

# NORTHERN TERRITORY OF AUSTRALIA

## DISABILITY SERVICES ACT 1993

As in force at 20 November 2020

### Table of provisions

#### **Part 1 Preliminary matters**

1	Short title .....	1
2	Interpretation .....	1
2A	Principles for treatment and care .....	5
2B	Application of Criminal Code .....	5

#### **Part 2 Funding**

3	Persons eligible for funding .....	5
4	Terms and conditions .....	6

#### **Part 3 Treatment and care of people with a disability**

##### **Division 1 Basic concepts**

5	Meaning of <i>criteria for involuntary treatment and care</i> .....	6
6	Meaning of <i>treatment plan</i> .....	7
7	Meaning of <i>primary carer</i> .....	7

##### **Division 2 Application process and related provisions for treatment orders**

8	Application for order .....	8
9	Notice of application .....	8
10	Parties to proceedings .....	9
11	Hearing in absence of person .....	9
12	Deciding application .....	9
13	Interim treatment order .....	10
14	Effect of order .....	10
15	Conditions of order .....	11
16	Duration of order .....	11
17	Local Court may initiate review of order .....	12
18	Resident to be released when order ceases .....	12

##### **Division 3 Variation, revocation and renewal of treatment orders**

19	Application for variation or revocation .....	13
20	Application for renewal .....	13

---

## **Division 4        Appeals**

21	Appeal to Supreme Court .....	13
22	Stay of decision .....	14
23	Hearing appeal .....	14
24	Right of appearance and representation .....	14
25	Power of Supreme Court .....	15

## **Division 5        Miscellaneous matters**

26	Searching resident of secure care facility .....	15
27	Seizure of things found to prevent harm .....	16
28	Records and reports .....	16
29	Approval of absence .....	17
30	Person absent without approval .....	17
31	Apprehension of missing resident.....	18
32	Transfer of resident to another secure care facility .....	19

## **Part 4                Behaviour support plans and restrictive interventions**

### **Division 1        Basic concepts**

33	Definitions.....	19
34	Meaning of <i>chemical restraint</i> .....	20
35	Meaning of <i>restricting access</i> .....	20

### **Division 2        Behaviour support plans**

36	Preparation of behaviour support plan.....	20
37	Use of restrictive intervention included in behaviour support plan.....	21
38	Behaviour support plan required for residents .....	22
39	Review of behaviour support plan – CEO.....	22
40	Review of behaviour support plan – review panel .....	23

### **Division 3        Use of restrictive interventions**

41	Offence to use restrictive intervention .....	23
42	Emergency use of restraint or seclusion.....	24

### **Division 4        Records and reports**

43	Record to be kept of use of restrictive intervention.....	25
44	Manager of residential facility to keep records of use of restrictive intervention.....	25

---

**Part 5****Complaints**

45	Complaint procedures to be established .....	25
46	Making complaint.....	26
47	Acknowledgment of complaint.....	26
48	Investigation of complaint.....	26
49	Records and reports about complaints .....	27

**Part 6****Community visitors program****Division 1****Administration****Subdivision 1****Principal community visitor and community visitors**

50	Appointment .....	27
51	Interim community visitor .....	28
52	Resignation and termination of appointment .....	28
53	Functions and powers .....	29

**Subdivision 2****Powers and functions of community visitors**

54	Functions of principal community visitor .....	29
55	Inquiry functions .....	30
56	Complaint functions .....	30
57	Visiting and inspections of residential facilities .....	30
58	Requests to be contacted by community visitors.....	31
59	Reports by community visitors.....	32

**Subdivision 3****Community visitors panel**

60	Establishment.....	32
61	Appointment of members.....	32
62	Resignation and termination of appointment of members .....	33
63	Functions of community visitors panel.....	33
64	Reports by community visitors panel.....	34

**Division 2****Miscellaneous matters**

65	Assistance to be provided.....	35
66	Annual report.....	35
67	Protection from liability .....	35
68	Confidentiality of information .....	36

**Part 7****Other matters of administration****Division 1****Review panel**

69	Establishment.....	37
----	--------------------	----

---

70	Membership.....	37
71	Resignation and termination .....	38

**Division 2      Other matters**

72	Secure care facilities .....	39
72A	Requirement to notify or consult with decision maker.....	39
73	Approved forms .....	39
74	Delegations.....	39

**Part 8              Miscellaneous matters**

75	Acquisition on just terms.....	40
76	Regulations.....	40

**Schedule 1      Objects**

**Schedule 2      Principles**

**Schedule 3      Objectives**

**ENDNOTES**

# NORTHERN TERRITORY OF AUSTRALIA

---

As in force at 20 November 2020

---

## DISABILITY SERVICES ACT 1993

**An Act about providing services for people with a disability, and for related purposes**

### **Part 1 Preliminary matters**

#### **1 Short title**

This Act may be cited as the *Disability Services Act 1993*.

#### **2 Interpretation**

(1) In this Act:

**appropriate place** means a place mentioned in section 43ZA(1)(a)(ii) of the Criminal Code.

*Note*

*A secure care facility may be an appropriate place.*

**approved form** means a form approved under section 73.

**authorised employee**, see section 26(1).

**behaviour support plan**, see section 36(1).

**business day** means a day that is not a Saturday, Sunday or public holiday.

**CEO** means the Chief Executive Officer.

**chemical restraint**, see section 34.

**community visitor**, means a person holding office under an appointment under section 50(2), and includes the principal community visitor and an interim community visitor.

**community visitors panel** means the community visitors panel established under section 60.

**complaint** means a complaint made under Part 5.

**complex cognitive impairment**, see section 6A of the *Mental Health and Related Services Act 1998*.

**criteria for involuntary treatment and care**, see section 5.

**decision maker**, for a person with a disability, means a decision maker (as defined in section 3 of the *Advance Personal Planning Act 2013*) for the person who has authority for matters relating to the treatment and care of the person.

**disability**, in respect of a person, means a disability:

- (a) which is attributable to an intellectual, sensory, physical or psychiatric impairment or a combination of those impairments;
- (b) which is permanent or likely to be permanent;
- (c) which results in:
  - (i) a substantially reduced capacity of the person for communication, learning or mobility; and
  - (ii) the need for continuing support services; and
- (d) which may or may not be of a chronic episodic nature.

**guardian**, for a person, means a guardian (as defined in section 3 of the *Guardianship of Adults Act 2016*) for the person who has authority under that Act to make decisions relating to the treatment and care of the person.

**interim community visitor**, see section 51(1).

**interim treatment order** means a treatment order made under section 13.

**manager**, of a residential facility, means the person responsible for the day-to-day management of the facility.

**organisation** means:

- (a) a body corporate; or
- (b) a local government council; or
- (c) a post-school education institution or body; or
- (d) the Charles Darwin University; or
- (e) the Menzies School of Health Research; or

- (f) an agency of the Territory; or
- (g) a prescribed society, association or body.

**original decision**, for Part 3, Division 4, see section 21(1).

**physical restraint**, see section 33.

**primary carer**, see section 7.

**principal community visitor**, means the person holding office under an appointment under section 50(1).

**provider of services** means an organisation or a person that provides services to persons with disabilities.

**research and development activities** means:

- (a) research with respect to the provision of services for persons with disabilities;
- (b) investigation of the need for services for persons with disabilities;
- (c) the initiation of services for persons with disabilities;
- (d) the planning of the provision of services for persons with disabilities;
- (e) the development of proposals for the provision of services for persons with disabilities;
- (f) the development or implementation of training programs for:
  - (i) persons engaged in the provision of services for; or
  - (ii) the families of, and other persons who provide care for or assistance to,  
persons with disabilities;
- (g) the investigation of outcomes achieved by persons with disabilities through the provision of services; or
- (h) any other activities approved by the Minister.

**researcher** means an organisation or person conducting research and development activities.

**resident**, of a residential facility, means:

- (a) for a secure care facility – an adult with a disability who is living in and receiving treatment and care in the facility under:
  - (i) a treatment order; or
  - (ii) a supervision order; or
- (b) for an appropriate place other than a secure care facility – an adult with a disability who is living in and receiving treatment and care in the place under a supervision order; or
- (c) for another residential facility – a person with a disability who is living in and receiving treatment and care in the facility.

**residential facility** means:

- (a) a secure care facility; or
- (b) an appropriate place other than a secure care facility; or
- (c) other premises operated by the Agency to provide services for the treatment and care of people with a disability.

**restraint**, see section 33.

**restricting access**, see section 35.

**restrictive intervention**, see section 33.

**review panel** means the review panel established under section 69.

**seclusion**, see section 33.

**secure care facility** means premises declared under section 72 to be a secure care facility.

**supervision order**, see section 43A of the Criminal Code.

**therapeutic benefit** means a therapeutic benefit by way of personal development, including:

- (a) building on strengths and life skills; and
- (b) opportunities for quality of life and participation and inclusion in the community.

**treatment and care principles**, see section 2A.



---

**treatment order** means an order in force under Part 3, and includes an interim treatment order.

**treatment plan**, see section 6.

- (2) The Minister may, by notice in the *Gazette*, prescribe a society, association or body for the purposes of the definition of **organisation** in subsection (1).

## **2A Principles for treatment and care**

The following principles (the **treatment and care principles**) apply to the treatment and care of a person with a disability:

- (a) the treatment and care must be reviewed regularly;
- (b) if a restriction on the rights or opportunities of the person is necessary, the option chosen should be the option that is the least restrictive as is possible in the circumstances;
- (c) for a person for whom a treatment order is in force – the treatment and care of the person must cease if the person no longer obtains therapeutic benefit from it.

## **2B Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 2B*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

# **Part 2 Funding**

## **3 Persons eligible for funding**

- (1) Subject to subsection (2), the Minister may approve funding, out of money that has been provided for the purpose, to a provider of services, a researcher or a person with a disability.
- (2) The Minister must not approve funding under subsection (1) to a provider of services or a researcher unless the provider or researcher is:
  - (a) providing services or conducting research and development in a manner which furthers the principles set out in Schedule 2; and

- (b) furthering the objectives set out in Schedule 3.
- (3) The Minister must have regard to furthering the objects set out in Schedule 1 when approving funding under subsection (1).

#### **4            Terms and conditions**

- (1) Where the Minister decides to approve funding to the provider of a service, a researcher or a person with a disability, the Minister may require the provider, researcher or person to enter into an agreement about the terms and conditions with which the provider, researcher or person must comply while receiving the funding.
- (2) An agreement under subsection (1) must be in writing and signed by both parties.
- (3) The terms and conditions of the agreement may include the outcomes to be achieved by persons with disabilities and the rights of persons being provided with services by the provider or persons who are the subject of research programs of the researcher.

### **Part 3            Treatment and care of people with a disability**

#### **Division 1        Basic concepts**

#### **5            Meaning of *criteria for involuntary treatment and care***

A person fulfils the ***criteria for involuntary treatment and care*** if:

- (a) the person is an adult; and
- (b) the person has a disability; and
- (c) the person has a complex cognitive impairment; and
- (d) the person is engaging in repetitive conduct of high risk behaviour likely to cause harm to himself or herself or to someone else; and
- (e) unless the person receives treatment and care in a secure care facility, the person:
  - (i) is likely to cause serious harm to himself or herself or to someone else; or
  - (ii) will represent a substantial risk to the general community; or

- (iii) is likely to suffer serious mental or physical deterioration;  
and
- (f) the person has the capacity to benefit from goal-oriented therapeutic services in a secure care facility; and
- (g) the person can participate in treatment and care in a secure care facility; and
- (h) there is no less restrictive way of ensuring the person receives the treatment and care.

## 6      **Meaning of *treatment plan***

- (1) A ***treatment plan*** for a person with a disability is a document prepared by the CEO stating the services proposed to be provided for the person's treatment and care on being admitted to a secure care facility.
- (2) Without limiting subsection (1), the treatment plan for a person with a disability must:
  - (a) state the treatment and care that will be provided to the person while a resident of the secure care facility; and
  - (b) state the expected therapeutic benefit to the person of the treatment and care; and
  - (c) state a proposed process for the person's transition to living in the community without a treatment order or to lower levels of supervision; and
  - (d) include a proposed behaviour support plan.

*Note for section 6*

*If the person is receiving treatment and care under a treatment management plan under Part 6, Division 4 of the Mental Health and Related Services Act 1998, it is expected the treatment plan will cover matters dealt with in the treatment management plan.*

## 7      **Meaning of *primary carer***

- (1) A ***primary carer*** for a person is:
  - (a) someone providing care and support to the person because of his or her sense of responsibility as a relative of, or someone close to, the person; or

- (b) if the person does not have anyone providing care and support as mentioned in paragraph (a) – someone most closely involved in the treatment or care of, or support to, the person.

- (2) In this section:

**relative**, of a person, includes anyone related to the person through a relationship that arises through common ancestry, adoption, marriage, de facto relationship or any customary law or tradition (including Aboriginal customary law or tradition).

## **Division 2      Application process and related provisions for treatment orders**

### **8      Application for order**

- (1) The CEO may apply to the Local Court for an order under this Division for a person if the CEO is satisfied the person fulfils the criteria for involuntary treatment and care.
- (2) However, an application cannot be made for a person for whom a supervision order is in force.
- (3) An application must be accompanied by:
  - (a) the proposed treatment plan for the person; or
  - (b) if an order is in force for the person under Part 6, Division 4 of the *Mental Health and Related Services Act 1998* – a copy of the order and treatment management plan under that Act for the person.

*Note for subsection (3)(b)*

*The person may be receiving treatment and care under an order for the person's admission as an involuntary patient on the grounds of complex cognitive impairment under Part 6, Division 4 of the Mental Health and Related Services Act 1998.*

### **9      Notice of application**

- (1) Within one business day after making the application, the CEO must give written notice of it to the following persons:
  - (a) the person for whom the order is sought;
  - (b) if the person has a guardian – the guardian;
  - (ba) if the person has a decision maker – the decision maker;

- (c) if the person has a primary carer other than the Agency – the primary carer;
  - (d) a lawyer acting or prepared to act for the person;
  - (e) if an order is in force for the person under Part 6, Division 4 of the *Mental Health and Related Services Act 1998* – an authorised psychiatric practitioner.
- (2) However, the CEO need not give notice to a primary carer of the person if the CEO:
- (a) is satisfied it is not in the person's best interests to do so; and
  - (b) states the reasons for not doing so in the application.

## **10                      Parties to proceedings**

The following are parties to the proceeding for the hearing of the application:

- (a) the person to whom the application relates;
- (b) if the person has a guardian – the guardian;
- (ba) if the person has a decision maker – the decision maker;
- (c) a primary carer of the person who is given notice of the application;
- (d) the CEO.

## **11                      Hearing in absence of person**

- (1) The Local Court may hear the application in the absence of the person to whom the application relates if satisfied:
- (a) the person's appearance at the hearing may be detrimental to the person's health or wellbeing; or
  - (b) the person is unable to attend at the hearing because of exceptional circumstances.
- (2) However, this section does not limit the Local Court's power to exclude anyone else from the hearing.

## **12                      Deciding application**

- (1) If, on hearing the application, the Local Court decides the person fulfils the criteria for involuntary treatment and care, the Court may make a treatment order for the person.

- (2) However, the Local Court may make a treatment order for the person only if satisfied:
  - (a) the services to be provided to the person in accordance with the treatment plan accompanying the application will be of therapeutic benefit to the person; and
  - (b) it is necessary to admit the person to a secure care facility to enable delivery of services under the treatment plan and prevent substantial risk of harm to the person or someone else; and
  - (c) a secure care facility is available for the person's admission, treatment and care.
- (3) Otherwise, the Local Court must dismiss the application.

### **13 Interim treatment order**

- (1) If the Local Court adjourns the proceeding for the hearing of the application, it may make an interim treatment order for the person.
- (2) The Local Court may make the interim treatment order even though the person is not present at the hearing.
- (3) However, the Local Court may make the interim treatment order only if it reasonably believes, on the evidence before it when adjourning the proceeding, the person fulfils the criteria for involuntary treatment and care.
- (4) The interim treatment order is in force until the earlier of the following:
  - (a) it is revoked by the Local Court;
  - (b) on the making of a treatment order for the person.

### **14 Effect of order**

- (1) A treatment order for a person authorises:
  - (a) the person to be admitted to, and held in, the secure care facility stated in the order for the purpose of receiving services provided for the support of people with a disability; and
  - (b) a police officer to apprehend and take the person to the secure care facility stated in the order.
- (2) In addition, if the person is an involuntary patient under an order for the person's admission and detention as an involuntary patient on

the grounds of complex cognitive impairment under Part 6, Division 4 of the *Mental Health and Related Services Act 1998*, the order and treatment management plan under that Act for the person are revoked on the making of the treatment order.

- (3) However, if the person is later admitted to an approved treatment facility under Part 6 of the *Mental Health and Related Services Act 1998*, the treatment order is suspended while the person is detained in the facility under that Act.
- (4) Also, if a supervision order is later made for the person, the treatment order is revoked.
- (5) For subsection (1)(b), the police officer may:
  - (a) use reasonable force and assistance; and
  - (b) enter any place, including any dwelling, where the officer reasonably believes the person may be found.
- (6) When apprehending the person, the police officer must tell the person that a treatment order has been made authorising the person's admission to the secure care facility.

## **15                      Conditions of order**

- (1) A treatment order for a person is subject to the condition that the CEO must give the Local Court a report on the progress of the person's treatment and care under the treatment plan at least once in each 6 months the order is in force.
- (2) The treatment order is subject to the other conditions the Local Court considers appropriate and states in the order.

## **16                      Duration of order**

- (1) The treatment order for the person is in force for the period (not less than 6 months and not more than 2 years) the Local Court decides.
- (2) In deciding the period the Local Court must consider the evidence before it, including reports from health practitioners and others the Court considers appropriate.
- (3) In this section:

***health practitioner*** means a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student).

## **17 Local Court may initiate review of order**

- (1) On receipt of a report on the person's treatment and care under the treatment plan, the Local Court may fix a date, time and place for a review of the treatment order for the person.
- (2) The Local Court must give written notice of the date, time and place fixed to the following:
  - (a) the person;
  - (b) if the person has a guardian – the guardian;
  - (ba) if the person has a decision maker – the decision maker;
  - (c) if the person has a primary carer other than the Agency – the primary carer.
  - (d) the CEO.
- (3) However, section 11 applies to the review as if it were an application for a treatment order for the person.
- (4) In conducting the review, the Local Court may consider any matter relating to the making of the treatment order.
- (5) The Local Court may make any of the following orders:
  - (a) an order revoking the treatment order;
  - (b) an order varying the conditions of the order;
  - (c) a new treatment order;
  - (d) another order it considers appropriate.

## **18 Resident to be released when order ceases**

The manager of a residential facility must, as soon as practicable after the treatment order for a resident of the facility ceases to be in force, ensure the resident is released from the facility.



### **Division 3            Variation, revocation and renewal of treatment orders**

#### **19            Application for variation or revocation**

- (1) The CEO, or another person who was a party to the proceeding for the hearing of an application for a treatment order (a **third party**), may apply to the Local Court for the order to be:
  - (a) varied; or
  - (b) revoked; or
  - (c) revoked and replaced by a new treatment order.
- (2) However, a third party may make the application only with the leave of the Local Court.
- (3) Division 2 applies (with the necessary changes) to the application as if it were an application for a treatment order.

#### **20            Application for renewal**

- (1) An application for the renewal of a treatment order must be made to the Local Court at least 30 days before the order ceases to be in force.
- (2) Division 2 applies (with the necessary changes) to the application as if it were an application for a treatment order.

### **Division 4            Appeals**

#### **21            Appeal to Supreme Court**

- (1) A party to a Local Court proceeding may appeal to the Supreme Court against an order or decision of the Local Court under this Part (the **original decision**).
- (2) The appellant must do so by filing a notice of appeal with the Registrar of the Supreme Court within 28 days after the original decision is made.
- (3) The notice must state:
  - (a) the grounds for the appeal; and
  - (b) the facts on which the appeal is based.
- (4) The appellant must serve a copy of the notice on each of the other parties to the proceedings.

## **22            Stay of decision**

- (1) The Supreme Court may stay the original decision to secure the effectiveness of the appeal.
- (2) A stay:
  - (a) may be given on any conditions stated by the Supreme Court; and
  - (b) operates for the period stated by the Court; and
  - (c) may be revoked or amended by the Court.
- (3) However, the period of the stay must not extend beyond the time when the Supreme Court decides the appeal.

## **23            Hearing appeal**

An appeal must be conducted as a new hearing and is not limited by the evidence before the Supreme Court when the order was made.

## **24            Right of appearance and representation**

- (1) At the hearing of the appeal, the person for whom a treatment order was made or sought may:
  - (a) represent himself or herself; or
  - (b) be represented by a lawyer or another person.
- (2) The Supreme Court may:
  - (a) appoint a lawyer to represent the person if the person is not represented; and
  - (b) order the Territory to pay all or part of the reasonable costs and disbursements of the lawyer for representing the person at the appeal.
- (3) The Supreme Court may hear the appeal in the absence of the person or the person's representative if all of the following apply:
  - (a) reasonable notice of the hearing was given to the person or representative;
  - (b) the person or representative had a reasonable opportunity to attend the hearing;
  - (c) the person or representative refuses to attend the hearing.

- (4) The Court may hear the appeal in the absence of the person if:
  - (a) in the opinion of the Court, there are exceptional circumstances that make the attendance of the person inappropriate; and
  - (b) the person's representative is given notice of the hearing and has a reasonable opportunity to attend the hearing.
- (5) The Supreme Court must notify the person of its decision as soon as practicable if the hearing is conducted in the absence of the person or his or her representative.

## **25                      Power of Supreme Court**

The Supreme Court may:

- (a) confirm the original decision; or
- (b) vary the original decision; or
- (c) set aside the original decision; or
- (d) set aside the original decision and replace it with a new order or decision.

## **Division 5                      Miscellaneous matters**

### **26                      Searching resident of secure care facility**

- (1) The CEO may authorise a public sector employee of the Agency at a residential facility (the **authorised employee**) to search a resident of the facility (including anything found on or with the resident).
- (2) The authorised employee may search a resident only if the employee reasonably believes it is necessary to do so to prevent the resident from harming himself or herself or others.
- (2A) The authorised employee must:
  - (a) be someone who is of the same gender as the resident; and
  - (b) conduct the search in the presence of an adult who:
    - (i) is of the same gender as the resident; and
    - (ii) is nominated by the resident or, if the resident fails to do so, by the authorised employee.

- (3) The adult nominated by the authorised employee must not be a police officer.
- (4) The authorised employee may use reasonable force and assistance in acting under this section.
- (5) However, this section does not authorise a search that involves the removal of the resident's clothing or an examination of the resident's body cavities.

## **27                      Seizure of things found to prevent harm**

- (1) The authorised employee may seize anything found on or with the resident in the conduct of the search if the employee reasonably believes it is necessary to do so to prevent the resident from harming himself or herself or others.
- (2) The authorised employee may do so by using reasonable force and assistance.
- (3) If the authorised employee seizes any of the following things, the employee must, as soon as practicable after seizing it, give it to a police officer:
  - (a) a firearm as defined in section 3(1) of the *Firearms Act 1997*;
  - (b) a controlled weapon, offensive weapon or prohibited weapon as defined in section 3 of the *Weapons Control Act 2001*;
  - (c) a dangerous drug as defined in section 3(1) of the *Misuse of Drugs Act 1990*.
- (4) The authorised employee may destroy or otherwise dispose of anything seized under this section to prevent the resident from harming himself or herself or others.

## **28                      Records and reports**

An authorised employee must, as soon as practicable after exercising a power under section 26 or 27:

- (a) make a record of the exercise of the power in the approved form; and
- (b) place the record on the resident's file.

## **29                      Approval of absence**

- (1) The manager of a secure care facility may give approval to a resident of the facility under a treatment order or supervision order to be absent from the facility for any period:
  - (a) for the purpose of receiving medical care, educational training or participating in arrangements of a social, recreational or vocational nature in accordance with the resident's treatment plan; or
  - (b) for a purpose approved by the manager if the resident is escorted by:
    - (i) a member of the staff of the facility; or
    - (ii) a person authorised by the manager.
- (2) The resident's absence from the secure care facility is subject to any of the following conditions:
  - (a) the resident is escorted by:
    - (i) a member of the staff of the facility; or
    - (ii) a person authorised by the manager;
  - (b) other conditions decided by the manager of the facility.
- (3) However, the manager may give the approval only if it is not inconsistent with the resident's treatment order or supervision order.

## **30                      Person absent without approval**

- (1) This section applies if a resident of a secure care facility under a treatment order or supervision order:
  - (a) is absent from the facility other than in accordance with the resident's treatment plan; or
  - (b) is absent from the facility without approval given under section 29; or
  - (c) has been given approval to be absent under that section and any of the following occurs:
    - (i) the resident fails to return to the facility before the end of the leave;
    - (ii) the resident fails to comply with a condition of the leave.

- (2) The manager of the facility must, as soon as practicable, report the resident's absence to a police officer.
- (3) The report must include sufficient information about the resident's history to enable the manager and police officer to make a joint informed assessment of the risk posed by the resident and the person's vulnerability.
- (4) The manager of the facility must also ensure the following are notified of the resident's absence:
  - (a) if the resident has a guardian – the guardian;
  - (aa) if the resident has a decision maker – the decision maker;
  - (b) if the resident has a primary carer other than the Agency – the primary carer;
  - (c) another person the manager considers should be aware of the resident's absence.
- (5) As soon as practicable after the resident is found, the manager of the facility must ensure anyone notified under subsection (4) is notified that the resident has been found.
- (6) The manager of the facility must ensure:
  - (a) a record is made in the approved form about the resident's absence; and
  - (b) the record is placed on the resident's file.

### **31        Apprehension of missing resident**

- (1) This section applies if the manager of a secure care facility reports the absence of a resident of the facility under a treatment order.
- (2) A police officer may, at the request of the manager of the secure care facility:
  - (a) apprehend the person; and
  - (b) take the resident to the facility.
- (3) However, the manager of the secure care facility may make the request only if the manager is satisfied there is no other way of apprehending and taking the person to the facility.
- (4) For subsection (2), the police officer may:
  - (a) use reasonable force and assistance; and

- (b) enter any place, including any dwelling, where the officer reasonably believes the resident may be found.

### **32            Transfer of resident to another secure care facility**

- (1) The CEO may transfer a resident in a secure care facility to another secure care facility if satisfied the transfer will enable the more effective provision of disability or other services to meet the resident's needs.
- (2) However, the CEO must consult with the manager of the other secure care facility before directing the transfer.
- (3) On the transfer of the resident, the secure care facility to which the resident is transferred is taken to be the secure care facility stated in the resident's treatment order.

## **Part 4            Behaviour support plans and restrictive interventions**

### **Division 1        Basic concepts**

#### **33            Definitions**

In this Part:

***behaviour support plan***, see section 36(1).

***chemical restraint***, see section 34.

***physical restraint***, of a resident of a residential facility, means the use by a person of any part of the person's body to restrict the free movement of the resident for the purpose of controlling the resident's behaviour.

***restraint*** means chemical or physical restraint.

***restricting access***, see section 35.

***restrictive intervention***, for a resident of a residential facility, means any intervention used to restrict the resident's rights or freedom of movement at the facility, and includes:

- (a) chemical restraint; and
- (b) physical restraint; and
- (c) seclusion; and

- (d) restricting access.

**seclusion**, of a resident of a residential facility, means the sole confinement of the resident at any time of the day or night in a room or area at the facility from which free exit is prevented.

### 34                      **Meaning of *chemical restraint***

- (1) The ***chemical restraint*** of a resident of a residential facility is the use of medication prescribed by a medical practitioner, including a fixed daily dose and pro re nata medication, for the purpose of controlling the resident's behaviour.
- (2) However, using medication prescribed by a medical practitioner for the treatment, or to enable the treatment, of a mental illness or a physical illness or physical condition is not chemical restraint.
- (3) In this section:

***mental illness***, see section 6 of the *Mental Health and Related Services Act 1998*.

### 35                      **Meaning of *restricting access***

***Restricting access*** is the restriction of access by a resident of a residential facility to a thing at the facility for the purpose of:

- (a) controlling the resident's behaviour; or
- (b) preventing the resident using the thing to cause harm to himself or herself or others.

*Example for paragraph (b)*

*Locking a drawer in which knives are kept to prevent a resident from using the knives to cause harm.*

## **Division 2                      Behaviour support plans**

### 36                      **Preparation of behaviour support plan**

- (1) Before a person with a disability becomes a resident of a secure care facility, the CEO must prepare a document (a ***behaviour support plan***) for the person stating a range of strategies to be used in managing the person's behaviour.
- (2) The behaviour support plan must include proactive strategies to build on the person's strengths and increase the person's life skills.



- (3) In preparing the behaviour support plan, the CEO must consult with:
  - (a) the person; and
  - (b) providers of services to the person; and
  - (c) the following persons:
    - (i) if the person has a guardian – the guardian;
    - (ia) if the person has a decision maker – the decision maker;
    - (ii) if the person has a primary carer other than the Agency – the primary carer;
    - (iii) others who are integral to the development or implementation of the plan for the person.
- (4) On preparation of the behaviour support plan, the CEO must give notice of its preparation, and a copy of it, to:
  - (a) the person with a disability; and
  - (b) each of the other persons consulted in its preparation.
- (5) In addition, if the behaviour support plan includes the use of a restrictive intervention on the person, the notice must state:
  - (a) the form of the restrictive intervention; and
  - (b) the recipients have a right to apply to the review panel for a review of the decision for the inclusion.
- (6) Also, on the person becoming a resident of a residential facility, the CEO must give a copy of the behaviour support plan to the manager of the facility.

**37                      Use of restrictive intervention included in behaviour support plan**

- (1) This section applies if the CEO:
  - (a) is satisfied the matters mentioned in section 41(2) apply to a person with a disability; and
  - (b) proposes to include the use of a form of restrictive intervention on the person.

- (2) The behaviour support plan for the person must:
- (a) state the circumstances in which the proposed form of restrictive intervention is to be used for behaviour management; and
  - (b) explain how the use of the restrictive intervention will be of benefit to the person; and
  - (c) show the use of the restrictive intervention is the option that is the least restrictive of the person as is possible in the circumstances.

**38            Behaviour support plan required for residents**

The manager of a residential facility must ensure a behaviour support plan is in force for each resident of the facility.

**39            Review of behaviour support plan – CEO**

- (1) A behaviour support plan for a person with a disability must be reviewed by the CEO at least once in each 12 months.
- (2) In addition, the person with a disability or a person consulted in its preparation may request the CEO to review the behaviour support plan at any time.
- (3) In reviewing the behaviour support plan, the CEO must consult with:
  - (a) the person; and
  - (b) providers of services to the person; and
  - (c) the following persons:
    - (i) if the person has a guardian – the guardian;
    - (ia) if the person has a decision maker – the decision maker;
    - (ii) if the person has a primary carer other than the Agency – the primary carer;
    - (iii) others who are integral to the development or implementation of the plan for the person.

**40                      Review of behaviour support plan – review panel**

- (1) A resident of a residential facility or someone else consulted on the preparation of the behaviour support plan for the resident may apply to the review panel for the review of the inclusion of the use of a restrictive intervention in the plan.
- (2) The review panel must:
  - (a) confirm the decision to include the use of the restrictive intervention in the resident's behaviour support plan and dismiss the application; or
  - (b) direct the CEO to prepare a new behaviour support plan for the resident in accordance with the order; or
  - (c) direct the use of the restrictive intervention be removed from the behaviour support plan for the resident.
- (3) In making its decision, the review panel must have regard to the treatment and care principles.

**Division 3                      Use of restrictive interventions**

**41                      Offence to use restrictive intervention**

- (1) A person must not use a restrictive intervention on a resident of a residential facility.

Maximum penalty:            40 penalty units.

- (2) Subsection (1) does not apply if:
  - (a) the use is necessary:
    - (i) to prevent the resident from causing physical harm to himself or herself or others; or
    - (ii) to prevent the resident from destroying property if to do so could involve the risk of harm to himself or herself or others; and
  - (b) the use and form of the restrictive intervention is the option that is the least restrictive of the resident as is possible in the circumstances; and
  - (c) the use and form of the restrictive intervention is in accordance with the resident's behaviour support plan; and

- (d) for the use of seclusion:
  - (i) the resident is supplied with bedding and clothing appropriate in the circumstances; and
  - (ii) the resident has access to adequate heating or cooling as is appropriate in the circumstances; and
  - (iii) the resident is provided with food and drink at the appropriate times; and
  - (iv) the resident is provided with adequate toilet arrangements; and
  - (v) the resident is able to communicate with staff at the residential facility; and
  - (vi) the seclusion is not longer than a continuous period of 3 hours; and
  - (vii) the resident be visited and observed at intervals no longer than 15 minutes; and
  - (viii) a record of the use is made under section 43.

- (3) In addition, subsection (1) does not apply if restraint is applied to the resident, or the resident is kept in seclusion, in accordance with section 42.

## **42 Emergency use of restraint or seclusion**

- (1) This section applies if:
  - (a) a resident of a residential facility does not have a behaviour support plan providing for the use of restraint or seclusion; and
  - (b) a provider of services to the resident is satisfied the use of restraint or seclusion is necessary because there is an imminent risk of the resident causing serious physical harm to himself or herself or others.
- (2) The provider of services may use restraint or seclusion on the resident if:
  - (a) the use and form of restraint or seclusion is the least restrictive for the resident as is possible in the circumstances; and
  - (b) the provider immediately gives notice in the approved form to the CEO of the use of restraint or seclusion.

**Division 4        Records and reports****43        Record to be kept of use of restrictive intervention**

A provider of services who uses a restrictive intervention on a resident of a residential facility must, as soon as practicable after the use:

- (a) make a record of the use in the approved form; and
- (b) place the record on the resident's file.

**44        Manager of residential facility to keep records of use of restrictive intervention**

The manager of a residential facility must ensure:

- (a) a record is made in the approved form of each incident involving the use of force in using a restrictive intervention; and
- (b) the record is placed on the resident's file.

**Part 5                Complaints****45        Complaint procedures to be established**

- (1) The manager of a residential facility must establish procedures that are accessible and fair to deal with complaints relating to residents of the facility.
- (2) The procedures must aim:
  - (a) to investigate and, wherever possible, resolve complaints by a process within the residential facility; and
  - (b) to promote improvements in the quality of the policies, procedures and services of the facility.
- (3) The manager of a residential facility must ensure written information of the established complaints procedures is accessible to each of the following:
  - (a) a resident of the facility;
  - (b) if the resident has a guardian – the guardian;
  - (c) if the resident has a decision maker – the decision maker.

**46 Making complaint**

- (1) Each of the following persons may make a complaint to the manager of a residential facility about a matter mentioned in subsection (2):
- (a) a resident of the facility;
  - (b) if a resident of the facility has a guardian – the guardian;
  - (ba) if the resident has a decision maker – the decision maker;
  - (c) if the resident has a primary carer other than the Agency – the primary carer;
  - (d) someone else who has a genuine interest in the treatment and care of a resident of the facility.
- (2) Without limiting subsection (1), a complaint may be made about:
- (a) the failure to recognise any right of a resident under this Act;  
or
  - (b) the administration of this Act that relates directly to the provision of services under the treatment plan for a resident.

**47 Acknowledgment of complaint**

As soon as reasonably practicable after a complaint is made, the manager of the residential facility must ensure the complainant is given a written acknowledgment.

**48 Investigation of complaint**

The manager of the residential facility must ensure:

- (a) the complaint is investigated in accordance with the established complaints procedures; and
- (b) the complainant is:
  - (i) kept informed of the progress of the investigation at regular intervals; and
  - (ii) informed of the action taken on completion of the investigation.

**49                      Records and reports about complaints**

- (1) The manager of a residential facility must ensure a full and accurate record of the nature of each complaint, and any investigation and other action taken in relation to it, is made in a register kept for the purpose.
- (2) The manager of a residential facility must ensure the register is made available to a community visitor for inspection when requested by the community visitor.
- (3) The manager of a residential facility must give the CEO and principal community visitor, at least once in each 6 months, a report containing details of:
  - (a) the pattern of complaints made during the period of the report; and
  - (b) any changes made to prevent a recurrence of the activities that led to the complaints.

**Part 6                      Community visitors program**

**Division 1                Administration**

**Subdivision 1        Principal community visitor and community visitors**

**50                      Appointment**

- (1) The Minister must appoint a person to be the principal community visitor.
- (2) The Minister may appoint a person to be a community visitor.
- (3) A person must not be appointed to be a community visitor if:
  - (a) the person does not have appropriate qualifications; or
  - (b) the person is employed by, or has a direct interest in any contract with, the Agency.
- (4) An appointee holds office for 3 years and is eligible to be reappointed.

- (5) To avoid doubt, this section does not prevent an appointee concurrently holding office as the principal community visitor or a community visitor under the *Mental Health and Related Services Act 1998*.

## **51                      Interim community visitor**

- (1) The principal community visitor may appoint a person to be a community visitor (an ***interim community visitor***) for the period (of not more than 60 days) stated in the instrument of appointment.
- (2) A person must not be appointed to be an interim community visitor unless the person is qualified for appointment to be a community visitor.
- (3) The appointment of an interim community visitor ceases at the earliest of the following:
- (a) when the period of appointment ends;
  - (b) when the appointment is terminated;
  - (c) when the person resigns office;
  - (d) when the Minister appoints the person to be a community visitor.
- (4) The Minister may terminate the appointment before the period of appointment ends.

## **52                      Resignation and termination of appointment**

- (1) A community visitor may resign office by written notice given to the Minister.
- (2) The Minister may, by written notice given to a community visitor, terminate the community visitor's appointment:
- (a) on the ground of misbehaviour; or
  - (b) on the ground the community visitor becomes physically or mentally incapable of satisfactorily performing the functions of office.
- (3) In addition, the appointment is terminated if:
- (a) the community visitor:
    - (i) becomes bankrupt; or



- (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with creditors or makes an assignment of the community visitor's remuneration for their benefit; or
- (b) the community visitor is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
- (c) the community visitor is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

### **53            Functions and powers**

A community visitor has the functions and powers conferred by this Act.

## **Subdivision 2   Powers and functions of community visitors**

### **54            Functions of principal community visitor**

The functions of the principal community visitor are as follows:

- (a) to establish standards, principles and protocols for community visitors to exercise their powers and perform their functions;
- (b) to oversee the preparation and circulation of publications to residents of residential facilities, providers of services and the public generally explaining the role of community visitors and how they may be contacted;
- (c) to ensure community visitors exercise their powers and perform their functions in accordance with the established principles, standards and protocols;
- (d) to ensure the inspection by a community visitor of:
  - (i) a secure care facility at least once each month; or
  - (ii) an appropriate place at least once each 3 months.

## **55                Inquiry functions**

- (1) A community visitor may inquire into and make recommendations relating to:
  - (a) the adequacy of information relating to:
    - (i) the rights of residents receiving treatment and care at residential facilities; and
    - (ii) the complaint procedures under Part 5; and
  - (b) the accessibility and effectiveness of the complaint procedures; and
  - (c) the failure of persons employed in residential facilities to comply with this Act; and
  - (d) the use of restrictive interventions; and
  - (e) any matter the community visitor considers appropriate having regard to the treatment and care principles; and
  - (f) any matter as directed to the principal community visitor by the Minister.
- (2) A community visitor must refer to the principal community visitor any matter the community visitor considers should be investigated by a community visitors panel.

## **56                Complaint functions**

A community visitor must:

- (a) be accessible to residents of residential facilities to hear and facilitate the resolution of complaints they may have; and
- (b) help the residents make complaints, apply for reviews or file notices of appeal under this Act.

## **57                Visiting and inspections of residential facilities**

- (1) When visiting a residential facility, a community visitor must inspect documents made under this Act about the use of restrictive interventions on residents of the facility.
- (2) A community visitor may at any reasonable time (without notice) exercise the following powers:
  - (a) enter a residential facility;

- (b) visit and communicate with residents of a residential facility;
  - (c) inspect a residential facility and any documents relating to residents of the facility made or kept for this Act.
- (3) When directed by the Minister, the principal community visitor must arrange for a community visitor to inspect a residential facility at the times stated by the Minister.

## **58       Requests to be contacted by community visitors**

- (1) The manager of a residential facility must ensure a resident of the facility and the interested persons for the resident are given oral or written information about the role of the community visitors program under this Part, including the following:
  - (a) the resident's right to be visited by a community visitor;
  - (b) the right of the resident and the interested persons for the resident to contact a community visitor;
  - (c) how to contact a community visitor.
- (2) For subsection (1), the interested persons for the resident are the following:
  - (a) if the resident has a guardian – the guardian;
  - (aa) if the resident has a decision maker – the decision maker;
  - (b) if the resident has a primary carer of the resident other than the Agency – the primary carer;
  - (c) another person the manager considers should be aware of the resident's rights.
- (3) A resident of a residential facility may ask to be contacted by a community visitor.
- (4) The manager of a residential facility must send the request to the principal community visitor as soon as practicable and, in any event, not later than 24 hours after it is made.
- (5) The principal community visitor must ensure a community visitor contacts, or attempts to contact, the resident before the end of the next business day after the principal community visitor receives the request.
- (6) In this section:

**contact** includes contact by telephone or email.

## **59                Reports by community visitors**

- (1) A community visitor who visits a residential facility must give a report of his or her visit, including any findings and recommendations, to the principal community visitor.
- (2) The principal community visitor must give the manager of the residential facility a copy of the report.
- (3) The principal community visitor may report to the CEO if he or she reasonably believes the manager of a residential facility has not taken adequate or reasonable action to implement a recommendation made by a community visitor in a report under this section.
- (4) If the principal community visitor considers a matter mentioned in the report falls within the functions conferred by a law of the Territory, the Commonwealth, a State or another Territory on a person, tribunal or other entity, the principal community visitor may refer the matter to the person, tribunal or entity.

## **Subdivision 3    Community visitors panel**

### **60                Establishment**

The community visitors panel is established.

### **61                Appointment of members**

- (1) The Minister must appoint the following persons to be members of the community visitors panel:
  - (a) a lawyer;
  - (b) a medical practitioner;
  - (c) another person who represents the interest of people with a disability.
- (2) A person must not be appointed to be a member of the community visitors panel if the person is employed by, or has a direct interest in any contract with, the Agency.
- (3) The community visitors panel must, as far as practicable, include persons of both sexes and of diverse ethnic backgrounds (including Aboriginal and Torres Strait Islander backgrounds).
- (4) The Minister must appoint one member of the community visitors panel to be the chairperson of the panel.

- (5) A member of a community visitors panel holds office for 3 years and is eligible for reappointment.

## **62            Resignation and termination of appointment of members**

- (1) A member of the community visitor panel may resign office by written notice given to the Minister.
- (2) The Minister may, by written notice given to a member of the community visitor panel, terminate the member's appointment:
  - (a) on the ground of misbehaviour; or
  - (b) on the ground the member becomes physically or mentally incapable of satisfactorily performing the functions of office.
- (3) In addition, the appointment is terminated if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with creditors or makes an assignment of the member's remuneration for their benefit; or
  - (b) the member is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
  - (c) the member is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

## **63            Functions of community visitors panel**

- (1) The members of a community visitors panel must, as a group, visit each secure care facility at least once in each 6 months.
- (2) When visiting the secure care facility, the members of the community visitors panel must enquire into:
  - (a) the extent to which residents of the facility receive treatment and care in conditions that provide the least restrictive and least intrusive environment enabling the treatment and care to be effectively given; and

- (b) the adequacy of information provided by the manager of the facility about the complaints procedures and other rights under this Act; and
  - (c) the accessibility and effectiveness of internal complaints procedures of the facility; and
  - (d) any failure of persons employed at the facility to comply with this Act; and
  - (e) any other matter the panel consider appropriate having regard to the treatment and care principles; and
  - (f) any other matter referred to it by the Minister or principal community visitor.
- (3) The members of a community visitors panel may, when visiting a secure care facility:
  - (a) inspect any part of the facility; and
  - (b) visit a resident of the facility; and
  - (c) inquire into the admission, treatment and care of residents; and
  - (d) inspect records or other documents relating to residents; and
  - (e) inspect other records or registers made under this Act.

#### **64        Reports by community visitors panel**

- (1) The chairperson of the community visitors panel must give the principal community visitor a report of the panel's visit to a secure care facility as soon as practicable after the visit.
- (2) The report must be in writing and contain details of the following:
  - (a) the actions and inquiries undertaken by the panel;
  - (b) the results of attempts by the panel to resolve particular matters;
  - (c) those matters not resolved by the panel;
  - (d) those matters that require further attention by the panel;
  - (e) the results of inquiries from previous visits made by the panel;
  - (f) any recommendations of the panel arising out of the visit.

- (3) The principal community visitor must give a copy of the report to the manager of the secure care facility.
- (4) The Minister may require the principal community visitor to arrange for a community visitors panel to report to the Minister, through the principal community visitor, on a matter and at the times and in the way directed by the Minister.

## **Division 2            Miscellaneous matters**

### **65            Assistance to be provided**

- (1) The manager and each employee of a residential facility must give reasonable assistance and cooperation to the following persons in the exercise of their powers and performance of their functions under this Act:
  - (a) a community visitor;
  - (b) a member of the community visitors panel;
  - (c) a member of the review panel.
- (2) For subsection (1), reasonable assistance and cooperation to be given to a person includes answering questions and responding to enquiries.

### **66            Annual report**

- (1) Within 3 months after the end of each financial year, the principal community visitor must give the Minister a report on the activities of community visitors and community visitors panels in the year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

### **67            Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
  - (a) the CEO;
  - (b) a community visitor;
  - (c) a member of the community visitors panel;
  - (d) a member of the review panel.

- (2) In addition, a person is not civilly or criminally liable for an act done, or omitted to be done, by the person in good faith and exercising due diligence in the course of delivering treatment or other services to a resident of a residential facility for this Act.
- (3) Subsections (1) and (2) do not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (4) In this section:

**exercise**, of a power, includes the purported exercise of the power.

**performance**, of a function, includes the purported performance of the function.

## **68            Confidentiality of information**

- (1) A person commits an offence if the person:
  - (a) obtains information in the course of performing functions connected with the administration or enforcement of this Act; and
  - (b) engages in conduct that results in the disclosure of the information to someone else.

Maximum penalty:        40 penalty units.

- (2) Subsection (1) does not apply if the person engages in the conduct in exercising a power or performing a function under this Act.
- (3) In addition, subsection (1) does not apply if the information is disclosed:
  - (a) with the consent of the person to whom the information relates; or
  - (b) to a health service provider for providing a health service to a person; or
  - (c) to a health profession body; or
  - (d) to a court or tribunal for a legal proceeding arising out of the operation of this Act; or
  - (e) to a law enforcement agency for a criminal investigation; or
  - (f) to a police officer if:
    - (i) the person to whom the information relates is in a situation requiring immediate restrictive intervention; and



- (ii) the person:
  - (A) is likely to cause serious harm to himself or herself or to someone else; or
  - (B) represents a substantial danger to members of the public; and
- (iii) the information is relevant to the safe resolution of the situation.

(4) In this section:

***health profession body*** means:

- (a) a National Health Practitioner Board established under the Health Practitioner Regulation National Law; or
- (b) a State or Territory Board established under that Law by a Board mentioned in paragraph (a); or
- (c) the Australian Health Practitioner Regulation Agency established under that Law.

***health service provider***, see section 5 of the Health Practitioner Regulation National Law.

***law enforcement agency***, see section 4 of the *Information Act 2002*.

## **Part 7            Other matters of administration**

### **Division 1       Review panel**

#### **69            Establishment**

The review panel is established for this Act.

#### **70            Membership**

- (1) The review panel consists of the following persons appointed by the Minister:
  - (a) a lawyer;
  - (b) a person with a special interest or expertise in people with a disability, including a provider of services to persons having a complex cognitive impairment;

- (c) a person representing the interests of the community.
- (2) A person must not be appointed to be a member of the review panel if the person is:
  - (a) a community visitor; or
  - (b) a person employed by, or who has a direct interest in any contract with, the Agency.
- (3) The Minister must appoint one of the members of the review panel to be member the chairperson of the review panel.
- (4) A member of the review panel holds office for 3 years and is eligible for reappointment.

## **71            Resignation and termination**

- (1) A member of the review panel may resign by written notice given to the Minister.
- (2) The Minister may, by written notice given to a member of the review panel, terminate the member's appointment:
  - (a) on the ground of misbehaviour; or
  - (b) on the ground the member becomes physically or mentally incapable of satisfactorily performing the functions of office.
- (3) In addition, the appointment is terminated if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with creditors or makes an assignment of the member's remuneration for their benefit; or
  - (b) the member is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
  - (c) the member is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

## **Division 2            Other matters**

### **72            Secure care facilities**

The Minister may, by *Gazette* notice, declare premises that are operated by the Agency to provide services for the treatment and care of people with a disability to be a secure care facility.

### **72A          Requirement to notify or consult with decision maker**

- (1) If the CEO is required by a provision of this Act to notify or consult with a person's decision maker, it is sufficient compliance with that provision if the CEO:
  - (a) takes reasonable steps to ascertain whether the person has a decision maker; and
  - (b) takes reasonable steps to notify or consult with any decision maker whom the CEO is aware of after complying with paragraph (a).
- (2) If the manager of a residential facility is required by a provision of this Act to notify a resident's decision maker about a matter, it is sufficient compliance with the provision if the manager takes reasonable steps to notify each decision maker for the resident of whom the CEO or manager is aware.

### **73            Approved forms**

The CEO may approve forms for this Act.

### **74            Delegations**

- (1) The Minister may delegate any of the Minister's powers under this Act to the CEO or a public sector employee in the Agency.
- (2) The CEO may delegate any of the CEO's powers under this Act to a public sector employee in the Agency.

## **Part 8                      Miscellaneous matters**

### **75                      Acquisition on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

### **76                      Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may provide for any of the following:
  - (a) applying, adopting or incorporating (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time;
  - (b) an offence against a regulation to be an offence of strict or absolute liability but not with a penalty exceeding 100 penalty units.

## **Schedule 1      Objects**

section 3(3)

The objects to the furthering of which the Minister must have regard are:

- (a) to ensure that persons with disabilities receive the services necessary to enable them to achieve their maximum potential as members of the community;
- (b) to ensure that services provided to persons with disabilities:
  - (i) further the integration of persons with disabilities in the community and complement services available generally to persons in the community;
  - (ii) enable persons with disabilities to achieve positive outcomes such as increased independence, employment opportunities and integration in the community; and
  - (iii) are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;
- (c) to ensure that the provision of services takes into account the outcomes to be achieved by persons with disabilities; and
- (d) to encourage innovation in the provision of services for persons with disabilities.

## **Schedule 2 Principles**

### section 3(2)

The principles which are to be furthered with respect to persons with disabilities are that:

- (a) persons with disabilities are individuals who have the inherent right to respect for their human worth and dignity;
- (b) persons with disabilities, whatever the origin, nature, type and degree of disability, have the same basic human rights as other members of Australian society;
- (c) persons with disabilities have the same rights as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development;
- (d) persons with disabilities have the same right as other members of Australian society to services which will support their attaining a reasonable quality of life;
- (e) persons with disabilities have the same right as other members of Australian society to participate in decisions which affect their lives;
- (f) persons with disabilities receiving services have the same right as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities; and
- (g) persons with disabilities have the same right as other members of Australian society of the pursuit of a grievance in relation to services.

## **Schedule 3 Objectives**

### section 3(2)

The objectives for providers of services or researchers are that:

- (a) the services should have as their focus, the achievement of positive outcomes for people with disabilities, such as increased independence, employment opportunities and integration into the community;
- (b) the services should contribute to ensuring that the conditions of the every-day life of people with disabilities are the same as, or as close as possible to, norms and patterns which are valued in the general community;
- (c) the services should be provided as part of the local co-ordinated service systems and be integrated with services generally available to members of the community, wherever possible;
- (d) the services should be tailored to meet the individual needs and goals of the people with disabilities receiving those services;
- (e) the program or the services should be designed and administered to meet the needs of people with disabilities who experience a double disadvantage as a result of their gender, ethnic origin or Aboriginality;
- (f) the program or the services should be designed and administered to promote recognition of the competence of, and enhance the image of, people with disabilities;
- (g) the program or the services should be designed and administered to promote the participation of people with disabilities in the life of the local community through maximum physical and social integration in that community;
- (h) the program or the services should be designed and administered to ensure that no single organisation providing services exercises control over all or most aspects of the life of a person with disabilities;
- (j) the organisations or persons providing services to persons with disabilities, whether those services are provided specially to persons with disabilities or generally to members of the community, should be accountable to those persons with disabilities who use their services, advocates of those

persons, the Territory and the community generally for the provision of information from which the quality of their services can be judged;

- (k) the program or the services should be designed and administered to provide opportunities for people with disabilities to reach goals and enjoy lifestyles which are valued by the community generally and are appropriate to their chronological age;
- (m) the services should be designed and administered to ensure that persons with disabilities have access to advocacy support where necessary to ensure adequate participation in decision-making about the services they receive;
- (n) the program or the services should be designed and administered to ensure that appropriate avenues exist for people with disabilities to raise and have resolved any grievances about services;
- (p) the program or the services should be designed and administered to provide people with disabilities with, and encourage them to make use of, avenues for participating in the planning and operation of services which they receive and the Territory and organisations should provide opportunities for consultation in relation to the development of major policy and program changes;
- (q) the program or the services should be designed and administered to respect the rights of people with disabilities to privacy and confidentiality; and
- (r) the activities of the provider of services which relate to persons with disabilities should be conducted in accordance with the Principles set out in Schedule 2.



---

## ENDNOTES

### 1 KEY

Key to abbreviations

<b>amd</b> = amended	<b>od</b> = order
<b>app</b> = appendix	<b>om</b> = omitted
<b>bl</b> = by-law	<b>pt</b> = Part
<b>ch</b> = Chapter	<b>r</b> = regulation/rule
<b>cl</b> = clause	<b>rem</b> = remainder
<b>div</b> = Division	<b>renum</b> = renumbered
<b>exp</b> = expires/expired	<b>rep</b> = repealed
<b>f</b> = forms	<b>s</b> = section
<b>Gaz</b> = <i>Gazette</i>	<b>sch</b> = Schedule
<b>hdg</b> = heading	<b>sdiv</b> = Subdivision
<b>ins</b> = inserted	<b>SL</b> = Subordinate Legislation
<b>lt</b> = long title	<b>sub</b> = substituted
<b>nc</b> = not commenced	

### 2 LIST OF LEGISLATION

***Disability Services Act 1993 (Act No. 31, 1993)***

Assent date	9 July 1993
Commenced	9 July 1993

***Statute Law Revision Act 2003 (Act No. 12, 2003)***

Assent date	18 March 2003
Commenced	18 March 2003

***Statute Law Revision Act (No. 2) 2004 (Act No. 54, 2004)***

Assent date	15 September 2004
Commenced	27 October 2004 ( <i>Gaz</i> G43, 27 October 2004, p 3)

***Local Government (Consequential Amendments) Act 2008 (Act No. 28, 2008)***

Assent date	14 November 2008
Commenced	1 July 2008 (s 2)

***Disability Services Amendment Act 2012 (Act No. 11, 2012)***

Assent date	27 April 2012
Commenced	20 August 2012 ( <i>Gaz</i> G31, 1 August 2012, p 4)

***Advance Personal Planning (Consequential Amendments) Act 2013 (Act No. 36, 2013 )***

Assent date	19 December 2013
Commenced	pt 3: 5 February 2014 ( <i>Gaz</i> G5, 5 February 2014, p 2); rem: 17 March 2014 ( <i>Gaz</i> S14, 17 March 2014)

***Local Government Amendment Act 2014 (Act No. 19, 2014)***

Assent date	2 June 2014
Commenced	s 16: 1 July 2014; s 18: 1 December 2014; rem: 2 June 2014, (s 2)

***Statute Law Revision Act 2014 (Act No. 38, 2014)***

Assent date	13 November 2014
Commenced	13 November 2014

**Education Act 2015 (Act No. 28, 2015)**

Assent date	10 December 2015
Commenced	pt 6, divs 2 and 4 and pt 7: 1 April 2016; pt 3: 1 July 2016; rem: 1 January 2016 (s 2)

**Guardianship of Adults Act 2016 (Act No. 15, 2016)**

Assent date	7 June 2016
Commenced	28 July 2016 (Gaz S74, 27 July 2016, p 1)

**Statute Law Revision Act 2017 (Act No. 4, 2017)**

Assent date	10 March 2017
Commenced	12 April 2017 (Gaz G15, 12 April 2017, p 3)

**Statute Law Revision Act 2020 (Act No. 26, 2020)**

Assent date	19 November 2020
Commenced	20 November 2020

**3 GENERAL AMENDMENTS**

General amendments of a formal nature (which are not referred to in the table of amendments to this reprint) are made by the *Interpretation Legislation Amendment Act 2018* (Act No. 22, 2018) to: ss 1, 2, 6, 8, 9, 14, 27, 50 and 68.

**4 LIST OF AMENDMENTS**

lt	sub No. 11, 2012, s 4
pt 1 hdg	ins No. 11, 2012, s 8
s 2	amd No. 54, 2004, s 7; No. 28, 2008, s 3; No. 11, 2012, s 5; No. 36, 2013, s 65; No. 19, 2014, s 26; No. 28, 2015, s 195; No. 15, 2016, s 117
ss 2A – 2B	ins No. 11, 2012, s 6
pt 2 hdg	ins No. 11, 2012, s 8
ss 3 – 4	amd No. 11, 2012, s 8
pt 3 hdg	ins No. 11, 2012, s 7
pt 3	
div 1 hdg	ins No. 11, 2012, s 7
s 5	amd No. 12, 2003, s 18
	sub No. 11, 2012, s 7
ss 6 – 7	ins No. 11, 2012, s 7
pt 3	
div 2 hdg	ins No. 11, 2012, s 7
s 8	ins No. 11, 2012, s 7
s 9	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 66
s 10	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 67
ss 11 – 16	ins No. 11, 2012, s 7
s 17	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 68
s 18	ins No. 11, 2012, s 7
pt 3	
div 3 hdg	ins No. 11, 2012, s 7
ss 19 – 20	ins No. 11, 2012, s 7
pt 3	
div 4 hdg	ins No. 11, 2012, s 7
ss 21 – 25	ins No. 11, 2012, s 7

---

pt 3	
div 5 hdg	ins No. 11, 2012, s 7
s 26	ins No. 11, 2012, s 7
	amd No. 38, 2014, s 2
s 27	ins No. 11, 2012, s 7
	amd No. 38, 2014, s 2; No. 4, 2017, s 34
ss 28 – 29	ins No. 11, 2012, s 7
s 30	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 69
ss 31 – 32	ins No. 11, 2012, s 7
pt 4 hdg	ins No. 11, 2012, s 7
pt 4	
div 1 hdg	ins No. 11, 2012, s 7
ss 33 – 35	ins No. 11, 2012, s 7
pt 4	
div 2 hdg	ins No. 11, 2012, s 7
s 36	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 70
ss 37 – 38	ins No. 11, 2012, s 7
s 39	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 71
s 40	ins No. 11, 2012, s 7
pt 4	
div 3 hdg	ins No. 11, 2012, s 7
ss 41 – 42	ins No. 11, 2012, s 7
pt 4	
div 4 hdg	ins No. 11, 2012, s 7
ss 43 – 44	ins No. 11, 2012, s 7
pt 5 hdg	ins No. 11, 2012, s 7
s 45	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 72
s 46	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 73
ss 47 – 49	ins No. 11, 2012, s 7
pt 6 hdg	ins No. 11, 2012, s 7
pt 6	
div 1 hdg	ins No. 11, 2012, s 7
pt 6	
div 1	
sdiv 1 hdg	ins No. 11, 2012, s 7
ss 50 – 53	ins No. 11, 2012, s 7
pt 6	
div 1	
sdiv 2 hdg	ins No. 11, 2012, s 7
ss 54 – 57	ins No. 11, 2012, s 7
s 58	ins No. 11, 2012, s 7
	amd No. 36, 2013, s 74
s 59	ins No. 11, 2012, s 7
pt 6	
div 1	
sdiv 3 hdg	ins No. 11, 2012, s 7
ss 60 – 61	ins No. 11, 2012, s 7
s 62	ins No. 11, 2012, s 7
	amd No. 38, 2014, s 2
ss 63 – 64	ins No. 11, 2012, s 7
pt 6	
div 2 hdg	ins No. 11, 2012, s 7
ss 65 – 68	ins No. 11, 2012, s 7

## ENDNOTES

---

pt 7 hdg	ins No. 11, 2012, s 7
pt 7	
div 1 hdg	ins No. 11, 2012, s 7
s 69	ins No. 11, 2012, s 7
s 70	ins No. 11, 2012, s 7
	amd No. 26, 2020, s 3
s 71	ins No. 11, 2012, s 7
pt 7	
div 2 hdg	ins No. 11, 2012, s 7
s 72	ins No. 11, 2012, s 7
s 72A	ins No. 36, 2013, s 75
ss 73 – 74	ins No. 11, 2012, s 7
pt 8 hdg	ins No. 11, 2012, s 7
ss 75 – 76	ins No. 11, 2012, s 7
sch 1	amd No. 11, 2012, s 8