (d) the extent to which –
    - (i) the individual plan in relation to the person with disability to whom the grant relates may require amendment; and
    - (ii) obligations of any other person, including but not limited to disability services providers, for the provision of goods or services in relation to the person with disability to whom the grant relates have been fulfilled; and
    - (iii) there is adequate coordination of the delivery of services, including but not limited to specialist disability services, in relation to the person with disability to whom the grant relates.
- (3) Despite subsection (1) , the Secretary is not required to conduct a review in relation to a grant to a funded private person if the Secretary is of the opinion that –
  - (a) the person may otherwise provide proof of the use that has been made of the grant and compliance with any terms and conditions of the grant; and
  - (b) the specialist disability services, or other goods or services, to which the grant relates are such that a review of the matters referred to in subsection (2) is unnecessary.

### ***Division 2 - Monitoring***

#### **22. Provision of assistance to enable compliance with terms and conditions of grant**

- (1) If the Secretary is of the opinion that a funded entity is failing to comply with a term or condition of a grant that the entity is receiving, the Secretary may –
  - (a) discuss with the funded entity how the Secretary may assist the entity to comply with the term or condition by providing to the entity –
    - (i) training, or access to training; or
    - (ii) the services of persons with specialist skills; or
    - (iii) other assistance; and
  - (b) provide to the funded entity any appropriate assistance to enable the entity to comply with the term or condition of the grant.
- (2) The appropriate assistance that may be provided to a funded entity under subsection (1)(b) is –
  - (a) training, or access to training; or
  - (b) the provision of the services of persons with specialist skills; or
  - (c) any other assistance that the Secretary considers appropriate.

#### **23. Requirements must be imposed on entity if non-compliance continues**

- (1) The Secretary must give notice in writing to a funded entity if –
  - (a) the entity –
    - (i) has refused to discuss with the Secretary under section 22(1)(a) how the Secretary may assist the entity to comply with a term or condition of a grant to the entity; or
    - (ii) has refused, without reasonable cause, to accept an offer by the Secretary to provide assistance to the entity under section 22(1)(b) ; and

(b) the Secretary is of the opinion that the entity is continuing to fail to comply with the term or condition.

- (2) A notice to a funded entity under subsection (1) is to –
  - (a) specify the term or condition that, in the Secretary's opinion, the entity is failing to comply with; and
  - (b) specify the requirements, for the entity to take action or to cease to take action, that the Secretary proposes to require the entity to comply with; and
  - (c) invite the entity to make written submissions to the Secretary within 28 days after receiving the notice.
- (3) A funded entity to which a notice is given under subsection (1) may, within 28 days after receiving the notice, make a submission in writing to the Secretary.
- (4) A submission made by a funded entity under subsection (3) may contain –
  - (a) a statement –
    - (i) as to the reasons why the entity believes that the opinion of the Secretary may be in error; or
    - (ii) disputing a ground on which the Secretary's opinion is based; and
  - (b) a statement as to why the requirements that the Secretary proposes to require the entity to comply with cannot or should not be complied with; and
  - (c) any other information that the entity thinks fit.
- (5) The Secretary, after considering a submission, if any, made by a funded entity under subsection (3) in relation to a notice received by the entity under subsection (1), may, by notice in writing to the entity, require the entity to take the relevant action.
- (6) For the purposes of subsection (5), the relevant action is the requirements specified in the notice under subsection (1), as those requirements have been modified, if at all, in response to the submission.

#### **24. Failure of entity to comply with requirement**

- (1) This section applies in relation to a funded entity if –
  - (a) the entity fails to comply with a requirement of a notice given to the entity under section 23(5) in relation to a term or condition of a grant to the entity; and
  - (b) the Secretary is of the opinion that the entity is continuing to fail to comply with the term or condition.
- (2) The Secretary may –
  - (a) terminate the funding agreement in relation to a funded entity to which this section applies; or
  - (b) with the consent of a funded entity to which this section applies, appoint, for a period of not more than 90 days, a person as administrator of –
    - (i) the services to be provided by the funded entity for the purposes of the grant; or
    - (ii) the research or development to be carried out by the funded entity for the purposes of the grant.
- (3) If a funding agreement in relation to a funded entity is terminated, the entity must return to the Secretary, within 90 days, the balance of any grant to which the funding agreement relates that is outstanding at the date of the termination.

### ***Division 3 - Entry of premises***

#### **25. Secretary may authorise entry of premises**

- (1) The Secretary, in writing, may authorise a State Service employee or State Service officer to enter funded provider's premises, or private funded premises, or both.
- (2) An authorisation under this section may relate to –
  - (a) particular funded provider's premises or particular private funded premises; or
  - (b) funded provider's premises generally or private funded premises generally.
- (3) An authorisation under this section may be subject to conditions or limitations specified in the authorisation.

#### **26. Rights of authorised officers to enter premises**

- (1) An authorised officer who is authorised under section 25(1) to enter premises may enter the premises specified in the authorisation.
- (2) An entry of premises under subsection (1) may only be made for the purposes of –
  - (a) determining the extent to which the terms and conditions of a funding agreement are being complied with; or
  - (b) ensuring that persons with disability who reside in, or receive specialist disability services in, the premises are receiving the care and support that is necessary or desirable for their health and wellbeing; or
  - (c) ensuring the safety of persons with disability who reside at, or receive specialist disability services in, the premises.
- (3) An authorised officer may enter funded provider's premises under subsection (1) at any time without prior warning to the owner of, or any occupier of, the premises.
- (4) An authorised officer who enters funded provider's premises under subsection (1) must ensure that, if he or she enters a part of the premises, designated for the private use of a person with disability, while the person is present in the part of the premises, the authorised officer immediately tells the person the purposes for which the authorised officer has entered the premises.
- (5) An authorised officer who enters premises under subsection (1) must, at the request of a person on the premises, show the person proof that the officer is authorised to enter the premises, or leave the premises as soon as practicable after the request is made.
- (6) An authorised officer is not authorised to use force to enter premises under this Act.
- (7) A police officer may, at the request of an authorised officer who would only be able to enter premises for the purposes of this section by using force, use such force as is reasonably necessary to enable the authorised officer to enter the premises.

#### **27. Additional requirements where private funded premises entered**

- (1) An authorised officer may enter private funded premises under section 26(1) only if he or she has made reasonable attempts to give at least 48 hours' prior notice to a person who resides at the premises.

(2) Despite subsection (1), an authorised officer is not required to make reasonable attempts to give at least 48 hours' prior notice to a person who resides at private funded premises if the officer is reasonably of the opinion that it is necessary to enter the premises without notice in order to ascertain –

- (a) whether a person with disability is receiving the care and support that is necessary or desirable for the person's health and wellbeing; or
- (b) whether a person with disability is safe.

(3) An authorised officer may only enter private funded premises under section 26(1) before 7 a.m., or after 7 p.m., if it is reasonably necessary to do so in order to ascertain whether –

- (a) the person with disability is receiving, at the premises, or from a person who resides at the premises, the care and support that is necessary or desirable for the health and wellbeing of the person; or
- (b) a person with disability is safe.

(4) An authorised officer who enters private funded premises under section 26(1) must as soon as practicable tell a person on the premises, and any person with disability on the premises, the purpose for which the authorised officer has entered the premises.

## **28. Rights of authorised officers after entry of premises**

(1) An authorised officer who enters premises under section 26(1) may take any of the following actions on the premises, in so far as it is necessary to do so for the purposes for which, under section 26(2), the officer has entered the premises:

- (a) inspect the premises;
- (b) open any container, filing cabinet, or storage facility, that is on the premises;
- (c) request a person on the premises to provide documents or records to the officer;
- (d) inspect any documents or records on the premises;
- (e) take copies of, or request a person on the premises to make copies of, any documents or records that are on the premises or provided to the officer.

(2) An authorised officer who enters premises under section 26(1) may request –

- (a) any employee of the funded provider, if any, in respect of the premises and any person who is receiving a grant under section 14(1)(c); or
- (b) any person with disability, or other person, who is on the premises –

to answer questions in relation to the provision of specialist disability services or other goods or services to which the grant relates, or the carrying out of research or development, by the provider.

(3) A person with disability who is requested under subsection (2) to answer questions is entitled to –

- (a) request that another person be present when the person with disability answers the questions; and
- (b) have another person be present, and to be assisted by that other person, when answering the questions.

(4) If an authorised officer has entered premises under section 26(1), the funded provider providing services at the premises, any employee of the funded provider and any person (other than a person with disability) who is receiving a grant under section 14(1)(c) –

- (a) must permit the authorised officer to ask employees of the provider, or any person who is on the premises, questions in relation to –
  - (i) the provision of specialist disability services or other goods or services to which the grant relates; or
  - (ii) the carrying out by the provider of research or development; and
- (b) must not –
  - (i) prohibit a person of whom a question is asked under paragraph (a) from answering the question; or
  - (ii) threaten or punish a person of whom a question is asked under paragraph (a) if the person answers or were to answer such a question; and
- (c) must permit an authorised officer to speak in private with employees of the provider or any person who is on the premises.

(5) A funded provider, any employee of a funded provider and any person (other than a person with disability) who is receiving a grant under section 14(1)(c) must not impede an authorised officer from performing or exercising the authorised officer's functions or powers under this Act.

(6) If a funded provider, an employee of a funded provider or any person (other than a person with disability) who is receiving a grant under section 14(1)(c) –

- (a) fails to comply with a request made of the funded provider, employee or person, respectively, under subsection (2); or
- (b) fails to comply with a requirement of subsection (5) –

the failure may be taken into account in determining whether or not a grant to the funded provider or the person may be terminated or refused.

## **PART 5 - Senior Practitioner**

### **29. Senior Practitioner to be appointed**

- (1) The Secretary is to appoint a State Service employee or State Service officer to be the Senior Practitioner.
- (2) A person may only be appointed to be the Senior Practitioner if, in the opinion of the Secretary, the person has appropriate qualifications and experience to perform the functions and exercise the powers of the Senior Practitioner under this Act.

### **30. Functions and powers of Senior Practitioner**

- (1) The functions of the Senior Practitioner are –
  - (a) to advise the Secretary in relation to the provision of specialist disability services; and
  - (b) to make recommendations to the Secretary as to how the provision of specialist disability services may be improved; and
  - (c) any other functions specified by or under this Act.
- (2) In addition to any other power that may be exercised by the Senior Practitioner under this Act, the Senior Practitioner has the powers necessary to perform the functions of the Senior Practitioner.

### **31. Annual report**

- (1) The Senior Practitioner must provide to the Secretary, by 1 September in each year, a report consisting of –
  - (a) information on the performance of the functions, and the exercise of the powers, of the Senior Practitioner during the previous financial year; and
  - (b) data relating to the use of restrictive interventions during the previous financial year.
- (2) A report provided to the Secretary under subsection (1) must not enable a person with disability to be identified.
- (3) The Secretary must ensure that a copy of the report provided to the Secretary under subsection (1) is available to the public at an electronic website of the Department for at least 12 months after it is so provided.

### **32. Senior Practitioner may delegate functions, &c.**

- (1) The Senior Practitioner may delegate to a State Service employee or State Service officer a power or function of the Senior Practitioner, other than this power of delegation.
- (2) The Senior Practitioner may only delegate a power or function under subsection (1) to a person who –
  - (a) in the opinion of the Senior Practitioner has sufficient knowledge and expertise in respect of persons with disability; and
  - (b) has appropriate skills and qualifications in respect of the power or function.

### **33. Persons to provide assistance to Senior Practitioner, &c.**

- (1) The Senior Practitioner may require a disability services provider, any employee of the provider, and a funded private person, to provide the Senior Practitioner with any reasonable assistance that the Senior Practitioner may require to perform a function or exercise a power of the Senior Practitioner in the disability services provider's premises or the private funded premises of the funded private person.
- (2) A disability services provider, any employee of the provider and a funded private person –
  - (a) must not fail to provide reasonable assistance when required to do so under subsection (1) ; and
  - (b) must give full and true answers to the best of the provider's, employee's or funded private person's knowledge, respectively, to any question asked by the Senior Practitioner in the performance or exercise of a function or power of the Senior Practitioner under this Act.

Penalty: Fine not exceeding 200 penalty units.

## PART 6 - Regulation of Restrictive Interventions

### *Division 1 - Preliminary provisions*

#### 34. Interpretation of Part 6

In this Part –

**environmental restriction**, in relation to a person with disability, means a restrictive intervention in relation to the person that consists of the modification of an object, or the environment of the person, so as to enable the behavioural control of the person but does not include a personal restriction;

**personal restriction**, in relation to a person with disability, means a restrictive intervention in relation to the person that consists wholly or partially of –

- (a) physical contact with the person so as to enable the behavioural control of the person; or
- (b) the taking of an action that restricts the liberty of movement of the person.

#### 35. Functions of Senior Practitioner in relation to restrictive interventions

The functions of the Senior Practitioner in relation to restrictive interventions under this Act are as follows:

- (a) to develop, in relation to restrictive interventions, guidelines, and standards, that are in accordance with best practice;
- (b) to provide education and information in relation to restrictive interventions and the use of behaviour management techniques that may obviate or minimise the need for restrictive interventions;
- (c) to provide information in relation to the rights of persons with disability who may be subject to restrictive interventions;
- (d) to give advice to the Secretary, the Guardianship and Administration Board, disability services providers and funded private persons, so as to –
  - (i) improve practices in relation to restrictive interventions and the use of behaviour management techniques that may obviate or minimise the need for restrictive interventions; and
  - (ii) enable the use of restrictive interventions to be reduced and, where appropriate, eliminated;
- (e) to undertake research in relation to restrictive interventions and to make recommendations to the Secretary in respect of the need for research in relation to restrictive interventions;
- (f) to monitor and evaluate the use of restrictive interventions.

#### 36. Use of unauthorised restrictive intervention prohibited

(1) A disability services provider or a funded private person must ensure that a type of restrictive intervention is not carried out in relation to a person with disability who is under the care or control of the disability services provider or a funded private person –

- (a) unless, if the person with disability is not a person to whom paragraph (b) relates –
  - (i) there is in force an approval under section 38 or section 42 for the carrying out of the type of restrictive intervention in relation to the person; and
  - (ii) the restrictive intervention is carried out in accordance with any conditions or limitations specified in the approval; and
  - (iii) the restrictive intervention does not contravene a direction, if any, under section 47 in relation to the carrying out of the restrictive intervention in relation to the person; or
- (b) if there is a relevant authorisation in relation to the person with disability, except if the restrictive intervention is the restrictive intervention authorised under that authorisation.

Penalty: Fine not exceeding 200 penalty units.

(2) It is a defence to a charge of an offence against subsection (1) in relation to a person with disability if –

- (a) the disability services provider or funded private person establishes that the carrying out of the restrictive intervention in relation to the person with disability was required to protect the person with disability, or another person, from serious harm; and
- (b) the restrictive intervention carried out was the least intrusive type of restrictive intervention that would have protected the person with disability, or another person, from serious harm; and
- (c) the Senior Practitioner was notified by the disability services provider or funded private person as soon as practicable after the restrictive intervention was carried out; and
- (d) no restrictive intervention, other than under an approval under section 38 or section 42, was carried out in relation to the person with disability after 72 hours after the restrictive intervention was first carried out in relation to the person; and
- (e) there is no relevant authorisation in relation to the person with disability.

(3) For the purposes of this section, there is a relevant authorisation in relation to a person with disability if there is, in relation to the person, an authorisation by the Chief Forensic Psychiatrist under the Mental Health Act 1996, or an authorisation under another enactment, which –

- (a) authorises the carrying out of an action by the Chief Forensic Psychiatrist, or another person acting under the authority of the Chief Forensic Psychiatrist, which action, but for paragraph (a) or (c) of the definition of **restrictive intervention** in section 4, would be a restrictive intervention; or
- (b) authorises the Chief Forensic Psychiatrist, or another person, to carry out in relation to the person an action that is a restrictive intervention.

(4) A reference in subsection (3) to an authorisation to carry out an action includes an order, direction, permission, requirement, or any other authority, to carry out the action.

### *Division 2 - Approvals by Secretary*

#### 37. Applications for approvals to carry out restrictive interventions

- (1) A disability services provider or funded private person may apply to the Secretary for an approval under section 38.
- (2) An application under subsection (1) is to be in a form approved by the Secretary.



### **38. Approvals to carry out restrictive interventions**

- (1) The Secretary, after receiving under section 37(1) an application from a disability services provider or funded private person, may grant, or refuse to grant, approval for the provider or person to carry out, in relation to a person with disability specified in the approval, a type of restrictive intervention, specified in the notice, that is an environmental restriction.
- (2) An approval may only be granted under subsection (1) by notice in writing to –
  - (a) the disability services provider, or funded private person, to whom the approval is granted; and
  - (b) the person with disability to whom the approval relates.
- (3) An approval for the carrying out of a type of restrictive intervention in relation to a person with disability may only be granted by the Secretary under subsection (1) if the Secretary is satisfied that consultation on the Secretary's behalf with –
  - (a) the person or a person nominated by the person; and
  - (b) persons, if any, who have expertise in the carrying out of restrictive interventions of that type; and
  - (c) the Senior Practitioner –has occurred and the Secretary has taken into account matters raised in that consultation.
- (4) An approval for the carrying out of a type of restrictive intervention in relation to a person with disability may only be granted by the Secretary under subsection (1) if the Secretary is satisfied that –
  - (a) the type of restrictive intervention will be carried out only for the primary purpose of ensuring the safety, health or wellbeing of the person or other persons; and
  - (b) the restrictive intervention is the type of restrictive intervention that is the least restrictive of the person's freedom of decision and action as is practicable in the circumstances.
- (5) In determining whether to grant an approval under this section for the carrying out by a disability services provider or funded private person of a type of restrictive intervention in relation to a person with disability, the Secretary must have regard to –
  - (a) the best interests of the person with disability; and
  - (b) the consequences to the person with disability if restrictive intervention of that type is carried out in relation to the person; and
  - (c) the consequences to the person with disability, or other persons, if restrictive intervention of that type is not carried out in relation to the person with disability; and
  - (d) any alternative method reasonably suitable and able to be used in relation to the person with disability to control the behaviour for which the type of restrictive intervention has been proposed; and
  - (e) the nature and degree of any significant risks to the person with disability if the restrictive intervention is carried out; and
  - (f) whether, and the extent to which, carrying out the restrictive intervention will promote or reduce the safety, health and wellbeing of the person with disability.

### **39. Provisions in respect of approvals by Secretary**

- (1) An approval under section 38 may be granted subject to the conditions or limitations specified in the approval.
- (2) Without limiting the generality of subsection (1), an approval under section 38 may be granted on the condition that reports, in relation to the carrying out of restrictive interventions of the type authorised under the approval, are given to the Secretary, at the times, or in the circumstances, specified in the condition, by the disability services provider or funded private person to whom the approval is granted.
- (3) An approval under section 38 expires 90 days after it is granted.
- (4) Nothing in this Act is to be taken to prevent the granting of more than one approval under section 38 in relation to the same person with disability.
- (5) The Secretary may not delegate under any Act his or her functions or powers under this Division.

### **40. Review, amendment and revocation of approval by Secretary of restrictive interventions**

- (1) If the Secretary has granted an approval under section 38, the Secretary may, at any time –
  - (a) of his or her own motion; or
  - (b) on application by, or on behalf of, a person with disability to whom the approval relates or a person nominated by the person; or
  - (c) on application by the disability services provider, or funded private person, to whom the approval is granted –

review the approval.

- (2) The Secretary, after reviewing an approval granted under section 38, may, by notice in writing to –
  - (a) the disability services provider or funded private person to whom the approval was granted; and
  - (b) the person with disability to whom the approval relates or a person nominated by the person –

amend or revoke the approval.

- (3) The Secretary may only amend or revoke an approval granted by the Secretary under section 38 if the Secretary is satisfied that consultation on the Secretary's behalf with –

- (a) the disability services provider or funded private person to whom the approval was granted; and
  - (b) the person with disability to whom the approval relates or a person nominated by the person –

has occurred and the Secretary has taken into account matters raised in that consultation.

- (4) A person with disability to whom an approval under section 38 relates, or a person nominated by the person, may apply to the Guardianship and Administration Board for a review of the approval granted by the Secretary.

- (5) If an application is made under subsection (4) in relation to an approval –

- (a) the approval is taken to be an approval granted under section 42 by the Guardianship and Administration Board after a hearing was held by the Board; and

(b) the application is to be treated as an application under section 45 for a review of the approval.

### ***Division 3 - Approvals by Guardianship and Administration Board***

#### **41. Applications for approvals to carry out restrictive interventions**

- (1) A disability services provider or funded private person may apply to the Guardianship and Administration Board for an approval under section 42 .
- (2) An application under subsection (1) –
  - (a) is to be in writing; and
  - (b) is to specify the name of the person with disability to whom the approval is to relate; and
  - (c) is to contain a statement from the Senior Practitioner as to why he or she is of the opinion that the Guardianship and Administration Board ought to grant the approval sought; and
  - (d) is to contain the prescribed information; and
  - (e) is to be lodged with the registrar within the meaning of the Guardianship and Administration Act 1995 .

#### **42. Approvals to carry out restrictive interventions**

- (1) The Guardianship and Administration Board, after receiving under section 41 an application from a disability services provider or funded private person, may grant, or refuse to grant, approval for the provider or person to carry out in relation to a person with disability specified in the approval –
  - (a) a type of restrictive intervention, specified in the notice, that is a personal restriction; or
  - (b) a type of restrictive intervention, specified in the notice, that is an environmental restriction.
- (2) An approval may be granted under subsection (1) by notice in writing to –
  - (a) the disability services provider, or funded private person, to whom the approval is granted; and
  - (b) the person with disability to whom the approval relates.
- (3) An approval for the carrying out of a type of restrictive intervention in relation to a person with disability may only be granted by the Guardianship and Administration Board under subsection (1) by notice in accordance with subsection (2) if the Board has consulted with –
  - (a) the person or a person nominated by the person; and
  - (b) persons, if any, who have expertise in the carrying out of restrictive interventions of that type.
- (4) An approval may be granted under subsection (1) at the conclusion of a hearing for the purposes of subsection (5) .
- (5) The Guardianship and Administration Board may hold a hearing in respect of an application under section 41 for an approval.
- (6) For the purposes of subsection (5) , a hearing is to be held under Division 1 of Part 10 of the Guardianship and Administration Act 1995 as if a reference in that Division –
  - (a) to an application were a reference to an application for an approval under this section; and
  - (b) to medical or dental treatment were a reference to a restrictive intervention; and
  - (c) to a registered practitioner were a reference to the disability services provider, or funded private person, who made the application.
- (7) At the hearing of an application for the purposes of subsection (5) , the Guardianship and Administration Board, in addition to granting or refusing to grant an approval under subsection (1) , may –
  - (a) require a party to the hearing to provide to the Board any information required to be contained in an application under section 19 of the Guardianship and Administration Act 1995 ; and
  - (b) make an order under section 20(1) of the Guardianship and Administration Act 1995 appointing a full or limited guardian in relation to the person with disability to whom the approval relates, as if the application for an approval under this section were an application under section 19 of the Guardianship and Administration Act 1995 .

#### **43. Circumstances in which approvals may be granted**

- (1) An approval for the carrying out of a type of restrictive intervention in relation to a person with disability may only be granted by the Guardianship and Administration Board under section 42 if the Board is satisfied that –
  - (a) the type of restrictive intervention will be carried out only for the primary purpose of ensuring the safety, health or wellbeing of the person or other persons; and
  - (b) the restrictive intervention is the type of restrictive intervention that is the least restrictive of the person's freedom of decision and action as is practicable in the circumstances.
- (2) In determining whether to grant an approval under section 42 for the carrying out by a disability services provider or funded private person of a type of restrictive intervention in relation to a person with disability, the Guardianship and Administration Board must have regard to –
  - (a) the best interests of the person with disability; and
  - (b) the consequences to the person with disability if restrictive intervention of that type is carried out in relation to the person; and
  - (c) the consequences to the person with disability, or other persons, if restrictive intervention of that type is not carried out in relation to the person with disability; and
  - (d) any alternative method reasonably suitable and able to be used in relation to the person with disability to control the behaviour for which the type of restrictive intervention has been proposed; and
  - (e) the nature and degree of any significant risks to the person with disability if the restrictive intervention is carried out; and
  - (f) whether, and the extent to which, carrying out the restrictive intervention will promote or reduce the safety, health and wellbeing of the person with disability.

#### **44. Provisions in respect of approvals by Guardianship and Administration Board**

- (1) An approval under section 42 may be granted subject to the conditions or limitations specified in the approval.

(2) Without limiting the generality of subsection (1) , an approval under section 42 may be granted on the condition that reports, in relation to the carrying out of restrictive interventions of the type authorised under the approval, are given to the Guardianship and Administration Board, at the times, or in the circumstances, specified in the condition, by the disability services provider or funded private person who made the application for the approval.

(3) An approval under section 42 expires 90 days after it is granted, unless it is granted at the conclusion of a hearing in accordance with section 42(5) , in which case it expires after 6 months or a shorter period, if any, specified in the approval.

(4) Nothing in this Act is to be taken to prevent the granting of more than one approval under section 42 in relation to the same person with disability.

#### **45. Review, amendment and revocation of approval by Guardianship and Administration Board**

(1) An application for a review of an approval granted under section 42 may be made to the Guardianship and Administration Board by –

- (a) a person with disability to whom the approval relates or a person nominated by the person; or
- (b) the disability services provider, or funded private person, to whom the approval was granted.

(2) The Guardianship and Administration Board –

- (a) on its own motion; or
- (b) on application by, or on behalf of, a person with disability to whom the approval relates or a person nominated by the person; or
- (c) on application by the disability services provider, or funded private person, to whom the approval was granted –

may review an approval granted under section 42 .

(3) If an approval was granted under section 42 without a hearing being held, the Guardianship and Administration Board may, by notice in writing to –

- (a) the disability services provider or funded private person to whom the approval was granted; and
- (b) the person with disability to whom the approval relates –

amend or revoke the approval.

(4) The Guardianship and Administration Board may only amend or revoke an approval granted by the Board under section 42 without a hearing being held if the Board has consulted with –

- (a) the disability services provider or funded private person to whom the approval was granted; and
- (b) the person with disability to whom the approval relates or a person nominated by the person.

(5) If an approval was granted under section 42 after a hearing, the Guardianship and Administration Board may only amend or revoke the approval at the conclusion of a hearing for the purposes of subsection (6) of a review in respect of the approval.

(6) The Guardianship and Administration Board may hold a hearing of a review in respect of an approval granted under section 42 .

(7) For the purposes of subsection (6) , a hearing of a review is to be held under Division 1 of Part 10 of the Guardianship and Administration Act 1995 as if a reference in that Division –

- (a) to an application were a reference to an application referred to in subsection (2)(b) or (c) ; and
- (b) to an application were, where the hearing of a review is held of the Board's own motion, a reference to the decision of the Board to hold the hearing of the Board's own motion; and
- (c) to medical or dental treatment were a reference to a restrictive intervention; and
- (d) to a registered practitioner were a reference to the disability services provider, or funded private person, to whom the approval to which the review relates was granted.

(8) The Guardianship and Administration Board, at the conclusion of a hearing in accordance with subsection (6) to review an approval granted under section 42 to a disability services provider or funded private person, may amend or revoke the approval.

### ***Division 4 - Investigations and directions***

#### **46. Senior Practitioner to investigate, &c., use of restrictive interventions**

(1) If the Senior Practitioner believes on reasonable grounds that a type of restrictive intervention is being carried out by a disability services provider or funded private person, the Senior Practitioner may –

- (a) visit and inspect any part of the premises of the provider or any part of the funded private premises on which the restrictive intervention is being carried out; and
- (b) observe and speak to a person who is subject to a restrictive intervention being carried out by the provider or funded private person; and
- (c) investigate, audit and monitor the carrying out of a restrictive intervention by the provider or funded private person; and
- (d) inspect and make copies of, or take extracts from, any document that –
  - (i) relates to a person who is subject to a restrictive intervention being carried out by the provider or funded private person; and
  - (ii) may be relevant to determining whether it is necessary to impose a restrictive intervention or determining the type of restrictive intervention that may be necessary to impose; and
- (e) question a person involved in the development, implementation or application of such restrictive interventions; and
- (f) request the provider or funded private person to provide information relating to a restrictive intervention carried out by the provider or funded private person.

(2) The Senior Practitioner must provide a report to the Secretary in relation to the exercise of any powers under subsection (1) in relation to a disability services provider or funded private person.

(3) If the Secretary is of the opinion that a restrictive intervention, in relation to a person with disability, to which a report provided to the Secretary under subsection (2) relates is a restrictive intervention authorised by an approval granted under section 42 by the Guardianship and Administration Board, the Secretary must provide a copy of the report to the Guardianship and Administration Board.

#### **47. Directions may be issued in relation to restrictive interventions**

(1) The Secretary, after considering a report provided to him or her under section 46(2) in relation to a disability services provider or funded private person, may, by notice in writing to the provider or funded private person, direct the provider or funded private person to do either or both of the following:

(a) to discontinue a restrictive intervention that has not been authorised by an approval under section 38 or section 42 ;

(b) to observe a practice or procedure, specified in the notice, in the carrying out of a restrictive intervention that has been authorised by an approval granted by the Secretary under section 38 .

(2) The Guardianship and Administration Board, after considering a report provided to the Board under section 46(3) in relation to a disability services provider or funded private person, may, by notice in writing to the provider or person, direct the provider or person to observe a practice or procedure, specified in the notice, in the carrying out of a restrictive intervention that has been authorised by an approval granted by the Board under section 42 .

(3) The Secretary may only give a direction under subsection (1) if the Secretary has considered the matters referred to in section 38(4) or (5) .

(4) The Guardianship and Administration Board may only give a direction under subsection (2) if the Board has considered the matters referred to in section 43 .

(5) A disability services provider or funded private person to whom a direction under subsection (1) or (2) is given must not fail to comply with the direction.  
Penalty: Fine not exceeding 200 penalty units.

(6) If a direction is given under subsection (1) to discontinue a restrictive intervention or a practice or procedure used in a restrictive intervention, the Senior Practitioner must provide assistance in developing alternative strategies for the management of the behaviour of the person in respect of whom the restrictive intervention is to be used.

(7) The Secretary must as soon as practicable advise in writing a person with disability in respect of whom a restrictive intervention is to be used, or a person nominated by the person, of a direction given under subsection (1) in relation to the restrictive intervention.

(8) The Guardianship and Administration Board must as soon as practicable advise in writing a person with disability in respect of whom a restrictive intervention is to be used, or a person nominated by the person, of a direction given under subsection (2) in relation to the restrictive intervention.

(9) A direction given under this section in relation to a person with disability that is inconsistent with an approval under section 38 or section 42 in relation to the person is invalid to the extent of the inconsistency.

## PART 7 - Miscellaneous

### 48. Review by Magistrates Court (Administrative Appeals Division)

- (1) A person with disability to whom an individual plan relates or is to relate may apply to the Magistrates Court (Administrative Appeals Division) for a review of a decision by the Secretary, or a person authorised by a funded disability services provider, to approve, or not to approve, a proposed individual plan in relation to the person under section 11 or 12 .
- (2) A person with disability, a disability services provider, or a funded private person, to whom an approval under section 38 relates may apply to the Magistrates Court (Administrative Appeals Division) for a review of –
- (a) the decision under that section to grant the approval; or
  - (b) a decision under section 39(1) to impose a condition or limitation on the approval; or
  - (c) a decision under section 40 to amend or revoke the approval.
- (3) A person with disability, a disability services provider, or a funded private person, to whom a direction under section 47 relates may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision under that section to give the direction.
- (4) A person on whom a requirement specified in a notice under section 23 has been imposed may apply to the Magistrates Court (Administrative Appeals Division) for a review of the decision by the Secretary to impose the requirement.

### 49. Secretary to be responsible for coordination of services

The Secretary is to take reasonable steps to assist in the effective coordination of the provision of the following services for persons with disability:

- (a) specialist disability services;
- (b) health and psychiatric services;
- (c) specialist education services;
- (d) other services that are provided by or on behalf of Tasmania or the Commonwealth for the purpose of providing special assistance to persons with disability.

### 50. Sharing of information

- (1) In this section –

**information-sharing entity** means –

- (a) a prescribed person; or
- (b) a State Service officer or State Service employee employed in or for the purposes of the Department or another department, within the meaning of the Administrative Arrangements Act 1990 ; or
- (c) a manager of a private medical establishment, within the meaning of the Hospitals Act 1918 or of an establishment to which a licence under the Health Service Establishments Act 2006 relates; or
- (d) a controlling authority of an approved hospital, assessment centre, or secure mental health unit, each within the meaning of the Mental Health Act 1996 ; or
- (e) the person in charge of a funded disability services provider; or
- (f) the person in charge of an organisation that receives funding from the Secretary under a funding agreement to provide drug or alcohol treatment services; or
- (g) the person in charge of an organisation that receives a referral from the Secretary or a Community-Based Intake Service, within the meaning of the Children, Young Persons and Their Families Act 1997 ; or
- (h) the Chief Forensic Psychiatrist; or
- (i) any other person, or organisation, prescribed in the regulations;

**prescribed person** means –

- (a) a medical practitioner; or
- (b) a registered nurse or enrolled nurse; or
- (c) a person registered under the Health Practitioner Regulation National Law (Tasmania) in –
  - (i) the midwifery profession; or
  - (ii) the dental profession as a dentist, dental therapist, dental hygienist or oral health therapist; or
  - (iii) the psychology profession; or
- (d) a police officer; or
- (e) a probation officer appointed or employed under section 5 of the Corrections Act 1997 ; or
- (f) a principal or a teacher in any educational institution (including a kindergarten); or
- (g) a person who provides child care, or a child care service, for fee or reward; or
- (h) a person concerned in the management of a child care service licensed under the Child Care Act 2001 ; or
- (i) any other person who is employed or engaged as an employee for, of or in, or who is a volunteer in –
  - (i) an Agency, within the meaning of the State Service Act 2000 , that provides health, welfare, education, child care or residential services wholly or partly for children; or
  - (ii) an organisation that receives any funding from the Crown for the provision of such services;

**relevant person** means a person with disability to whom goods or services are being, or have been, provided under a grant.

- (2) Subject to subsection (3) , the Secretary may –

(a) provide information to an information-sharing entity; or

(b) require an information-sharing entity to provide information to the Secretary.

(3) The Secretary may only provide information in relation to a relevant person, or require information in relation to a relevant person to be provided to the Secretary, if the Secretary is satisfied that –

(a) the information is necessary –

(i) to enable an appropriate assessment of the needs of the person to be ascertained; or

(ii) to determine whether any goods or services provided, or to be provided, to the person are appropriate; or

(iii) for the safety, welfare or wellbeing of the person or the safety of other persons; and

(b) where the person with disability is capable of giving his or her consent to the provision of the information to another person and the information is not required for the safety of the person or other persons, the person with disability has given that consent.

(4) An information-sharing entity required to provide information to the Secretary under subsection (2) must, within the period specified by the Secretary –

(a) provide the information; or

(b) if the information-sharing entity does not have the information, provide the Secretary with notice in writing that it cannot provide the information for that reason.

Penalty: Fine not exceeding 5 penalty units.

(5) An information-sharing entity may do either or both of the following in relation to information in its possession in relation to a relevant person:

(a) provide the Secretary with the information, whether or not the Secretary has required the information to be provided;

(b) provide another information-sharing entity with the information if that entity is involved with, or is likely to be involved with, the person or a person who is related to the person.

(6) An information-sharing entity may only provide under subsection (5) to an information-sharing entity information in relation to a relevant person if –

(a) it is satisfied that it is necessary to do so –

(i) to enable an appropriate assessment of the needs of the person to be made; or

(ii) to determine whether any goods or services provided, or to be provided, to the person are appropriate; or

(iii) for the safety, welfare or wellbeing of the person or the safety of other persons; and

(b) where the person with disability is capable of giving his or her consent to the provision of the information to another person and the information is not required for the safety of the person or other persons, the person with disability has given that consent.

(7) A person providing information under this section –

(a) cannot, by virtue of providing the information, be held to have breached any code of professional etiquette or ethics, to have departed from any accepted standards of professional conduct or to have contravened any Act; and

(b) to the extent that he or she has acted in good faith, incurs no civil or criminal liability in respect of providing the information.

## 51. Immunity

(1) This section applies to –

(a) the Minister; and

(b) the Secretary; and

(c) the Senior Practitioner; and

(d) the Guardianship and Administration Board; and

(e) any delegate of, or person authorised by, the Minister, the Secretary or the Senior Practitioner; and

(f) an authorised officer.

(2) An action does not lie against any person to whom this section applies in respect of any act done in good faith and in the performance, or purported performance, of a function imposed, or the exercise, or purported exercise, of a power conferred, by or under this Act.

## 52. Regulations

(1) The Governor may make regulations for the purposes of this Act.

(2) Without limiting the generality of subsection (1), the regulations may –

(a) prescribe fees and charges for the purposes of this Act; and

(b) prescribe standards in accordance with section 6 in relation to the design, administration and provision of specialist disability services.

(3) The regulations may be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance or otherwise, specified in the regulations.

## 53. Review of Act

(1) The Minister is to cause an independent review of the operation of this Act to be carried out as soon as practicable after the third anniversary of its commencement.

(2) The persons who carry out the review are to give the Minister a written report on its outcome.

(3) The Minister is to cause a copy of the report to be tabled in each House of Parliament within 10 sitting-days of that House after it is given to the Minister.

(4) In this section –

**independent review** means a review carried out by persons who –

(a) in the Minister's opinion, are appropriately qualified for that task; and

(b) include one or more persons who are not employees of the State or Commonwealth or of any agency of the State or Commonwealth.

#### **54. Administration of Act**

Until provision is made in relation to this Act by order under section 4 of the Administrative Arrangements Act 1990 –

- (a) the administration of this Act is assigned to the Minister for Human Services; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Health and Human Services.

#### **55. Savings and transitional**

- (1) In this section –

***repealed Act*** means the Disability Services Act 1992 .

- (2) A grant or a funding agreement given or entered into under the repealed Act continues in force as if it were given or entered into under this Act.

## PART 8 - Children, Young Persons and Their Families Act 1997 Amended

### 56. Principal Act

In this Part, the Children, Young Persons and Their Families Act 1997 is referred to as the Principal Act.

### 57. Section 3 amended (Interpretation)

Section 3(1) of the Principal Act is amended by omitting paragraph (e) from the definition of *information-sharing entity* and substituting:

(e) the person in charge of an organisation that –

(i) is a disability services provider within the meaning of the Disability Services Act 2011 ; and

(ii) receives funding under a funding agreement, within the meaning of that Act, to provide specialist disability services to a child; or



## PART 9 - Mental Health Act 1996 Amended

### 58. Principal Act

In this Part, the Mental Health Act 1996 is referred to as the Principal Act.

### 59. Section 73 amended (Mail)

Section 73(1) of the Principal Act is amended by omitting paragraph (n) from the definition of *exempt correspondent* and substituting:

(n) the Senior Practitioner within the meaning of the Disability Services Act 2011 ; and

## PART 10 - Obstetric and Paediatric Mortality and Morbidity Act 1994 Amended

### 60. Principal Act

In this Part, the Obstetric and Paediatric Mortality and Morbidity Act 1994 is referred to as the Principal Act.

### 61. Section 3 amended (Interpretation)

Section 3 of the Principal Act is amended by omitting " Disability Services Act 1992 " from the definition of *relevant Minister* and substituting " Disability Services Act 2011 " .

## PART 11 - Poisons Regulations 2008 Amended

### 62. Principal Regulations

In this Part, the Poisons Regulations 2008 are referred to as the Principal Regulations.

### 63. Regulation 3 amended (Interpretation)

Regulation 3(1) of the Principal Regulations is amended as follows:

- (a) by omitting " Disability Services Act 1992 " from the definition of *disability* and substituting " Disability Services Act 2011 ";
- (b) by omitting " Disability Services Act 1992 " from the definition of *funding agreement* and substituting " Disability Services Act 2011 ";
- (c) by omitting the definition of *service provider* and substituting the following definition:
  - service provider*, in relation to a disability, has the same meaning as "disability services provider" has in the Disability Services Act 2011 ;

**PART 12 - Legislation repealed**

**64. Legislation repealed**

The legislation specified in Schedule 1 is repealed.

Disability Services Act 1992 (No. 8 of 1992)

[Second reading presentation speech made in:

House of Assembly on 17 MAY 2011

Legislative Council on 15 JUNE 2011]