



TASMANIA

DISABILITY SERVICES ACT 1992

No. 8 of 1992

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**DISABILITY SERVICES ACT 1992**

No. 8 of 1992

AN ACT relating to the provision of services for persons with disabilities

[Royal Assent 26 May 1992]

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****Short title**

1—This Act may be cited as the *Disability Services Act 1992*.

Commencement

2—This Act commences on a day to be proclaimed.

Interpretation

3—In this Act, unless the contrary intention appears—

“disability” means a disability—

- (a) which is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments; and
- (b) which is permanent or likely to be permanent; and
- (c) which results in—
 - (i) a substantially reduced capacity of a 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;

“funding agreement” means an agreement referred to in section 6;

“grant” means a grant made under section 5;

“grantee” means—

- (a) a person receiving a grant; or
- (b) in the case of a grant in respect of which a funding agreement was entered into by a person on behalf of an unincorporated organization, the organization and that person severally;

“research and development activity” means—

- (a) research relating to the provision of services for persons with disabilities; or
- (b) the investigation of the need for services for persons with disabilities; or
- (c) the initiation of services for persons with disabilities; or
- (d) the planning of the provision of services for persons with disabilities; or
- (e) the development of proposals for the provision of services for persons with disabilities; or
- (f) the development or implementation of training programs for—
 - (i) persons engaged in the provision of services; or

- (ii) the families of, and other persons who provide care for or assistance to, persons with disabilities; or
 - (g) the investigation of outcomes achieved by persons with disabilities by the provision of services; or
 - (h) any other activity approved by the Minister for the purposes of this definition;
- “researcher” means a person or an organization conducting research and development activities;
- “Secretary” means Secretary of the Department;
- “service” includes the supplying of goods, whether or not accompanied by the provision of other services;
- “service provider” means a person or an organization providing services to persons with disabilities.

PART 2

FUNDING OF SERVICES FOR PERSONS WITH DISABILITIES

Provision of services

4—(1) The Secretary may provide assistance in respect of the provision of services for, or with respect to, persons with disabilities.

(2) In providing assistance, the Secretary may—

(a) provide services—

- (i) directly to any person with a disability who is in need of any service; or
- (ii) indirectly to any such person through service providers; and

(b) take the necessary action to encourage persons and organizations to provide services to persons with disabilities who are in need of them.

(3) Any services provided directly to any person under subsection (2) (a) must comply with—

- (a) the objectives set out in Schedule 1; and
- (b) the principles set out in Schedule 2; and
- (c) the standards set out in Schedule 3.

Grants to organizations

5—(1) Subject to subsection (2), the Minister on the recommendation of the Secretary may, out of money appropriated by Parliament for the purpose, make a grant of financial assistance to any person or organization to establish or maintain services for persons with a disability or to carry out any research and development activity.

- (2) The Secretary must not make a recommendation unless—
- (a) the prospective grantee has entered into an agreement under section 6; and
 - (b) satisfied that the services or research and development activity further or comply with—
 - (i) the objectives set out in Schedule 1; and
 - (ii) the principles set out in Schedule 2; and
 - (iii) the standards set out in Schedule 3.
- (3) A grant may be made by way of—
- (a) a lump sum; or
 - (b) periodic payments as determined by the Secretary.

Funding agreements

6—(1) Before a grant may be made under section 5, a prospective grantee must enter into a written agreement with the Secretary.

- (2) An agreement must specify—
- (a) the services to be provided or research and development activities to be carried out; and
 - (b) the terms and conditions with which the prospective grantee must comply while receiving financial assistance under the grant.
- (3) An agreement must include terms and conditions relating to—
- (a) the outcomes to be achieved by persons with disabilities who are to be provided with the services; and
 - (b) the rights of persons being provided with services; and
 - (c) the rights of persons who are the subject of research.

Review of services, &c.

7—(1) The Secretary must review the services provided or the research and development activities carried out by a grantee at least once in every 5 years.

(2) The review is to consider the extent to which—

- (a) a grantee is complying with the terms and conditions referred to in the agreement; and
- (b) the matters referred to in section 6 (3) are being achieved.

Failure to comply with agreement

8—(1) If a grantee fails to comply with a term or condition of a funding agreement, the Secretary may require the grantee to comply with any measures the Secretary considers appropriate to remedy that failure.

(2) If a grantee fails to comply with a requirement under subsection (1), the Secretary may recommend that the Minister—

- (a) terminates the funding agreement; or
- (b) with the consent of the grantee, appoints, for a period not exceeding 90 days, a person as administrator of the services to be provided or the research and development activity to be carried out; or
- (c) with the consent of the grantee, takes any other action to assist the grantee to comply with the terms and conditions of the funding agreement.

(3) A grantee whose funding agreement is terminated must return the balance of any grant outstanding at the date of the termination to the Secretary within 90 days of that termination.

PART 3**ETHICS COMMITTEE****Establishment of Ethics Committee**

9—(1) There is established an Ethics Committee consisting of—

- (a) a legal practitioner; and
- (b) a duly qualified medical practitioner; and
- (c) such other persons who, in the opinion of the Minister, have qualifications, expertise or experience in issues relating to disabilities.

(2) The members of the Ethics Committee are appointed by the Minister.

(3) The Minister is to appoint one of the members as chairperson of the Ethics Committee.

(4) The Ethics Committee may regulate its own procedures.

(5) Schedule 4 has effect with respect to members of the Ethics Committee.

Functions and powers of Ethics Committee

10—(1) The Ethics Committee has the following functions:—

- (a) to monitor programs and services relating to persons with disabilities to ensure that they are designed and administered so as to be as free as possible from aversive, restrictive and intrusive treatment practices;
- (b) to report, or give recommendations, to the Minister in respect of such programs and services generally or in relation to specific treatment practices;
- (c) such other functions as the Minister may determine.

(2) The Ethics Committee has power to do anything necessary or convenient to perform its functions.

PART 4**MISCELLANEOUS****Employees**

11—Such persons as are necessary for the administration of this Act may be appointed subject to and in accordance with the *Tasmanian State Service Act 1984*.

Delegation

12—(1) The Secretary may in writing—

- (a) delegate to any person any functions or powers other than this power of delegation; and
- (b) revoke wholly or partly a delegation.

(2) A delegation—

- (a) may be made either generally or as otherwise provided by the instrument of delegation; and
- (b) does not prevent the performance or exercise of a function or power by the Secretary.

(3) A function or power performed or exercised by a delegate has the same effect as if performed or exercised by the Secretary.

Immunity

13—An action does not lie against any person in respect of any act done in good faith and in the exercise or purported exercise of any power conferred, or in the performance or purported performance of any function imposed, by this Act.

Application of money

14—Any money received under this Act by way of prescribed fees or charges is to be applied to the provision of services for persons with disabilities.

Regulations

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

- (2) Regulations may prescribe—
 - (a) fees and charges for the purposes of this Act; and
 - (b) guidelines in relation to the provision of services to persons with disabilities.
- (3) Regulations made under this section may—
 - (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and
 - (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units and, in the case of a continuing offence, a further fine not exceeding 2 penalty units for each day during which the offence continues.

Administration of Act

16—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 Community Services; and
 - (b) the Department responsible to the Minister for Community Services in relation to the administration of this Act is the Department of Community Services.
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SCHEDULE 1Sections 4 (3) (a),
5 (2) (b) (i)**OBJECTIVES**

The objectives to be furthered in respect of persons with disabilities are as follows:—

- (a) to enable persons with disabilities to achieve their maximum potential as members of the community;
 - (b) to enable persons with disabilities to—
 - (i) further their integration into the community and complement services available generally to persons in the community; and
 - (ii) enable them to achieve a better quality of life including 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 quality of life achieved by persons with disabilities as the result of the services provided for them is taken into account in the granting of financial assistance for the provision of those services;
 - (d) to encourage innovation in the provision of services for persons with disabilities;
 - (e) to provide a system to administer funding in respect of persons with disabilities that is flexible and responsive to the needs and aspirations of those persons.
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SCHEDULE 2

Sections 4 (3) (b),
5 (2) (b) (ii)

PRINCIPLES

The principles to be furthered in respect of persons with disabilities are as follows:—

1. Persons with disabilities are individuals who have the inherent right to respect for their human worth and dignity.
 2. Persons with disabilities have the same human rights as other members of society and are entitled to be assisted to exercise these human rights.
 3. Persons with disabilities have the same rights as other members of society to realize their individual capacities for physical, social, emotional and intellectual development.
 4. Persons with disabilities and carers of persons with disabilities have the same right as other members of society to services which will support their attaining a reasonable quality of life.
 5. Persons with disabilities have the same right as other members of society to make and actively participate in, direct and implement the decisions which affect their lives.
 6. Persons with disabilities have the same right as other members of society to receive services in a manner which results in the least reasonable restriction of their rights and opportunities.
 7. Persons with disabilities have the same right of pursuit of any grievance in relation to services as have other members of society.
 8. Persons with disabilities who wish to pursue such a grievance have the right—
 - (a) to adequate support to enable them to pursue the grievance; and
 - (b) to pursue the grievance without fear of discontinuation of services or recrimination from any person who may be involved in, or be the subject of, the grievance.
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SCHEDULE 3

Sections 4 (3) (c),
5 (2) (b) (iii)

STANDARDS

The standards to be complied with in respect of the provision of services relating to persons with disabilities are as follows:—

1. Services are to be designed and administered so as to achieve positive outcomes for persons with disabilities, such as increased independence, education and employment opportunities and integration into the community.
2. Services are to be designed and administered so as to ensure that the conditions of every-day life of persons with disabilities are the same as, or as close as possible to, the conditions of every-day life of other members of the community.
3. Services are to be provided as part of local co-ordinated service systems and be integrated with services generally available to members of the community, wherever possible.
4. Services are to be tailored to meet the individual needs and goals of persons with disabilities.
5. Programs and services are to be designed and administered so as to meet the needs of persons with disabilities who experience additional disadvantage as a result of their sex, ethnic origin, Aboriginality or geographic location.
6. Programs and services are to be designed and administered so as to promote recognition of the competence of, and enhance the image of, persons with disabilities.
7. Programs and services are to be designed and administered so as to promote the participation of persons with disabilities in the life of the local community through maximum physical and social integration in that community.
8. Programs and services are to be designed and administered so as to ensure that no single organization providing services exercises control over all or most aspects of the life of a person with disabilities.

9. Programs and services are to be designed and administered so as to be as free as possible from aversive, restrictive and intrusive treatment practices.
10. Organizations providing services, whether those services are provided specifically to people with disabilities or generally to members of the community, are to be accountable to those persons with disabilities who use their services, the advocates of such people, the State and the community generally for the provision of information from which the quality of their services can be judged.
11. Programs and services are to be designed and administered so as to provide opportunities for persons with disabilities to reach goals and enjoy lifestyles which are valued by the community generally and are appropriate to their age.
12. Services are to be designed and administered so as 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.
13. Programs and services are to be designed and administered so as to ensure that appropriate avenues exist for persons with disabilities to raise and have resolved any grievances about services.
14. Services are to be designed and administered so as to provide persons with disabilities with, and encourage them to make use of, avenues for on-going participation in the planning and operation of services which they receive.
15. Programs and services are to be designed and administered so as to provide persons with disabilities with opportunities for consultation in relation to the development of major policy and program changes.
16. Programs and services are to be designed and administered so as to respect the rights of persons with disabilities to privacy and confidentiality.
17. Priority of access to services is to be on the assessed needs of each person based on—
 - (a) the person's wishes; and
 - (b) the level of disability and its impact on the person; and

- (c) the extent of support provided to the person from all sources; and
 - (d) the benefits to the person of preventive services over remedial measures.
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SCHEDULE 4

Section 9

PROVISIONS WITH RESPECT TO MEMBERS OF ETHICS COMMITTEE

Interpretation

1—In this Schedule, “**member**” means a member of the Ethics Committee.

Term of office

2—A member is to be appointed for such period, not exceeding 3 years, as is specified in the member’s instrument of appointment.

Provisions relating to members

3—If, by or under any Act, provision is made requiring the holder of an office to devote the whole of his or her time to the duties of that office, that provision does not operate to disqualify the person from—

- (a) holding that office and also the office of a member;
or
- (b) accepting any remuneration payable to a member.

Remuneration of members

4—A member is entitled to be paid such remuneration (including travelling and subsistence allowances) as the Minister may from time to time determine.

Vacation of office

5—(1) A member may resign from office by written notice addressed to the Minister.

- (2) A member vacates office if he or she—
 - (a) dies; or

(b) resigns; or

(c) is removed from office under subclause (3) or (4).

(3) The Minister may only remove a member from office if the member—

(a) is absent from 4 consecutive meetings of the Ethics Committee without the permission of the Minister; or

(b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's remuneration or estate for their benefit; or

(c) is convicted, in Tasmania or elsewhere, of a crime or an offence punishable by imprisonment for 12 months or longer; or

(d) is convicted of an offence against this Act.

(4) The Minister may remove a member from office if satisfied—

(a) that the member is unable to perform adequately or competently the duties of office; or

(b) that the member is no longer qualified to be a member of the Ethics Committee.

Filling of casual vacancies

6—If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

Validity of proceedings, &c.

7—(1) Any act or proceeding of the Ethics Committee or of any person acting under any direction of the Ethics Committee is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.

(2) All acts and proceedings of the Ethics Committee or of any person acting under any direction of the Ethics Committee are, notwithstanding the subsequent discovery of any defect in the appointment of any member or deputy or that any person was disqualified from acting as, or incapable of being, a member or deputy, as valid as if the member or deputy had been duly appointed and was qualified to act as, or capable of being, a member or deputy, and as if the Ethics Committee had been fully constituted.

Presumptions

8—In any proceedings by or against the Ethics Committee, unless evidence is given to the contrary, proof is not required of—

- (a) the constitution of the Ethics Committee; or
 - (b) any resolution of the Ethics Committee; or
 - (c) the appointment of any member.
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