



# **Disability Services Act 2006**

**Reprinted as in force on 1 December 2008**

**Reprint No. 2A**

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This page is specific to this reprint. See previous reprints for information about earlier changes made under the Reprints Act 1992. A table of reprints is included in the endnotes.

**Also see endnotes for information about—**

- **when provisions commenced**
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Queensland

# Disability Services Act 2006

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
<b>Division 1</b>	<b>Introduction</b>	
1	Short title . . . . .	15
2	Commencement . . . . .	15
3	Act binds all persons . . . . .	15
4	Contravention of this Act does not create civil cause of action . .	15
5	Act does not affect other rights or remedies . . . . .	16
<b>Division 2</b>	<b>Objects</b>	
6	Objects of Act . . . . .	16
7	How objects are mainly achieved . . . . .	16
8	Finite resources available . . . . .	17
<b>Division 3</b>	<b>Interpretation</b>	
9	Definitions . . . . .	17
10	Notes in text . . . . .	17
11	What is a disability . . . . .	17
12	What are disability services . . . . .	18
13	Meaning of service provider . . . . .	18
14	Meaning of funded service provider . . . . .	19
15	Meaning of non-government service provider . . . . .	19
16	Meaning of approved non-government service provider . . . . .	19
17	Meaning of funded non-government service provider . . . . .	19
<b>Part 2</b>	<b>Disability rights</b>	
<b>Division 1</b>	<b>Human rights principle</b>	
18	Persons encouraged to have regard to human rights principle . .	20
19	Principle that people with a disability have the same human rights as others . . . . .	20

---

<b>Division 2</b>	<b>Service delivery principles</b>	
20	Service delivery principles to be promoted by service providers . . . . .	21
21	Focus on the development of the individual . . . . .	21
22	Participation in planning and operation of services . . . . .	21
23	Focus on a lifestyle the same as other people and appropriate for age . . . . .	22
24	Coordination and integration of services with general services . . . . .	22
25	Services to be tailored to meet individual needs and goals . . . . .	22
26	People with a disability experiencing additional barriers . . . . .	22
27	Promotion of competency, positive image and self-esteem . . . . .	23
28	Inclusion in the community . . . . .	23
29	No single service provider to exercise control over life of person with disability . . . . .	23
30	Consideration for others involved with people with a disability . . . . .	23
31	Service providers to make information available . . . . .	24
32	Raising and resolving grievances . . . . .	24
33	Access to advocacy support . . . . .	24
<b>Part 3</b>	<b>Disability service standards</b>	
34	Minister may make disability service standards . . . . .	24
35	When service standard takes effect . . . . .	25
36	Notice and availability of service standards . . . . .	25
<b>Part 4</b>	<b>Process for certifying whether service providers meet service standards</b>	
37	Minister may approve process . . . . .	25
38	Minister may approve entity as suitable to accredit external certification body . . . . .	26
39	Minister must publish approvals given under pt 4. . . . .	26
40	Documents relating to process approved must be published. . . . .	26
<b>Part 5</b>	<b>Complaints about the delivery of disability services by funded service providers</b>	
41	Complaints by consumers . . . . .	26
42	Chief executive may refer matters to complaints agency . . . . .	27
43	Complaints agency to inform chief executive about actions taken for complaint . . . . .	27
<b>Part 6</b>	<b>Approved non-government service providers</b>	
44	Explanation. . . . .	28
45	No entitlement to funding . . . . .	28
46	Application for approval . . . . .	28
47	Approval remains in force unless cancelled . . . . .	29

---

48	Application for cancellation of approval . . . . .	29
49	Cancellation of approval without application . . . . .	30
50	Cancellation of approval if funded non-government service provider no longer exists . . . . .	31
<b>Part 7</b>	<b>Funding of non-government service providers</b>	
51	Purpose of giving funding . . . . .	31
52	When funding may be given . . . . .	31
53	Types of funding . . . . .	31
54	Recurrent funding for non-government service providers . . . . .	31
55	Who may receive approval for one-off funding . . . . .	32
56	No funding without agreement . . . . .	32
57	Insurance for service outlets . . . . .	33
58	What funding agreement is to contain . . . . .	33
<b>Part 8</b>	<b>Prescribed requirements for funded non-government service providers</b>	
59	Prescribed requirements . . . . .	34
60	Funded non-government service provider must comply with prescribed requirements. . . . .	35
<b>Part 9</b>	<b>Screening of persons engaged by the department</b>	
<b>Division 1</b>	<b>Preliminary</b>	
61	Main purpose of pt 9 . . . . .	36
62	Safety of people with a disability to be paramount consideration. . . . .	36
63	Persons engaged by the department . . . . .	36
64	This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986 . . . . .	37
65	Chief executive to advise of duties of disclosure etc. . . . .	37
<b>Division 2</b>	<b>Disclosure of criminal history</b>	
66	Persons seeking to be engaged by the department must disclose criminal history . . . . .	37
67	Persons engaged by the department must disclose changes in criminal history . . . . .	38
68	Requirements for disclosure. . . . .	38
69	False, misleading or incomplete disclosure or failure to disclose. . . . .	38
<b>Division 3</b>	<b>Chief executive may obtain information from other entities about criminal history and certain investigations</b>	
70	Chief executive may obtain report from commissioner of the police service . . . . .	39
71	Prosecuting authority to notify chief executive about committal, conviction etc. . . . .	40

---

<b>Division 4</b>	<b>Controls on use of information about criminal history and certain investigations</b>	
72	Use of information obtained under this part . . . . .	42
73	Person to be advised of information obtained . . . . .	43
74	Guidelines for dealing with information. . . . .	43
<b>Part 10</b>	<b>Screening of persons engaged by funded non-government service providers</b>	
<b>Division 1</b>	<b>Preliminary</b>	
75	Main purpose of pt 10 . . . . .	44
76	Safety of people with a disability to be paramount consideration. . . . .	44
77	This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986 . . . . .	44
<b>Division 2</b>	<b>Interpretation</b>	
78	What is engagement . . . . .	44
79	What is a serious offence . . . . .	46
80	What is a serious sexual or violent offence . . . . .	47
81	What is an excluding offence . . . . .	48
<b>Division 3</b>	<b>Risk management strategies</b>	
82	Risk management strategies about persons engaged by funded non-government service providers . . . . .	48
<b>Division 4</b>	<b>Issue of prescribed notices for funded non-government service providers</b>	
83	Application for notice . . . . .	49
84	Notice of change of engagement, or name and contact details in application under s 83 . . . . .	50
85	Decision on application . . . . .	50
86	Decision making under s 85 in relation to discretionary matters . . . . .	52
87	Actions of chief executive after making decision on application . . . . .	53
88	Chief executive to invite submissions from engaged person about particular information . . . . .	54
89	Currency of prescribed notice and positive notice card . . . . .	55
<b>Division 5</b>	<b>Obligations and offences relating to prescribed notices</b>	
<b>Subdivision 1</b>	<b>Engagement of persons by funded non-government service provider</b>	
90	When person without current positive notice may be engaged . . . . .	55
91	Prohibited engagement . . . . .	56

<b>Subdivision 2</b>	<b>Obligations if holder of negative notice or application for prescribed notice is withdrawn</b>	
92	Person holding negative notice, or who has withdrawn consent to screening, not to apply for, or start or continue in, engagement by funded non-government service provider . . . . .	57
<b>Subdivision 3</b>	<b>Changes in criminal history</b>	
93	Acquiring a criminal history . . . . .	57
94	Effect of conviction for serious offence or charge for excluding offence . . . . .	58
95	Change in criminal history of engaged person . . . . .	58
96	Change in criminal history of other persons . . . . .	59
<b>Subdivision 4</b>	<b>General</b>	
97	False or misleading disclosure . . . . .	59
98	False or misleading documents . . . . .	60
99	Return of positive notice and positive notice card to chief executive . . . . .	60
<b>Division 6</b>	<b>Cancellation and replacement of prescribed notices</b>	
100	Cancellation of negative notice and issuing of positive notice . . .	61
101	Chief executive may cancel a prescribed notice and substitute another prescribed notice . . . . .	62
102	Cancellation if conviction for excluding offence and imprisonment or disqualification order . . . . .	63
103	Cancellation if conviction for excluding offence but no imprisonment or disqualification order . . . . .	64
104	Effect of charge for excluding offence pending charge being dealt with . . . . .	65
105	Cancellation of suspension and issue of further prescribed notice . . . . .	66
106	Replacement of positive notice or positive notice card . . . . .	67
107	Change of details for prescribed notice or positive notice card . .	68
<b>Division 7</b>	<b>Miscellaneous</b>	
108	Person may apply for review of decision . . . . .	69
109	Police commissioner may decide that information about a person is investigative information . . . . .	70
110	Delegation by police commissioner of power under s 109 restricted . . . . .	71
111	Decision by police commissioner that information is investigative information . . . . .	71
112	Court to decide matters afresh . . . . .	72
113	Consequence of decision on appeal . . . . .	72

---

114	Chief executive may obtain information from police commissioner . . . . .	73
115	Notice of change in police information about a person . . . . .	75
116	Chief executive to give notice to funded non-government service provider about making screening decision about engaged person . . . . .	76
117	Withdrawal of engaged person's consent to screening . . . . .	77
118	Compliance with requirement to end, or not start, a person's engagement . . . . .	79
119	Guidelines for dealing with information. . . . .	79
120	Use of information obtained under this part about a person . . . .	80
121	Chief executive must give police commissioner a person's current address . . . . .	80
122	Disqualification order . . . . .	80
123	Register of persons engaged by funded non-government entities . . . . .	81
<b>Part 10A</b>	<b>Use of restrictive practices</b>	
<b>Division 1</b>	<b>Preliminary</b>	
123A	Purpose of pt 10A . . . . .	82
123B	Service providers to which pt 10A applies . . . . .	82
123C	Principles for performing functions etc. . . . .	82
123D	Explanation of operation of pt 10A . . . . .	82
123E	Definitions for pt 10A . . . . .	84
123F	Meaning of chemical restraint . . . . .	88
123G	Meaning of contain. . . . .	88
123H	Meaning of mechanical restraint . . . . .	88
123I	Requirement to keep and implement a policy . . . . .	89
<b>Division 2</b>	<b>Important concepts for using restrictive practices</b>	
123J	Assessment of an adult . . . . .	90
123K	Who is appropriately qualified to assess an adult . . . . .	91
123L	What is a positive behaviour support plan . . . . .	91
<b>Division 3</b>	<b>Containment and seclusion</b>	
<b>Subdivision 1</b>	<b>Requirements for containing or secluding an adult</b>	
123M	Containing or secluding an adult under containment or seclusion approval . . . . .	95
123N	Containing or secluding an adult for respite services or community access services . . . . .	96
123O	Containing or secluding an adult under short term approval . . . .	96

<b>Subdivision 2</b>	<b>Multidisciplinary assessment and development of positive behaviour support plan</b>	
123P	Application of sdiv 2 . . . . .	97
123Q	Chief executive to decide whether multidisciplinary assessment of adult will be conducted . . . . .	98
123R	Notice of decision not to conduct assessment . . . . .	99
123S	Development of positive behaviour support plan following assessment . . . . .	99
123T	Participation of psychiatrist in development of plan—adult subject to forensic order or involuntary treatment order. . . . .	101
<b>Subdivision 3</b>	<b>Changing a positive behaviour support plan</b>	
123U	Application of sdiv 3 . . . . .	101
123V	Who may change positive behaviour support plan. . . . .	101
123W	When chief executive must decide whether positive behaviour support plan should be changed . . . . .	101
123X	Requirements for chief executive’s decision about whether change should be made. . . . .	102
123Y	Action of chief executive after deciding whether change should be made . . . . .	102
<b>Subdivision 4</b>	<b>General requirements for containment or seclusion</b>	
123Z	Relevant service provider to ensure adult’s needs are met . . . . .	105
<b>Division 4</b>	<b>Use of restrictive practices other than containment or seclusion</b>	
<b>Subdivision 1</b>	<b>Requirements for using chemical, mechanical or physical restraint, or restricting access</b>	
123ZA	Using chemical, mechanical or physical restraint, or restricting access, with consent of guardian etc. . . . .	105
123ZB	Using chemical, mechanical or physical restraint, or restricting access, for respite services or community access services. . . . .	107
123ZC	Using chemical restraint (fixed dose) for respite services . . . . .	107
123ZD	Using chemical, mechanical or physical restraint, or restricting access, under short term approval . . . . .	108
<b>Subdivision 2</b>	<b>Assessment of adult and positive behaviour support plan</b>	
123ZE	Application of sdiv 2 . . . . .	109
123ZF	Requirements for development of positive behaviour support plan—assessment and consultation. . . . .	109
123ZG	Changing a positive behaviour support plan . . . . .	111
123ZH	Requirement for relevant service provider to consider whether plan should be changed . . . . .	111
<b>Subdivision 3</b>	<b>Requirements if adult subject to forensic order or involuntary treatment order</b>	
123ZI	Requirement for relevant service provider to notify guardian. . . . .	112

123ZJ	Requirement for relevant service provider to notify director of mental health . . . . .	113
<b>Subdivision 4</b>	<b>Short term approvals given by chief executive</b>	
123ZK	Short term approval for use of restrictive practices other than containment or seclusion . . . . .	114
123ZL	Period for which short term approval has effect . . . . .	116
123ZM	Conditions of short term approval . . . . .	116
123ZN	Chief executive's decision about approving short term plan. . . . .	117
<b>Division 5</b>	<b>Use of restrictive practices for respite services or community access services</b>	
123ZO	Purpose of div 5 . . . . .	118
123ZP	Requirement to develop respite/community access plan . . . . .	118
123ZQ	Obtaining information about the adult . . . . .	119
123ZR	Consultation . . . . .	120
123ZS	Risk assessment . . . . .	120
<b>Division 6</b>	<b>Policy about use of restrictive practices</b>	
123ZT	Application of div 6 . . . . .	121
123ZU	Policy must be consistent with department's policy . . . . .	121
123ZV	Requirements for content of department's policy . . . . .	121
123ZW	Requirements for publication of department's policy etc. . . . .	124
<b>Division 7</b>	<b>Review of particular chief executive decisions</b>	
123ZX	Application of div 7 . . . . .	124
123ZY	Definitions for div 7 . . . . .	124
123ZZ	Application for review . . . . .	125
123ZZA	Review of relevant decision . . . . .	125
<b>Division 8</b>	<b>Miscellaneous provisions</b>	
<b>Subdivision 1</b>	<b>Immunity for use of restrictive practices</b>	
123ZZB	Immunity from liability—relevant service provider . . . . .	126
123ZZC	Immunity from liability—individual acting for relevant service provider . . . . .	126
<b>Subdivision 2</b>	<b>Requirements for relevant service providers</b>	
123ZZD	Requirement to give information to guardian or informal decision maker . . . . .	128
123ZZE	Requirement to keep records and other documents . . . . .	129
123ZZF	Notification requirements about approvals given for use of restrictive practices. . . . .	130
<b>Subdivision 3</b>	<b>Confidentiality provisions</b>	
123ZZG	Definitions for sdiv 3. . . . .	132

---

123ZZH	Relevant service provider may request confidential information from health professional or chief executive (health) . . . . .	133
123ZZI	Relevant service providers must maintain confidentiality . . . . .	133
<b>Part 11</b>	<b>Monitoring and enforcement</b>	
<b>Division 1</b>	<b>Authorised officers</b>	
124	Powers generally . . . . .	135
125	Appointment . . . . .	135
126	Qualifications for appointment . . . . .	135
127	Appointment conditions and limit on powers . . . . .	135
128	Issue of identity card . . . . .	136
129	Production or display of identity card . . . . .	136
130	When authorised officer ceases to hold office . . . . .	137
131	Resignation . . . . .	137
132	Return of identity card . . . . .	137
<b>Division 2</b>	<b>Powers of authorised officers</b>	
<b>Subdivision 1</b>	<b>Entry of places</b>	
133	Power to enter places . . . . .	138
134	Power to enter place where funded non-government service provider provides disability services . . . . .	138
<b>Subdivision 2</b>	<b>Procedure for entry</b>	
135	Entry with consent . . . . .	139
136	Application for warrant . . . . .	140
137	Issue of warrant . . . . .	140
138	Application by electronic communication and duplicate warrant . . . . .	142
139	Defect in relation to a warrant . . . . .	144
140	Warrants—procedure before entry . . . . .	144
141	Entering a home and preserving privacy . . . . .	144
<b>Subdivision 3</b>	<b>Powers after entry</b>	
142	General powers after entering a place . . . . .	145
143	Failure to help authorised officer . . . . .	146
144	Failure to answer questions . . . . .	146
<b>Subdivision 4</b>	<b>Power to seize evidence</b>	
145	Seizing evidence after entry without consent or warrant . . . . .	147
146	Seizing evidence after entry with consent or warrant . . . . .	147
<b>Subdivision 5</b>	<b>Dealing with seized things</b>	
147	Definition for sdiv 5 . . . . .	148
148	Securing a seized thing . . . . .	148

---

149	Tampering with a seized thing . . . . .	148
150	Powers to support seizure . . . . .	148
151	Authorised officer may require thing's return . . . . .	149
152	Receipts for seized thing . . . . .	149
153	Forfeiture of seized thing . . . . .	150
154	Return of seized thing . . . . .	151
155	Access to seized thing . . . . .	151
<b>Subdivision 6</b>	<b>Power to obtain information</b>	
156	Power to require name and address . . . . .	151
157	Failure to give name or address . . . . .	152
158	Power to require production of documents . . . . .	152
159	Failure to produce document . . . . .	153
160	Failure to certify copy of document . . . . .	153
<b>Subdivision 7</b>	<b>Other compliance matters</b>	
161	Compliance notice . . . . .	153
<b>Division 3</b>	<b>General enforcement matters</b>	
162	Notice of damage . . . . .	155
163	Compensation . . . . .	156
164	False or misleading statements . . . . .	156
165	False or misleading documents . . . . .	157
166	Obstructing an authorised officer . . . . .	157
167	Impersonation of an authorised officer . . . . .	157
168	Chief executive may advise people with a disability and others of action taken in relation to funded non-government service providers . . . . .	157
<b>Part 12</b>	<b>Appointment of interim manager</b>	
<b>Division 1</b>	<b>Appointment</b>	
169	Appointment . . . . .	158
170	Basis for appointment . . . . .	159
171	Suitability of proposed appointee . . . . .	160
172	Terms of appointment . . . . .	160
173	Notice to funded non-government service provider about appointment . . . . .	161
174	Informing consumers about appointment . . . . .	161
175	Initial period of appointment . . . . .	162
176	Variation of appointment . . . . .	162
177	Ending of appointment . . . . .	163

<b>Division 2</b>	<b>Function and powers</b>	
178	Application of div 2 . . . . .	163
179	Interim manager's function . . . . .	163
180	Interim manager's powers . . . . .	164
181	Direction by chief executive . . . . .	164
182	Other powers . . . . .	164
183	Limitation on powers under instrument of appointment . . . . .	164
184	Production of instrument of appointment for inspection . . . . .	164
185	Obstruction . . . . .	165
<b>Division 3</b>	<b>Other matters</b>	
186	Access to information or documents . . . . .	165
187	Confidentiality . . . . .	165
188	Remuneration . . . . .	166
189	Funded non-government service provider liable for remuneration and other costs . . . . .	166
190	Accounts and reports . . . . .	167
191	Compensation . . . . .	167
<b>Part 13</b>	<b>Legal proceedings</b>	
<b>Division 1</b>	<b>Application</b>	
192	Application of pt 13 . . . . .	167
<b>Division 2</b>	<b>Evidence</b>	
193	Appointments and authority . . . . .	168
194	Signatures . . . . .	168
195	Evidentiary provisions . . . . .	168
196	Positive notice card is evidence of holding positive notice . . . . .	169
<b>Division 3</b>	<b>Proceedings</b>	
197	Indictable and summary offences . . . . .	169
198	Proceedings for indictable offences . . . . .	169
199	Limitation on who may summarily hear indictable offence proceedings . . . . .	170
200	Proceeding for offences . . . . .	170
201	When proceeding may start . . . . .	170
202	Allegations of false or misleading information or document . . . . .	171
203	Forfeiture on conviction . . . . .	171
204	Dealing with forfeited thing . . . . .	171
205	Responsibility for acts or omissions of representative . . . . .	172
206	Executive officers must ensure corporation complies with Act . . . . .	172

<b>Part 14</b>	<b>Reviews and appeals</b>	
<b>Division 1</b>	<b>Reviewable decisions</b>	
207	Reviewable decisions . . . . .	173
208	Chief executive must give notice after making reviewable decision . . . . .	174
<b>Division 2</b>	<b>Review of decision</b>	
209	Application for review . . . . .	174
210	Stay of operation of original decision . . . . .	175
211	Review decision . . . . .	175
<b>Division 3</b>	<b>Appeal against decision</b>	
212	Appeal against review decision . . . . .	176
213	Appeal is by way of rehearing . . . . .	177
<b>Part 15</b>	<b>Miscellaneous</b>	
<b>Division 1</b>	<b>Records</b>	
214	Funded non-government service provider must keep records . . .	177
<b>Division 1A</b>	<b>Locking of gates, doors and windows</b>	
214A	Application of div 1A. . . . .	177
214B	Definitions for div 1A. . . . .	178
214C	Immunity from liability—relevant service provider . . . . .	178
214D	Immunity from liability—individual acting for relevant service provider . . . . .	179
214E	Department’s policy about locking of gates, doors and windows .	179
<b>Division 2</b>	<b>Other matters</b>	
215	Disability service plans for departments. . . . .	180
216	Establishment of Ministerial advisory committees . . . . .	181
217	Membership of advisory committee . . . . .	182
218	Dissolution . . . . .	182
219	Other matters . . . . .	182
220	Person with a disability must advise chief executive about compensation . . . . .	182
221	Confidentiality of information about criminal history and related information . . . . .	183
222	Confidentiality of other information. . . . .	184
223	Power to require information or documents . . . . .	186
224	Protection from liability for giving information. . . . .	186
225	Chief executive to advise on-disclosure . . . . .	187
226	Chief executive may enter into arrangement about giving and receiving information with police commissioner . . . . .	187

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227	Delegation by Minister . . . . .	188
228	Delegation by chief executive . . . . .	188
229	Protecting officials from liability . . . . .	189
230	Approval of forms . . . . .	189
231	Service of documents. . . . .	189
232	Regulation-making power. . . . .	190
233	Review of Act . . . . .	190
233A	Review of Guardianship and Administration Act 2000, ch 5B . . .	190
<b>Part 16</b>	<b>Repeal and transitional provisions</b>	
<b>Division 1</b>	<b>Repeal</b>	
234	Repeal of Disability Services Act 1992. . . . .	190
<b>Division 2</b>	<b>Transitional provisions for Act No. 12 of 2006</b>	
235	Definitions for div 2. . . . .	191
236	Screening of persons engaged by funded non-government service providers at the commencement . . . . .	191
237	Certain non-government service providers taken to be approved under part 6 and to be funded non-government service providers . . . . .	192
238	When grants of financial assistance under the repealed Act continue . . . . .	192
239	Queensland disability service standards to continue in force. . . .	193
240	Disability sector quality system to continue in force . . . . .	193
<b>Division 3</b>	<b>Transitional provisions for Disability Services and Other Legislation Amendment Act 2008</b>	
<b>Subdivision 1</b>	<b>Preliminary</b>	
241	Interpretation . . . . .	194
<b>Subdivision 2</b>	<b>Immunity from liability for use of restrictive practices before commencement</b>	
242	Immunity of previous service provider . . . . .	195
243	Immunity of individual acting for previous service provider . . . . .	196
<b>Subdivision 3</b>	<b>Immunity from liability for use of restrictive practices during transitional period</b>	
244	Immunity of relevant service provider. . . . .	196
245	Requirement to assess adult if no authorised guardian . . . . .	197
246	Immunity for individual acting for relevant service provider . . . . .	198
247	Relationship of subdivision with pt 10A . . . . .	198
248	Circumstances in which subdivision stops applying. . . . .	198

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<b>Subdivision 4</b>	<b>Other provisions</b>	
249	Requirements for department's policy about use of restrictive practices during transitional period. . . . .	199
250	Short term approvals not to be given during transitional period. .	200
<b>Division 3</b>	<b>Transitional provision for Criminal Code and Other Acts Amendment Act 2008</b>	
241	References in schs 3 and 5 to Criminal Code offence . . . . .	201
<b>Schedule 2</b>	<b>Reviewable decisions</b> . . . . .	202
<b>Schedule 3</b>	<b>Current serious offences</b> . . . . .	203
<b>Schedule 4</b>	<b>Repealed or expired serious offences</b> . . . . .	210
<b>Schedule 5</b>	<b>Current serious sexual or violent offences</b> . . . . .	212
<b>Schedule 6</b>	<b>Repealed or expired serious sexual or violent offences</b> . . . .	213
<b>Schedule 7</b>	<b>Dictionary</b> . . . . .	214
<b>Endnotes</b>		
1	Index to endnotes. . . . .	221
2	Date to which amendments incorporated. . . . .	221
3	Key . . . . .	222
4	Table of reprints . . . . .	222
5	Tables in earlier reprints . . . . .	222
6	List of legislation. . . . .	223
7	List of annotations . . . . .	223
8	List of forms notified or published in the gazette . . . . .	226

# **Disability Services Act 2006**

[as amended by all amendments that commenced on or before 1 December 2008]

## **An Act to protect and promote the rights of people with a disability, and for other purposes**

### **Part 1 Preliminary**

#### **Division 1 Introduction**

##### **1 Short title**

This Act may be cited as the *Disability Services Act 2006*.

##### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

##### **3 Act binds all persons**

- (1) This Act binds all persons, including the State and, so far as the legislative power of the Parliament permits, the Commonwealth and the other States.
- (2) Nothing in this Act makes the Commonwealth or a State liable to be prosecuted for an offence.

##### **4 Contravention of this Act does not create civil cause of action**

No provision of this Act creates a civil cause of action based on a contravention of the provision.

**5 Act does not affect other rights or remedies**

- (1) This Act, other than sections 123ZZB, 123ZZC, 214C, 214D, 242 to 244 and 246, does not affect or limit a civil right or remedy that exists apart from this Act, whether at common law or otherwise.
- (2) Without limiting subsection (1), compliance with this Act does not necessarily show that a civil obligation that exists apart from this Act has been satisfied or has not been breached.

**Division 2 Objects****6 Objects of Act**

The objects of this Act are—

- (a) to acknowledge the rights of people with a disability including by promoting their inclusion in the life of the community generally; and
- (b) to ensure that disability services funded by the department are safe, accountable and respond to the needs of people with a disability; and
- (c) to safeguard the rights of adults with an intellectual or cognitive disability including by regulating the use of restrictive practices by funded service providers in relation to those adults—
  - (i) only where it is necessary to protect a person from harm; and
  - (ii) with the aim of reducing or eliminating the need for use of the restrictive practices.

**7 How objects are mainly achieved**

The objects are mainly achieved by—

- (a) stating the human rights principle and supporting rights applying to people with a disability; and
- (b) stating the principles for service delivery to people with a disability to be promoted by service providers; and

- (c) regulating disability services funded by the department to ensure the quality, safety, responsiveness and accountability of the services; and
- (d) helping to protect people with a disability using services funded by the department from abuse, neglect and exploitation; and
- (e) stating requirements for when funded service providers may use restrictive practices in relation to adults with an intellectual or cognitive disability.

## **8 Finite resources available**

In administering this Act, regard must be had to the following—

- (a) the State has finite resources available to provide services to people with a disability;
- (b) there is a need to distribute the resources fairly having regard to the State's priorities.

## **Division 3 Interpretation**

### **9 Definitions**

The dictionary in schedule 7 defines particular words used in this Act.

### **10 Notes in text**

A note in the text of this Act is part of the Act.

### **11 What is a *disability***

- (1) A *disability* is a person's condition that—
  - (a) is attributable to—
    - (i) an intellectual, psychiatric, cognitive, neurological, sensory or physical impairment; or

- (ii) a combination of impairments mentioned in subparagraph (i); and
- (b) results in—
  - (i) a substantial reduction of the person's capacity for communication, social interaction, learning, mobility or self care or management; and
  - (ii) the person needing support.
- (2) For subsection (1), the impairment may result from an acquired brain injury.
- (3) The disability must be permanent or likely to be permanent.
- (4) The disability may be, but need not be, of a chronic episodic nature.

## 12 What are *disability services*

*Disability services*, for people with a disability, means 1 or more of the following—

- (a) accommodation support services;
- (b) respite services;
- (c) community support services;
- (d) community access;
- (e) advocacy or information services or services that provide alternative forms of communication;
- (f) research, training or development services.

## 13 Meaning of *service provider*

- (1) A *service provider* is a person providing services for people with a disability.
- (2) The service provider may provide the services—
  - (a) specifically to people with a disability; or
  - (b) generally to people in the community, including people with a disability.

- (3) The service provider may provide the services with the intention of making a profit.

**14 Meaning of *funded service provider***

- (1) A *funded service provider* is a service provider that receives funds from the department to provide disability services.
- (2) A funded service provider includes the department to the extent it provides disability services.
- (3) However, a funded service provider does not include another department receiving funds from the department.

**15 Meaning of *non-government service provider***

- (1) A *non-government service provider* is a service provider, other than the State, providing disability services.
- (2) A non-government service provider may be a local government.

**16 Meaning of *approved non-government service provider***

An *approved non-government service provider* is a non-government service provider that is a corporation approved by the chief executive under part 6 as eligible to receive recurrent funding under part 7.

**17 Meaning of *funded non-government service provider***

- (1) A *funded non-government service provider* is a non-government service provider receiving recurrent or one-off funds from the department to provide disability services.
- (2) It is immaterial whether other funds or resources are also used by the non-government service provider to provide disability services.

## **Part 2                      Disability rights**

### **Division 1                  Human rights principle**

#### **18            Persons encouraged to have regard to human rights principle**

Persons are encouraged to have regard to the human rights principle in matters relating to people with a disability.

#### **19            Principle that people with a disability have the same human rights as others**

- (1) People with a disability have the same human rights as other members of society and should be empowered to exercise their rights.
- (2) People with a disability have the right to—
  - (a) respect for their human worth and dignity as individuals; and
  - (b) realise their individual capacities for physical, social, emotional, cultural, religious and intellectual development; and
  - (c) live lives free from abuse, neglect or exploitation; and
  - (d) participate actively in decisions affecting their lives, including the development of disability policies, programs and services.
- (3) When using disability services people with a disability have the right to—
  - (a) services supporting their achieving quality of life in a way that supports their family unit and their full participation in society; and
  - (b) receive services in a way that results in the minimum restriction of their rights and opportunities; and
  - (c) receive services in a way that respects the confidentiality of their information; and

- (d) receive services in a safe, accessible built environment appropriate to their needs; and
  - (e) pursue grievances about services without fear of the services being discontinued or recrimination from service providers; and
  - (f) support to enable them to pursue grievances about services; and
  - (g) support, and access to information, to enable them to participate in decisions affecting their lives.
- (4) People with a disability have the right to receive services, and information necessary to support rights, in ways that are appropriate having regard to their disabilities and cultural backgrounds.
- (5) Subsections (2), (3) and (4) do not limit subsection (1).

## **Division 2                    Service delivery principles**

### **20            Service delivery principles to be promoted by service providers**

- (1) This division sets out the principles that service providers are encouraged to apply and promote in the development and implementation of services for people with a disability.
- (2) For subsection (1), the application and promotion of the principles is encouraged to the extent they reasonably apply to a service provider.

### **21            Focus on the development of the individual**

Services should be designed and implemented so that their focus is on developing the individual and on enhancing the individual's opportunity to establish a quality life.

### **22            Participation in planning and operation of services**

- (1) Services should be designed and implemented so that people with a disability are encouraged, and able, to participate

continually in the planning and operation of the services they receive.

- (2) Services provided to people with a disability should provide opportunities for consultation in relation to the development of major policy changes.

**23 Focus on a lifestyle the same as other people and appropriate for age**

Services should be designed and implemented to ensure that the conditions of everyday life of people with a disability are—

- (a) the same as, or as close as possible to, the conditions of everyday life valued by the general community; and
- (b) appropriate to their chronological age.

**24 Coordination and integration of services with general services**

Services should be designed and implemented as part of local coordinated service systems and integrated with services generally available to members of the community.

**25 Services to be tailored to meet individual needs and goals**

- (1) Services should be tailored to meet the individual needs and goals of people with a disability.
- (2) To be responsive to the needs and goals of people with a disability, innovation and flexibility are encouraged when designing services.

**26 People with a disability experiencing additional barriers**

Services should be designed and implemented to meet the needs of people with a disability who may experience additional barriers—

- (a) because they are Aborigines or Torres Strait Islanders;  
or

- (b) because of their age, gender or culturally or linguistically diverse backgrounds; or
- (c) because of their rural or remote location.

**27 Promotion of competency, positive image and self-esteem**

Services should be designed and implemented to—

- (a) promote recognition of the competence of people with a disability; and
- (b) promote a positive image of people with a disability; and
- (c) enhance the self-esteem of people with a disability.

**28 Inclusion in the community**

Services should be designed and implemented to promote the inclusion of people with a disability in the life of the community.

**29 No single service provider to exercise control over life of person with disability**

Services should be designed and implemented to ensure that no single service provider exercises control over all or most aspects of the life of a person with a disability.

**30 Consideration for others involved with people with a disability**

Services should be designed and implemented to—

- (a) have sufficient regard to the needs of families, carers and advocates of people with a disability; and
- (b) recognise the demands on the families of people with a disability; and
- (c) take into account the implications for, and demands on, the families of people with a disability.

**31 Service providers to make information available**

- (1) Service providers should make available information that allows the quality of their services to be judged.
- (2) The information should be available to the people using the services, their families, carers and advocates, people giving financial assistance for the services and the community generally.

**32 Raising and resolving grievances**

Services should be designed and implemented to ensure that appropriate ways exist for people with a disability and their advocates to raise grievances about services and have them resolved.

**33 Access to advocacy support**

Services should be designed and implemented to ensure people with a disability have access to necessary independent advocacy support so they can participate adequately in decision making about the services they receive.

**Part 3 Disability service standards****34 Minister may make disability service standards**

- (1) The Minister may make disability service standards (the *service standards*) for improving the quality of disability services provided by funded service providers.
- (2) The service standards must detail the way in which disability services are to be provided by funded service providers.
- (3) The service standards must include indicators to measure whether funded service providers have met the standards.
- (4) A standard is a statutory instrument within the meaning of the *Statutory Instruments Act 1992*.

**35 When service standard takes effect**

- (1) The Minister must notify the making of a service standard.
- (2) A service standard takes effect—
  - (a) on the day the Minister’s notice is notified or published in the gazette; or
  - (b) if a later day is stated in the Minister’s notice or the service standard—on that day.
- (3) A notice mentioned in subsection (2) is subordinate legislation.

**36 Notice and availability of service standards**

- (1) The chief executive must keep a copy of the service standards, as in force from time to time, available for inspection free of charge by funded service providers, people with a disability and members of the public at—
  - (a) the department’s head office and regional offices; and
  - (b) other places the chief executive considers appropriate.
- (2) Also, the chief executive must publish the service standards, as in force from time to time, on the department’s website on the internet.

**Part 4 Process for certifying whether service providers meet service standards****37 Minister may approve process**

- (1) The Minister may approve a process under which a service provider may be certified by an external certification body as meeting the service standards.
- (2) In deciding whether to approve the process the Minister must have regard to whether the process will allow an external

certification body to decide whether a service provider has met the service standards.

**38 Minister may approve entity as suitable to accredit external certification body**

- (1) The Minister may approve an entity as being suitable to accredit another entity (an *external certification body*) for the purpose of the other entity deciding whether, having regard to the process approved under section 37, a service provider meets the service standards.
- (2) The Minister may approve the entity only if the Minister is satisfied the entity is qualified for approval because the entity has the necessary expertise or experience to decide whether another entity is suitable to be an external certification body.

**39 Minister must publish approvals given under pt 4**

The Minister must publish details of approvals in force under this part on the department's internet site.

**40 Documents relating to process approved must be published**

The Minister must publish documents relating to the process approved on the department's internet site.

## **Part 5 Complaints about the delivery of disability services by funded service providers**

**41 Complaints by consumers**

- (1) The following may make a complaint to the chief executive about the delivery of disability services by a funded service provider—
  - (a) a consumer;

- (b) a family member, carer or advocate of a consumer;
  - (c) another person on behalf of a consumer.
- (2) The chief executive must maintain a system that deals effectively with complaints received.

*Note—*

A complaint received by the chief executive may result in action under part 11. Part 11 sets out powers for monitoring and enforcing compliance with this Act.

#### **42 Chief executive may refer matters to complaints agency**

The chief executive may—

- (a) liaise with a complaints agency about matters relating to people with a disability; and
- (b) refer matters relating to people with a disability to a complaints agency; and
- (c) enter into an arrangement with a complaints agency aimed at avoiding inappropriate duplication of activities.

#### **43 Complaints agency to inform chief executive about actions taken for complaint**

- (1) This section applies if—
- (a) the chief executive refers a matter about a person with a disability to a complaints agency; and
  - (b) the chief executive, by notice to the agency, asks for information about the way in which the agency is dealing or has dealt with the matter.
- (2) The agency must inform the chief executive about any action taken for dealing with the matter or, if it is resolved, the resolution of the matter.
- (3) Subsection (2) applies despite any express provision in an Act establishing a complaints agency that makes it an offence for anyone involved with administration of the Act to disclose the information.

## **Part 6**

# **Approved non-government service providers**

### **44 Explanation**

This part establishes a system under which the chief executive may approve non-government service providers that are corporations as being eligible to receive recurrent funding for disability services.

### **45 No entitlement to funding**

The Minister is not required to approve funding for an approved non-government service provider.

### **46 Application for approval**

- (1) A corporation may apply to the chief executive for approval as an approved non-government service provider.
- (2) The application must be in the approved form.
- (3) Within 60 days after receiving the application, the chief executive must decide the application and give the corporation notice of the decision.
- (4) The chief executive may approve a corporation as an approved non-government service provider only if the corporation—
  - (a) is either—
    - (i) certified under the disability sector quality system; or
    - (ii) has started the process for certification under the disability sector quality system or agreed to start the process; and
  - (b) provides or intends to provide 1 or more disability services.
- (5) However, subsection (4)(a) does not apply to a corporation if the only consumer of disability services provided by the corporation is a director of the corporation.

- (6) In deciding the application, the chief executive may have regard to the following—
- (a) the corporation's business plan;
  - (b) the corporation's record of financial management;
  - (c) how the corporation conducts, or proposes to conduct, its operations;
  - (d) whether the corporation has appropriate corporate governance;
  - (e) how the corporation intends to promote the human rights principle;
  - (f) how the corporation intends to receive and deal with complaints about the delivery of disability services by the corporation;
  - (g) whether the corporation is receiving funding from another department;
  - (h) another matter prescribed under a regulation.

#### **47 Approval remains in force unless cancelled**

The approval of a corporation remains in force unless it is cancelled under this part.

#### **48 Application for cancellation of approval**

- (1) A corporation may apply to the chief executive for cancellation of its approval as an approved non-government service provider.
- (2) The application must be in the approved form.
- (3) Within 45 days after receiving the application, the chief executive must decide the application and give the service provider notice of the decision.
- (4) The chief executive must, and may only, grant the application if—
  - (a) there is no funding agreement in force with the provider;  
and

- (b) the chief executive is satisfied it is unlikely the chief executive will want to take action to enforce compliance by the service provider with this Act.
- (5) The chief executive may require the service provider to take stated action before the chief executive grants the application including, for example, returning unspent funds to the chief executive.

#### **49 Cancellation of approval without application**

- (1) The chief executive may cancel the approval of an approved non-government service provider, even though no application has been made under section 48, if—
  - (a) there is no funding agreement in force with the service provider; and
  - (b) the chief executive is satisfied it is unlikely either of the following will happen—
    - (i) action will be taken to enforce compliance by the service provider with this Act;
    - (ii) funding, or further funding, will be given to the service provider under this Act.
- (2) Before cancelling the approval, the chief executive must give the service provider a notice—
  - (a) stating that the chief executive proposes to cancel the approval; and
  - (b) stating the reasons for the proposed cancellation; and
  - (c) inviting the service provider to give a written response within a stated time of at least 30 days.
- (3) The chief executive must consider any written response received from the service provider within the stated time before deciding whether to cancel the approval.
- (4) Immediately after deciding whether or not to cancel the approval, the chief executive must give the service provider notice of the decision.

- (5) The chief executive may cancel the approval of an approved non-government service provider, without complying with subsections (2) to (4), if the service provider agrees.

**50 Cancellation of approval if funded non-government service provider no longer exists**

The chief executive must cancel the approval of an approved non-government service provider if it no longer exists.

**Part 7 Funding of non-government service providers**

**51 Purpose of giving funding**

The purpose of giving funding to non-government service providers is to enable them to provide disability services in ways that best achieve the objects of this Act.

**52 When funding may be given**

To achieve the objects of this Act the Minister may approve funding for disability services to a non-government service provider.

**53 Types of funding**

The Minister may approve funding for disability services as recurrent funding or one-off funding.

**54 Recurrent funding for non-government service providers**

- (1) The Minister may approve recurrent funding for a non-government service provider only if the service provider is an approved non-government service provider.
- (2) However, the Minister may approve recurrent funding for a non-government service provider that is not an approved non-government service provider if the Minister is satisfied—

- (a) there is an urgent need for the funding; and
  - (b) it is not practicable for the non-government service provider to become an approved non-government service provider before funding is approved.
- (3) If recurrent funding is approved for a non-government service provider under subsection (2)—
- (a) the service provider must take action to become an approved non-government service provider as soon as reasonably practicable after receiving the funding; and
  - (b) the funding must stop 6 months after it is first given if the non-government service provider has not become an approved non-government service provider within that time.
- (4) Recurrent funding may be given to a non-government service provider only if the service provider is a corporation.

## **55 Who may receive approval for one-off funding**

- (1) The Minister may approve one-off funding for a non-government service provider.
- (2) One-off funding may be given to a non-government service provider only if the service provider is a corporation.

## **56 No funding without agreement**

- (1) If the Minister approves funding for a non-government service provider, the chief executive must enter into a written agreement with the service provider (a *funding agreement*) for giving the funding.
- (2) The chief executive may give the funding to the non-government service provider only if the service provider has entered into a written agreement with the chief executive for the funding.
- (3) However, the chief executive may give funding before a written agreement is entered into if the Minister is satisfied—
  - (a) there is an urgent need for the funding; and

- (b) it is not practicable to enter into an agreement before funding is given.
- (4) If subsection (3) applies, the service provider must—
  - (a) before receiving the funding, agree in writing to enter into a funding agreement after receiving the funding, within a stated time decided by the chief executive; and
  - (b) enter into the funding agreement within that time.
- (5) Recurrent funding must stop if the service provider has not entered into a funding agreement within the stated time.

## **57 Insurance for service outlets**

A funded non-government service provider must ensure there is in force, for all service outlets of the service provider for which funding is provided by the department, the insurance cover prescribed under a regulation.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—50 penalty units; or
- (b) for a funded non-government service provider—250 penalty units.

## **58 What funding agreement is to contain**

- (1) A funding agreement must state each of the following the chief executive considers relevant to the funding—
  - (a) the amount of funding;
  - (b) whether the funding is recurrent or one-off funding;
  - (c) the period of the agreement and, for recurrent funding, how often funding is to be given;
  - (d) the type of disability services to be provided;
  - (e) the place at which the disability services are to be provided;
  - (f) the service delivery outcomes to be achieved;

- (g) the performance measures to be used in measuring the service delivery outcomes;
  - (h) the policies and procedures to guide service delivery;
  - (i) the way the service provider is to report to the chief executive;
  - (j) that recurrent funding to a non-government service provider will stop if the service provider's certification under the disability sector quality system is withdrawn;
  - (k) the circumstances in which the service provider is in breach of the agreement;
  - (l) the action that may be taken by the chief executive for a breach of the agreement, including the suspension or stopping of funding;
  - (m) the way the service provider must receive and deal with complaints about the delivery of disability services by the service provider.
- (2) The agreement may also include other matters the chief executive considers necessary to give effect to or enforce the agreement.

## **Part 8                      Prescribed requirements for funded non-government service providers**

### **59      Prescribed requirements**

- (1) A regulation may prescribe requirements relating to the provision of disability services to people with a disability by funded non-government service providers.
- (2) Without limiting subsection (1), a regulation may prescribe a requirement about—
  - (a) how a funded non-government service provider conducts its operations while providing a disability service, including operations relating to—

- (i) financial management and accountability; and
  - (ii) corporate governance; and
  - (iii) staff recruitment, employment and training; and
  - (iv) compliance with the disability sector quality system.
- (b) how a funded non-government service provider provides disability services to people with a disability including—
  - (i) addressing individual needs; and
  - (ii) protecting the people from abuse, neglect or exploitation; and
  - (iii) deciding eligibility and priority in relation to the delivery of the services; and
  - (iv) giving information about the services; and
  - (v) providing opportunities for decision making; and
  - (vi) resolving complaints and disputes; and
  - (vii) respecting privacy and confidentiality.
- (3) A requirement may include provision about—
  - (a) preparing, maintaining, publishing or implementing a policy or procedure; or
  - (b) reporting a change of address of a funded non-government service provider to the chief executive; or
  - (c) collecting and reporting data and other information about the provision of disability services to consumers; or
  - (d) reporting other matters to the chief executive.

**60 Funded non-government service provider must comply with prescribed requirements**

A funded non-government service provider must not contravene a prescribed requirement.

*Notes—*

- 1 Under section 161, a funded non-government service provider may be given a compliance notice requiring the provider to remedy a contravention of a prescribed requirement.
- 2 The extent of a funded non-government service provider's compliance with, or contravention of, a prescribed requirement is likely to be a relevant matter for the Minister to consider when deciding the further funding, if any, to give to the provider under this Act.
- 3 Noncompliance with certain types of prescribed requirements may lead to the appointment of an interim manager for a funded non-government service provider. See section 169.

## **Part 9                      Screening of persons engaged by the department**

### **Division 1                Preliminary**

#### **61            Main purpose of pt 9**

The main purpose of this part is to enable the chief executive to obtain the criminal history of, and related information about, persons engaged or to be engaged by the department.

#### **62            Safety of people with a disability to be paramount consideration**

The paramount consideration in making a decision under this part is the right of people with a disability to live lives free from abuse, neglect or exploitation.

#### **63            Persons engaged by the department**

Each of the following persons is *engaged by the department*—

- (a) a public service employee in the department;

- (b) a person contracted by the chief executive to provide disability services for the department;
- (c) members of committees established under section 216;
- (d) a person working in the department as a volunteer or as a student on work experience.

**64 This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986**

This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

**65 Chief executive to advise of duties of disclosure etc.**

Before a person is engaged by the department, the chief executive must tell the person—

- (a) of the person's duties of disclosure under this part; and
- (b) that the chief executive may obtain the information about the person mentioned in section 70; and
- (c) that guidelines for dealing with information obtained by the chief executive under this part are available from the chief executive on request.

## **Division 2 Disclosure of criminal history**

**66 Persons seeking to be engaged by the department must disclose criminal history**

A person seeking to be engaged by the department must disclose to the chief executive, before being engaged—

- (a) whether or not the person has a criminal history; and
- (b) if the person has a criminal history, the person's complete criminal history.

**67 Persons engaged by the department must disclose changes in criminal history**

- (1) If there is a change in the criminal history of a person engaged by the department, the person must immediately disclose to the chief executive the details of the change.
- (2) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

**68 Requirements for disclosure**

- (1) To comply with section 66 or 67, a person must give the chief executive a disclosure in the approved form.
- (2) The information disclosed by a person about a conviction or charge of an offence in the person's criminal history must include—
  - (a) the existence of the conviction or charge; and
  - (b) when the offence was committed or alleged to have been committed; and
  - (c) the details of the offence or alleged offence; and
  - (d) for a conviction—whether or not a conviction was recorded and the sentence imposed on the person.

**69 False, misleading or incomplete disclosure or failure to disclose**

- (1) A person must not—
  - (a) give the chief executive a disclosure for the purposes of this division that is false or misleading in a material particular; or
  - (b) fail to give the chief executive a disclosure as required under section 67, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) Subsection (1)(a) does not apply to a person who, when giving the disclosure—

- (a) informs the chief executive, to the best of the person's ability, how it is false or misleading; and
  - (b) gives the correct information to the chief executive if the person has, or can reasonably obtain, the correct information.
- (3) In a proceeding for an offence against subsection (1)(a), it is enough for a charge to state that the disclosure was, without specifying which, 'false or misleading'.

### **Division 3                      Chief executive may obtain information from other entities about criminal history and certain investigations**

#### **70            Chief executive may obtain report from commissioner of the police service**

- (1) This section applies to a person who—
  - (a) is engaged by the department; or
  - (b) seeks to be engaged by the department and has given the chief executive a disclosure for the purposes of division 2.
- (2) The chief executive may ask the commissioner of the police service to give the chief executive the following information about the person—
  - (a) a written report about the person's criminal history;
  - (b) a brief description of the circumstances of a conviction or charge mentioned in the person's criminal history;
  - (c) information about an investigation relating to the possible commission of a serious offence by the person.
- (3) Subject to subsections (4) and (5), the commissioner of the police service must comply with the request.
- (4) The duty imposed on the commissioner of the police service to comply with the request—

- (a) applies only to information in the commissioner's possession or to which the commissioner has access; and
  - (b) in relation to information mentioned in subsection (2)(c)—applies only to information recorded on a central electronic database kept by the commissioner.
- (5) The commissioner of the police service must not give information about an investigation relating to the possible commission of a serious offence by the person if—
- (a) the commissioner is reasonably satisfied that giving the information—
    - (i) may prejudice or otherwise hinder an investigation to which the information may be relevant; or
    - (ii) may lead to the identification of an informant; or
    - (iii) may affect the safety of a police officer, complainant or other person; or
  - (b) for an investigation that has been completed—the investigation has not led, and the commissioner is reasonably satisfied it is unlikely to lead, to a reasonable suspicion that the person committed a serious offence; or
  - (c) for an investigation that has not been completed—the commissioner is reasonably satisfied the investigation is unlikely to lead to a reasonable suspicion that the person committed a serious offence.

**71 Prosecuting authority to notify chief executive about committal, conviction etc.**

- (1) This section applies if a person is charged with an indictable offence and the commissioner of the police service or the director of public prosecutions (a *prosecuting authority*) is aware that the person is engaged by the department.
- (2) If the person is committed by a court for trial for an indictable offence, the prosecuting authority must, within 7 days after the committal, give notice to the chief executive of the following—

*Disability Services Act 2006*

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- (a) the person's name;
  - (b) the court;
  - (c) particulars of the offence;
  - (d) the date of the committal;
  - (e) the court to which the person was committed.
- (3) If the person is convicted before a court of an indictable offence, the prosecuting authority must, within 7 days after the conviction, give notice to the chief executive of the following—
- (a) the person's name;
  - (b) the court;
  - (c) particulars of the offence;
  - (d) the date of the conviction;
  - (e) the sentence imposed by the court.
- (4) If the person is convicted of an indictable offence, and has appealed the conviction, and the appeal is finally decided or has otherwise ended, the prosecuting authority must, within 7 days after the decision or the day the appeal otherwise ends, give notice to the chief executive of the following—
- (a) the person's name;
  - (b) particulars of the offence;
  - (c) the date of the decision or other ending of the appeal;
  - (d) if the appeal was decided—
    - (i) the court in which it was decided; and
    - (ii) particulars of the decision.
- (5) If the prosecution process ends without the person being convicted of an indictable offence, the prosecuting authority must, within 7 days after the end, give notice to the chief executive about the following—
- (a) the person's name;
  - (b) if relevant, the court in which the prosecution process ended;



**73 Person to be advised of information obtained**

- (1) This section applies to information obtained by the chief executive about a person, under this part, from the commissioner of the police service.
- (2) Before using the information to assess the person's suitability to be, or continue to be, engaged by the department, the chief executive must—
  - (a) disclose the information to the person; and
  - (b) allow the person a reasonable opportunity to make representations to the chief executive about the information.

**74 Guidelines for dealing with information**

- (1) The chief executive must make guidelines, consistent with this Act, for dealing with information obtained by the chief executive under this part.
- (2) The purpose of the guidelines is to ensure—
  - (a) natural justice is afforded to the persons about whom the information is obtained; and
  - (b) only relevant information is used in assessing the persons' suitability to be, or continue to be, engaged by the department; and
  - (c) decisions about the suitability of persons, based on the information, are made consistently.
- (3) The chief executive must give a copy of the guidelines, on request, to a person seeking to be engaged, or engaged, by the department.

## **Part 10                      Screening of persons engaged by funded non-government service providers**

### **Division 1                      Preliminary**

#### **75                      Main purpose of pt 10**

The main purpose of this part is to enable the chief executive to obtain the criminal history of, and related information about, persons engaged or to be engaged by funded non-government service providers at service outlets.

#### **76                      Safety of people with a disability to be paramount consideration**

The paramount consideration in making a decision under this part is the right of people with a disability to live lives free from abuse, neglect or exploitation.

#### **77                      This part applies despite the Criminal Law (Rehabilitation of Offenders) Act 1986**

This part applies to a person despite anything in the *Criminal Law (Rehabilitation of Offenders) Act 1986*.

### **Division 2                      Interpretation**

#### **78                      What is engagement**

- (1) For this part, a funded non-government service provider is engaging a person at a service outlet of the service provider if the provider has an agreement with the person for the person to carry out work at the outlet.
- (2) Without limiting subsection (1), each of the following persons at a service outlet of a funded non-government service provider is engaged by the service provider—

*Disability Services Act 2006*

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- (a) an employee of the service provider employed under a contract of service;
  - (b) a volunteer of the service provider;
  - (c) a person employed by the service provider under a contract for services;
  - (d) a member of a board, management committee or other governing body of the service provider;
  - (e) an executive officer of the service provider;
  - (f) a student on work experience with the service provider.
- (3) It is immaterial for this section—
- (a) whether the agreement is written or unwritten; and
  - (b) the time for which the person is engaged to carry out the work; and
  - (c) whether the agreement provides for the person to carry out work on 1 occasion or on an ongoing basis, whether regularly or irregularly.
- (4) Also, for this section, the nature of the work is immaterial.
- (5) However, the following are not engaged by a service provider—
- (a) a consumer of the service provider even if the consumer carries out work at a service outlet of the service provider;
  - (b) a tradesperson who—
    - (i) from time to time performs work at a service outlet of the service provider; and
    - (ii) is not an employee of the service provider employed under a contract of service.
- (6) Also, a volunteer is not engaged by a funded non-government service provider if—
- (a) the volunteer is a relative of a person with a disability who is receiving disability services at a service outlet of the service provider; and
  - (b) the volunteer is at the service outlet only to help with the care of the person.

(7) In this section—

***cousin*** means a first cousin.

***parent***, of a person, includes—

- (a) in any case—the spouse of a parent of the person; and
- (b) for an Aboriginal person—a person who, under Aboriginal tradition, is regarded as a parent of the person; and
- (c) for a Torres Strait Islander—a person who, under Island custom, is regarded as a parent of the person.

***relative***, of a person with a disability—

- (a) means the person's parent, grandparent, great grandparent, brother, sister, uncle, aunt, niece, nephew or cousin; and
- (b) for an Aboriginal person—includes a person who, under Aboriginal tradition, is regarded as a relative mentioned in paragraph (a); and
- (c) for a Torres Strait Islander—includes a person who, under Island custom, is regarded as a relative mentioned in paragraph (a); and
- (d) for a person with a parent who is not a natural parent—includes anyone who would be a relative mentioned in paragraph (a) if the parent were a natural parent.

*Example for paragraph (d)—*

The daughter of a person's step-parent is a relative of the person.

## **79 What is a *serious offence***

(1) A ***serious offence*** is—

- (a) for each Act mentioned in schedule 3, an offence against a provision mentioned in column 1 of that schedule for that Act, subject to any limitation relating to the provision mentioned opposite in column 3; or
- (b) an offence of counselling or procuring the commission of, or attempting or conspiring to commit, an offence mentioned in paragraph (a); or

- (c) an offence against a provision mentioned in schedule 4 that is an expired or repealed provision of the Criminal Code, subject to any qualification relating to the provision mentioned opposite in column 3; or
- (d) an offence against a law at any time of another jurisdiction that substantially corresponds to an offence mentioned in paragraph (a), (b) or (c); or
- (e) an offence that is a class 1 or 2 offence as defined under the *Child Protection (Offender Reporting) Act 2004* that is not otherwise a serious offence under this subsection.

*Note—*

Column 2 in schedules 3 and 4 is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

- (2) For this section, it is immaterial if a provision mentioned in schedule 3 or 4, column 1, for an Act has been amended from time to time or that the provision was previously numbered with a different number.

## **80 What is a *serious sexual or violent offence***

- (1) A *serious sexual or violent offence* is—
  - (a) an offence against a provision of the Criminal Code mentioned in schedule 5, column 1; or
  - (b) an offence against a provision mentioned in schedule 6, column 1, that is an expired or repealed provision of the Criminal Code, subject to any qualification relating to the provision mentioned opposite in column 3.

*Note—*

Column 2 in schedules 5 and 6 is included for information purposes only and states a section heading for the provision mentioned opposite in column 1.

- (2) For this section, it is immaterial if a provision mentioned in schedule 5 or 6, column 1 has been amended from time to time or that the provision was previously numbered with a different number.

**81 What is an *excluding offence***

An *excluding offence* is—

- (a) a serious sexual or violent offence; or
- (b) an offence against a provision mentioned in schedule 3, in relation to the entry for the *Classification of Computer Games and Images Act 1995*, *Classification of Films Act 1991* or *Classification of Publications Act 1991*; or
- (c) an offence against the Criminal Code, section 228A, 228B, 228C or 228D.

**Division 3 Risk management strategies****82 Risk management strategies about persons engaged by funded non-government service providers**

- (1) This section applies to a funded non-government service provider who engages a person at a service outlet of the service provider.
- (2) For each year, the service provider must develop and implement a written strategy (a *risk management strategy*) for persons engaged by the service provider.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—20 penalty units; or
  - (b) for a funded non-government service provider—100 penalty units.
- (3) The purpose of a risk management strategy is to implement engagement practices and procedures in relation to people with a disability to—
    - (a) promote their wellbeing; and
    - (b) protect them from abuse, neglect or exploitation.

- (4) Without limiting subsection (3), a regulation may prescribe the matters that are to be included in a risk management strategy.

## **Division 4                    Issue of prescribed notices for funded non-government service providers**

### **83            Application for notice**

- (1) A funded non-government service provider who proposes to start engaging, or continue engaging, another person (the *engaged person*) at a service outlet of the service provider, may apply to the chief executive for a prescribed notice about the engaged person.
- (2) The application must be—
- (a) in the approved form; and
  - (b) signed by, or on behalf of, the service provider; and
  - (c) signed by the engaged person.
- (3) The approved form must include provision for—
- (a) identifying information about the engaged person; and
  - (b) certification by the service provider that the service provider has sighted documents, relating to proof of the engaged person's identity, prescribed under a regulation; and
  - (c) the engaged person's consent to screening under this part.
- (4) On receiving the application, the chief executive may ask the service provider or engaged person for further information that the chief executive reasonably considers necessary to establish the engaged person's identity.
- (5) If an engaged person is given a written request under subsection (4), the engaged person is taken to have withdrawn the application if—

- (a) the request includes a warning that, if the request is not complied with within a stated time, the engaged person's application will be taken to have been withdrawn; and
- (b) the engaged person does not comply with the request within the stated time; and
- (c) the chief executive gives the engaged person a notice stating that the engaged person is taken to have withdrawn the application.

#### **84 Notice of change of engagement, or name and contact details in application under s 83**

- (1) This section applies to a person if an application under section 83 is made for a prescribed notice about an engaged person and any of the following (each a *relevant change*) happens before the chief executive has issued a prescribed notice to the engaged person in relation to the application—
  - (a) the engaged person's name or contact details, as stated in the application, change;
  - (b) the engaged person's engagement, as stated in the application, ends.
- (2) The engaged person must give notice, in the approved form, to the chief executive of the relevant change within 14 days after the relevant change happens.  
Maximum penalty—10 penalty units.
- (3) The approved form mentioned in subsection (2) must provide for an engaged person to give notice withdrawing the person's consent to screening under this part.

#### **85 Decision on application**

- (1) This section applies if an application under section 83 is made for a prescribed notice about an engaged person.
- (2) The chief executive must decide the application by issuing either of the following unless the application is withdrawn—
  - (a) a notice declaring the application for the prescribed notice is approved (a *positive notice*);

*Disability Services Act 2006*

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- (b) a notice declaring the application for the prescribed notice is refused (a *negative notice*).
  - (3) Subject to subsection (4), the chief executive must issue a positive notice to the engaged person if the chief executive—
    - (a) is not aware of any police information about the engaged person; or
    - (b) is not aware of a conviction of the engaged person for any offence but is aware that there is 1 or more of the following about the engaged person—
      - (i) investigative information;
      - (ii) a charge for an offence other than an excluding offence;
      - (iii) a charge for an excluding offence that has been dealt with other than by a conviction; or
- Note for subparagraph (iii)—*
- See sections 104 and 117(5) in relation to charges for excluding offences that have not been dealt with.
- (c) is aware of a conviction of the engaged person for an offence other than a serious offence.
  - (4) The chief executive is required to issue a positive notice under subsection (3)(b) or (c) unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of people with a disability for the chief executive to issue a positive notice.
  - (5) If the chief executive is satisfied under subsection (4) that it is an exceptional case, the chief executive must issue a negative notice.
  - (6) Subject to subsection (7), the chief executive must issue a negative notice to the engaged person if the chief executive is aware of a conviction of the engaged person for—
    - (a) an excluding offence for which the court that convicted the engaged person imposed an imprisonment order for the offence or made a disqualification order under section 122; or
    - (b) a serious offence, other than an excluding offence dealt with in a way mentioned in paragraph (a).

- (7) The chief executive is required to issue a negative notice under subsection (6)(b) unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of people with a disability for the chief executive to issue a positive notice.
- (8) If the chief executive is satisfied under subsection (7) that it is an exceptional case, the chief executive must issue a positive notice.

## **86 Decision making under s 85 in relation to discretionary matters**

- (1) This section applies if the chief executive is deciding whether or not there is an exceptional case as mentioned in section 85(4) or (7).
- (2) If the chief executive is aware that an engaged person has been convicted of, or charged with, an offence, the chief executive must have regard to the following—
  - (a) in relation to the commission, or alleged commission, of an offence by the person—
    - (i) whether it is a conviction or a charge; and
    - (ii) whether the offence is a serious offence and, if it is, whether it is an excluding offence; and
    - (iii) when the offence was committed or is alleged to have been committed; and
    - (iv) the nature of the offence and its relevance to engagement that involves people with a disability; and
    - (v) in the case of a conviction—the penalty imposed by the court and if it decided not to impose an imprisonment order for the offence, or decided not to make a disqualification order under section 122, the court’s reasons for its decision;
  - (b) anything else relating to the commission, or alleged commission, of the offence that the chief executive reasonably considers to be relevant to the assessment of the engaged person.

- (3) If the chief executive is aware of investigative information about a person, the chief executive must have regard to the following—
  - (a) when the acts or omissions constituting the alleged offence to which the investigative information relates were committed;
  - (b) anything else relating to the commission of the acts or omissions that the chief executive reasonably considers relevant to the assessment of the engaged person.

**87      Actions of chief executive after making decision on application**

- (1) After making a decision about an application under section 83, the chief executive must issue a prescribed notice to the engaged person.
- (2) If the prescribed notice is a negative notice, the prescribed notice must be accompanied by a notice stating the following—
  - (a) the reasons for the chief executive's decision on the application;
  - (b) if the reasons do not include investigative information, a statement that the engaged person may apply to the tribunal, within 28 days after the engaged person is given the notice, to have reviewed only a decision of the chief executive about whether there is an exceptional case as mentioned in section 85(4) or (7);
  - (c) if the reasons include investigative information, a statement that, within 28 days after the engaged person is given the notice, the engaged person—
    - (i) may appeal as mentioned in section 111(2) to a Magistrates Court about only the investigative information; or
    - (ii) may decide not to appeal under section 111(2) but apply to the tribunal to have reviewed only a decision of the chief executive about whether there is an exceptional case as mentioned in section 85(4) or (7);

- (d) how the person may apply for the review to the tribunal or appeal to the Magistrates Court.
- (3) The notice must also include a copy of section 108.
- (4) After the chief executive issues the prescribed notice to the engaged person under this section, the chief executive must give notice to the funded non-government service provider stating whether the engaged person was given a positive notice or negative notice.
- (5) Within 14 days after a prescribed notice is issued under this section to an engaged person who previously held another prescribed notice, the engaged person must give the chief executive—
  - (a) the previously held prescribed notice; and
  - (b) if the previously held prescribed notice was a positive notice—the positive notice card previously held by the engaged person.

Maximum penalty for subsection (5)—10 penalty units.

## **88 Chief executive to invite submissions from engaged person about particular information**

- (1) This section applies if, for an application under section 83, the chief executive must decide whether or not there is an exceptional case as mentioned in section 85(4) or (7).
- (2) If the chief executive proposes to decide the application by issuing a negative notice, the chief executive must give the engaged person a notice—
  - (a) stating the police information about the engaged person that the chief executive is aware of; and
  - (b) inviting the engaged person to give the chief executive, within a stated time, a written submission about why the chief executive should not issue a negative notice.
- (3) The stated time must be reasonable and, in any case, at least 7 days after the chief executive gives the notice to the engaged person.

- (4) Before deciding the application, the chief executive must consider any submission received from the engaged person within the stated time.

## **89 Currency of prescribed notice and positive notice card**

- (1) A negative notice remains current until it is cancelled under division 6.
- (2) A positive notice remains current for 2 years after it is issued, unless it is earlier cancelled under division 6.
- (3) A positive notice card relating to a positive notice remains current for the same period as the positive notice.

## **Division 5 Obligations and offences relating to prescribed notices**

### **Subdivision 1 Engagement of persons by funded non-government service provider**

#### **90 When person without current positive notice may be engaged**

- (1) This section applies if—
- (a) a person is engaged or to be engaged by a funded non-government service provider at a service outlet of the service provider; and
- (b) the person does not have a current positive notice.
- (2) The service provider must not engage or continue to engage the person at a service outlet of the service provider unless the service provider has applied for a prescribed notice, or further prescribed notice, about the person.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—50 penalty units;  
or

- (b) for a funded non-government service provider—250 penalty units.

## **91 Prohibited engagement**

- (1) This section applies if a person (the *engaged person*) does not have a current positive notice.
- (2) A funded non-government service provider must not engage, or continue to engage, the engaged person at a service outlet of the service provider if the service provider—
  - (a) has applied for a prescribed notice about the engaged person and has been notified by the chief executive, other than as provided under paragraph (b), that the engaged person has withdrawn the engaged person's consent to screening under this part; or
  - (b) has been given a notice of deemed withdrawal relating to the engaged person under section 117(4); or
  - (c) is aware that a negative notice has been issued to the engaged person and is current.

### Maximum penalty—

- (a) for paragraph (a)—
  - (i) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—40 penalty units; or
  - (ii) for a funded non-government service provider—200 penalty units; or
- (b) for paragraphs (b) and (c)—
  - (i) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—100 penalty units; or
  - (ii) for a funded non-government service provider—500 penalty units.

## **Subdivision 2      Obligations if holder of negative notice or application for prescribed notice is withdrawn**

### **92      Person holding negative notice, or who has withdrawn consent to screening, not to apply for, or start or continue in, engagement by funded non-government service provider**

- (1) A person must not apply for, or start or continue in engagement by a funded non-government service provider at a service outlet of the service provider if a negative notice has been issued to the person and is current.

Maximum penalty—500 penalty units or 5 years imprisonment.

- (2) A person must not apply for, or start or continue in, engagement by a service provider at a service outlet of the service provider if an application about the person was made under section 83 but the person withdrew the person's consent, or is taken to have withdrawn the person's consent, to screening under this part before a prescribed notice was issued.

Maximum penalty—100 penalty units or 1 year's imprisonment.

- (3) However, if the person held a positive notice but a negative notice was substituted for the positive notice under section 101, a court may not find the person contravened subsection (1) unless the court is satisfied that notice of the substitution was given to the person.

## **Subdivision 3      Changes in criminal history**

### **93      Acquiring a criminal history**

For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

**94 Effect of conviction for serious offence or charge for excluding offence**

- (1) This section applies to a person with a current positive notice immediately on the person's conviction for a serious offence or the person being charged with an excluding offence.
- (2) Until the notice is cancelled and a further positive notice is issued to the person, the person must not start or continue engagement with a funded non-government service provider at a service outlet of the service provider.

Maximum penalty—500 penalty units or 5 years imprisonment.

**95 Change in criminal history of engaged person**

- (1) This section applies to a person engaged by a funded non-government service provider if there is a change in the person's criminal history.
- (2) The person must immediately disclose to the service provider that there has been a change in the person's criminal history.

Maximum penalty—100 penalty units.

- (3) On receiving the disclosure, the service provider must not continue to engage the person at a service outlet of the service provider without applying for a prescribed notice, or further prescribed notice, about the person.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—100 penalty units; or
  - (b) for a funded non-government service provider—500 penalty units.
- (4) To remove any doubt, it is declared that—
    - (a) it is not a requirement of subsection (2) that the person give the service provider any information about the change other than that a change has happened; and
    - (b) it is not a requirement of subsection (3) that the service provider stop engaging the person at a service outlet of the service provider on receiving the disclosure.

**96 Change in criminal history of other persons**

- (1) This section applies if—
- (a) a person has a current positive notice; and
  - (b) there has been a change in the person's criminal history since the notice was issued; and
  - (c) the person is not engaged by a funded non-government service provider at a service outlet of the service provider.
- (2) Before starting engagement with a funded non-government service provider at a service outlet of the service provider, the person must notify the service provider that there has been a change in the person's criminal history since the person's current prescribed notice was issued.

Maximum penalty—100 penalty units.

- (3) On receiving the disclosure, the service provider must not engage the person at a service outlet of the service provider without applying for a further prescribed notice about the person.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—100 penalty units; or
- (b) for a funded non-government service provider—500 penalty units.

**Subdivision 4 General****97 False or misleading disclosure**

A person must not—

- (a) give a funded non-government service provider who is proposing to engage the person information for this part that is false or misleading in a material particular; or

- (b) state anything to the chief executive for this part that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

## **98 False or misleading documents**

- (1) A person must not give the chief executive a document for this part containing information the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
  - (a) tells the chief executive, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

## **99 Return of positive notice and positive notice card to chief executive**

- (1) This section applies to a person with a current positive notice if—
  - (a) the person is convicted of a serious offence; or
  - (b) the chief executive cancels the notice and issues a negative notice to the person.
- (2) The person must immediately return the positive notice, and the positive notice card issued to the person, to the chief executive, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

## **Division 6                      Cancellation and replacement of prescribed notices**

### **100      Cancellation of negative notice and issuing of positive notice**

- (1) This section applies if the chief executive has issued a negative notice to a person and the notice is current.
- (2) The person may apply to the chief executive to cancel the notice.
- (3) The application may not be made less than 2 years after the issue of the notice or any previous application by the person under this section.
- (4) The application must be—
  - (a) in the approved form; and
  - (b) signed by the person; and
  - (c) accompanied by the fee prescribed under a regulation for the application.
- (5) The person may state in the application anything the person considers relevant to the chief executive's decision including, in particular, any change in the person's circumstances since the negative notice was issued.
- (6) Sections 85, 86, 87 and 88 apply to the application as if—
  - (a) the application were an application for a prescribed notice; and
  - (b) a reference in the provisions to issuing a positive notice were a reference to granting the application; and
  - (c) a reference in the provisions to issuing a negative notice were a reference to refusing the application.
- (7) If the chief executive grants the application, the chief executive must cancel the negative notice to which the application relates and issue a positive notice to the person.

**101 Chief executive may cancel a prescribed notice and substitute another prescribed notice**

- (1) The chief executive may cancel a positive notice (the *cancelled notice*) about a person and substitute a negative notice if the chief executive is satisfied that—
  - (a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue the negative notice; or
  - (b) it is appropriate to cancel the positive notice having regard to information received under section 114 or 115, about the person.
- (2) If the person is engaged by a funded non-government service provider at the time the negative notice is substituted, the chief executive must give notice of the substitution to the service provider.
- (3) The chief executive may cancel a negative notice (the *cancelled notice*) and substitute a positive notice if the chief executive is satisfied that—
  - (a) the decision on the application for the cancelled notice was based on wrong or incomplete information and, based on the correct or complete information, the chief executive should issue the positive notice; or
  - (b) a penalty or order of a court of the type mentioned in section 102(1), that required the chief executive to cancel the positive notice and issue a negative notice, is not upheld on appeal.
- (4) In making a decision under subsection (1) or (3), the chief executive must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 85, 86 and 87 apply to the decision under this section.
- (5) If the chief executive proposes to substitute a negative notice as mentioned in subsection (1), the chief executive must first comply with section 88 as if—
  - (a) the reference in section 88(2) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and

- (b) the reference in section 88(4) to deciding the application were a reference to substituting a negative notice for a positive notice.
- (6) The chief executive may exercise a power under subsection (1) or (3)—
  - (a) on application by the person to whom the cancelled notice was issued or the person who applied for the cancelled notice; or
  - (b) on the chief executive's own initiative.

## **102 Cancellation if conviction for excluding offence and imprisonment or disqualification order**

- (1) This section applies if a person who is the holder of a positive notice, including a positive notice that is suspended under section 104, is convicted of an excluding offence and the court that convicts the person—
  - (a) imposes an imprisonment order; or
  - (b) makes a disqualification order under section 122.
- (2) The chief executive must cancel the positive notice held by the person and substitute a negative notice.
- (3) At the time the chief executive gives the person the negative notice, the chief executive must give the person a further notice stating—
  - (a) there is no appeal under this Act against the decision of the chief executive to cancel the positive notice and substitute a negative notice; and
  - (b) the person can not apply under section 100 for the cancellation of the negative notice, even after 2 years; and
  - (c) the person may apply under section 101 for the cancellation of the negative notice if the decision to issue the cancelled notice was made under this section and the penalty or order mentioned in subsection (1)(a) or (b) is not upheld on appeal against the imposition of the penalty or making of the order and that is the only reason for an application under section 101.

- (4) Also, if the person is engaged by a funded non-government service provider, the chief executive must give notice to the service provider stating the person was given a negative notice.
- (5) There is no appeal under this Act against a decision of the chief executive under this section to cancel the positive notice and substitute a negative notice.
- (6) In section—  
*appeal* includes review.

### **103 Cancellation if conviction for excluding offence but no imprisonment or disqualification order**

- (1) This section applies if a person who is the holder of a positive notice, including a positive notice that is suspended under section 104, is convicted of an excluding offence but the court that convicts the person—
  - (a) imposes a penalty that does not include an imprisonment order for the offence; or
  - (b) does not make a disqualification order under section 122.
- (2) The chief executive must cancel the person's positive notice and substitute a negative notice unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of people with a disability for the chief executive not to cancel the positive notice.
- (3) In making a decision under subsection (2), the chief executive must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 85, 86 and 87 apply to the decision under this section.
- (4) If the chief executive proposes to substitute a negative notice as mentioned in subsection (2), the chief executive must first comply with section 88 as if—
  - (a) the reference in section 88(2) to deciding the application by issuing a negative notice were a reference to substituting a negative notice for a positive notice; and

- (b) the reference in section 88(4) to deciding the application were a reference to substituting a negative notice for a positive notice.

**104 Effect of charge for excluding offence pending charge being dealt with**

- (1) If a person who is the holder of a positive notice is charged with an excluding offence, the chief executive must suspend the positive notice by notice given to the person.
- (2) The notice about the suspension must state the following—
  - (a) the positive notice held by the person is suspended;
  - (b) the reason for the suspension;
  - (c) how long the suspension will continue;
  - (d) the effect of the suspension;
  - (e) the person must return the positive notice, and the positive notice card, to the chief executive within 7 days after the notice is given to the person.
- (3) Until a suspension is cancelled, the person whose positive notice is suspended and who is given a notice under subsection (1) must not apply, start or continue to be engaged by a funded non-government service provider at a service outlet of the service provider.

Maximum penalty—200 penalty units or 2 years imprisonment.

- (4) Within 7 days after a person is given notice under subsection (1), the person must return each of the following to the chief executive—
  - (a) the positive notice;
  - (b) the positive notice card relating to the positive notice.

Maximum penalty—100 penalty units.

- (5) Also, if the person is engaged by a funded non-government service provider, the chief executive must give notice to the service provider stating that the positive notice held by the person is suspended and the effect of the suspension.

- (6) A notice under subsection (5) to a funded non-government service provider must state that—
- (a) the service provider must not allow the person to work at a service outlet of the service provider; and
  - (b) the service provider must not terminate the person's engagement or continued engagement solely or mainly because the person's positive notice is suspended.
- (7) A funded non-government service provider to whom a notice is given under subsection (5) must not allow the person engaged by the service provider to work at a service outlet of the service provider.
- Maximum penalty—
- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—200 penalty units or 2 years imprisonment; or
  - (b) for a funded non-government service provider—1000 penalty units.
- (8) A funded non-government service provider to whom a notice is given under subsection (5) about a person must not terminate the person's engagement or continued engagement solely or mainly because the service provider is given the notice.
- (9) Without limiting subsection (3) and despite section 89(2), a positive notice remains current during the period of suspension even if it would otherwise end under section 89(2) during that period.

## **105 Cancellation of suspension and issue of further prescribed notice**

- (1) This section applies to a positive notice held by a person that is suspended under section 104 (the *suspended notice*).
- (2) The suspension is cancelled if—
- (a) the suspended notice is cancelled under section 102(2) or 103(2); or
  - (b) on application by the person for the cancellation of the suspension and issue of a further prescribed notice, the

chief executive cancels the suspended notice and issues a further positive notice or a negative notice.

- (3) If, in relation to the charge of an excluding offence that resulted in the person's positive notice being suspended, the person—
  - (a) was not convicted of any offence or was convicted of an offence that is not a serious offence, the chief executive must issue a further positive notice unless the chief executive is satisfied it is an exceptional case in which it would not be in the best interests of people with a disability for the chief executive to issue a further positive notice; or
  - (b) was convicted of a serious offence, the chief executive must issue a negative notice unless the chief executive is satisfied it is an exceptional case in which it would not harm the best interests of people with a disability for the chief executive to issue a further positive notice.
- (4) If the chief executive is satisfied that—
  - (a) there is an exceptional case under subsection (3)(a), the chief executive must issue a negative notice; or
  - (b) there is an exceptional case under subsection (3)(b), the chief executive must issue a further positive notice.
- (5) In making a decision under subsection (3), the chief executive must make the decision as if it were a decision about an application for a prescribed notice and, for that purpose, sections 85, 86 and 87 apply to the decision under this section.
- (6) If the chief executive proposes to issue a negative notice, the chief executive must first comply with section 88.

## **106 Replacement of positive notice or positive notice card**

- (1) If a person's current positive notice, or current positive notice card, is lost or stolen, the person must apply for a replacement notice or card within 14 days after the loss or theft.

Maximum penalty—10 penalty units.

- (2) The application must be in the approved form and accompanied by the fee prescribed under a regulation for the application.
- (3) The chief executive must—
  - (a) cancel the lost or stolen notice or card; and
  - (b) issue a replacement notice or card to the person.
- (4) The chief executive may issue the replacement notice or card with a different registration number to the number of the lost or stolen notice or card.
- (5) If the person's lost or stolen notice or card is returned to, or otherwise recovered by, the person after the application for a replacement notice or card, the person must give the replaced notice or card to the chief executive within 14 days after it is returned to, or otherwise recovered by, the person.

Maximum penalty—10 penalty units.

- (6) The chief executive must give notice to the police commissioner about the fact that a current positive notice, or current positive notice card, has been lost or stolen.

### **107 Change of details for prescribed notice or positive notice card**

- (1) This section applies if the holder of a positive notice does any of the following (each of which is a *relevant change*)—
  - (a) changes a name the holder has previously given to the chief executive;
  - (b) starts to use a different name to the name or names the holder has previously given to the chief executive;
  - (c) changes contact details previously given to the chief executive.
- (2) The holder must give notice, in the approved form, to the chief executive about the relevant change within 14 days after the relevant change.

Maximum penalty—10 penalty units.

- (3) If the chief executive considers it is appropriate to do so, the chief executive may issue to the holder a replacement positive notice or replacement positive notice card.
- (4) If the chief executive issues to the holder a replacement positive notice, or replacement positive notice card, within 14 days after receiving the replacement notice or card the holder must return the replaced notice or card to the chief executive.  
Maximum penalty—10 penalty units.
- (5) The chief executive must cancel the previously held positive notice or positive notice card if the chief executive has issued a replacement notice or card.

## **Division 7                      Miscellaneous**

### **108      Person may apply for review of decision**

- (1) A person may apply to the tribunal for a review of either of the following decisions of the chief executive—
  - (a) a decision as to whether or not there is an exceptional case as mentioned in section 85(4) or (7), 103(2) or 105(3) if, because of the decision, the chief executive issued a negative notice, or refused to cancel a negative notice, about the person;
  - (b) a decision that the person had been charged with an excluding offence if, because of the decision, the positive notice held by the person was suspended under section 104(1).
- (2) An application to review a decision mentioned in subsection (1)(b) may only be made if the person claims he or she has not been charged with the relevant excluding offence.
- (3) If a person applies under subsection (1) to have a decision reviewed, the tribunal may not stay the operation of the decision.
- (4) To remove any doubt, it is declared that there is no appeal, or review, under this Act against a decision of the chief executive to issue, or refuse to cancel, a negative notice about a person other than a decision mentioned in subsection (1).

- (5) This section does not limit section 111.
- (6) In this section—
  - issue a negative notice* includes substitute a negative notice after cancelling a positive notice.

**109 Police commissioner may decide that information about a person is investigative information**

- (1) The police commissioner may decide under this section that information about a person (the *investigated person*) is *investigative information* if—
  - (a) there is or was evidence of acts or omissions that, at the time of the acts or omissions, constituted a serious sexual or violent offence (the *alleged offence*) by the investigated person against a person with a disability (a *complainant*); and
  - (b) the police investigated the alleged offence and the investigated person was formally notified about the investigation, including—
    - (i) by participating in an interview, or by being asked to participate in an interview, about the alleged offence; or
    - (ii) by otherwise being given an opportunity to answer allegations about the alleged offence; and
  - (c) there was sufficient evidence available that was capable of establishing each element of the alleged offence but a decision was made not to charge the investigated person because—
    - (i) the complainant died before the charge was brought; or
    - (ii) either or both of the following applied—
      - (A) the complainant was unwilling to proceed;
      - (B) an adult who, at the relevant time, was the complainant's parent or guardian decided that, in the interests of the complainant, the matter should not proceed.

- (2) Evidence of acts or omissions includes information from a third party if the complainant did not make a formal complaint at or about the time of the investigation.

**110 Delegation by police commissioner of power under s 109 restricted**

Despite the *Police Service Administration Act 1990*, section 4.10, the police commissioner may not delegate the police commissioner's powers under section 109 other than to a police officer of at least the rank of superintendent.

**111 Decision by police commissioner that information is investigative information**

- (1) This section applies if—
  - (a) the police commissioner decides that information about a person is investigative information; and
  - (b) the investigative information is given, under section 114 or 115, to the chief executive; and
  - (c) a negative notice is issued, or a positive notice is cancelled and a negative notice is substituted for it, after the investigative information is given to the chief executive.
- (2) The person may appeal to a Magistrates Court about the decision that information, given to the chief executive as investigative information, is investigative information.
- (3) However, an appeal under subsection (2) may only be made after the chief executive has issued a negative notice to the person under section 87(1) and within 28 days after the negative notice is given to the person.
- (4) The chief executive and police commissioner must be given a copy of the notice of appeal.
- (5) The tribunal does not have jurisdiction to review a decision of the police commissioner that information about a person is investigative information or that information that is investigative information may be given to the chief executive.

**112 Court to decide matters afresh**

- (1) A Magistrates Court hearing an appeal under section 111 is to decide afresh whether information given to the chief executive as investigative information about a person is investigative information.
- (2) A person who is the relevant complainant under section 109 must not be asked or called on by the investigated person under that section to give evidence in person before the court.
- (3) Subsection (2) does not prevent documentary evidence being tendered and received in evidence by the court.
- (4) After hearing an appeal under section 111, the court may confirm or set aside the decision and the clerk of the court is to give the appellant notice of the decision.
- (5) For subsection (4), the court must have regard to the matters the police commissioner was required to have regard to under this Act when the police commissioner made the decision.

**113 Consequence of decision on appeal**

- (1) If, on appeal, a Magistrates Court sets aside the police commissioner's decision under section 109 that information given to the chief executive about a person is investigative information, the person may apply under section 101 to cancel the negative notice issued to the person on the grounds that the decision to issue the negative notice was based on wrong information.
- (2) If the court confirms the decision appealed against—
  - (a) the person who appealed the decision may, within 28 days after receiving the notice under section 112(4), apply to the tribunal to have reviewed only a decision of the chief executive about whether there is an exceptional case as mentioned in section 85(4) or (7); and
  - (b) the notice under section 112(4) must state that the person may apply to the tribunal to have the decision mentioned in paragraph (a) reviewed and how the person may apply.

**114 Chief executive may obtain information from police commissioner**

- (1) This section applies to a person if—
  - (a) the person has a current positive notice; or
  - (b) the chief executive has received an application for a prescribed notice about the person and the application has not been withdrawn and the person has not withdrawn his or her consent to screening under this part; or
  - (c) the person has applied to the chief executive to cancel a negative notice about the person or to cancel a suspension of the person's positive notice under section 104.
- (2) The chief executive may ask the police commissioner for information, or for access to the police commissioner's records, to enable the chief executive to learn what police information exists, if any, in relation to the person.
- (3) For subsection (2), the chief executive's request may include the following information—
  - (a) the person's name and any other name that the chief executive believes the person may use or may have used;
  - (b) the person's gender and date and place of birth;
  - (c) if the person is currently the holder of a prescribed notice—any number or date relevant to the prescribed notice or a positive notice card;
  - (d) the status of the relevant application, applicant or prescribed notice, including, for example, by reference to subsection (1).
- (4) If there is police information about the person, the chief executive may ask the police commissioner for a brief description of the circumstances of a conviction, charge or investigative information mentioned in the police information.
- (5) The police commissioner must comply with a request under this section unless the police commissioner is, under subsection (9), told not to provide the information.

- (6) However, the duty imposed on the police commissioner to comply with a request applies only to information in the police commissioner's possession or to which the police commissioner has access.
- (7) The police commissioner need not disclose investigative information about the person to the chief executive under this section if the police commissioner is reasonably satisfied that giving the information may do any of the following—
  - (a) prejudice the investigation of a contravention or possible contravention of the law in a particular case;
  - (b) enable the existence or identity of a confidential source of information, in relation to the enforcement or administration of the law, to be ascertained;
  - (c) endanger a person's life or physical safety;
  - (d) prejudice the effectiveness of a lawful method or procedure for preventing, detecting, investigating or dealing with a contravention or possible contravention of the law.
- (8) If the police commissioner gives investigative information about the person to the chief executive under this section, the police commissioner must give notice, in the approved form, to the person that—
  - (a) the police commissioner has decided that information about the person is investigative information; and
  - (b) investigative information has been given to the chief executive.
- (9) If the chief executive decides that information requested under subsection (2) about the person is no longer required, the chief executive must tell the police commissioner not to provide the information.
- (10) Information given to the police commissioner under this section must not be accessed or disclosed for any purpose except for a purpose under this part or any other purpose relevant to law enforcement.
- (11) Information given to the police commissioner under this section must not be used for any purpose except for a purpose under this part.

- (12) However, subsections (10) and (11) do not apply to information the police commissioner obtained before the chief executive gave the information to the police commissioner under this section.

### **115 Notice of change in police information about a person**

- (1) This section applies if, for a person in relation to whom either of the following happens, the police commissioner reasonably suspects the person is a person mentioned in section 114(1)(a) to (c)—
- (a) the person's criminal history changes;
  - (b) the police commissioner decides, under section 109, that information about the person is investigative information (regardless of when the act or omission relevant to the investigative information happened or is alleged to have happened).
- (2) The police commissioner may notify the chief executive that—
- (a) the person's criminal history has changed; or
  - (b) the police commissioner has decided that information about the person is investigative information.
- (3) The notice must state the following—
- (a) the person's name and any other name that the police commissioner believes the person may use or may have used;
  - (b) the person's gender and date and place of birth;
  - (c) a brief description of the conviction or charge to which the change relates, or of the investigative information.
- (4) The chief executive may confirm the police commissioner's suspicions under subsection (1).
- (5) If the person is a person to whom section 95(1) or 96(1) applies, the chief executive, on receiving notice under

subsection (2), may write to the person to inform the person of the person's obligations under sections 95(2) and 96(2).

- (6) If the police commissioner gives investigative information to the chief executive under this section, the police commissioner must give notice, in the approved form, to the person that investigative information has been given to the chief executive.
- (7) For a person who does not have a criminal history, there is taken to be a change in the person's criminal history if the person acquires a criminal history.

**116 Chief executive to give notice to funded non-government service provider about making screening decision about engaged person**

- (1) This section applies if—
  - (a) the police commissioner, the holder of a prescribed notice (the *engaged person*) or another person gives notice to the chief executive that police information about the engaged person has changed; or
  - (b) the chief executive otherwise becomes aware that police information about the engaged person has changed.
- (2) However, this section does not apply if the change is that the engaged person has been convicted or charged with an excluding offence.
- (3) If the chief executive considers the change in police information may be relevant to the engagement of a person by a funded non-government service provider, the chief executive must give notice to the service provider—
  - (a) identifying the engaged person; and
  - (b) stating only that the chief executive is making a screening decision in relation to the engaged person.
- (4) However, if the change in police information is a change in criminal history, the notice under subsection (3) must state whether or not—
  - (a) the change in criminal history is a charge or a conviction; and

- (b) the offence is a serious offence or serious sexual or violent offence.
- (5) The service provider must not terminate the engaged person's engagement or continued engagement solely or mainly because the service provider is given the notice.

### **117 Withdrawal of engaged person's consent to screening**

- (1) This section applies if the chief executive—
  - (a) has received an application from a funded non-government service provider for a prescribed notice about a person (the *engaged person*); and
  - (b) has not yet issued the prescribed notice.
- (2) The engaged person may give a notice to the chief executive withdrawing the engaged person's consent to screening under this part.
- (3) The engaged person is taken to have withdrawn his or her consent to screening under this part if—
  - (a) the chief executive gives the engaged person a notice—
    - (i) asking the engaged person to provide, within a reasonable stated time, stated information that the chief executive reasonably needs to establish the engaged person's identity; and
    - (ii) warning the engaged person that, if the engaged person does not comply with the request, the chief executive may give the engaged person a notice of deemed withdrawal; and
  - (b) the engaged person does not comply with the request within the stated time; and
  - (c) the chief executive can not establish with certainty the engaged person's identity; and
  - (d) the chief executive gives the engaged person and the service provider a notice of deemed withdrawal relating to the engaged person.
- (4) Also, the engaged person is taken to have withdrawn his or her consent to screening under this part if—

*Disability Services Act 2006*

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- (a) the service provider has given the chief executive notice that the person is no longer engaged by the service provider or the chief executive can not obtain information, in writing, from the service provider that the person is engaged by the service provider; and
  - (b) the engaged person has not given notice to the chief executive about the end of the engagement as required under section 84; and
  - (c) the chief executive gives the engaged person and the service provider a notice of deemed withdrawal relating to the engaged person.
- (5) Further, the engaged person is taken to have withdrawn his or her consent to screening under this part if—
- (a) the engaged person gives the chief executive, or the chief executive gives the engaged person, notice that the engaged person is charged with an excluding offence; and
  - (b) the chief executive gives the engaged person and the service provider a notice of deemed withdrawal under this subsection relating to the engaged person.
- (6) If the engaged person withdraws his or her consent to screening under this part before the chief executive issues a prescribed notice about the engaged person—
- (a) the chief executive must not issue the prescribed notice; and
  - (b) if the engaged person withdraws consent by giving a notice to the chief executive, the chief executive must give notice of the withdrawal to the service provider.
- (7) For subsection (4), a service provider may give notice to the chief executive that a stated person—
- (a) is engaged, or continues to be engaged, by the service provider; or
  - (b) is no longer engaged by the service provider.
- (8) In this section—

*notice of deemed withdrawal*, relating to the engaged person, means a notice stating that the engaged person is taken to have withdrawn his or her consent to screening under this part.

**118 Compliance with requirement to end, or not start, a person's engagement**

- (1) This section applies if it would be a contravention of a provision of this part for a funded non-government service provider to engage, or continue to engage, another person (the *engaged person*) at a service outlet of the service provider.
- (2) The service provider must comply with the provision despite another Act or law or any industrial award or agreement.
- (3) The service provider does not incur any liability because, in compliance with the provision, the service provider does not engage, or continue to engage, the engaged person at a service outlet of the service provider.
- (4) A person whose positive notice is suspended under section 104 may be engaged by the service provider, other than at a service outlet of the service provider, until the charge for the excluding offence is dealt with and the chief executive cancels the suspension and issues a further prescribed notice.

**119 Guidelines for dealing with information**

- (1) The chief executive must make guidelines, consistent with this Act, for dealing with information obtained by the chief executive under this part.
- (2) The purpose of the guidelines is to ensure—
  - (a) natural justice is afforded to the persons about whom the information is obtained; and
  - (b) only relevant information is used in making screening decisions; and
  - (c) screening decisions, based on the information, are made consistently.
- (3) The chief executive must give a copy of the guidelines to a person on request.

**120 Use of information obtained under this part about a person**

The chief executive must not use information obtained under this part about a person, other than for this part.

**121 Chief executive must give police commissioner a person's current address**

- (1) The chief executive must, on written application of the police commissioner, give the police commissioner information about an address for a person if—
  - (a) the chief executive has an address for the person that is different to the address stated by the police commissioner in the application; and
  - (b) the police commissioner is, under this part, required to give a notice to the person.
- (2) Information given to the police commissioner under this section must not be used, disclosed or accessed for any purpose except to give a notice under this part to the person.

**122 Disqualification order**

- (1) This section applies if—
  - (a) a person is convicted of an excluding offence; and
  - (b) the court that convicted the person did not impose an imprisonment order for the offence.
- (2) The court may, on application by the prosecutor or on its own initiative, make an order (*disqualification order*) in relation to the person stating that the person may never hold a positive notice or be the subject of an application for a prescribed notice.
- (3) In this section—

*Crown prosecutor* includes—

  - (a) the Attorney-General; and
  - (b) the director of public prosecutions; and
  - (c) another person, other than a police officer, appearing for the State.

**prosecutor** means—

- (a) in the context of a proceeding before, or an application to, a Magistrates Court—a police officer or Crown prosecutor; or
- (b) otherwise—a Crown prosecutor.

**123 Register of persons engaged by funded non-government entities**

- (1) The chief executive must keep a register with up-to-date information for each engaged person for whom an application for a prescribed notice is made.
- (2) The register may include the matters decided by the chief executive but must include the following—
  - (a) the engaged person's name;
  - (b) the name of the funded non-government service provider engaging the person;
  - (c) whether a positive or negative notice was issued;
  - (d) the date of issue of the prescribed notice;
  - (e) if an application for a prescribed notice is taken to have been withdrawn, the date of the withdrawal;
  - (f) if an engaged person applies for a review of a chief executive's decision relating to a prescribed notice, details of the review and its outcome.
- (3) If a funded non-government service provider proposes to start engaging a person at a service outlet of the service provider, the service provider may apply to the chief executive in the approved form for information contained in the register.
- (4) If a funded non-government service provider asks the chief executive for information contained in the register, the chief executive must give the service provider the information.

## **Part 10A                    Use of restrictive practices**

### **Division 1                    Preliminary**

#### **123A    Purpose of pt 10A**

The purpose of this part is to protect the rights of adults with an intellectual or cognitive disability by regulating the use of restrictive practices by funded service providers in relation to those adults in a way that—

- (a) has regard to the human rights of those adults; and
- (b) safeguards them and others from harm; and
- (c) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of the restrictive practices; and
- (d) ensures transparency and accountability in the use of the restrictive practices.

#### **123B    Service providers to which pt 10A applies**

This part applies to a funded service provider who provides disability services to an adult with an intellectual or cognitive disability (a *relevant service provider*).

#### **123C    Principles for performing functions etc.**

- (1) This section applies to a person, including a relevant service provider, who performs a function, or exercises a power, under this part.
- (2) Despite section 18, the person must have regard to the human rights principle in performing the function or exercising the power.

#### **123D    Explanation of operation of pt 10A**

- (1) The purpose of this section is to explain generally the circumstances in which a relevant service provider may be

authorised under this part to use a restrictive practice in relation to an adult with an intellectual or cognitive disability.

- (2) Use of the restrictive practice may be authorised if the following are satisfied—
- (a) for containment or seclusion, or an associated restrictive practice—
    - (i) a positive behaviour support plan is prepared for the adult by the chief executive; and
    - (ii) use of the restrictive practice is approved by the guardianship tribunal;
  - (b) for any other restrictive practice—
    - (i) a positive behaviour support plan is prepared for the adult by the relevant service provider; and
    - (ii) use of the restrictive practice is consented to by a guardian for a restrictive practice (general) matter for the adult or, in some cases, an informal decision maker for the adult;
  - (c) for all restrictive practices, use of the restrictive practice—
    - (i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and
    - (ii) is the least restrictive way of ensuring the safety of the adult or others; and
    - (iii) complies with the positive behaviour support plan for the adult.

*Note—*

Some other requirements must also be complied with for the relevant service provider to be authorised to use the restrictive practice. See section 123M (for containment or seclusion) or 123ZA (for use of other restrictive practices).

- (3) Also, use of a restrictive practice may be authorised if—
- (a) the restrictive practice is used in the course of providing respite services or community access services to the adult; or

- (b) there is an immediate and serious risk of harm to the adult or others.

*Note—*

See—

- sections 123N, 123ZB and 123ZC for use of restrictive practices in the course of providing respite services or community access services
- sections 123O and 123ZD for use of restrictive practices if there is an immediate and serious risk of harm to the adult or others.

- (4) In this section—

*associated restrictive practice* means a restrictive practice other than containment or seclusion, relating to the adult who is the subject of a containment or seclusion approval.

## 123E Definitions for pt 10A

In this part—

*adult with an intellectual or cognitive disability* means an adult with a disability who has a condition attributable to an intellectual or cognitive impairment, or a combination of the impairments.

*appropriately qualified* see section 123K.

*assessment* see section 123J(3).

*authorised psychiatrist* see the *Mental Health Act 2000*, schedule 2.

*chemical restraint* see section 123F.

*chemical restraint (fixed dose)* means chemical restraint using medication that is administered at fixed intervals and times.

*community access services* means disability services that are—

- (a) community access services provided to an adult with an intellectual or cognitive disability who does not receive disability services other than respite services or community access services from a relevant service provider; and

- (b) funded as community access services by the department or the Commonwealth.

**contain** see section 123G.

**containment or seclusion approval** means approval given by the guardianship tribunal under the GAA, chapter 5B, part 2 for a relevant service provider to contain or seclude, or use another restrictive practice in relation to, an adult with an intellectual or cognitive disability.

**decision notice**, for a decision of the chief executive, means a notice stating the following—

- (a) the decision and the reasons for it;
- (b) that the person to whom the notice is given may apply for review of the decision under section 123ZZ within 28 days after the person receives the notice;
- (c) how to apply for review of the decision.

**director of mental health** means the director under the *Mental Health Act 2000*.

**GAA** means the *Guardianship and Administration Act 2000*.

**guardian for a restrictive practice (general) matter**, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (general) matter appointed for the adult under the GAA, chapter 5B.

**guardian for a restrictive practice matter**, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (general) matter, or a guardian for a restrictive practice (respite) matter, for the adult.

**guardian for a restrictive practice (respite) matter**, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (respite) matter appointed for the adult under the GAA, chapter 5B.

**guardianship tribunal** means the Guardianship and Administration Tribunal.

**harm** to a person means—

- (a) physical harm to the person; or
- (b) a serious risk of physical harm to the person; or

- (c) damage to property involving a serious risk of physical harm to the person.

***informal decision maker***, for an adult with an intellectual or cognitive disability, means a member of the adult's support network, other than a paid carer for the adult within the meaning of the GAA.

***keep and implement***, a policy about use of a restrictive practice, see section 123I.

***least restrictive***, for use of a restrictive practice in relation to an adult with an intellectual or cognitive disability, means use of the restrictive practice—

- (a) ensures the safety of the adult or others; and
- (b) having regard to paragraph (a), imposes the minimum limits on the freedom of the adult as is practicable in the circumstances.

***mechanical restraint*** see section 123H.

***multidisciplinary assessment*** see section 123J(4).

***physical restraint***, of an adult with an intellectual or cognitive disability, means the use, for the primary purpose of controlling the adult's behaviour, of any part of another person's body to restrict the free movement of the adult.

***positive behaviour support plan*** see section 123L.

***relevant decision maker (respite)***, for an adult with an intellectual or cognitive disability, means—

- (a) a guardian for a restrictive practice (respite) matter for the adult; or
- (b) for a restrictive practice other than chemical restraint used under section 123ZB, if there is no guardian for a restrictive practice (respite) matter for the adult—an informal decision maker for the adult.

***respite/community access plan*** see section 123ZP(2).

***respite services*** means disability services that are—

- (a) respite services provided to an adult with an intellectual or cognitive disability who does not receive disability

*Disability Services Act 2006*

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services other than respite services or community access services from a relevant service provider; and

- (b) funded as respite services by the department or the Commonwealth.

***restricting access***, of an adult with an intellectual or cognitive disability, means restricting the adult's access, at a place where the adult receives disability services, to an object to prevent the adult using the object to cause harm to the adult or others.

*Examples—*

- locking a drawer in which knives are kept to prevent an adult using the knives to cause harm
- restricting an adult's access to a particular cupboard or particular parts of the fridge to prevent the adult eating in a way that is likely to harm the adult

***restrictive practice*** means—

- (a) containing or secluding an adult with an intellectual or cognitive disability; or
- (b) using chemical, mechanical or physical restraint on an adult with an intellectual or cognitive disability; or
- (c) restricting access of an adult with an intellectual or cognitive disability.

***seclude*** an adult with an intellectual or cognitive disability means physically confine the adult alone, at any time of the day or night, in a room or area from which free exit is prevented.

***short term approval*** means an approval given by—

- (a) the adult guardian under the GAA, chapter 5B, part 4; or
- (b) the chief executive under section 123ZK.

***short term plan*** see section 123ZM(2).

***support network***, for an adult, see the GAA, schedule 4.

**123F Meaning of *chemical restraint***

- (1) *Chemical restraint*, of an adult with an intellectual or cognitive disability, means the use of medication for the primary purpose of controlling the adult's behaviour.
- (2) However, using medication for the proper treatment of a diagnosed mental illness or physical condition is not chemical restraint.
- (3) To remove any doubt, it is declared that an intellectual or cognitive disability is not a physical condition.
- (4) In this section—

*diagnosed*, for a mental illness or physical condition, means a doctor confirms the adult has the illness or condition.

*mental illness* see the *Mental Health Act 2000*, section 12.

**123G Meaning of *contain***

- (1) *Contain* an adult with an intellectual or cognitive disability means physically prevent the free exit of the adult from premises where the adult receives disability services, other than by secluding the adult.
- (2) However, the adult is not contained if—
  - (a) the adult is an adult with a skills deficit under part 15, division 1A; and
  - (b) the adult's free exit from the premises is prevented by the locking of gates, doors or windows under that part.
- (3) In this section—

*premises* includes the land around a building or other structure, but does not include a vehicle.

**123H Meaning of *mechanical restraint***

- (1) *Mechanical restraint*, of an adult with an intellectual or cognitive disability, means the use, for the primary purpose of controlling the adult's behaviour, of a device to—
  - (a) restrict the free movement of the adult; or
  - (b) prevent or reduce self-injurious behaviour.

- (2) However, the following are not mechanical restraint—
- (a) using a device to enable the safe transportation of the adult;  
*Examples of devices used to enable safe transportation—*
    - a cover over a seat belt buckle
    - a harness or strap
  - (b) using a device for postural support;
  - (c) using a device to prevent injury from involuntary bodily movements, such as seizures;
  - (d) using a surgical or medical device for the proper treatment of a physical condition;
  - (e) using bed rails or guards to prevent injury while the adult is asleep.

### **123I Requirement to *keep and implement* a policy**

A requirement under this part for a relevant service provider to ***keep and implement*** a policy about use of a restrictive practice means—

- (a) prepare the policy and keep it up-to-date; and
- (b) when providing disability services, implement and comply with the procedures and other matters stated in the policy; and
- (c) keep a copy of the up-to-date policy at premises where the restrictive practice is used; and
- (d) ensure a copy of the up-to-date policy is available for inspection by the following—
  - (i) staff of the relevant service provider;
  - (ii) guardians, informal decision makers or advocates for adults in relation to whom the restrictive practices are used;
  - (iii) a community visitor under the GAA.

*Note—*

See also division 6 for requirements about the content of the policy.

## Division 2                      **Important concepts for using restrictive practices**

### 123J    **Assessment of an adult**

- (1) Before a restrictive practice can be used in relation to an adult with an intellectual or cognitive disability, the adult must be assessed.
- (2) However, an assessment is not required if the restrictive practice is used—
  - (a) under a short term approval; or
  - (b) in the course of providing respite services or community access services to the adult.

*Note—*

Although an assessment is not required for using restrictive practices in the course of providing respite services or community access services, relevant service providers must comply with division 5.

- (3) For this part, an **assessment** of an adult with an intellectual or cognitive disability is an assessment by 1 or more persons, as provided for under subsections (4) to (6), for the following purposes—
  - (a) making findings about the nature, intensity, frequency and duration of the behaviour of the adult that causes harm to the adult or others;
  - (b) developing theories about the factors that contribute to the adult's behaviour mentioned in paragraph (a);

*Examples of factors that might contribute to the behaviour—*

- biological factors, such as genetic predispositions
  - psychological or cognitive factors, such as low communication skills
  - social factors, such as the adult's surroundings
  - medical conditions
- (c) making recommendations about appropriate strategies for—

- (i) meeting the adult's needs and improving the adult's capabilities and quality of life; and
  - (ii) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others; and
  - (iii) managing the adult's behaviour that causes harm to the adult or others to minimise the risk of harm.
- (4) For containing or secluding an adult under section 123M, the adult must be assessed by 2 or more appropriately qualified persons who have qualifications or experience in different disciplines (a ***multidisciplinary assessment***).
- (5) For using chemical, mechanical or physical restraint under section 123ZA on an adult, the adult must be assessed by at least 1 appropriately qualified person.
- (6) For restricting access of an adult under section 123ZA, the adult must be assessed by the relevant service provider proposing to restrict the adult's access.

### **123K Who is *appropriately qualified* to assess an adult**

For assessing an adult with an intellectual or cognitive disability, a person is ***appropriately qualified*** if the person has the qualifications or experience appropriate to conduct the assessment.

*Examples of who might be appropriately qualified persons—*

behaviour analysts, medical practitioners, psychologists, psychiatrists, speech and language pathologists, occupational therapists, registered nurses, social workers

### **123L What is a *positive behaviour support plan***

- (1) For this part, a ***positive behaviour support plan***, for an adult with an intellectual or cognitive disability, means a plan stating at least each of the following—
- (a) the adult's name, age and gender;
  - (b) the name of any guardian or informal decision maker for the adult;

*Disability Services Act 2006*

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- (c) a description of the adult's intellectual or cognitive disability;
- (d) the name of each relevant service provider providing disability services to the adult and a description of the disability services provided;
- (e) in relation to previous behaviour of the adult that has caused harm to the adult or others, a description of—
  - (i) the intensity, frequency and duration of the behaviour; and
  - (ii) the consequences of the behaviour;

*Examples—*

- harm is caused to the adult or someone else
  - the adult is charged with, or was convicted of, an offence involving the behaviour
- (f) any available information about strategies previously used to manage the behaviour mentioned in paragraph (e) and the effectiveness of those strategies;
- (g) for the assessment of the adult, each of the following—
  - (i) the name of each person who assessed the adult;
  - (ii) a description of the assessment conducted;
  - (iii) the findings, theories and recommendations of each person about the matters mentioned in section 123J(3);
  - (iv) if the assessment was a multidisciplinary assessment and there was a difference of opinion between any of the appropriately qualified persons who assessed the adult—how the difference was taken into account in developing the plan;
- (h) for each restrictive practice proposed to be used in relation to the adult, the details stated in subsection (2);
- (i) a description of the positive strategies, including the community access arrangements in place for the adult, that will be used to—
  - (i) meet the adult's needs and improve the adult's capabilities and quality of life; and

*Disability Services Act 2006*

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- (ii) reduce the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others;

*Examples—*

- skills development, such as communication skills, motor skills or life skills
  - strategies that encourage the use of appropriate behaviour
- (j) for each relevant service provider who will use a restrictive practice in relation to the adult—a description of how the provider will support and supervise staff involved in implementing the plan;
- (k) if the person developing the plan is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the requirements of the order;
- (l) the name, and relationship to the adult, of each person consulted during the development of the plan, and the person's views about the use of each restrictive practice proposed to be used in relation to the adult.
- (2) For subsection (1)(h), the details about the restrictive practice are the following—
- (a) the name of the relevant service provider who will use the restrictive practice;
  - (b) any strategies that must be attempted before using the restrictive practice;
  - (c) the procedure for using the restrictive practice, including observations and monitoring, and any other measures necessary to ensure the adult's proper care and treatment, that must happen while the restrictive practice is being used;
  - (d) a description of the anticipated positive and negative effects on the adult of using the restrictive practice;
  - (e) a demonstration of why use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others;
  - (f) the strategy for reducing or eliminating the use of the restrictive practice;

*Disability Services Act 2006*

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- (g) the intervals at which use of the restrictive practice will be reviewed by the relevant service provider using the restrictive practice in compliance with the provider's policy about use of the restrictive practice;

*Note—*

See also section 123ZV.

- (h) for containment—a description of the adult's accommodation and its suitability for implementing the plan;
- (i) for seclusion—
  - (i) a description of the place where the adult will be secluded and its suitability for secluding the adult; and
  - (ii) the maximum period for which seclusion may be used at any 1 time and the maximum frequency of the seclusion;
- (j) for chemical restraint—
  - (i) the name of the medication to be used and any available information about the medication, including, for example, information about possible side effects; and
  - (ii) the dose, route and frequency of administration, including, for medication to be administered as and when needed, the circumstances in which the medication may be administered, as prescribed by the adult's treating doctor; and
  - (iii) if the adult's medication has previously been reviewed by the adult's treating doctor—the date of the most recent medication review; and
  - (iv) the name of the adult's treating doctor;
- (k) for mechanical or physical restraint—the maximum period for which the restraint may be used at any 1 time.



**123N Containing or secluding an adult for respite services or community access services**

- (1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability in the course of providing respite services or community access services to the adult if—
  - (a) the containment or seclusion is necessary to prevent the adult's behaviour causing harm to the adult or others; and
  - (b) the containment or seclusion is the least restrictive way of ensuring the safety of the adult or others; and
  - (c) before containing or secluding the adult, the relevant service provider complies with the requirements under division 5; and
  - (d) the containment or seclusion complies with—
    - (i) the consent of a guardian for a restrictive practice (respite) matter for the adult; and
    - (ii) a respite/community access plan for the adult; and
  - (e) the relevant service provider keeps and implements a policy about use of containment or seclusion under this section as required under division 6; and
  - (f) the relevant service provider complies with section 123Z.
- (2) For subsection (1)(d)(ii), the adult is taken not to be contained or secluded in compliance with the respite/community access plan if the relevant service provider does not implement the positive strategies stated in the plan.
- (3) This section does not apply if the adult is the subject of a containment or seclusion approval.

**123O Containing or secluding an adult under short term approval**

- (1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability if—
  - (a) there is an immediate and serious risk of harm to the adult or others; and

- (b) the containment or seclusion is necessary to prevent the adult's behaviour causing harm to the adult or others; and
  - (c) the containment or seclusion is the least restrictive way of ensuring the safety of the adult or others; and
  - (d) the containment or seclusion complies with—
    - (i) a short term approval given by the adult guardian under the GAA, chapter 5B, part 4; and
    - (ii) if a short term plan for the adult has been approved under the GAA, chapter 5B, part 4—the short term plan; and
  - (e) the relevant service provider keeps and implements a policy about use of containment or seclusion under this section as required under division 6; and
  - (f) the relevant service provider complies with section 123Z.
- (2) It is not necessary to obtain the adult's consent to the containment or seclusion of the adult under this section.

## **Subdivision 2      Multidisciplinary assessment and development of positive behaviour support plan**

### **123P    Application of sdiv 2**

This subdivision applies if—

- (a) a relevant service provider notifies the chief executive that the relevant service provider wishes to contain or seclude an adult with an intellectual or cognitive disability, other than in the course of providing respite services or community access services to the adult; and
- (b) the adult is not the subject of a containment or seclusion approval.

*Notes—*

- 1 Under the GAA, chapter 5B, a relevant service provider other than the department must apply for a containment or seclusion approval jointly with the chief executive.
- 2 If the adult is the subject of an existing containment or seclusion approval, see subdivision 3 for changing the adult's positive behaviour support plan.

**123Q Chief executive to decide whether multidisciplinary assessment of adult will be conducted**

- (1) The chief executive must decide whether a multidisciplinary assessment of the adult will be conducted.
- (2) The chief executive may decide a multidisciplinary assessment of the adult will be conducted if the chief executive considers it may be necessary for the relevant service provider to contain or seclude the adult to safeguard the adult or others from harm.
- (3) In deciding whether a multidisciplinary assessment of the adult will be conducted, the chief executive must consult with, and consider the views of, the following persons—
  - (a) the adult;
  - (b) if the adult has a guardian or informal decision maker—the guardian or informal decision maker;
  - (c) each relevant service provider providing disability services to the adult;
  - (d) if the chief executive is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the authorised psychiatrist responsible for treatment of the adult under that Act;
  - (e) any other person considered by the chief executive to be integral to the chief executive's decision.

*Example—*

a family member who is part of the adult's support network, a key health care provider or an advocate for the adult

- (4) Despite subsection (3)(b), the chief executive is not required to consult with a person who is an informal decision maker for the adult if—

- (a) the chief executive is not, and could not reasonably be expected to be, aware the person is an informal decision maker for the adult; or
- (b) after taking all reasonable steps, the chief executive can not locate the person.

### **123R Notice of decision not to conduct assessment**

If the chief executive decides a multidisciplinary assessment of the adult will not be conducted, the chief executive must give the following persons a decision notice about the decision—

- (a) the relevant service provider;
- (b) the adult;
- (c) a guardian or informal decision maker for the adult who was consulted by the chief executive under section 123Q(3).

### **123S Development of positive behaviour support plan following assessment**

- (1) This section applies if a multidisciplinary assessment of the adult is conducted.
- (2) The chief executive must develop a positive behaviour support plan for the adult if, having regard to the findings, theories and recommendations of the persons who assessed the adult, the chief executive is satisfied—
  - (a) the adult's behaviour has previously resulted in harm to the adult or others; and
  - (b) it is necessary for the relevant service provider to contain or seclude the adult to safeguard the adult or others from harm; and
  - (c) containing or secluding the adult is the least restrictive way of ensuring the safety of the adult or others.
- (3) The positive behaviour support plan must provide for the use of any restrictive practice, including chemical, mechanical or physical restraint or restricting access, that is—

*Disability Services Act 2006*

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- (a) when the plan is developed, proposed to be used in relation to the adult by any relevant service provider; and
  - (b) based on the recommendations of the persons who assessed the adult.
- (4) In developing the positive behaviour support plan, the chief executive must consult with, and consider the views of, each person who was consulted under section 123Q(3).
- (5) If the positive behaviour support plan provides for the use of chemical restraint, the chief executive must—
- (a) consult the adult's treating doctor; and
  - (b) inform the adult's treating doctor about—
    - (i) the findings and theories of the persons who conducted the multidisciplinary assessment about the adult's behaviour that causes harm to the adult or others, including the factors contributing to the behaviour; and
    - (ii) the strategies, including other restrictive practices, proposed to be used for—
      - (A) meeting the adult's needs and improving the adult's capabilities and quality of life; and
      - (B) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others.
- (6) If the chief executive is not required to develop a positive behaviour support plan for the adult under subsection (2), the chief executive must give the following persons a decision notice about the decision not to develop the plan—
- (a) the relevant service provider;
  - (b) the adult;
  - (c) a guardian or informal decision maker for the adult who was consulted under section 123Q(3).

**123T Participation of psychiatrist in development of plan—adult subject to forensic order or involuntary treatment order**

- (1) This section applies if—
  - (a) the chief executive is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*; and
  - (b) the chief executive develops a positive behaviour support plan for the adult under this division.
- (2) The chief executive must ensure the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000* is given the opportunity to participate in the development of the positive behaviour support plan.

**Subdivision 3 Changing a positive behaviour support plan****123U Application of sdiv 3**

This subdivision applies if an adult with an intellectual or cognitive disability is the subject of a containment or seclusion approval.

**123V Who may change positive behaviour support plan**

The positive behaviour support plan for the adult may be changed only by the chief executive.

**123W When chief executive must decide whether positive behaviour support plan should be changed**

The chief executive must decide whether a change to the adult's positive behaviour support plan should be made if—

- (a) a relevant service provider asks the chief executive, in writing, to make a change to the plan; or
- (b) the chief executive becomes aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*.

*Examples of when a relevant service provider might ask for a change—*

- A new relevant service provider wants to use a restrictive practice in relation to the adult, including chemical, mechanical or physical restraint or restricting access.
- The relevant service provider to which the containment or seclusion approval applies wants to change a detail stated in the positive behaviour support plan for the adult.
- The containment or seclusion approval is about to expire and the relevant service provider to which the approval applies wishes to apply for a new approval.

### **123X Requirements for chief executive's decision about whether change should be made**

- (1) The chief executive may decide a change should be made to the adult's positive behaviour support plan only if satisfied the change would not—
  - (a) increase the risk of the adult's behaviour causing harm to the adult or others; or
  - (b) decrease the extent to which the adult's needs are met or the adult's capabilities and quality of life are improved.
- (2) For deciding whether a change should be made, the chief executive may arrange for all or part of a multidisciplinary assessment to be conducted, or consult any of the persons listed in section 123Q(3), as the chief executive considers appropriate in the circumstances.
- (3) However, if the chief executive is deciding whether a change should be made because the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*, the chief executive must consult the authorised psychiatrist responsible for treatment of the adult under that Act.
- (4) Subsection (2) applies subject to any order or direction of the guardianship tribunal.

### **123Y Action of chief executive after deciding whether change should be made**

- (1) If the chief executive decides a change to the adult's positive behaviour support plan should be made, the chief executive

*Disability Services Act 2006*

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must decide whether the change requires a GAA application to be made.

- (2) The change requires the making of a GAA application if it—
- (a) is inconsistent with the terms of an existing containment or seclusion approval; or

*Examples—*

- The existing containment or seclusion approval approves seclusion for periods of not more than 15 minutes. The change is to increase the maximum period to 30 minutes.
  - The existing containment or seclusion approval applies to relevant service provider A. The change is for relevant service provider B to use a restrictive practice in relation to the adult.
  - The existing containment or seclusion approval is for seclusion. The change is for the additional use of mechanical restraint.
- (b) is requested because an existing containment or seclusion approval is about to expire and the relevant service provider proposes to apply for a further approval.
- (3) If the change does not require the making of a GAA application, the chief executive must make the change and give a copy of the amended plan to the following—
- (a) the guardianship tribunal;
- (b) the adult;
- (c) if the adult has a guardian or informal decision maker—the guardian or informal decision maker;
- (d) the relevant service provider to which an existing containment or seclusion approval applies.
- (4) However, the chief executive is not required to give a copy of the amended plan to a person who is an informal decision maker for the adult if—
- (a) the chief executive is not, and could not reasonably be expected to be, aware the person is an informal decision maker for the adult; or
- (b) after taking all reasonable steps, the chief executive can not locate the person.

*Disability Services Act 2006*

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(5) As soon as practicable after making the decision mentioned in subsection (1), the chief executive must give a prescribed notice to—

- (a) if the chief executive was required to decide whether a change should be made because of a request made by a relevant service provider—the relevant service provider; or

*Note—*

If the chief executive decides the change should not be made and the relevant service provider is dissatisfied with the decision, the relevant service provider could apply to the guardianship tribunal under the GAA, section 80ZA for review of the existing containment or seclusion approval.

- (b) if the chief executive was required to decide whether a change should be made because the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—

- (i) the director of mental health; and  
(ii) the relevant service provider to which an existing containment or seclusion approval applies.

(6) In this section—

***GAA application*** means an application to the guardianship tribunal for—

- (a) the giving of a new containment or seclusion approval; or  
(b) review of an existing containment or seclusion approval.

***prescribed notice*** means a notice stating the chief executive's decisions about—

- (a) whether a change should be made to the positive behaviour support plan for the adult; and  
(b) if the chief executive decides a change should be made—whether the change requires the making of a GAA application.

## **Subdivision 4      General requirements for containment or seclusion**

### **123Z    Relevant service provider to ensure adult's needs are met**

A relevant service provider containing or secluding an adult with an intellectual or cognitive disability must ensure the adult is given each of the following—

- (a) sufficient bedding and clothing;
- (b) sufficient food and drink;
- (c) access to adequate heating and cooling;
- (d) access to toilet facilities;
- (e) the adult's medication as prescribed by a doctor.

## **Division 4            Use of restrictive practices other than containment or seclusion**

### **Subdivision 1      Requirements for using chemical, mechanical or physical restraint, or restricting access**

#### **123ZA Using chemical, mechanical or physical restraint, or restricting access, with consent of guardian etc.**

- (1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability if—
  - (a) use of the restrictive practice is necessary to prevent the adult's behaviour causing harm to the adult or others; and
  - (b) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and
  - (c) either—

*Disability Services Act 2006*

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- (i) if the adult is the subject of a containment or seclusion approval—use of the restrictive practice complies with—
    - (A) the approval; and
    - (B) if the containment or seclusion approval is not given as an interim order under the GAA, section 80ZR—a positive behaviour support plan for the adult developed by the chief executive under division 3; or
  - (ii) otherwise—use of the restrictive practice complies with—
    - (A) a positive behaviour support plan for the adult developed by the relevant service provider under this division; and
    - (B) the consent of a relevant decision maker for the adult; and
  - (d) the relevant service provider keeps and implements a policy about use of the restrictive practice under this section as required under division 6.
- (2) For subsection (1)(c), the restrictive practice is not used in compliance with a positive behaviour support plan if the relevant service provider does not implement the positive strategies stated in the plan.
- (3) Subsection (1)(d) applies subject to the terms of any containment or seclusion approval of which the adult is the subject.
- (4) In this section—
- relevant decision maker***, for an adult with an intellectual or cognitive disability, means—
- (a) a guardian for a restrictive practice (general) matter for the adult; or
  - (b) for restricting access of the adult, if there is no guardian for a restrictive practice (general) matter for the adult—an informal decision maker for the adult.

**123ZB Using chemical, mechanical or physical restraint, or restricting access, for respite services or community access services**

- (1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability in the course of providing respite services or community access services to the adult if—
  - (a) use of the restrictive practice is necessary to prevent the adult's behaviour causing harm to the adult or others; and
  - (b) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and
  - (c) before using the restrictive practice, the relevant service provider complies with the requirements under division 5; and
  - (d) use of the restrictive practice complies with—
    - (i) the consent of a relevant decision maker (respite) for the adult; and
    - (ii) a respite/community access plan for the adult; and
  - (e) the relevant service provider keeps and implements a policy about use of the restrictive practice under this section as required under division 6.
- (2) For subsection (1)(d)(ii), the restrictive practice is not used in compliance with the respite/community access plan if the relevant service provider does not implement the positive strategies stated in the plan.
- (3) This section does not apply if the adult is the subject of a containment or seclusion approval.
- (4) This section does not apply to chemical restraint (fixed dose) used in the course of providing respite services to the adult.

**123ZC Using chemical restraint (fixed dose) for respite services**

- (1) A relevant service provider may use chemical restraint (fixed dose) on an adult with an intellectual or cognitive disability in the course of providing respite services to the adult if—

- (a) use of the chemical restraint complies with the consent of a relevant decision maker (respice) for the adult; and
  - (b) the relevant service provider keeps and implements a policy about use of the chemical restraint under this section as required under division 6.
- (2) This section does not apply if the adult is the subject of a containment or seclusion approval.

**123ZD Using chemical, mechanical or physical restraint, or restricting access, under short term approval**

- (1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability if—
- (a) there is an immediate and serious risk of harm to the adult or others; and
  - (b) use of the restrictive practice—
    - (i) is necessary to prevent the adult’s behaviour causing harm to the adult or others; and
    - (ii) is the least restrictive way of ensuring the safety of the adult or others; and
    - (iii) complies with a short term approval and, if a short term plan for the adult has been approved under subdivision 4 or the GAA, chapter 5B, part 4, the short term plan; and
  - (c) the relevant service provider keeps and implements a policy about use of the restrictive practice under this section as required under division 6.
- (2) It is not necessary to obtain the adult’s consent to the use of a restrictive practice under this section.

## **Subdivision 2      Assessment of adult and positive behaviour support plan**

### **123ZE Application of sdiv 2**

This subdivision applies if—

- (a) a relevant service provider proposes to use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability, other than—
  - (i) under a short term approval; or
  - (ii) in the course of providing respite services or community access services to the adult; and
- (b) the adult is not the subject of a containment or seclusion approval; and

*Note—*

If the adult is the subject of a containment or seclusion approval, and the adult's positive behaviour support plan does not provide for the relevant service provider's use of the restrictive practice mentioned in paragraph (a), the relevant service provider must—

- (a) ask the chief executive to change the positive behaviour support plan to provide for the relevant service provider's use of the restrictive practice (see division 3, subdivision 3); and
  - (b) apply to the guardianship tribunal for the making or review of a containment or seclusion approval in relation to the relevant service provider's use of the restrictive practice.
- (c) the relevant service provider does not propose to contain or seclude the adult in addition to using the restrictive practice mentioned in paragraph (a).

### **123ZF Requirements for development of positive behaviour support plan—assessment and consultation**

- (1) This section states the requirements with which the relevant service provider must comply in developing a positive behaviour support plan for the adult.
- (2) The relevant service provider must—

*Disability Services Act 2006*

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- (a) ensure the adult is assessed; and

*Note—*

See section 123J for requirements about the assessment of the adult.

- (b) if the provider is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—ensure the authorised psychiatrist responsible for treatment of the adult under that Act is given the opportunity to participate in the development of the positive behaviour support plan; and
- (c) consult with, and consider the views of, the following—
- (i) the adult;
  - (ii) any guardian or informal decision maker for the adult;
  - (iii) any other relevant service provider providing disability services to the adult;
  - (iv) another person considered by the provider to be integral to the development of the plan.

*Example—*

a family member who is part of the adult's support network, a key health care provider or an advocate for the adult

- (3) Also, if the relevant service provider proposes to use chemical restraint, the relevant service provider must—
- (a) consult the adult's treating doctor; and
  - (b) inform the adult's treating doctor about—
    - (i) the findings and theories of the person who assessed the adult about the adult's behaviour that causes harm to the adult or others, including the factors contributing to the behaviour; and
    - (ii) the strategies, including other restrictive practices, proposed to be used in conjunction with the use of the chemical restraint for—
      - (A) meeting the adult's needs and improving the adult's capabilities and quality of life; and

- (B) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others.
- (4) The positive behaviour support plan may provide for the use of mechanical or physical restraint only if the use is supported by the recommendations of the person who assessed the adult.

### **123ZG Changing a positive behaviour support plan**

- (1) A positive behaviour support plan that provides for use of chemical, mechanical or physical restraint may be changed by the relevant service provider only if—
  - (a) either—
    - (i) for a change relating to use of chemical restraint—the relevant service provider has consulted the adult's treating doctor; or
    - (ii) otherwise—the change is supported by the recommendations of an appropriately qualified person; and
  - (b) a guardian for a restrictive practice (general) matter for the adult consents to the change.
- (2) A positive behaviour support plan that provides only for restricting access of the adult may be changed by the relevant service provider only if a following person consents to the change—
  - (a) a guardian for a restrictive practice (general) matter for the adult;
  - (b) if there is no guardian for a restrictive practice (general) matter for the adult—an informal decision maker for the adult.

### **123ZH Requirement for relevant service provider to consider whether plan should be changed**

- (1) This section applies if—
  - (a) a positive behaviour support plan is developed for an adult under this division; and

- (b) the relevant service provider becomes aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*.
- (2) The relevant service provider must consider whether the positive behaviour support plan should be changed.
- (3) In deciding whether the positive behaviour support plan should be changed, the relevant service provider must—
  - (a) consult the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000*; and
  - (b) consider the psychiatrist's views about the use of any restrictive practice provided for in the plan.

### **Subdivision 3      Requirements if adult subject to forensic order or involuntary treatment order**

*Note—*

Under section 161, a funded non-government service provider may be given a compliance notice requiring the provider to remedy a contravention of a requirement under this subdivision.

#### **123ZI Requirement for relevant service provider to notify guardian**

- (1) This section applies if—
  - (a) a relevant service provider is required under section 123ZF(2) or 123ZH(3) to consult the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000*; and
  - (b) the psychiatrist does not agree with the use of a restrictive practice provided for in the positive behaviour support plan for the adult.
- (2) As soon as practicable after consulting the authorised psychiatrist, the relevant service provider must notify a relevant decision maker for the adult about the psychiatrist's views regarding use of the restrictive practice.

(3) In this section—

**consult**, the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000*, includes give the psychiatrist an opportunity to participate in the development of a positive behaviour support plan.

**relevant decision maker**, for the adult, means—

- (a) a guardian for a restrictive practice (general) matter for the adult; or
- (b) if the only restrictive practice provided for in the positive behaviour support plan for the adult is restricting access and there is no guardian for a restrictive practice (general) matter for the adult—an informal decision maker for the adult.

### **123ZJ Requirement for relevant service provider to notify director of mental health**

(1) This section applies if—

- (a) a relevant service provider develops or changes a positive behaviour support plan for an adult under this division; and
- (b) a guardian for a restrictive practice (general) matter, or an informal decision maker, for the adult consents to the use of a restrictive practice by the relevant service provider in relation to the adult; and
- (c) the relevant service provider is or becomes aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*.

(2) The relevant service provider must—

- (a) give notice to the director of mental health of the terms of the consent given by the guardian or informal decision maker as soon as practicable after the later of—
  - (i) the consent being given; or
  - (ii) the relevant service provider becoming aware of the forensic order or involuntary treatment order; and

- (b) if asked by the director of mental health, give the director a copy of the positive behaviour support plan for the adult.

## **Subdivision 4      Short term approvals given by chief executive**

### **123ZK Short term approval for use of restrictive practices other than containment or seclusion**

- (1) This section applies if a relevant service provider asks the chief executive for approval to use a restrictive practice, other than containment or seclusion, in relation to an adult with an intellectual or cognitive disability.
- (2) The chief executive may give the approval only if the chief executive is satisfied—
  - (a) the adult is not the subject of a containment or seclusion approval; and
  - (b) there is no guardian for a restrictive practice (general) matter for the adult; and
  - (c) there is an immediate and serious risk that, if the approval is not given, the adult's behaviour will cause harm to the adult or others; and
  - (d) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and
  - (e) if the restrictive practice is chemical restraint—the relevant service provider has consulted with, and considered the views of, the adult's treating doctor.
- (3) If the chief executive has previously given an approval under this section in relation to the adult, the chief executive may give the approval only if satisfied exceptional circumstances justify giving a subsequent approval under this section.
- (4) In deciding whether to give the approval, the chief executive must, unless it is not practicable in the circumstances, consult with and consider the views of the following persons about the proposed use of the restrictive practice—

*Disability Services Act 2006*

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- (a) the adult, or a guardian or informal decision maker for the adult;
  - (b) if the chief executive is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the authorised psychiatrist responsible for treatment of the adult under that Act.
- (5) The chief executive must, as soon as practicable after deciding whether to give the approval, give the relevant service provider notice of the decision, including, if the approval is given—
  - (a) the conditions to which it is subject; and
  - (b) the period for which it has effect.
- (6) Also, the chief executive must, within 7 days after deciding whether to give the approval, give notice of the decision to the following persons—
  - (a) the adult guardian;
  - (b) any person consulted by the chief executive under subsection (4).
- (7) A notice for subsection (6) must state each of the following—
  - (a) the name of the adult;
  - (b) the name of the relevant service provider;
  - (c) the chief executive’s decision, including, if the approval is given—
    - (i) the terms of the approval; and
    - (ii) the chief executive’s reasons for giving the approval.
- (8) A person given notice under subsection (5) or (6) of a decision of the chief executive to give, or refuse to give, the approval may apply to the guardianship tribunal, and the guardianship tribunal may make the order it considers appropriate.

**123ZL Period for which short term approval has effect**

- (1) An approval given by the chief executive under section 123ZK has effect for the period stated in the notice given to the relevant service provider under section 123ZK(5).
- (2) However, the period must not be more than 3 months.
- (3) The approval ends if—
  - (a) the guardianship tribunal appoints a guardian for a restrictive practice (general) matter for the adult; or
  - (b) the guardianship tribunal gives a containment or seclusion approval for the adult; or
  - (c) the relevant service provider does not comply with the condition of the approval mentioned in section 123ZM(1)(a); or
  - (d) the chief executive notifies the relevant service provider under section 123ZN that the chief executive does not approve a short term plan for the adult given to the chief executive by the provider.

**123ZM Conditions of short term approval**

- (1) An approval given by the chief executive under section 123ZK—
  - (a) is subject to the condition that, within 14 days after receiving notice that the approval has been given, the relevant service provider must give the chief executive a short term plan for the adult; and
  - (b) may be subject to other conditions considered appropriate by the chief executive.
- (2) For this part, a *short term plan*, for an adult with an intellectual or cognitive disability, is a plan stating at least the following—
  - (a) a description of the behaviour of the adult that causes harm to the adult or others, including the consequences of the behaviour;
  - (b) a description of the restrictive practices used in relation to the adult;

- (c) the reasons for using the restrictive practices;
- (d) a demonstration of why using the restrictive practices is the least restrictive way of ensuring the safety of the adult or others.

### **123ZN Chief executive's decision about approving short term plan**

- (1) This section applies if the chief executive is given a short term plan for an adult with an intellectual or cognitive disability by a relevant service provider under section 123ZM(1)(a).
- (2) As soon as practicable after receiving the short term plan, the chief executive must decide whether to approve it.
- (3) The chief executive must approve the short term plan if the chief executive is satisfied—
  - (a) the information in the plan is consistent with the information considered by the chief executive in deciding whether to give the relevant short term approval; and
  - (b) there is an immediate and serious risk that, if the short term approval does not continue in effect, the adult's behaviour will cause harm to the adult or others; and
  - (c) use of the restrictive practices in compliance with the short term approval and the plan is the least restrictive way of ensuring the safety of the adult or others.
- (4) The chief executive must, as soon as practicable after deciding whether to approve the short term plan, notify the relevant service provider about the chief executive's decision.
- (5) If the chief executive does not approve the short term plan—
  - (a) the relevant service provider may apply to the guardianship tribunal; and
  - (b) the guardianship tribunal may make the order it considers appropriate.

## **Division 5                    Use of restrictive practices for respite services or community access services**

### **123ZO Purpose of div 5**

- (1) This division prescribes the requirements that a relevant service provider must comply with before using a restrictive practice in the course of providing respite services or community access services to an adult with an intellectual or cognitive disability.
- (2) This division does not apply for the use of chemical restraint (fixed dose) under section 123ZC.

### **123ZP Requirement to develop respite/community access plan**

- (1) The relevant service provider must develop a respite/community access plan for the adult.
- (2) A *respite/community access plan*, for an adult with an intellectual or cognitive disability, is a plan stating at least each of the following—
  - (a) the adult's name;
  - (b) a description of the behaviour of the adult that causes harm to the adult or others, including the consequences of the behaviour;
  - (c) a description of the restrictive practices used in relation to the adult;
  - (d) the reasons for using the restrictive practices;
  - (e) any strategies that must be attempted before using the restrictive practices;
  - (f) the procedure for using the restrictive practices, including observations and monitoring, and any other measures necessary to ensure the adult's proper care and treatment, that must take place while the restrictive practices are being used;

- (g) a demonstration of why the restrictive practices are the least restrictive way of ensuring the safety of the adult or others;
- (h) a description of the positive strategies that will be used to—
  - (i) meet the adult’s needs and improve the adult’s capabilities and quality of life; and
  - (ii) reduce the intensity, frequency and duration of the adult’s behaviour that causes harm to the adult or others;
- (i) for containment—a description of the place where the adult will be contained;
- (j) for seclusion—
  - (i) a description of the place where the adult will be secluded; and
  - (ii) the maximum period for which seclusion may be used at any 1 time and the maximum frequency of the seclusion;
- (k) for chemical restraint—
  - (i) the name of the medication to be used and any available information about the medication, including, for example, information about possible side effects; and
  - (ii) the dose, route and frequency of administration, including, for medication to be administered as and when needed, the circumstances in which the medication may be administered, as prescribed by the adult’s treating doctor; and
  - (iii) the name of the adult’s treating doctor;
- (l) for mechanical or physical restraint—the maximum period for which the restraint may be used at any 1 time.

### **123ZQ Obtaining information about the adult**

In developing a respite/community access plan, the relevant service provider must obtain, from the persons consulted

under section 123ZR, any information available and relevant for identifying the following—

- (a) the adult's needs;
- (b) the behaviour of the adult that causes harm to the adult or others, including the consequences of the behaviour;
- (c) the factors contributing to the behaviour mentioned in paragraph (b).

### **123ZR Consultation**

In developing a respite/community access plan for an adult, the relevant service provider must consult with, and consider the views of, the following persons—

- (a) the adult;
- (b) if the adult has a guardian or informal decision maker—the guardian or informal decision maker;
- (c) any other relevant service provider providing disability services to the adult;
- (d) any other person considered by the relevant service provider to be integral to the development of the plan.

*Example—*

a family member who is part of the adult's support network, a key health care provider or an advocate for the adult

### **123ZS Risk assessment**

The relevant service provider must identify, and keep a record of—

- (a) the risks associated with the provision of respite services or community access services to the adult by the relevant service provider; and

*Examples of possible risks—*

- the adult's behaviour causing harm to another client of the relevant service provider
- the staff of the relevant service provider not being adequately trained to manage the behaviour of the adult

- the physical environment in which the services are provided not being adequate to accommodate the needs of the adult
- (b) the procedures the relevant service provider will implement to mitigate those risks.

## **Division 6                      Policy about use of restrictive practices**

### **123ZT Application of div 6**

This division applies if another section in this part authorises a relevant service provider to use a restrictive practice if the relevant service provider keeps and implements a policy about use of the restrictive practice.

*Note—*

See sections 123M(1)(d), 123N(1)(e), 123O(1)(e), 123ZA(1)(d), 123ZB(1)(e), 123ZC(1)(b) and 123ZD(1)(c).

### **123ZU Policy must be consistent with department's policy**

The relevant service provider must keep and implement a policy about use of the restrictive practice that is consistent with the department's policy about use of the restrictive practice.

### **123ZV Requirements for content of department's policy**

- (1) The department must have a policy about use of each type of restrictive practice.
- (2) To the extent the policy is about use of a type of restrictive practice other than under a short term approval or in the course of providing respite services or community access services to an adult, the policy must outline the procedures a relevant service provider must use to—
  - (a) for a restrictive practice not used under a containment or seclusion approval—
    - (i) develop a positive behaviour support plan for an adult with an intellectual or cognitive disability,

*Disability Services Act 2006*

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- including, for example, consulting with members of the adult's support network; and
- (ii) review use of the restrictive practice at least once—
    - (A) if the restrictive practice is used with the consent of a guardian for a restrictive practice (general) matter—during the period of the guardian's appointment; or
    - (B) if the restrictive practice is used with the consent of an informal decision maker—during each 12 month period; and
  - (b) for a restrictive practice used under a containment or seclusion approval—review use of the restrictive practice when required by the chief executive, but at least once during the period of the approval; and
  - (c) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—
    - (i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and
    - (ii) has the skills and knowledge required to use the restrictive practice appropriately; and
  - (d) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation; and
  - (e) for restricting access—minimise the impact on other persons living at the premises.
- (3) To the extent the policy is about use of a type of restrictive practice under a short term approval, the policy must outline the procedures a relevant service provider must use to—
- (a) develop a short term plan for an adult with an intellectual or cognitive disability; and
  - (b) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—
    - (i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and

*Disability Services Act 2006*

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- (ii) has the skills and knowledge required to use the restrictive practice appropriately; and
  - (c) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation.
- (4) To the extent the policy is about use of a type of restrictive practice in the course of providing respite services or community access services to an adult with an intellectual or cognitive disability, the policy must outline the procedures a relevant service provider must use to—
  - (a) for a restrictive practice other than chemical restraint (fixed dose)—
    - (i) develop a respite/community access plan for the adult; and
    - (ii) carry out a risk assessment for the adult under section 123ZS; and
  - (b) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—
    - (i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and
    - (ii) has the skills and knowledge required to use the restrictive practice appropriately; and
  - (c) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation; and
  - (d) for restricting access—minimise the impact on other persons living at the premises.
- (5) Subsections (2) to (4) do not limit the matters that may be stated in the policy.
- (6) The policy must ensure appropriate regard is had to linguistic and cultural diversity and Aboriginal tradition and Island custom.

*Editor's note—*

*Acts Interpretation Act 1954, section 36—*

**Aboriginal tradition** means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions,

observances, customs and beliefs relating to particular persons, areas, objects or relationships.

*Island custom*, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

### **123ZW Requirements for publication of department's policy etc.**

- (1) The chief executive must keep a copy of the department's policy about use of each type of restrictive practice available for inspection free of charge by relevant service providers at—
  - (a) the department's head office and regional offices; and
  - (b) other places the chief executive considers appropriate.
- (2) Also, the chief executive must publish the policy on the department's website on the internet.

## **Division 7                      Review of particular chief executive decisions**

### **123ZX Application of div 7**

This division applies if the chief executive makes a decision (a *relevant decision*) about which the chief executive is required under this part to give a decision notice.

*Note—*

See sections 123R (a decision that a multidisciplinary assessment will not be conducted) and 123S(6) (a decision not to develop a positive behaviour support plan under division 3).

### **123ZY Definitions for div 7**

In this division—

*interested person*, for a relevant decision, means a person to whom the chief executive is required under this part to give a decision notice about the decision.

*relevant decision* see section 123ZX.

**123ZZ Application for review**

- (1) An interested person for a relevant decision may apply to the chief executive, within 28 days after receiving a decision notice about the decision, to review the decision.
- (2) The chief executive may extend the time for applying for the review.
- (3) Also, an interested person for a relevant decision may apply to the chief executive to review the decision if the chief executive has not given the interested person a decision notice about the decision.
- (4) The application must be in the approved form and accompanied by enough information to enable the chief executive to decide the application.

**123ZZA Review of relevant decision**

- (1) This section applies to an application under section 123ZZ for review of a relevant decision.
- (2) Unless the chief executive made the relevant decision personally, the chief executive must ensure the application is not dealt with by—
  - (a) the person who made the relevant decision; or
  - (b) a person in a less senior office than the person who made the relevant decision.
- (3) Within 28 days after receiving the application, the chief executive must review the relevant decision and make a decision (the *review decision*)—
  - (a) confirming the relevant decision; or
  - (b) amending the relevant decision; or
  - (c) substituting another decision for the relevant decision.
- (4) Immediately after deciding the application, the chief executive must give the interested person a notice stating—
  - (a) the review decision; and
  - (b) the reasons for the review decision.

**Division 8                      Miscellaneous provisions****Subdivision 1                Immunity for use of restrictive practices****123ZZB Immunity from liability—relevant service provider**

A relevant service provider is not criminally or civilly liable if the relevant service provider, acting honestly and without negligence, uses a restrictive practice under this part.

**123ZZC Immunity from liability—individual acting for relevant service provider**

- (1) This section applies to an individual who, acting for a relevant service provider, uses a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- (2) The individual is not criminally or civilly liable for using the restrictive practice if the individual acts honestly and without negligence in compliance with—
  - (a) if the restrictive practice is used under section 123M—
    - (i) the containment or seclusion approval for the adult; and
    - (ii) either—
      - (A) if the containment or seclusion for the adult is given as an interim order under the GAA, section 80ZR—the terms of the order; or
      - (B) otherwise—the positive behaviour support plan for the adult; or
  - (b) if the restrictive practice is used under section 123N—
    - (i) the consent of a guardian for a restrictive practice (respite) matter for the adult; and
    - (ii) the respite/community access plan for the adult; or
  - (c) if the restrictive practice is used under section 123ZA—

- (i) the positive behaviour support plan for the adult; and
  - (ii) either—
    - (A) a containment or seclusion approval for the adult; or
    - (B) the consent of a relevant decision maker for the adult within the meaning of section 123ZA; or
  - (d) if the restrictive practice is used under section 123ZB—
    - (i) the respite/community access plan for the adult; and
    - (ii) the consent of a relevant decision maker (respite) for the adult; or
  - (e) if the restrictive practice is used under section 123ZC—the consent of a relevant decision maker (respite) for the adult; or
  - (f) if the restrictive practice is used under section 123O or 123ZD—
    - (i) the relevant short term approval; and
    - (ii) if a short term plan for the adult has been approved under division 4, subdivision 4 or the GAA, chapter 5B, part 4—the short term plan.
- (3) For subsection (2), the individual is taken to be acting in compliance with an approval, consent or plan mentioned in the subsection if the individual reasonably believes he or she is acting in compliance with the approval, consent or plan.

## **Subdivision 2      Requirements for relevant service providers**

*Note—*

Under section 161, a funded non-government service provider may be given a compliance notice requiring the provider to remedy a contravention of a requirement under this subdivision.

**123ZZD Requirement to give information to guardian or informal decision maker**

- (1) This section applies if—
  - (a) a relevant service provider seeks consent from a substitute decision maker for an adult to use a restrictive practice in relation to the adult; and
  - (b) the restrictive practice is not chemical restraint (fixed dose) used under section 123ZC in the course of providing respite services to the adult.
- (2) To enable the substitute decision maker to make an informed decision about the use of a restrictive practice other than in the course of providing respite services or community access services to the adult, the relevant service provider must give the substitute decision maker each of the following—
  - (a) the positive behaviour support plan for the adult;
  - (b) any assessment or other information used to develop or change the plan;
  - (c) if the relevant service provider is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the terms of the order.
- (3) To enable the substitute decision maker to make an informed decision about the use of a restrictive practice in the course of providing respite services or community access services to the adult, the relevant service provider must give the substitute decision maker—
  - (a) the respite/community access plan for the adult; and
  - (b) any information used to develop the plan.
- (4) If the relevant service provider, acting honestly and without negligence, gives the information to the substitute decision maker, the relevant service provider is not liable, civilly, criminally or under an administrative process, for giving the information.
- (5) Also, merely because the relevant service provider gives the information, the relevant service provider can not be held to have—

- (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- (6) Without limiting subsections (4) and (5)—
- (a) in a proceeding for defamation, the relevant service provider has a defence of absolute privilege for publishing the information; and
  - (b) if the relevant service provider would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the relevant service provider—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.
- (7) This section does not limit the GAA, section 44.

*Note—*

The GAA, section 44 enables a guardian to obtain all information the adult would have been entitled to if the adult had capacity and that is necessary for the guardian to make informed decisions.

- (8) In this section—

***information*** includes a document.

***substitute decision maker***, for an adult, means a guardian for a restrictive practice matter, or an informal decision maker, for the adult.

*Note—*

A guardian or informal decision maker who gains confidential information is subject to confidentiality requirements under the GAA. See the GAA, section 249 for guardians and section 80ZT for informal decision makers.

## **123ZZE Requirement to keep records and other documents**

- (1) This section applies to a relevant service provider using a restrictive practice in relation to an adult with an intellectual or cognitive disability.

- (2) The relevant service provider must make, and keep for the time prescribed under a regulation, the records prescribed under a regulation.
- (3) Also, the relevant service provider must keep, at premises where disability services are provided to the adult, a copy of—
  - (a) if the restrictive practice is used under section 123M or 123ZA—the positive behaviour support plan for the adult; or
  - (b) if the restrictive practice is used under section 123N or 123ZB—the respite/community access plan for the adult; or
  - (c) if the restrictive practice is used under section 123O or 123ZD—the short term approval and any short term plan for the adult.
- (4) If the restrictive practice is used under a containment or seclusion approval given as an interim order under the GAA, section 80ZR—
  - (a) subsection (3)(a) does not apply; and
  - (b) the relevant service provider must keep, at premises where disability services are provided to the adult, a copy of the interim order.

### **123ZZF Notification requirements about approvals given for use of restrictive practices**

- (1) If—
  - (a) a relevant service provider is given a limited restrictive practice approval authorising the provider to use a restrictive practice at a service outlet; and
  - (b) there is no other limited restrictive practice approval in effect relating to the service outlet;the relevant service provider must, within the required period, give notice in the approved form to the chief executive.
- (2) A relevant service provider who has given a notice under subsection (1) must, within the period mentioned in subsection (6), give notice in the approved form to the chief

*Disability Services Act 2006*

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executive if all limited restrictive practice approvals relating to the service outlet stop having effect.

- (3) If—
- (a) a relevant service provider is given a restrictive practice approval authorising the provider to use a restrictive practice at a visitable site under the GAA; and
  - (b) there is no other restrictive practice approval in effect relating to the visitable site;

the relevant service provider must, within the required period, give notice to the chief executive of the department in which the GAA is administered.

*Editor's note—*

GAA, section 222—

**visitable site** means a place, other than a private dwelling house, where a consumer lives or receives services and that is prescribed under a regulation.

- (4) For subsection (3), the notice must state—
- (a) the name and address of the visitable site; and
  - (b) that a restrictive practice approval has been given in relation to the visitable site.
- (5) A relevant service provider who has given a notice under subsection (3) must, within the period mentioned in subsection (6), give notice to the chief executive of the department in which the GAA is administered if all restrictive practice approvals relating to the visitable site stop having effect.
- (6) For subsections (2) and (5), the notice must be given within 21 days after the event mentioned in the subsection happens.
- (7) In this section—

**limited restrictive practice approval** means a restrictive practice approval other than—

- (a) a containment or seclusion approval; or
- (b) a short term approval given by the adult guardian under the GAA, chapter 5B, part 4.

***required period*** means—

- (a) if the restrictive practice approval is a short term approval—14 days after the approval is given; or
- (b) otherwise—21 days after the restrictive practice approval is given.

***restrictive practice approval*** means—

- (a) a containment or seclusion approval; or
- (b) consent to use of a restrictive practice given by—
  - (i) a guardian for a restrictive practice matter; or
  - (ii) an informal decision maker; or
- (c) a short term approval.

### **Subdivision 3      Confidentiality provisions**

#### **123ZZG Definitions for sdiv 3**

In this subdivision—

***chief executive (health)*** means the chief executive of the department in which the *Health Services Act 1991* is administered.

***health professional*** means a person engaged in delivering a private sector health service, including the following—

- (a) a person registered under a health practitioner registration Act within the meaning of the *Health Practitioner Registration Boards (Administration) Act 1999*;
- (b) a person enrolled, registered or authorised to practise under the *Nursing Act 1992*;
- (c) any other person, including, for example, an audiologist, dietitian or social worker.

***private sector health service*** means a service for maintaining, improving or restoring people's health and wellbeing, other than a service provided by the State.

**123ZZH Relevant service provider may request confidential information from health professional or chief executive (health)**

- (1) This section applies if a relevant service provider considers a health professional, or the chief executive (health), may hold confidential information about an adult with an intellectual or cognitive disability that is relevant to any of the following being done by the provider—
  - (a) the assessment of the adult, including the making of a decision about whether to assess the adult;
  - (b) the development or changing of a positive behaviour support plan for the adult;
  - (c) the development of a short term plan for the adult;
  - (d) the development of a respite/community access plan for the adult.
- (2) The relevant service provider may ask the health professional or chief executive (health) for the confidential information.
- (3) A health professional or the chief executive (health) who gives confidential information requested under this section and who would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice—
  - (a) does not contravene the Act, oath or rule of law or practice by giving the information; and
  - (b) is not liable to disciplinary action for giving the information.
- (4) Also, merely because the health professional or the chief executive (health) gives the confidential information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.

**123ZZI Relevant service providers must maintain confidentiality**

- (1) This section applies if a relevant service provider—

*Disability Services Act 2006*

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- (a) gains confidential information under section 123ZZH;  
or
- (b) otherwise gains confidential information in the course  
of—
  - (i) assessing an adult with an intellectual or cognitive  
disability or developing a positive behaviour  
support plan for the adult; or
  - (ii) developing a respite/community access plan or  
short term plan for an adult with an intellectual or  
cognitive disability.

- (2) The relevant service provider, or an individual acting for the  
relevant service provider, must not disclose the information to  
anyone other than under subsection (3).

Maximum penalty—100 penalty units.

- (3) The relevant service provider, or an individual acting for the  
relevant service provider, may disclose the information to  
someone else—
  - (a) for this Act; or
  - (b) to discharge a function under another law; or
  - (c) for a proceeding in a court or tribunal; or
  - (d) if authorised under another law or a regulation made  
under this Act; or
  - (e) if authorised in writing by the adult with an intellectual  
or cognitive disability to whom the information relates;  
or
  - (f) to protect a person with a disability from abuse, neglect  
or exploitation.

## **Part 11                      Monitoring and enforcement**

### **Division 1                      Authorised officers**

#### **124      Powers generally**

- (1) An authorised officer has the powers given under this Act.
- (2) In exercising the powers an authorised officer is subject to the directions of the chief executive.

#### **125      Appointment**

- (1) The chief executive may appoint any of the following persons as an authorised officer—
  - (a) a public service employee;
  - (b) for the purpose of investigating a particular matter, another person.
- (2) A person may be appointed for the Act generally or for stated provisions of the Act.

#### **126      Qualifications for appointment**

The chief executive may appoint a person as an authorised officer only if—

- (a) the chief executive is satisfied the person is qualified for appointment because the person has the necessary expertise or experience; and
- (b) the person has the competencies, if any, prescribed under a regulation as relevant to the person's appointment.

#### **127      Appointment conditions and limit on powers**

- (1) An authorised officer holds office on the conditions stated in—
  - (a) the authorised officer's instrument of appointment; or

- (b) a signed notice given to the authorised officer; or
  - (c) a regulation.
- (2) The instrument of appointment, a signed notice given to an authorised officer or a regulation may limit the authorised officer's powers under this Act.
- (3) In this section—  
*signed notice* means a notice signed by the chief executive.

### **128 Issue of identity card**

- (1) The chief executive must issue an identity card to each authorised officer.
- (2) The identity card must—
- (a) contain a recent photo of the authorised officer; and
  - (b) contain a copy of the authorised officer's signature; and
  - (c) identify the person as an authorised officer under this Act; and
  - (d) state an expiry date for the card.
- (3) This section does not prevent the issue of a single identity card to a person for this Act and other purposes.

### **129 Production or display of identity card**

- (1) In exercising a power under this Act in relation to another person, an authorised officer must—
- (a) produce the authorised officer's identity card for the other person's inspection before exercising the power; or
  - (b) have the identity card displayed so it is clearly visible to the other person when exercising the power.
- (2) However, if it is not practicable to comply with subsection (1), the authorised officer must produce the identity card for the other person's inspection at the first reasonable opportunity.
- (3) For subsection (1), an authorised officer does not exercise a power in relation to another person only because the

authorised officer has entered a place as mentioned in section 133(1)(b) or (2).

### **130 When authorised officer ceases to hold office**

- (1) An authorised officer ceases to hold office if any of the following happens—
  - (a) the term of office stated in a condition of office ends;
  - (b) under another condition of office, the authorised officer ceases to hold office;
  - (c) the authorised officer’s resignation under section 131 takes effect.
- (2) Subsection (1) does not limit the ways an authorised officer may cease to hold office.
- (3) In this section—

*condition of office* means a condition on which the authorised officer holds office.

### **131 Resignation**

An authorised officer may resign by signed notice given to the chief executive.

### **132 Return of identity card**

A person who ceases to be an authorised officer must return the person’s identity card to the chief executive within 21 days after ceasing to be an authorised officer unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

## **Division 2            Powers of authorised officers**

### **Subdivision 1        Entry of places**

#### **133    Power to enter places**

- (1) An authorised officer may enter a place if—
  - (a) its occupier consents to the entry; or
  - (b) it is a public place and the entry is made when it is open to the public; or
  - (c) the entry is authorised by a warrant; or
  - (d) it is a place where a funded non-government service provider provides disability services and the entry is authorised under section 134.
- (2) For the purpose of asking the occupier of a place for consent to enter, an authorised officer may, without the occupier's consent or a warrant—
  - (a) enter land around premises at the place to an extent that is reasonable to contact the occupier; or
  - (b) enter part of the place the officer reasonably considers members of the public ordinarily are allowed to enter when they wish to contact the occupier.

#### **134    Power to enter place where funded non-government service provider provides disability services**

- (1) This section applies to the entry of a place where a funded non-government service provider provides disability services.
- (2) If the place is not a home, the authorised officer may enter the place if it is open for carrying on business or otherwise open for entry.
- (3) Also, the authorised officer may enter the place with necessary and reasonable help and force, whether or not the place is a home—
  - (a) if the authorised officer reasonably suspects—

- (i) there is an immediate risk of harm to a person with a disability at the place because of abuse, neglect or exploitation; or
    - (ii) there is an imminent risk that evidence at the place, of a misuse of funds provided to the service provider under part 7, will be destroyed or removed; or
  - (b) to check whether the service provider has taken the steps required under a compliance notice.
- (4) The authorised officer must comply with section 141 before entering, when entering and after entering a home.

## **Subdivision 2 Procedure for entry**

### **135 Entry with consent**

- (1) This section applies if an authorised officer intends to ask an occupier of a place to consent to the officer or another authorised officer entering the place under section 133(1)(a).
- (2) Before asking for the consent, the authorised officer must tell the occupier—
  - (a) the purpose of the entry; and
  - (b) that the occupier is not required to consent.
- (3) If the consent is given, the authorised officer may ask the occupier to sign an acknowledgement of the consent.
- (4) The acknowledgement must state—
  - (a) that the occupier has been told—
    - (i) the purpose of the entry; and
    - (ii) that the occupier is not required to consent; and
  - (b) the purpose of the entry; and
  - (c) that the occupier gives the authorised officer consent to enter the place and exercise the powers under this part; and
  - (d) the time and date the consent was given.

- (5) If the occupier signs the acknowledgement, the authorised officer must immediately give a copy to the occupier.
- (6) If—
  - (a) an issue arises in a proceeding about whether the occupier consented to the entry; and
  - (b) an acknowledgement complying with subsection (4) for the entry is not produced in evidence;the onus of proof is on the person relying on the lawfulness of the entry to prove the occupier consented.

### **136 Application for warrant**

- (1) An authorised officer may apply to a magistrate for a warrant for a place.
- (2) The authorised officer must prepare a written application that states the grounds on which the warrant is sought.
- (3) The written application must be sworn.
- (4) The magistrate may refuse to consider the application until the authorised officer gives the magistrate all the information the magistrate requires about the application in the way the magistrate requires.

*Example—*

The magistrate may require additional information supporting the application to be given by statutory declaration.

### **137 Issue of warrant**

- (1) The magistrate may issue a warrant for the place only if the magistrate is satisfied there are reasonable grounds for suspecting—
  - (a) there is a particular thing or activity (the *evidence*) that may provide evidence of an offence against this Act and the evidence is at the place or, within the next 7 days, will be at the place; or
  - (b) that it is necessary to enter the place—

- (i) to protect a person with a disability at the place from risk of harm because of abuse, neglect or exploitation; or
  - (ii) to investigate the suspected misuse of funds provided to the service provider under part 7; or
  - (iii) to check whether the service provider has taken the steps required under a compliance notice.
- (2) The warrant must state—
  - (a) the place to which the warrant applies; and
  - (b) that a stated authorised officer may, with necessary and reasonable help and force—
    - (i) enter the place and any other place necessary for the entry; and
    - (ii) exercise the officer’s powers under this part; and
  - (c) if subsection (1)(a) applies, particulars of the offence that the magistrate considers appropriate in the circumstances; and
  - (d) if subsection (1)(b) applies, particulars of the reason it is necessary to enter the place that the magistrate considers appropriate in the circumstances; and
  - (e) if subsection (1)(a) applies, the name of the person suspected of having committed the offence, unless the name is unknown or the magistrate considers it inappropriate to state the name; and
  - (f) if subsection (1)(a) applies, the evidence that may be seized under the warrant; and
  - (g) the hours of the day or night when the place may be entered; and
  - (h) the magistrate’s name; and
  - (i) the date and time of the warrant’s issue; and
  - (j) the date, within 14 days after the warrant’s issue, the warrant ends.

**138 Application by electronic communication and duplicate warrant**

- (1) An application under section 136 may be made by phone, fax, email, radio, videoconferencing or another form of electronic communication if the authorised officer reasonably considers it necessary because of—
  - (a) urgent circumstances; or
  - (b) other special circumstances, including, for example, the authorised officer's remote location.
- (2) The application—
  - (a) may not be made before the authorised officer prepares the written application under section 136(2); but
  - (b) may be made before the written application is sworn.
- (3) The magistrate may issue the warrant (the *original warrant*) only if the magistrate is satisfied—
  - (a) it was necessary to make the application under subsection (1); and
  - (b) the way the application was made under subsection (1) was appropriate.
- (4) After the magistrate issues the original warrant—
  - (a) if there is a reasonably practicable way of immediately giving a copy of the warrant to the authorised officer, for example, by sending a copy by fax or email, the magistrate must immediately give a copy of the warrant to the authorised officer; or
  - (b) otherwise—
    - (i) the magistrate must tell the authorised officer the date and time the warrant is issued and the other terms of the warrant; and
    - (ii) the authorised officer must complete a form of warrant, including by writing on it—
      - (A) the magistrate's name; and
      - (B) the date and time the magistrate issued the warrant; and

*Disability Services Act 2006*

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- (C) the other terms of the warrant.
- (5) The copy of the warrant mentioned in subsection (4)(a), or the form of warrant completed under subsection (4)(b) (in either case the ***duplicate warrant***), is a duplicate of, and as effectual as, the original warrant.
- (6) The authorised officer must, at the first reasonable opportunity, send to the magistrate—
- (a) the written application complying with section 136(2) and (3); and
  - (b) if the authorised officer completed a form of warrant under subsection (4)(b)—the completed form of warrant.
- (7) The magistrate must keep the original warrant and, on receiving the documents under subsection (6)—
- (a) attach the documents to the original warrant; and
  - (b) give the original warrant and documents to the clerk of the court of the relevant magistrates court.
- (8) Despite subsection (5), if—
- (a) an issue arises in a proceeding about whether an exercise of a power was authorised by a warrant issued under this section; and
  - (b) the original warrant is not produced in evidence;
- the onus of proof is on the person relying on the lawfulness of the exercise of the power to prove a warrant authorised the exercise of the power.
- (9) This section does not limit section 136.
- (10) In this section—

***relevant magistrates court***, in relation to a magistrate, means the Magistrates Court that the magistrate constitutes under the *Magistrates Act 1991*.

**139 Defect in relation to a warrant**

- (1) A warrant is not invalidated by a defect in the warrant, or in compliance with section 136, 137 or 138, unless the defect affects the substance of the warrant in a material particular.
- (2) In this section—  
*warrant* includes a duplicate warrant mentioned in section 138(5).

**140 Warrants—procedure before entry**

- (1) This section applies if an authorised officer named in a warrant issued under this part for a place is intending to enter the place under the warrant.
- (2) Before entering the place, the authorised officer must do or make a reasonable attempt to do the following things—
  - (a) identify himself or herself to a person present at the place who is an occupier of the place by producing a copy of the authorised officer's identity card or other document evidencing the appointment;
  - (b) give the person a copy of the warrant;
  - (c) tell the person the authorised officer is permitted by the warrant to enter the place;
  - (d) give the person an opportunity to allow the authorised officer immediate entry to the place without using force.
- (3) However, the authorised officer need not comply with subsection (2) if the authorised officer believes on reasonable grounds that immediate entry to the place is required to ensure the effective execution of the warrant is not frustrated.
- (4) In this section—  
*warrant* includes a duplicate warrant mentioned in section 138(5).

**141 Entering a home and preserving privacy**

- (1) Before entering a home under section 134, an authorised officer must do or make a reasonable attempt to do the following things—

- (a) comply with section 129;
  - (b) tell an occupier of the home that the officer is permitted to enter the home;
  - (c) give the occupier an opportunity to allow the officer immediate entry to the home without using force.
- (2) When entering and after entering a home, or exercising a power or performing a function in a home, an authorised officer must, as far as practicable—
- (a) preserve the privacy and dignity of anyone living at the home; and
  - (b) minimise the impact on occupiers of the home who are people with a disability.
- (3) Subsection (2) applies to entry to a home under this division with consent or without consent.

### **Subdivision 3 Powers after entry**

#### **142 General powers after entering a place**

- (1) This section applies to an authorised officer who enters a place.
- (2) However, if an authorised officer enters a place to get the occupier's consent to enter the place, this section applies to the officer only if the consent is given or the entry is otherwise authorised.
- (3) For monitoring or enforcing compliance with this Act, the authorised officer may do any of the following—
  - (a) search any part of the place;
  - (b) inspect, measure, test, photograph or film any part of the place or anything at the place;
  - (c) take a thing, or a sample of or from a thing, at the place for analysis or testing;
  - (d) copy a document at the place or take the document to another place to copy it;

- (e) take into or onto the place any person, equipment and materials the officer reasonably requires for the exercise of a power under this part;
  - (f) confer alone with a consumer or person engaged by a funded non-government service provider;
  - (g) require a person at the place to give the authorised officer reasonable help to exercise the authorised officer's powers under paragraphs (a) to (f);
  - (h) require a person at the place to answer questions by the authorised officer to help the authorised officer ascertain whether this Act is being or has been complied with.
- (4) When making a requirement mentioned in subsection (3)(g) or (h), the authorised officer must warn the person it is an offence to fail to comply with the requirement, unless the person has a reasonable excuse.
- (5) If an authorised officer takes a document from a place to copy it, the document must be copied as soon as practicable and returned to the place.

### **143 Failure to help authorised officer**

A person required to give reasonable help under section 142(3)(g) must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

### **144 Failure to answer questions**

- (1) A person of whom a requirement is made under section 142(3)(h) must comply with the requirement, unless the person has a reasonable excuse.<sup>1</sup>

Maximum penalty—50 penalty units.

- (2) It is a reasonable excuse for the person to fail to comply with the requirement that complying with the requirement might tend to incriminate the person.

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<sup>1</sup> Also, a person must not state anything the person knows to be false or misleading in a material particular—see section 164 (False or misleading statements).

## **Subdivision 4      Power to seize evidence**

### **145      Seizing evidence after entry without consent or warrant**

An authorised officer who lawfully enters a place under this part without the occupier's consent and without a warrant, may seize a thing at the place if the authorised officer reasonably believes the thing is evidence of an offence against this Act.

### **146      Seizing evidence after entry with consent or warrant**

- (1) This section applies if an authorised officer—
  - (a) is authorised to enter a place under this part with the consent of the occupier or a warrant; and
  - (b) enters the place after obtaining the necessary consent or warrant.
- (2) If the authorised officer enters the place with the occupier's consent, the officer may seize a thing at the place if—
  - (a) the officer reasonably believes the thing is evidence of an offence against this Act; and
  - (b) seizure of the thing is consistent with the purpose of entry as told to the occupier when asking for the occupier's consent.
- (3) If the authorised officer enters the place with a warrant, the officer may seize the evidence for which the warrant was issued.
- (4) The authorised officer may seize anything else at the place if the officer reasonably believes—
  - (a) the thing is evidence of an offence against this Act; and
  - (b) the seizure is necessary to prevent the thing being hidden, lost, destroyed or used to continue or repeat the offence.
- (5) Also, the authorised officer may seize a thing at the place if the officer reasonably believes it has just been used in committing an offence against this Act.

## **Subdivision 5      Dealing with seized things**

### **147      Definition for sdiv 5**

In this subdivision—

*owner*, of a seized thing, includes the person entitled to possession of it.

### **148      Securing a seized thing**

- (1) This section applies if an authorised officer seizes a thing under section 145 or 146.
- (2) Having seized the thing, the authorised officer may—
  - (a) move the thing from the place where it was seized (the *place of seizure*); or
  - (b) leave the thing at the place of seizure, but take reasonable action to restrict access to it.

*Examples of restricting access to a thing—*

- 1 sealing a thing and marking it to show access to it is restricted
- 2 sealing the entrance to a room where the thing is situated and marking it to show access to it is restricted

### **149      Tampering with a seized thing**

- (1) If an authorised officer restricts access to a seized thing under section 148, a person must not tamper with the thing, or something restricting access to the thing, without an authorised officer's approval.

Maximum penalty—100 penalty units.

- (2) In this section—

*tamper* includes attempt to tamper.

### **150      Powers to support seizure**

- (1) To enable a thing to be seized, an authorised officer may require the person in control of it—

- (a) to take it to a stated reasonable place by a stated reasonable time; and
  - (b) if necessary, to remain in control of it at the stated place for a reasonable time.
- (2) The requirement—
- (a) must be made by notice; or
  - (b) if for any reason it is not practicable to give the notice, may be made orally and confirmed by notice as soon as practicable.
- (3) A further requirement may be made under this section about the same thing if it is necessary and reasonable to make the further requirement.
- (4) A person of whom the requirement is made under subsection (1) or (3) must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—100 penalty units.
- (5) Subject to section 163, the cost of complying with subsection (4) must be borne by the person.

### **151 Authorised officer may require thing's return**

- (1) If an authorised officer has required a person to take a thing to a stated place by a stated reasonable time under section 150, the authorised officer may require the person to return the thing to the place from which it was taken.
  - (2) A person of whom the requirement is made under subsection (1) must comply with the requirement, unless the person has a reasonable excuse.
- Maximum penalty—100 penalty units.
- (3) Subject to section 163, the cost of complying with subsection (1) must be borne by the person.

### **152 Receipts for seized thing**

- (1) As soon as practicable after seizing a thing, an authorised officer must give a receipt for it to the person from whom it was seized.

- (2) However, if for any reason it is not practicable to comply with subsection (1), the authorised officer must leave the receipt at the place of seizure in a conspicuous position and in a reasonably secure way.
- (3) The receipt must describe generally each thing seized and its condition.
- (4) This section does not apply to a thing if it is impracticable, or would be unreasonable, to give the receipt, having regard to the thing's nature, condition and value.

### **153 Forfeiture of seized thing**

- (1) A seized thing is forfeited to the State if an authorised officer—
  - (a) can not find its owner, after making reasonable inquiries; or
  - (b) can not return it to its owner, after making reasonable efforts.
- (2) In applying subsection (1)—
  - (a) subsection (1)(a) does not require the authorised officer to make inquiries if it would be unreasonable to make inquiries to find the owner; and
  - (b) subsection (1)(b) does not require the authorised officer to make efforts if it would be unreasonable to make efforts to return the thing to its owner.
- (3) Regard must be had to a thing's nature, condition and value in deciding—
  - (a) whether it is reasonable to make inquiries or efforts; and
  - (b) if making inquiries or efforts, what inquiries or efforts, including the period over which they are made, are reasonable.
- (4) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the chief executive as the chief executive considers appropriate.
- (5) Without limiting subsection (4), the chief executive may destroy or dispose of the thing.

**154 Return of seized thing**

- (1) If a seized thing is not forfeited, the authorised officer must return it to its owner—
  - (a) at the end of 6 months; or
  - (b) if a proceeding for an offence involving the thing is started within 6 months—at the end of the proceeding and any appeal from the proceeding.
- (2) Despite subsection (1), unless the thing is forfeited, the authorised officer must immediately return it to its owner if the officer stops being satisfied—
  - (a) its continued retention as evidence is necessary; or
  - (b) its continued retention is necessary to prevent the thing being used to continue, or repeat, the offence.

**155 Access to seized thing**

- (1) Until a seized thing is forfeited or returned, an authorised officer must allow its owner to inspect it and, if it is a document, to copy it.
- (2) Subsection (1) does not apply if it is impracticable, or would be unreasonable, to allow the inspection or copying.

**Subdivision 6 Power to obtain information****156 Power to require name and address**

- (1) This section applies if—
  - (a) an authorised officer finds a person committing an offence against this Act; or
  - (b) an authorised officer finds a person in circumstances that lead, or has information that leads, the authorised officer reasonably to suspect the person is committing, or has just committed, an offence against this Act.
- (2) The authorised officer may require the person to state the person's name and residential address.

- (3) When making the requirement, the authorised officer must warn the person it is an offence to fail to state the person's name or residential address, unless the person has a reasonable excuse.
- (4) The authorised officer may require the person to give the authorised officer evidence of the correctness of the stated name or residential address if the authorised officer reasonably suspects the stated name or address to be false.
- (5) A requirement under subsection (2) or (4) is a *personal details requirement*.

### **157 Failure to give name or address**

- (1) A person of whom a personal details requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) A person does not commit an offence against subsection (1) if—
  - (a) the person was required to state the person's name and residential address by an authorised officer who suspected the person had committed an offence against this Act; and
  - (b) the person is not proved to have committed the offence.

### **158 Power to require production of documents**

- (1) An authorised officer may require a person to make available for inspection by the authorised officer, or produce to the authorised officer for inspection, at a reasonable time and place nominated by the authorised officer—
  - (a) a document issued to the person under this Act; or
  - (b) a document required to be kept by the person under this Act.
- (2) The authorised officer may keep the document to copy it.
- (3) If the authorised officer copies the document, or an entry in the document, the authorised officer may require the person

responsible for keeping the document to certify the copy as a true copy of the document or entry.

- (4) The authorised officer must return the document to the person as soon as practicable after copying it.
- (5) However, if a requirement (a *document certification requirement*) is made of a person under subsection (3), the authorised officer may keep the document until the person complies with the requirement.
- (6) A requirement under subsection (1) is a *document production requirement*.

### **159 Failure to produce document**

- (1) A person of whom a document production requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

- (2) It is not a reasonable excuse for a person not to comply with a document production requirement that complying with the requirement might tend to incriminate the person.

### **160 Failure to certify copy of document**

A person of whom a document certification requirement is made must comply with the requirement, unless the person has a reasonable excuse.

Maximum penalty—50 penalty units.

## **Subdivision 7 Other compliance matters**

### **161 Compliance notice**

- (1) This section applies if the chief executive reasonably believes a funded non-government service provider—
  - (a) is contravening a provision of this Act; or
  - (b) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be

*Disability Services Act 2006*

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repeated.

- (2) This section applies to a funded non-government service provider even if the service provider's funding has been suspended under the relevant funding agreement.
- (3) The chief executive may give the service provider a notice (a ***compliance notice***) requiring the service provider to remedy the contravention.
- (4) The compliance notice must state the following—
  - (a) that the chief executive reasonably believes the service provider—
    - (i) is contravening a provision of this Act; or
    - (ii) has contravened a provision of this Act in circumstances that make it likely the contravention will continue or be repeated;
  - (b) the provision the chief executive believes is being, or has been, contravened (the ***relevant provision***);
  - (c) briefly, how it is believed the relevant provision is being, or has been, contravened;
  - (d) that the service provider must remedy the contravention within a stated reasonable time;
  - (e) that it is an offence to fail to comply with the compliance notice unless the service provider has a reasonable excuse.
- (5) The compliance notice may also state—
  - (a) the steps that the chief executive is satisfied are necessary to remedy the contravention, or avoid further contravention, of the relevant provision; and
  - (b) that the service provider must report to the chief executive after taking a step or steps.
- (6) The service provider must comply with the compliance notice unless the service provider has a reasonable excuse.

Maximum penalty—

- (a) if it is an offence to contravene the relevant provision—the maximum penalty for contravening that provision; or

- (b) otherwise—
  - (i) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—20 penalty units; or
  - (ii) for a funded non-government service provider—100 penalty units.
- (7) If it is an offence to contravene the relevant provision, the service provider can not be prosecuted for that offence unless it fails to comply with the compliance notice and does not have a reasonable excuse for the noncompliance.
- (8) If the service provider contravenes subsection (6), the chief executive may, by notice given to the service provider, suspend or cancel funding to the service provider despite anything in a funding agreement with the service provider.
- (9) This section does not limit—
  - (a) a remedy available to the chief executive under a funding agreement; or
  - (b) the chief executive's powers apart from this section.

## **Division 3                    General enforcement matters**

### **162    Notice of damage**

- (1) This section applies if—
  - (a) an authorised officer damages property when exercising or purporting to exercise a power; or
  - (b) a person (the *other person*) acting under the direction or authority of an authorised officer damages property.
- (2) The authorised officer must immediately give notice of particulars of the damage to a person who appears to the authorised officer to be an owner of the property.
- (3) If the authorised officer believes the damage was caused by a latent defect in the property or circumstances beyond the authorised officer's or other person's control, the authorised officer may state the belief in the notice.

- (4) If, for any reason, it is impracticable to comply with subsection (2), the authorised officer must leave the notice in a conspicuous position and in a reasonably secure way where the damage happened.
- (5) This section does not apply to damage the authorised officer reasonably believes is trivial.
- (6) In this section—  
*owner*, of property, includes a person in possession or control of it.

### **163 Compensation**

- (1) If a person incurs loss or expense because of the exercise or purported exercise of a power under this part, other than section 161, the person may claim compensation from the chief executive.
- (2) Without limiting subsection (1), compensation may be claimed for loss or expense incurred in complying with a requirement made of the person under this part.
- (3) Compensation may be claimed and ordered to be paid in a proceeding—
  - (a) brought in a court with jurisdiction for the recovery of the amount of compensation claimed; or
  - (b) for an offence against this Act brought against the person claiming compensation.
- (4) A court may order compensation to be paid only if it is satisfied it is just to make the order in the circumstances of the particular case.

### **164 False or misleading statements**

A person must not state anything to an authorised officer that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

**165 False or misleading documents**

- (1) A person must not give an authorised officer a document containing information that the person knows is false or misleading in a material particular.

Maximum penalty—100 penalty units.

- (2) Subsection (1) does not apply to a person if the person, when giving the document—
- (a) tells the authorised officer, to the best of the person's ability, how it is false or misleading; and
  - (b) if the person has, or can reasonably obtain, the correct information—gives the correct information.

**166 Obstructing an authorised officer**

- (1) A person must not obstruct an authorised officer in the exercise of a power, unless the person has a reasonable excuse.

Maximum penalty—100 penalty units.

- (2) If a person has obstructed an authorised officer and the officer decides to proceed with the exercise of the power, the officer must warn the person that—
- (a) it is an offence to obstruct the officer, unless the person has a reasonable excuse; and
  - (b) the officer considers the person's conduct an obstruction.

**167 Impersonation of an authorised officer**

A person must not pretend to be an authorised officer.

Maximum penalty—100 penalty units.

**168 Chief executive may advise people with a disability and others of action taken in relation to funded non-government service providers**

- (1) This section applies if the chief executive gives a compliance notice to a funded non-government service provider.

- (2) The chief executive may advise any of the following about the compliance notice including particulars of the contents of the notice—
- (a) a consumer of the service provider;
  - (b) the consumer's family or carer;
  - (c) the chief executive of the department in which the *Guardianship and Administration Act 2000* is administered;
  - (d) the adult guardian;
  - (e) the Commissioner for Children and Young People and Child Guardian;
  - (f) the chief executive of the department in which the *Child Protection Act 1999* is administered;
  - (g) the chief executive of the department in which the *Health Services Act 1991* is administered;
  - (h) another person the chief executive considers should be advised because of the person's relationship with the consumer.

## **Part 12**                      **Appointment of interim manager**

### **Division 1**                **Appointment**

#### **169**    **Appointment**

- (1) The chief executive may appoint a person as interim manager for a funded non-government service provider receiving recurrent funding.
- (2) The appointment may apply to all service outlets of the service provider or to stated service outlets only.

**170 Basis for appointment**

- (1) The chief executive may make the appointment only if the chief executive is satisfied the appointment is reasonably necessary to—
  - (a) protect consumers of the funded non-government service provider from abuse, neglect or exploitation; or
  - (b) ensure the proper and efficient use of funds under the funding agreement with the service provider.
- (2) In deciding whether the appointment is reasonably necessary, the chief executive may have regard to all of the following matters—
  - (a) whether it appears there has been abuse, neglect or exploitation of consumers of the service provider;
  - (b) the type of disability services provided to consumers by the service provider;
  - (c) the amount of funding given by the chief executive to the service provider;
  - (d) whether the chief executive has suspended or cancelled funding to the service provider or is likely to suspend or cancel funding;
  - (e) whether it appears the service provider is—
    - (i) unwilling or unable to provide disability services; or
    - (ii) providing disability services in a way that does not comply with the funding agreement with the service provider;
  - (f) the likely consequences for consumers of the service provider if disability services are not provided or not provided in a way that complies with the funding agreement with the service provider;
  - (g) the likely consequences of the appointment, of which the chief executive is aware, for the service provider and anyone else likely to be affected;
  - (h) any other relevant matter of which the chief executive is aware.

- (3) Before making the appointment the chief executive—
  - (a) must consider whether it would be more appropriate to take action other than the appointment, or not to take any action; and
  - (b) may consult with the service provider, the consumers of the service provider and their families and carers.

### **171 Suitability of proposed appointee**

- (1) The chief executive may make the appointment only if the chief executive is satisfied the proposed appointee is suitable for the appointment under this section.
- (2) In deciding whether a person is suitable for the appointment, the chief executive must have regard to the following matters—
  - (a) the type of disability services provided by the funded non-government service provider;
  - (b) the reason for the appointment;
  - (c) the person's expertise or experience relevant to the appointment;
  - (d) any conflict of interest that may arise in the course of the person acting as interim manager;
  - (e) any other relevant matter of which the chief executive is aware.
- (3) A person who has agreed to a proposed appointment must advise the chief executive, before the appointment is made, whether the person is aware of a conflict of interest that may arise in the course of the person acting as interim manager.

Maximum penalty—40 penalty units.

- (4) Only an adult may be appointed as interim manager.

### **172 Terms of appointment**

An appointment of a person as interim manager of a funded non-government service provider must state the following matters—

- (a) the person's name;
- (b) details of the service provider;
- (c) the service outlets to which the appointment applies;
- (d) the disability services to be provided;
- (e) the way in which, or the extent to which, the disability services are to be provided;
- (f) details of the person's function as interim manager;
- (g) any limitations on the person's powers as interim manager;
- (h) the period of the appointment;
- (i) any conditions of the appointment;
- (j) anything else the chief executive considers appropriate.

**173 Notice to funded non-government service provider about appointment**

Immediately after appointing a person as interim manager of a funded non-government service provider, the chief executive must give a copy of the appointment to the service provider.

**174 Informing consumers about appointment**

Before an interim manager exercises a power under this part, the chief executive must ensure the consumers of the funded non-government service provider are informed of the appointment, for example, by—

- (a) giving a notice of the appointment to the consumers of the service provider and to consumers' families, carers, guardians or administrators; or
- (b) posting a notice of the appointment at a place at the premises of the service provider where it is likely to be seen by consumers of the service provider; or
- (c) directing the interim manager to inform the consumers of the service provider about the appointment in an appropriate way.

**175 Initial period of appointment**

An interim manager may be appointed for a period of not more than 3 months.

**176 Variation of appointment**

- (1) After an interim manager starts to carry out the manager's function, the chief executive may, by notice—
  - (a) extend the period of the appointment; or
  - (b) vary the appointment in another way.
- (2) The chief executive may extend the period of the appointment if the chief executive is satisfied the extension is reasonably necessary in all the circumstances.
- (3) The period of the appointment may be extended more than once.
- (4) However—
  - (a) the period of an extension must not be more than 3 months; and
  - (b) the total period of the initial appointment and any extension or extensions must not be more than 6 months.
- (5) The chief executive may vary the appointment in a way other than by extending the period of the appointment if the chief executive is satisfied the variation is appropriate, having regard to—
  - (a) the matters stated in section 170; and
  - (b) the operation of the funded non-government service provider since the appointment started.
- (6) If the appointment is varied under this section, the chief executive must ensure notice of the variation is given—
  - (a) to the service provider; and
  - (b) if the interim manager exercises a power under this part in relation to a consumer of the service provider—to the consumer.

- (7) The notice under subsection (6)(b) must be given to the consumer at or before the time the manager exercises the power.

### **177 Ending of appointment**

- (1) The chief executive may, by notice, end an interim manager's appointment at any time before the end of the period of appointment if the chief executive is satisfied the appointment is no longer appropriate, having regard to the matters stated in section 170.
- (2) Immediately after ending an appointment under subsection (1), the chief executive must give notice about the ending of the appointment to the funded non-government service provider and to consumers of the service provider.

## **Division 2 Function and powers**

### **178 Application of div 2**

This division applies to a person appointed as interim manager of a funded non-government service provider.

### **179 Interim manager's function**

The interim manager's function is, under the terms of the appointment—

- (a) to protect consumers of the funded non-government service provider from abuse, neglect or exploitation; and
- (b) to ensure the proper and efficient use of funds under the funding agreement with the funded non-government service provider; and
- (c) to provide disability services to consumers that the funded non-government service provider has agreed to provide under the funding agreement.

**180 Interim manager's powers**

So far as is necessary to carry out his or her function, an interim manager appointed to a funded non-government service provider—

- (a) may enter any part of the service provider's premises; and
- (b) may use the facilities or things in the premises that it appears are intended for use, or are ordinarily used, to provide services to consumers; and
- (c) may ask for and accept payments that a consumer must pay to the service provider; and
- (d) may do anything in relation to a funding agreement, on behalf of the service provider, that the service provider is permitted or required to do.

**181 Direction by chief executive**

An interim manager is subject to the chief executive's direction in performing the interim managers's function and exercising the powers given under this part.

**182 Other powers**

The interim manager has the other powers of the funded non-government service provider that are necessary or convenient to carry out the manager's function.

*Example—*

It may be necessary for the interim manager to carry out repairs to the funded non-government service provider's property.

**183 Limitation on powers under instrument of appointment**

A power conferred on the interim manager under this part applies subject to any limitation stated in the instrument of appointment.

**184 Production of instrument of appointment for inspection**

- (1) This section applies if—

- (a) the interim manager is exercising, or proposes to exercise, a power given under this part in relation to a person; and
  - (b) the person asks the manager to produce the manager's instrument of appointment for the person's inspection.
- (2) The manager must comply with the request.

### **185 Obstruction**

- (1) A person must not obstruct an interim manager in the exercise of a power, unless the person has a reasonable excuse.
- Maximum penalty—40 penalty units.
- (2) If a person has obstructed an interim manager and the manager decides to proceed with the exercise of the power, the manager must warn the person that—
- (a) it is an offence to obstruct the manager, unless the person has a reasonable excuse; and
  - (b) the manager considers the person's conduct an obstruction.

## **Division 3 Other matters**

### **186 Access to information or documents**

- (1) The interim manager may ask an executive officer of the funded non-government service provider for information or documents that the manager reasonably needs to carry out the manager's function.
- (2) The chief executive may disclose information to an interim manager, or give an interim manager access to documents, to the extent the chief executive considers appropriate for the purpose of the manager's appointment.

### **187 Confidentiality**

- (1) This section applies to a person—

- (a) who is, or has been, appointed as interim manager of a funded non-government service provider; and
  - (b) who, in the course of the appointment or because of opportunity provided by the appointment, has gained or has access to confidential information about the service provider or someone else.
- (2) The person must not disclose the information to anyone else or give access to the information to anyone else, other than—
- (a) for a purpose of this part; or
  - (b) under section 190; or
  - (c) with the consent of the service provider or other person to whom the information relates; or
  - (d) in compliance with lawful process requiring production of documents or giving of evidence before a court or tribunal; or
  - (e) as expressly permitted or required by another Act.

Maximum penalty—40 penalty units.

## **188 Remuneration**

An interim manager is entitled to be paid the reasonable amount of remuneration agreed with the chief executive.

## **189 Funded non-government service provider liable for remuneration and other costs**

- (1) If an interim manager is appointed to a funded non-government service provider, the chief executive may give the service provider a written demand for the amount of an administration cost.
- (2) The chief executive may recover the amount as a debt owed to the State.
- (3) In this section—

*administration cost* means the remuneration paid to the interim manager and any other reasonable cost incurred in carrying out the manager's function.

**190 Accounts and reports**

- (1) An interim manager appointed to a funded non-government service provider must give to the chief executive—
  - (a) records of all amounts received or paid in the course of the appointment; and
  - (b) reports about the wellbeing of consumers of the service provider; and
  - (c) the other reports about the administration that the chief executive requires.
- (2) The records and other reports must be given as soon as possible after the end of the appointment or, if required by the chief executive at a time during the appointment, at that time.
- (3) The chief executive must give a copy of each record or report to the service provider.

**191 Compensation**

- (1) A person may claim compensation from the chief executive if the person incurs loss or damage because of the exercise or purported exercise of a power under this part.
- (2) Compensation may be claimed and ordered to be paid in a proceeding brought in a court with jurisdiction for the recovery of the amount of compensation claimed.
- (3) A court may order compensation to be paid only if satisfied it is just to make the order in the circumstances of the particular case.

**Part 13 Legal proceedings****Division 1 Application****192 Application of pt 13**

This part applies to a proceeding under this Act.

## **Division 2                    Evidence**

### **193    Appointments and authority**

The following must be presumed unless a party to the proceeding, by reasonable notice, requires proof of it—

- (a) the chief executive's appointment;
- (b) an authorised officer's appointment;
- (c) the authority of the chief executive or an authorised officer to do anything under this Act.

### **194    Signatures**

A signature purporting to be the signature of the chief executive or an authorised officer is evidence of the signature it purports to be.

### **195    Evidentiary provisions**

- (1) A certificate purporting to be signed by the chief executive and stating any of the following matters is evidence of the matter—
  - (a) a stated document is 1 of the following things made, given, issued or kept under this Act—
    - (i) an appointment, approval or decision;
    - (ii) a notice or requirement;
    - (iii) a record, or an extract from a record;
  - (b) a stated document is another document kept under this Act;
  - (c) a stated document is a copy of a thing mentioned in paragraph (a) or (b);
  - (d) on a stated day, or during a stated period, an appointment as an authorised officer was, or was not, in force for a stated person;
  - (e) on a stated day, a stated person was given a stated notice under this Act;

- (f) on a stated day, a stated requirement was made of a stated person.
- (2) In a complaint starting a proceeding, a statement that the matter of complaint came to the complainant's knowledge on a stated day is evidence of when the matter came to the complainant's knowledge.

### **196 Positive notice card is evidence of holding positive notice**

If a person holds a current positive notice card, the card is evidence of the person holding a current positive notice.

## **Division 3 Proceedings**

### **197 Indictable and summary offences**

- (1) An offence against section 92(1) or 94 is an indictable offence that is a crime.
- (2) Otherwise, an offence against this Act is a summary offence.

### **198 Proceedings for indictable offences**

- (1) A proceeding for an indictable offence against this Act may be taken, at the election of the prosecution—
  - (a) by way of summary proceedings under the *Justices Act 1886*; or
  - (b) on indictment.
- (2) A magistrate must not hear an indictable offence summarily if—
  - (a) the defendant asks at the start of the hearing that the charge be prosecuted on indictment; or
  - (b) the magistrate considers the charge should be prosecuted on indictment.
- (3) If subsection (2) applies—
  - (a) the magistrate must proceed by way of an examination of witnesses for an indictable offence; and

- (b) a plea of the person charged at the start of the proceeding must be disregarded; and
  - (c) evidence brought in the proceeding before the magistrate decided to act under subsection (2) is taken to be evidence in the proceeding for the committal of the person for trial or sentence; and
  - (d) before committing the person for trial or sentence, the magistrate must make a statement to the person as required by the *Justices Act 1886*, section 104(2)(b).
- (4) The maximum penalty that may be summarily imposed for an indictable offence is 150 penalty units or 2 years imprisonment.

**199 Limitation on who may summarily hear indictable offence proceedings**

- (1) A proceeding must be before a magistrate if it is a proceeding—
- (a) for the summary conviction of a person on a charge for an indictable offence; or
  - (b) for an examination of witnesses for a charge for an indictable offence.
- (2) However, if a proceeding for an indictable offence is brought before a justice who is not a magistrate, jurisdiction is limited to taking or making a procedural action or order within the meaning of the *Justices of the Peace and Commissioners for Declarations Act 1991*.

**200 Proceeding for offences**

A proceeding for an offence against this Act, other than an indictable offence, must be taken in a summary way under the *Justices Act 1886*.

**201 When proceeding may start**

A proceeding for a summary offence against this Act must start within the later of the following periods to end—

- (a) 1 year after the commission of the offence;
- (b) 6 months after the offence comes to the complainant's knowledge, but within 2 years after the offence is committed.

## **202 Allegations of false or misleading information or document**

In any proceeding for an offence against this Act defined as involving false or misleading information, or a false or misleading document, it is enough for a charge to state that the information or document was, without specifying which, 'false or misleading'.

## **203 Forfeiture on conviction**

- (1) On conviction of a person for an offence against this Act, a court may order the forfeiture to the State of—
  - (a) anything used to commit the offence; or
  - (b) anything else the subject of the offence.
- (2) The court may make the order—
  - (a) whether or not the thing has been seized; and
  - (b) if the thing has been seized, whether or not the thing has been returned to its owner.
- (3) The court may make any order to enforce the forfeiture it considers appropriate.
- (4) This section does not limit the court's powers under the *Penalties and Sentences Act 1992* or another law.

## **204 Dealing with forfeited thing**

- (1) On the forfeiture of a thing to the State, the thing becomes the State's property and may be dealt with by the State as the State considers appropriate.
- (2) Without limiting subsection (1), the State may destroy the thing.

**205 Responsibility for acts or omissions of representative**

- (1) This section applies in a proceeding for an offence against this Act.
- (2) If it is relevant to prove a person's state of mind about a particular act or omission, it is enough to show—
  - (a) the act was done or omitted to be done by a representative of the person within the scope of the representative's actual or apparent authority; and
  - (b) the representative had the state of mind.
- (3) An act done or omitted to be done for a person by a representative of the person within the scope of the representative's actual or apparent authority is taken to have been done or omitted to be done also by the person, unless the person proves the person could not, by the exercise of reasonable diligence, have prevented the act or omission.
- (4) In this section—

*representative* means—

  - (a) for a corporation—an executive officer, employee or agent of the corporation; or
  - (b) for an individual—an employee or agent of the individual.

*state of mind* of a person includes—

  - (a) the person's knowledge, intention, opinion, belief or purpose; and
  - (b) the person's reasons for the intention, opinion, belief or purpose.

**206 Executive officers must ensure corporation complies with Act**

- (1) The executive officers of a corporation must ensure the corporation complies with this Act.
- (2) If a corporation commits an offence against a provision of this Act, each of the corporation's executive officers also commits an offence, namely, the offence of failing to ensure the corporation complies with the provision.

Maximum penalty—the penalty for the contravention of the provision by an individual.

- (3) Evidence that the corporation has been convicted of an offence against a provision of this Act is evidence that each of the executive officers committed the offence of failing to ensure the corporation complies with the provision.
- (4) However, it is a defence for an executive officer to prove—
  - (a) if the officer was in a position to influence the conduct of the corporation in relation to the offence, the officer exercised reasonable diligence to ensure the corporation complied with the provision; or
  - (b) the officer was not in a position to influence the conduct of the corporation in relation to the offence.

## **Part 14                      Reviews and appeals**

### **Division 1                      Reviewable decisions**

#### **207      Reviewable decisions**

Schedule 2 states—

- (a) decisions of the chief executive under this Act that are reviewable decisions; and
- (b) for each reviewable decision, the person who may seek to have the decision reviewed under this part (the *interested person*).

*Note—*

In addition to the reviewable decisions stated in schedule 2, part 10 provides for a person to apply to the tribunal for the matters stated in that part.

**208 Chief executive must give notice after making reviewable decision**

- (1) Immediately after making a reviewable decision, the chief executive must give to the interested person a notice stating—
  - (a) the reasons for the decision; and
  - (b) that, within 28 days after receiving the notice, the interested person may apply to the chief executive for a review of the decision; and
  - (c) how the interested person may apply for the review; and
  - (d) that, if the interested person applies for a review of the decision and the matter is not resolved on the review, the interested person may appeal against the decision on review to the tribunal.
- (2) Subsection (1) does not apply if the chief executive can not locate the interested person after making reasonable inquiries.

**Division 2 Review of decision****209 Application for review**

- (1) This section applies to the interested person for a reviewable decision.
- (2) Within 28 days after the interested person receives a notice under section 208 about the decision, the interested person may apply to the chief executive to review the decision.
- (3) The chief executive may extend the time for applying for the review.
- (4) Also, the interested person may apply to the chief executive to review the decision if the chief executive has not given the interested person a notice under section 208 about the decision.
- (5) The application must be in the approved form and supported by enough information to enable the chief executive to decide the application.

**210 Stay of operation of original decision**

- (1) An application under section 209 for review of a decision does not stay the decision.
- (2) However, before the decision takes effect, the chief executive may give the interested person a notice staying the operation of the decision for a stated period.
- (3) The stay may be granted on conditions the chief executive considers appropriate.
- (4) Also, whether or not the applicant has asked the chief executive to stay the operation of the decision, the applicant may apply to the tribunal for a stay of the decision.
- (5) The tribunal may stay the decision to secure the effectiveness of the review and any later appeal to the tribunal.
- (6) The stay may be granted on conditions the tribunal considers appropriate and has effect for the period stated by the tribunal.
- (7) The period of the stay must not extend past the time when the chief executive makes the review decision and any later period the tribunal allows to enable the applicant to appeal against the review decision.
- (8) The chief executive's decision to issue a negative notice must not be stayed.

**211 Review decision**

- (1) This section applies to an application under section 209 for review of a decision.
- (2) Unless the chief executive made the original decision personally, the chief executive must ensure the application is not dealt with by—
  - (a) the person who made the original decision; or
  - (b) a person in a less senior office than the person who made the original decision.
- (3) Within 28 days after receiving the application, the chief executive must review the original decision and make a decision (the *review decision*)—
  - (a) confirming the original decision; or

- (b) amending the original decision; or
  - (c) substituting another decision for the original decision.
- (4) Immediately after deciding the application, the chief executive must give the interested person a notice stating—
- (a) the review decision; and
  - (b) the reasons for the review decision; and
  - (c) that, within 28 days after receiving the notice, the interested person may appeal against the review decision to the tribunal; and
  - (d) how the interested person may appeal.
- (5) If the chief executive does not decide the application within 28 days after receiving it, the chief executive is taken to have made a review decision confirming the original decision.

## **Division 3                      Appeal against decision**

### **212      Appeal against review decision**

- (1) Within 28 days after receiving a decision notice for a review decision, the interested person for the decision may appeal against the decision to the tribunal.<sup>2</sup>
- (2) Also, if the chief executive has made a review decision but has not given the interested person a decision notice for the decision, the interested person for the decision may appeal against the decision to the tribunal.
- (3) If the interested person has received a decision notice for the review decision, the application filed in the tribunal to start the appeal must be accompanied by a copy of the decision notice.
- (4) In this section—

***decision notice***, for a review decision, means a notice under section 211(4) about the decision.

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<sup>2</sup> See the *Commercial and Consumer Tribunal Act 2003*, section 31 (How to start proceedings).

**213 Appeal is by way of rehearing**

The appeal to the tribunal is by way of rehearing on the evidence that was before the chief executive.

**Part 15 Miscellaneous****Division 1 Records****214 Funded non-government service provider must keep records**

A funded non-government service provider must make, and keep for the time prescribed under a regulation, the records prescribed under a regulation.

Maximum penalty—

- (a) for an individual guilty under chapter 2 of the Criminal Code of an offence or for section 206—20 penalty units; or
- (b) for a funded non-government service provider—100 penalty units.

**Division 1A Locking of gates, doors and windows****214A Application of div 1A**

This division applies if—

- (a) a relevant service provider locks gates, doors or windows at premises where disability services are provided to adults with an intellectual or cognitive disability; and
- (b) the only reason the gates, doors or windows are locked is to prevent physical harm being caused to an adult with a skills deficit.

**214B Definitions for div 1A**

In this division—

*adult with an intellectual or cognitive disability* see section 123E.

*adult with a skills deficit* means an adult with an intellectual or cognitive disability who can not safely exit premises where disability services are provided to the adult without supervision, if the only reason the adult can not safely exit the premises without supervision is—

- (a) the adult lacks road safety skills; or
- (b) the adult is vulnerable to abuse or exploitation by others; or
- (c) the adult is unable to find his or her way back to the premises; or
- (d) another reason prescribed under a regulation.

*relevant service provider* see section 123B.

**214C Immunity from liability—relevant service provider**

- (1) The relevant service provider is not civilly or criminally liable for locking gates, doors or windows if—
  - (a) the relevant service provider acts honestly and without negligence; and
  - (b) the relevant service provider keeps and implements a policy about the locking of gates, doors and windows that is consistent with the department's policy about the locking of gates, doors and windows; and
  - (c) the gates, doors or windows are locked in compliance with the policy; and
  - (d) the relevant service provider takes reasonable steps to minimise the impact of locking the gates, doors or windows on a person living at the premises who is not an adult with a skills deficit.
- (2) Subsection (1) applies to the extent the locking of the gates, doors or windows prevents the free exit from the premises of—

- (a) an adult with a skills deficit; or
  - (b) any other person living at the premises, other than an adult with an intellectual or cognitive disability who is contained within the meaning of part 10A.
- (3) In this section—
- keep and implement***, for a policy, means—
- (a) prepare the policy and keep it up-to-date; and
  - (b) when providing disability services, implement and comply with the procedures and other matters stated in the policy; and
  - (c) keep a copy of the up-to-date policy at the premises.

**214D Immunity from liability—individual acting for relevant service provider**

An individual, acting for a relevant service provider, is not civilly or criminally liable for locking gates, doors or windows if the individual acts in compliance with, or reasonably believes he or she is acting in compliance with, the provider's policy about the locking of gates, doors and windows.

**214E Department's policy about locking of gates, doors and windows**

- (1) The department must have a policy about the locking of gates, doors and windows under this division.
- (2) The policy must outline the procedures a relevant service provider will use to ensure gates, doors and windows are locked only if it is—
  - (a) necessary to prevent physical harm to an adult with a skills deficit; and
  - (b) the least restrictive way of ensuring the adult's safety as is practicable in the circumstances.
- (3) Also, the policy must ensure appropriate regard is had to linguistic and cultural diversity and Aboriginal tradition and Island custom.

*Editor's note—*

*Acts Interpretation Act 1954, section 36—*

**Aboriginal tradition** means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

**Island custom**, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

- (4) The chief executive must keep a copy of the policy available for inspection free of charge by relevant service providers at—
  - (a) the department's head office and regional offices; and
  - (b) other places the chief executive considers appropriate.
- (5) Also, the chief executive must publish the policy on the department's website on the internet.

## **Division 2            Other matters**

### **215    Disability service plans for departments**

- (1) The chief executive of a department must develop and implement disability service plans for the chief executive's department.
- (2) The first plan must be developed and implemented within 1 year after the commencement of this section.
- (3) A further plan must be developed and implemented at least once every 3 years.
- (4) The purpose of a plan is to ensure each department has regard to the following to the extent they reasonably apply to the department's operations—
  - (a) the human rights principle;
  - (b) the service delivery principles;
  - (c) the government's policies for people with a disability.

- (5) In developing a disability service plan, the chief executive of a department must consult with the following to ensure the chief executive's plan forms part of a coordinated whole-of-government approach for service delivery to people with a disability—
- (a) the chief executive of the department in which this Act is administered;
  - (b) the chief executives of other departments.
- (6) The plan must, for the period of the plan—
- (a) identify the issues relating to service delivery to people with a disability by the department; and
  - (b) state the way the issues will be addressed; and
  - (c) state the way the chief executive of a department is to consult with other chief executives to achieve the whole-of-government approach mentioned in subsection (5).
- (7) The chief executive of a department must publish the current disability service plan for the department on the department's website on the internet.
- (8) Despite the *Public Service Act 1996*, section 19, this section does not apply to a public service office.

## **216 Establishment of Ministerial advisory committees**

The Minister may establish—

- (a) a committee to advise on the system that deals with complaints received from the following—
  - (i) consumers;
  - (ii) family members, carers or advocates of consumers;and
- (b) as many other committees to advise on disability issues and disability services as the Minister considers appropriate.

**217 Membership of advisory committee**

- (1) An advisory committee has the membership decided by the Minister.
- (2) The Minister may appoint the following persons to an advisory committee—
  - (a) a person with a disability;
  - (b) a family member or carer of a person with a disability;
  - (c) another person the Minister considers has expertise or experience relevant to people with a disability.

**218 Dissolution**

The Minister may dissolve an advisory committee at any time.

**219 Other matters**

The Minister may decide matters about an advisory committee that are not provided for under this Act, including, for example, the way a committee must conduct meetings or report to the Minister.

**220 Person with a disability must advise chief executive about compensation**

- (1) This section applies to a person with a disability who, in relation to the disability—
  - (a) is applying for, or is receiving—
    - (i) funding for disability services from the department; or
    - (ii) disability services from another entity the person knows is a funded service provider; and
  - (b) has received, or may receive, an amount relating to the disability.
- (2) The person must notify the chief executive in the approved form—
  - (a) if action has been taken to claim an amount relating to the disability—of the type of action taken; and

*Disability Services Act 2006*

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- (b) if an amount has been paid—of the date it was paid and the amount; and
- (c) if part or all of the amount relates to future care—of the amount that relates to future care.

Maximum penalty—200 penalty units.

- (3) Subsection (4) applies to a person who, on behalf of a person with a disability, applies for—
  - (a) funding for disability services from the department; or
  - (b) disability services from another entity the person applying knows is a funded service provider.
- (4) The person who applies for funding on behalf of a person with a disability must notify the chief executive in the approved form of the matters mentioned in subsection (2).

Maximum penalty—200 penalty units.

- (5) In this section *an amount relating to the disability* includes an amount relating to the disability resulting from any of the following—
  - (a) a proceeding in a court;
  - (b) action taken for compensation under the *Workers' Compensation and Rehabilitation Act 2003* or an Act or law of another State, a Territory or the Commonwealth corresponding to that Act;
  - (c) an insurance claim;
  - (d) any other action taken under the common law or under an Act or law of a State or Territory or the Commonwealth.

## **221 Confidentiality of information about criminal history and related information**

- (1) This section applies to a person who—
  - (a) is, or has been, the chief executive, a public service employee, or a selection panel member; and
  - (b) in that capacity acquired information, or gained access to a document, under part 9 about another person's criminal history or about an investigation relating to the

*Disability Services Act 2006*

possible commission of a serious offence by another person.

- (2) This section also applies to a person who—
  - (a) is, or has been, the chief executive or a public service employee; and
  - (b) in that capacity acquired information, or gained access to a document, under part 10 about another person's police information.
- (3) The person must not disclose the information, or give access to the document, to anyone else.

Maximum penalty—100 penalty units or 2 years imprisonment.

- (4) Subsection (3) does not apply to the disclosure of information, or giving of access to a document, about a person—
  - (a) if subsection (1) applies—to the chief executive, a public service employee or selection panel member for the purpose of assessing the person's suitability to be, or continue to be, a public service employee; or
  - (b) if subsection (2) applies—to the chief executive or a public service employee for the purpose of a screening decision; or
  - (c) if the person is an adult—with the person's consent; or
  - (d) if the disclosure or giving of access is otherwise required under an Act.

- (5) In this section—

***selection panel member*** means a member of a panel formed to make a recommendation to the chief executive about a person's employment as a public service employee.

## **222 Confidentiality of other information**

- (1) This section applies to confidential information other than information mentioned in section 221(1)(b) or (2)(b).
- (2) If a person gains confidential information through involvement in this Act's administration, the person must not

*Disability Services Act 2006*

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disclose the information to anyone, other than under subsection (4).

Maximum penalty—100 penalty units.

- (3) A person gains information through involvement in this Act's administration if the person gains the information because of being, or an opportunity given by being—
- (a) the chief executive; or
  - (b) an authorised officer; or
  - (c) an employee in the department; or
  - (d) a person contracted by the chief executive to provide disability services for the department; or
  - (da) a person contracted by the department for the purpose of conducting a multidisciplinary assessment, or developing a positive behaviour support plan, under part 10A, division 3; or
  - (e) an interim manager; or
  - (f) a member of a Ministerial advisory committee.
- (4) A person may disclose information to someone else—
- (a) for administering, monitoring or enforcing compliance with, this Act; or
  - (b) to discharge a function under another law; or
  - (c) for a proceeding in a court or tribunal; or
  - (d) if authorised under another law or a regulation made under this Act; or
  - (e) if—
    - (i) the person is authorised in writing by the person to whom the information relates; and
    - (ii) the person to whom the information relates is an adult when the authorisation is given; or
  - (f) to protect a person with a disability from abuse, neglect or exploitation.
- (5) Also, a person may disclose information to—

- (a) another department, a funded non-government service provider or entity to enable the department, service provider or entity to provide for the needs of a person with a disability; or
- (b) the Commonwealth or another entity for the purposes of an agreement with the Commonwealth.

## **223 Power to require information or documents**

- (1) The chief executive may give notice to a funded non-government service provider requiring the service provider to give the chief executive, within a stated reasonable time, information or a document relating to the provision of disability services to consumers of the service provider.
- (2) The funded non-government service provider must comply with the notice.
- (3) For a requirement to give a document, the service provider may comply with the requirement by giving a copy of the document certified as a true copy of the document.

## **224 Protection from liability for giving information**

- (1) This section applies to the giving of information to the chief executive, by a funded non-government service provider under this Act.
- (2) A funded non-government service provider, or a person on behalf of the provider, may give the information despite any other law that would otherwise prohibit or restrict the giving of the information.
- (3) If a person, acting honestly on reasonable grounds, gives the information to the chief executive, the person is not liable, civilly, criminally or under an administrative process, for giving the information.
- (4) Also, merely because the person gives the information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.

- (5) Without limiting subsections (3) and (4)—
- (a) in a proceeding for defamation, the person has a defence of absolute privilege for publishing the information; and
  - (b) if the person would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the person—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.
- (6) In this section—  
*information* includes a document.

## **225 Chief executive to advise on-disclosure**

- (1) This section applies to information or a document that the chief executive has obtained from a funded non-government service provider under section 223.
- (2) The chief executive must advise the funded non-government service provider before giving the information or document to another entity, unless the chief executive considers that doing so would not be in the best interests of a consumer to whom the information or document relates.

## **226 Chief executive may enter into arrangement about giving and receiving information with police commissioner**

- (1) This section applies only to the extent that another provision under this Act allows the chief executive to give information to the police commissioner or the police commissioner to give information to the chief executive.
- (2) The chief executive and the police commissioner may enter into a written arrangement by which the information is given or received.
- (3) Without limiting subsection (2), the arrangement may provide for the electronic transfer of information, including on a daily basis.

- (4) However, if information is to be electronically transferred and, under this Act, there is a limitation on who may access the information or the purposes for which the information may be used, the arrangement must provide for the limitation.

## **227 Delegation by Minister**

- (1) The Minister may delegate the Minister's powers under this Act to an appropriately qualified person who is a public service employee.
- (2) However, the Minister must not delegate the following—
- (a) the Minister's power to make or amend the service standards;
  - (b) the review of the Act under section 233.
- (3) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of standing—*

if a person is a public service employee of the department, the person's classification level in the department

## **228 Delegation by chief executive**

- (1) The chief executive may delegate the chief executive's powers under this Act to an appropriately qualified person who is a public service employee.
- (2) In this section—

*appropriately qualified* includes having the qualifications, experience or standing appropriate to the exercise of the power.

*Example of standing—*

if a person is a public service employee of the department, the person's classification level in the department

**229 Protecting officials from liability**

- (1) An official is not civilly liable for an act done, or omission made, honestly and without negligence under this Act.
- (2) If subsection (1) prevents a civil liability attaching to an official, the liability attaches instead to the State.
- (3) In this section—  
*official* means—
  - (a) the Minister; or
  - (b) the chief executive; or
  - (c) an authorised officer; or
  - (d) a public service employee; or
  - (e) an interim manager; or
  - (f) a member of a Ministerial advisory committee; or
  - (g) a person acting under the direction of an official.

**230 Approval of forms**

The chief executive may approve forms for use under this Act.

**231 Service of documents**

- (1) If a document is required or permitted under this Act to be given to a person, the document may be given to the person by fax transmission directed and sent to—
  - (a) the last fax number given to the giver of the document by the person as the facsimile transmission number for service of documents on the person; or
  - (b) the fax transmission number operated—
    - (i) at the address of the person last known to the giver of the document; or
    - (ii) if the person is a corporation, at the corporation's registered office under the Corporations Act.
- (2) A document given under subsection (1) is taken to have been given on the day the document is transmitted.

**232 Regulation-making power**

- (1) The Governor in Council may make regulations under this Act.
- (2) A regulation made under this Act may—
  - (a) impose a penalty of not more than 20 penalty units for a contravention of a provision of a regulation; and
  - (b) prescribe fees payable under this Act and the matters for which fees are payable.

**233 Review of Act**

The Minister must review the efficacy and efficiency of this Act as soon as practicable after the end of 5 years after the commencement of this section.

**233A Review of Guardianship and Administration Act 2000, ch 5B**

When the Minister conducts the review required under section 233, the Minister and the Minister responsible for administering the *Guardianship and Administration Act 2000*, acting jointly, must review the efficacy and efficiency of chapter 5B of that Act.

**Part 16 Repeal and transitional provisions****Division 1 Repeal****234 Repeal of Disability Services Act 1992**

The Disability Services Act 1992 No. 24 is repealed.

## **Division 2                      Transitional provisions for Act No. 12 of 2006**

### **235      Definitions for div 2**

In this division—

*commencement* means the commencement of this part.

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

### **236      Screening of persons engaged by funded non-government service providers at the commencement**

- (1) This section applies to a funded non-government service provider who is engaging a person at a service outlet of the service provider at the commencement.
- (2) Section 90 does not apply to the continued engagement of the person until the earliest of the following—
  - (a) the end of the period after the commencement prescribed under a regulation;
  - (b) if an application for a prescribed notice about the person is made within that period and is not withdrawn—the day a prescribed notice is issued to the person;
  - (c) if an application for a prescribed notice about a person is made within that period and is withdrawn—the day of the withdrawal.
- (3) For subsection (2)(a), a regulation must—
  - (a) name each funded non-government service provider; and
  - (b) assign a category to the service provider; and
  - (c) state the period after the commencement, not exceeding 6 months, that applies to the category.
- (4) The category must relate to the type of disability services provided by the service provider and is for the purposes of this section only.

- (5) A particular category may be assigned to a funded non-government service provider even though the service provider also falls within another category.

**237 Certain non-government service providers taken to be approved under part 6 and to be funded non-government service providers**

- (1) This section applies to a non-government service provider that, at the commencement, is receiving financial assistance under the repealed Act that is recurrent funding.
- (2) The service provider is, from the commencement, taken to be—
- (a) an approved non-government service provider for this Act; and
  - (b) a funded non-government service provider for this Act.

**238 When grants of financial assistance under the repealed Act continue**

- (1) This section applies to a non-government service provider that, at the commencement, is receiving financial assistance under the repealed Act that is recurrent funding.
- (2) Subject to subsection (4), the service provider may continue to receive recurrent funding under this Act.
- (3) If the service provider has, before the commencement, signed an agreement under the repealed Act known as a general service agreement, that agreement is taken to be a funding agreement under this Act.
- (4) If the service provider has not signed a general service agreement before the commencement, funding must stop 3 months after the commencement unless—
- (a) the Minister approves funding under this Act; and
  - (b) a funding agreement is signed by the service provider.
- (5) No compensation is payable to a service provider if funding to the service provider stops under subsection (4).

**239 Queensland disability service standards to continue in force**

- (1) The prescribed standards are taken to be service standards made and notified under this Act and take effect for this Act from the commencement.
- (2) The prescribed standards may be amended and repealed under this Act.
- (3) In this section—

*prescribed standards* means the standards called the Queensland disability service standards that were approved by the Minister administering the *Disability Services Act 1992* in December, 2003.

**240 Disability sector quality system to continue in force**

- (1) The prescribed system is taken to be the disability sector quality system approved under this Act and takes effect for this Act from the commencement.
- (2) The Minister may approve an amendment of, or the repeal of, the prescribed system under this Act.
- (3) Subsection (4) applies if—
  - (a) the Minister administering the *Disability Services Act 1992* has approved an entity as being suitable to accredit another entity for the purpose of the other entity deciding whether a service provider has met the service standards for the prescribed system; and
  - (b) the approval is in force immediately before the commencement.
- (4) The entity is taken to be an entity approved under section 38.
- (5) The Minister may revoke the approval of the entity.
- (6) In this section—

*prescribed system* means the process called the disability sector quality system that was approved by the Minister administering the *Disability Services Act 1992* in June, 2004.

**Division 3**                      **Transitional provisions for Disability Services and Other Legislation Amendment Act 2008**

**Subdivision 1**            **Preliminary**

**241**    **Interpretation**

(1) In this division—

*authorised guardian*, for an adult with an intellectual or cognitive disability in relation to a restrictive practice, means a guardian for the adult—

- (a) appointed before the commencement under the *Guardianship and Administration Act 2000*; and
- (b) who is authorised under that Act, in accordance with the terms of the guardian’s appointment, to make decisions about the use of the restrictive practice in relation to the adult.

*Note*—

See also the GAA, section 265.

*commencement* means the commencement of this division.

*compliance period* means—

- (a) if the restrictive practice used is containment or seclusion or restricting access—6 months from the day the relevant service provider first uses the restrictive practice in relation to the adult on or after the commencement; or
- (b) if the restrictive practice used is chemical, mechanical or physical restraint—9 months from the day the relevant service provider first uses the restrictive practice in relation to the adult on or after the commencement.

*previous service provider* means—

- (a) the State, to the extent the State provided disability services for adults with an intellectual or cognitive disability before the commencement; or

- (b) a person other than the State who provided disability services funded by the State for adults with an intellectual or cognitive disability before the commencement.

*transitional period* means the period starting on the commencement and ending 18 months after the commencement.

- (2) If the context permits, terms used in this division that are defined for part 10A have the meanings given for part 10A.

## **Subdivision 2 Immunity from liability for use of restrictive practices before commencement**

### **242 Immunity of previous service provider**

A previous service provider is not criminally or civilly liable for using a restrictive practice before the commencement in relation to an adult with an intellectual or cognitive disability if—

- (a) the previous service provider acted honestly and without negligence; and
- (b) using the restrictive practice was—
- (i) necessary to prevent the adult's behaviour causing harm to the adult or others; and
  - (ii) the least restrictive way of ensuring the safety of the adult or others; and
- (c) within a reasonable time before using the restrictive practice, the previous service provider assessed the adult to identify—
- (i) the nature and causes of the adult's behaviour that caused harm to the adult or others; and
  - (ii) strategies for managing the adult's behaviour that caused harm to the adult or others, and for meeting the adult's needs; and

- (d) the previous service provider carried out monitoring in relation to use of the restrictive practice to ensure the safety of the adult.

### **243 Immunity of individual acting for previous service provider**

- (1) This section applies to an individual who, acting for a previous service provider before the commencement, used a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- (2) The individual is not criminally or civilly liable for using the restrictive practice if—
  - (a) the individual acted honestly and without negligence; and
  - (b) use of the restrictive practice was necessary, or the individual reasonably believed use of the restrictive practice was necessary, to prevent the adult's behaviour causing harm to the adult or others.

## **Subdivision 3 Immunity from liability for use of restrictive practices during transitional period**

### **244 Immunity of relevant service provider**

- (1) A relevant service provider is not criminally or civilly liable for using a restrictive practice during the transitional period in relation to an adult with an intellectual or cognitive disability if—
  - (a) the relevant service provider acts honestly and without negligence; and
  - (b) use of the restrictive practice is—
    - (i) necessary to prevent the adult's behaviour causing harm to the adult or others; and
    - (ii) the least restrictive way of ensuring the safety of the adult or others; and

- (c) either—
    - (i) if there is an authorised guardian for the adult in relation to the restrictive practice—the restrictive practice is used in compliance with the consent of the authorised guardian; or
    - (ii) otherwise—the relevant service provider complies with section 245; and
  - (d) the relevant service provider carries out monitoring in relation to use of the restrictive practice to ensure the safety of the adult; and
  - (e) for containment or seclusion—within 60 days after first containing or secluding the adult on or after the commencement, the relevant service provider gives notice to the chief executive in the approved form of the containment or seclusion of the adult; and
  - (f) from the first day after the end of the compliance period until the last day of the transitional period—the relevant service provider keeps and implements a policy about use of the restrictive practice during the transitional period that is consistent with the department’s policy about use of the restrictive practice mentioned in section 249.
- (2) Subsection (1)(b) to (d) does not apply if the restrictive practice is chemical restraint (fixed dose) used in the course of providing respite services to the adult.
  - (3) This section is subject to section 248.

## **245 Requirement to assess adult if no authorised guardian**

For section 244(1)(c)(ii), the requirements are that the relevant service provider must, during the compliance period, assess the adult to identify—

- (a) the nature and causes of the adult’s behaviour that causes harm to the adult or others; and
- (b) strategies for managing the adult’s behaviour that causes harm to the adult or others, and for meeting the adult’s needs.

**246 Immunity for individual acting for relevant service provider**

- (1) This section applies to an individual who, acting for a relevant service provider during the transitional period, uses a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- (2) The individual is not criminally or civilly liable for using the restrictive practice if—
  - (a) the individual acts honestly and without negligence; and
  - (b) use of the restrictive practice is necessary, or the individual reasonably believes use of the restrictive practice is necessary, to prevent the adult's behaviour causing harm to the adult or others.
- (3) Subsection (2)(b) does not apply if the restrictive practice is chemical restraint (fixed dose) used in the course of providing respite services to the adult.
- (4) This section is subject to section 248.

**247 Relationship of subdivision with pt 10A**

This subdivision does not limit part 10A.

**248 Circumstances in which subdivision stops applying**

- (1) This section provides for the circumstances in which this subdivision stops applying to the use of a restrictive practice by a relevant service provider in relation to an adult with an intellectual or cognitive disability.
- (2) If the restrictive practice is not used in the course of providing respite services or community access services to the adult, the circumstances are—
  - (a) for containment or seclusion—the guardianship tribunal gives, or refuses to give, a containment or seclusion approval authorising the relevant service provider to contain or seclude the adult; or
  - (b) for chemical, mechanical or physical restraint—a guardian for a restrictive practice (general) matter for

- the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider; or
- (c) for restricting access—a guardian for a restrictive practice (general) matter, or an informal decision maker, for the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider.
- (3) If the restrictive practice is used in the course of providing respite services or community access services to the adult, the circumstances are a guardian for a restrictive practice (respite) matter, or an informal decision maker, for the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider.

## **Subdivision 4      Other provisions**

### **249      Requirements for department's policy about use of restrictive practices during transitional period**

- (1) The department must have a policy about use of each type of restrictive practice during the transitional period.
- (2) The policy must outline the procedures a relevant service provider must use to—
- (a) if the relevant service provider is required to comply with section 245—assess an adult with an intellectual or cognitive disability; and
- (b) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—
- (i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and
- (ii) has the skills and knowledge required to use the restrictive practice appropriately; and
- (c) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation; and
- (d) review use of the restrictive practice at least once every 9 months; and

- (e) if the policy is about restricting access—minimise the impact on other persons living at the premises.
- (3) Subsection (2) does not limit the matters that may be stated in the policy.
- (4) The policy must ensure appropriate regard is had to linguistic and cultural diversity and Aboriginal tradition and Island custom.

*Editor's note—*

*Acts Interpretation Act 1954, section 36—*

**Aboriginal tradition** means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

**Island custom**, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

- (5) The chief executive must keep a copy of the policy available for inspection free of charge by relevant service providers at—
  - (a) the department's head office and regional offices; and
  - (b) other places the chief executive considers appropriate.
- (6) Also, the chief executive must publish the policy on the department's website on the internet.
- (7) This section stops applying on the day after the transitional period ends.

## **250 Short term approvals not to be given during transitional period**

Sections 123O and 123ZD and part 10A, division 4, subdivision 4 do not apply during the transitional period.

**Division 3****Transitional provision for Criminal Code and Other Acts Amendment Act 2008****241 References in schs 3 and 5 to Criminal Code offence**

Schedules 3 and 5 apply as if a reference to the Criminal Code, section 208 included a reference to the Criminal Code, section 209 as in force at any time before its repeal by the *Criminal Code and Other Acts Amendment Act 2008*.

## Schedule 2      Reviewable decisions

section 207

<b>Interested person</b>	<b>Reviewable decision</b>
applicant for approval as an approved non-government service provider	to refuse approval as an approved non-government service provider (s 46(3))
approved non-government service provider	to refuse to cancel approval as an approved non-government service provider (s 48(3))
approved non-government service provider	to cancel approval as an approved non-government service provider (s 49(1))
funded non-government service provider whose funding is suspended or cancelled	to cancel or suspend the funding of a funded non-government service provider for not complying with a compliance notice (s 161(8))
funded non-government service provider for whom interim manager appointed	to appoint an interim manager for a funded non-government service provider (s 169)

**Schedule 3      Current serious offences**

section 79

*1 Classification of Computer Games and Images Act 1995*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
23	Demonstration of an objectionable computer game before a minor	
26(3)	Possession of objectionable computer game	
27(3) and (4)	Making objectionable computer game	
28	Obtaining minor for objectionable computer game	

*2 Classification of Films Act 1991*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
41(3)	Possession of objectionable film	
42(3) and (4)	Making objectionable film	
43	Procurement of minor for objectionable film	

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 Schedule 3 (continued)
3 *Classification of Publications Act 1991*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
12	Sale etc. of prohibited publication or child abuse photograph	only if an offender was or could have been liable as mentioned in section 12, penalty, paragraph (c)
13	Possession of prohibited publication	only if an offender was or could have been liable as mentioned in section 13, penalty, paragraph (c)
14	Possession of child abuse publication or child abuse photograph	
15	Exhibition or display of prohibited publication or child abuse photograph	
16	Leaving prohibited publication or child abuse photograph in or on public place	only if an offender was or could have been liable as mentioned in section 16, penalty, paragraph (c)
17	Producing prohibited publication	only if an offender was or could have been liable as mentioned in section 17(1), penalty, paragraph (c) or 17(2), penalty, paragraph (c) or the offence is an offence under section 17(3) or (4)

## Schedule 3 (continued)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
18	Procurement of minor for RC publication or child abuse photograph	
20	Leaving prohibited publication or child abuse photograph in or on private premises	only if an offender was or could have been liable as mentioned in section 20, penalty, paragraph (c)

## 4 Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
208	Unlawful sodomy	
210	Indecent treatment of children under 16	
211	Bestiality	
213	Owner etc. permitting abuse of children on premises	
215	Carnal knowledge with or of children under 16	
216	Abuse of persons with an impairment of the mind	
217	Procuring young person etc. for carnal knowledge	

## Schedule 3 (continued)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
218	Procuring sexual acts by coercion etc.	
218A	Using internet etc. to procure children under 16	
219	Taking child for immoral purposes	
221	Conspiracy to defile	
222	Incest	
228	Obscene publications and exhibitions	only if an offender was or could have been liable as mentioned in section 228(2) or (3)
228A	Involving child in making child exploitation material	
228B	Making child exploitation material	
228C	Distributing child exploitation material	
228D	Possessing child exploitation material	
229B	Maintaining a sexual relationship with a child	

## Schedule 3 (continued)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
229G	Procuring prostitution	only if an offender was or could have been liable as mentioned in section 229G(2)
229H	Knowingly participating in provision of prostitution	only if an offender was or could have been liable as mentioned in section 229H(2)
229I	Persons found in places reasonably suspected of being used for prostitution etc.	only if an offender was or could have been liable as mentioned in section 229I(2)
229L	Permitting young person etc. to be at place used for prostitution	
300	Unlawful homicide	only if the unlawful killing is murder under section 302
306	Attempt to murder	
309	Conspiring to murder	
313	Killing unborn child	
315	Disabling in order to commit indictable offence	
316	Stupefying in order to commit indictable offence	

## Schedule 3 (continued)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
317	Acts intended to cause grievous bodily harm and other malicious acts	
320A	Torture	
322	Administering poison with intent to harm	Only if an offender was or could have been liable for a penalty as mentioned in section 322, penalty, paragraph (a)
323A	Female genital mutilation	
323B	Removal of child from State for female genital mutilation	
324	Failure to supply necessities	
326	Endangering life of children by exposure	
349	Rape	
350	Attempt to commit rape	
351	Assault with intent to commit rape	
352	Sexual assaults	
354	Kidnapping	
354A	Kidnapping for ransom	

## Schedule 3 (continued)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
363	Child-stealing	
363A	Abduction of child under 16	
364	Cruelty to children under 16	
409	Definition of <i>robbery</i>	only if an offender was or could have been liable as mentioned in section 411(2)
419	Burglary	only if an offender was or could have been liable as mentioned in section 419(3)(b)(i) and (ii)
427	Unlawful entry of vehicle for committing indictable offence	only if an offender was or could have been liable as mentioned in section 427(2)(b)(i) or (ii)

5 *Drugs Misuse Act 1986*

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Limitation relating to the provision of the Act</b>
5	Trafficking in dangerous drugs	
6	Supplying dangerous drugs	only if the offence is one of aggravated supply as mentioned in section 6(2)
8	Producing dangerous drugs	only if an offender was or could have been liable for a penalty as mentioned in section 8, penalty, paragraph (a) or (b)

## Schedule 4      Repealed or expired serious offences

section 79

### Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
212	Defilement of Girls under Twelve	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
223	Incest by adult female	as the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
325	Endangering life or health of apprentices or servants	as the provision was in force from time to time before its repeal by the <i>Training and Employment Act 2000</i>

## Schedule 4 (continued)

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
344	Aggravated assaults	as the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A <sup>a</sup>

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a *Criminal Law Amendment Act 1945*, section 2A was inserted into the *Criminal Law Amendment Act 1945* by the *Criminal Law Amendment Act 1946*.

## **Schedule 5      Current serious sexual or violent offences**

section 80

Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>
208	Unlawful sodomy
210	Indecent treatment of children under 16
213	Owner etc. permitting abuse of children on premises
215	Carnal knowledge with or of children under 16
216	Abuse of persons with an impairment of the mind
217	Procuring young person etc. for carnal knowledge
218	Procuring sexual acts by coercion etc.
219	Taking child for immoral purposes
222	Incest
229B	Maintaining a sexual relationship with a child
229G	Procuring prostitution
349	Rape
350	Attempt to commit rape
351	Assault with intent to commit rape
352	Sexual assaults

## Schedule 6      Repealed or expired serious sexual or violent offences

section 80

### Criminal Code

<b>Provision of Act</b>	<b>Relevant heading</b>	<b>Qualification relating to the provision of the Act</b>
212	Defilement of Girls under Twelve	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
214	Attempt to Abuse Girls under Ten	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
220	Unlawful Detention with Intent to Defile or in a Brothel	as the provision was in force from time to time before its repeal by the <i>Criminal Code, Evidence Act and Other Acts Amendment Act 1989</i>
223	Incest by adult female	as the provision was in force from time to time before its repeal by the <i>Criminal Law Amendment Act 1997</i>
344	Aggravated assaults	as the provision was in force from 20 December 1946 to 30 June 1997 if the circumstance of aggravation was that the unlawful assault was an offence of a sexual nature as defined in the <i>Criminal Law Amendment Act 1945</i> , section 2A

## Schedule 7      Dictionary

### section 9

***administrator*** means an administrator appointed under the *Guardianship and Administration Act 2000*.

***adult guardian*** means the adult guardian appointed under the *Guardianship and Administration Act 2000*.

***adult with an intellectual or cognitive disability***, for part 10A and part 15, division 1A, see section 123E.

***adult with a skills deficit***, for part 15, division 1A, see section 214B.

***appeal***, against a decision to the tribunal, means apply to the tribunal for a review of the decision.

***appropriately qualified***, for part 10A, see section 123E.

***approved form*** means a form approved by the chief executive under section 230.

***approved non-government service provider*** see section 16.

***assessment***, for part 10A, see section 123E.

***authorised guardian***, for part 16, division 3, see section 241(1).

***authorised officer*** means a person appointed as an authorised officer under section 125.

***authorised psychiatrist***, for part 10A, see section 123E.

***carer*** means a person of any age, who without being paid, cares for another person who needs ongoing support because of a disability, but does not include a volunteer for an organisation.

***chemical restraint***, for part 10A, see section 123E.

***chemical restraint (fixed dose)***, for part 10A, see section 123E.

***chief executive (health)***, for part 10A, division 8, subdivision 3, see section 123ZZG.

## Schedule 7 (continued)

**commencement**, for part 16, division 3, see section 241(1).

**Commissioner for Children and Young People and Child Guardian** means the Commissioner for Children and Young People and Child Guardian appointed under the *Commission for Children and Young People and Child Guardian Act 2000*.

**community access services**, for part 10A, see section 123E.

**complaints agency** means any of the following—

- (a) the ombudsman under the *Ombudsman Act 2001*;
- (b) the Crime and Misconduct Commission under the *Crime and Misconduct Act 2001*;
- (c) the Anti-Discrimination Commissioner under the *Anti-Discrimination Act 1991*;
- (d) the Health Quality and Complaints Commission under the *Health Quality and Complaints Commission Act 2006*;
- (e) the adult guardian;
- (f) the Commissioner for Children and Young People and Child Guardian.

**compliance notice** see section 161(3).

**compliance period**, for part 16, division 3, see section 241(1).

**confidential information** includes information about a person's affairs but does not include—

- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

**consumer**, of a funded non-government service provider, means a person with a disability who is provided with disability services by the service provider.

**contain**, for part 10A, see section 123E.

## Schedule 7 (continued)

**containment or seclusion approval**, for part 10A, see section 123E.

**conviction** means a finding of guilt or the acceptance of a plea of guilty by a court, whether or not a conviction is recorded.

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

- (a) every conviction of the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act; and
- (b) every charge made against the person for an offence, in Queensland or elsewhere, and whether before or after the commencement of this Act.

**current**, for a prescribed notice or a positive notice card, means current under section 89.

**decision notice**, for part 10A, see section 123E.

**director of mental health**, for part 10A, see section 123E.

**disability** see section 11.

**disability sector quality system** means the process approved by the Minister under section 37 under which a service provider may be certified by an external certification body as meeting the service standards.

**disability services** see section 12.

**disqualification order**, for part 10, see section 122(2).

**document certification requirement** see section 158(5).

**document production requirement** see section 158(6).

**engaged**, by a funded non-government service provider, see section 78.

**engaged by the department** see section 63.

**engaged person**, for part 10, see section 83(1).

**excluding offence**, for part 10, see section 81.

**executive officer**, of a corporation, means any person, by whatever name called and whether or not the person is a

## Schedule 7 (continued)

director of the corporation, who is concerned or takes part in the management of the corporation.

**external certification body** see section 38(1).

**funded non-government service provider** see section 17.

**funded service provider** see section 14.

**funding agreement** see section 56(1).

**GAA**, for part 10A, see section 123E.

**guardian** means a guardian appointed under the *Guardianship and Administration Act 2000*.

**guardian for a restrictive practice (general) matter**, for part 10A, see section 123E.

**guardian for a restrictive practice matter**, for part 10A, see section 123E.

**guardian for a restrictive practice (respite) matter**, for part 10A, see section 123E.

**guardianship tribunal**, for part 10A, see section 123E.

**harm**, for part 10A, see section 123E.

**health professional**, for part 10A, division 8, subdivision 3, see section 123ZZG.

**home** means premises used as a private residence.

**human rights principle** means the principle and rights stated in section 19.

**imprisonment order** means an order of a court that convicts a person for an offence, if the order includes a penalty that includes imprisonment for the offence, including imprisonment that is wholly or partially suspended.

**indictable offence** includes an indictable offence dealt with summarily, whether or not the Criminal Code, section 659, applies to the indictable offence.

**informal decision maker**, for part 10A, see section 123E.

## Schedule 7 (continued)

***interested person***—

- (a) for a relevant decision for part 10A, division 7, see section 123ZY; or
- (b) for a reviewable decision, see section 207.

***interim manager*** means a person appointed as interim manager under section 169.

***investigative information***, about a person, see section 109(1).

***keep and implement***, for part 10A, see section 123E.

***least restrictive***, for part 10A, see section 123E.

***mechanical restraint***, for part 10A, see section 123E.

***multidisciplinary assessment***, for part 10A, see section 123E.

***negative notice*** see section 85(2)(b).

***non-government service provider*** see section 15.

***notice*** means a written notice.

***obstruct*** includes hinder and attempt to obstruct or hinder.

***owner***, for part 11, division 2, subdivision 5, see section 147.

***personal details requirement***, for part 11, division 2, subdivision 6, see section 156(5).

***physical restraint***, for part 10A, see section 123E.

***place*** includes premises and vacant land.

***police commissioner*** means the commissioner of the police service.

***police information***, about a person, means the following—

- (a) the person's criminal history;
- (b) investigative information about the person.

***police service*** means the Queensland Police Service.

***positive behaviour support plan***, for part 10A, see section 123E.

***positive notice*** see section 85(2)(a).

## Schedule 7 (continued)

**positive notice card** means a document, in the form of a card, issued to a person who is the holder of a current positive notice at or about the time that the person is issued with the positive notice, that includes the following information—

- (a) the name of the person who is the holder of the positive notice;
- (b) the date of birth of the person;
- (c) a registration number for the person;
- (d) an expiry date for the positive notice;
- (e) the signature, or an electronic version of the signature, of the person to whom the positive notice is issued.

**premises** includes—

- (a) a building or other structure; and
- (b) a part of a building or other structure; and
- (c) a vehicle; and
- (d) a caravan.

**prescribed notice** means a notice issued under section 85(2).

**prescribed requirement** means a requirement prescribed under section 59.

**previous service provider**, for part 16, division 3, see section 241(1).

**private sector health service**, for part 10A, division 8, subdivision 3, see section 123ZZG.

**relevant decision**, for part 10A, division 7, see section 123ZY.

**relevant decision maker (respite)**, for part 10A, see section 123E.

**relevant service provider**, for part 10A and part 15, division 1A, see section 123B.

**repealed Act**, for part 16, division 2, see section 235.

**respite/community access plan**, for part 10A, see section 123E.

## Schedule 7 (continued)

*respite services*, for part 10A, see section 123E.

*restricting access*, for part 10A, see section 123E.

*restrictive practice* see section 123E.

*reviewable decision* means a decision stated in schedule 2.

*review decision*, for part 14, see section 211(3).

*screening decision*, in relation to a person, means a decision about whether a positive or negative notice should be issued to the person.

*seclude*, for part 10A, see section 123E.

*serious offence* see section 79.

*serious sexual or violent offence* see section 80.

*service delivery principles* means the principles stated in part 2, division 2.

*service outlet* means a place at which disability services are provided.

*service provider* see section 13.

*service standards* see section 34(1).

*short term approval*, for part 10A, see section 123E.

*short term plan*, for part 10A, see section 123E.

*support network*, for part 10A, see section 123E.

*transitional period*, for part 16, division 3, see section 241(1).

*tribunal* means the Commercial and Consumer Tribunal established under the *Commercial and Consumer Tribunal Act 2003*.

## Endnotes

### 1 Index to endnotes

	Page
2 Date to which amendments incorporated . . . . .	221
3 Key . . . . .	222
4 Table of reprints . . . . .	222
5 Tables in earlier reprints . . . . .	222
6 List of legislation . . . . .	223
7 List of annotations . . . . .	223
8 List of forms notified or published in the gazette . . . . .	226

### 2 Date to which amendments incorporated

This is the reprint date mentioned in the Reprints Act 1992, section 5(c). Accordingly, this reprint includes all amendments that commenced operation on or before 1 December 2008. Future amendments of the Disability Services Act 2006 may be made in accordance with this reprint under the Reprints Act 1992, section 49.

### 3 Key

#### Key to abbreviations in list of legislation and annotations

Key	Explanation	Key	Explanation
AIA	= Acts Interpretation Act 1954	(prev)	= previously
amd	= amended	proc	= proclamation
amdt	= amendment	prov	= provision
ch	= chapter	pt	= part
def	= definition	pubd	= published
div	= division	R[X]	= Reprint No. [X]
exp	= expires/expired	RA	= Reprints Act 1992
gaz	= gazette	reloc	= relocated
hdg	= heading	renum	= renumbered
ins	= inserted	rep	= repealed
lap	= lapsed	(retro)	= retrospectively
notfd	= notified	rv	= revised edition
num	= numbered	s	= section
o in c	= order in council	sch	= schedule
om	= omitted	sdiv	= subdivision
orig	= original	SIA	= Statutory Instruments Act 1992
p	= page	SIR	= Statutory Instruments Regulation 2002
para	= paragraph	SL	= subordinate legislation
prec	= preceding	sub	= substituted
pres	= present	unnum	= unnumbered
prev	= previous		

### 4 Table of reprints

Reprints are issued for both future and past effective dates. For the most up-to-date table of reprints, see the reprint with the latest effective date.

If a reprint number includes a letter of the alphabet, the reprint was released in unauthorised, electronic form only.

Reprint No.	Amendments included	Effective	Notes
1	2006 Act No. 25	1 July 2006	
2	2008 Act No. 23	1 July 2008	
2A	2008 Act No. 55	1 December 2008	

### 5 Tables in earlier reprints

Name of table	Reprint No.
Corrected minor errors	1

## **6 List of legislation**

### **Disability Services Act 2006 No. 12**

date of assent 4 April 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2006 (2006 SL No. 160)

amending legislation—

### **Health Quality and Complaints Commission Act 2006 No. 25 ss 1–2(1), 241(1) sch 3**

date of assent 29 May 2006

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2006 (see s 2(1))

### **Disability Services and Other Legislation Amendment Act 2008 No. 23 pts 1–2**

date of assent 9 May 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 July 2008 (2008 SL No. 201)

### **Criminal Code and Other Acts Amendment Act 2008 No. 55 ss 1–2, 150 sch**

date of assent 23 October 2008

ss 1–2 commenced on date of assent

remaining provisions commenced 1 December 2008 (2008 SL No. 386)

## **7 List of annotations**

### **Act does not affect other rights or remedies**

s 5 amd 2008 No. 23 s 4

### **Objects of Act**

s 6 amd 2008 No. 23 s 5

### **How objects are mainly achieved**

s 7 amd 2008 No. 23 s 6

### **PART 10A—USE OF RESTRICTIVE PRACTICES**

pt hdg ins 2008 No. 23 s 7

#### **Division 1—Preliminary**

div 1 (ss 123A–123I) ins 2008 No. 23 s 7

#### **Division 2—Important concepts for using restrictive practices**

div 2 (ss 123J–123L) ins 2008 No. 23 s 7

#### **Division 3—Containment and seclusion**

div hdg ins 2008 No. 23 s 7

##### **Subdivision 1—Requirements for containing or secluding an adult**

sdiv 1 (ss 123M–123O) ins 2008 No. 23 s 7

##### **Subdivision 2—Multidisciplinary assessment and development of positive behaviour support plan**

sdiv 2 (ss 123P–123T) ins 2008 No. 23 s 7

**Subdivision 3—Changing a positive behaviour support plan**

sdiv 3 (ss 123U–123Y) ins 2008 No. 23 s 7

**Subdivision 4—General requirements for containment or seclusion**

sdiv 4 (s 123Z) ins 2008 No. 23 s 7

**Division 4—Use of restrictive practices other than containment or seclusion**

div hdg ins 2008 No. 23 s 7

**Subdivision 1—Requirements for using chemical, mechanical or physical restraint, or restricting access**

sdiv 1 (ss 123ZA–123ZD) ins 2008 No. 23 s 7

**Subdivision 2—Assessment of adult and positive behaviour support plan**

sdiv 2 (ss 123ZE–123ZH) ins 2008 No. 23 s 7

**Subdivision 3—Requirements if adult subject to forensic order or involuntary treatment order**

sdiv 3 (ss 123ZI–123ZJ) ins 2008 No. 23 s 7

**Subdivision 4—Short term approvals given by chief executive**

sdiv 4 (ss 123ZK–123ZN) ins 2008 No. 23 s 7

**Division 5—Use of restrictive practices for respite services or community access services**

div 5 (ss 123ZO–123ZS) ins 2008 No. 23 s 7

**Division 6—Policy about use of restrictive practices**

div 6 (ss 123ZT–123ZW) ins 2008 No. 23 s 7

**Division 7—Review of particular chief executive decisions**

div 7 (ss 123ZX–123ZZA) ins 2008 No. 23 s 7

**Division 8—Miscellaneous provisions**

div hdg ins 2008 No. 23 s 7

**Subdivision 1—Immunity for use of restrictive practices**

sdiv 1 (ss 123ZZB–123ZZC) ins 2008 No. 23 s 7

**Subdivision 2—Requirements for relevant service providers**

sdiv 2 (ss 123ZZD–123ZZF) ins 2008 No. 23 s 7

**Subdivision 3—Confidentiality provisions**

sdiv 3 (ss 123ZZG–123ZZI) ins 2008 No. 23 s 7

**PART 15—MISCELLANEOUS****Division 1A—Locking of gates, doors and windows**

div 1A (ss 214A–214E) ins 2008 No. 23 s 8

**Confidentiality of other information**

s 222 amd 2008 No. 23 s 9

**Review of Guardianship and Administration Act 2000, ch 5B**

s 233A ins 2008 No. 23 s 10

**PART 16—REPEAL AND TRANSITIONAL PROVISIONS****Division 2—Transitional provisions for Act No. 12 of 2006**

**div hdg** amd 2008 No. 23 s 11  
sub 2008 No. 55 s 150 sch

**PART 17—CONSEQUENTIAL AMENDMENTS**

**pt hdg** om R1 (see RA ss 7(1)(k))

**Division 3—Transitional provisions for Disability Services and Other Legislation  
Amendment Act 2008**

**div hdg** ins 2008 No. 23 s 12

**Subdivision 1—Preliminary**

**sdiv hdg** ins 2008 No. 23 s 12

**Interpretation**

**s 241** prev s 241 om R1 (see RA s 40)  
pres s 241 ins 2008 No. 23 s 12

**Subdivision 2—Immunity from liability for use of restrictive practices before  
commencement**

**sdiv 2 (ss 242–243)** ins 2008 No. 23 s 12

**Subdivision 3—Immunity from liability for use of restrictive practices during  
transitional period**

**sdiv 3 (ss 244–248)** ins 2008 No. 23 s 12

**Subdivision 4—Other provisions**

**sdiv 4 (ss 249–250)** ins 2008 No. 23 s 12

**Division 3—Transitional provision for Criminal Code and Other Acts Amendment  
Act 2008**

**div 3 (s 241)** ins 2008 No. 55 s 150 sch

**SCHEDULE 1—CONSEQUENTIAL AMENDMENTS**

om R1 (see RA s 40)

**SCHEDULE 3—CURRENT SERIOUS OFFENCES**

amd 2008 No. 55 s 150 sch

**SCHEDULE 5—CURRENT SERIOUS SEXUAL OR VIOLENT OFFENCES**

amd 2008 No. 55 s 150 sch

**SCHEDULE 7—DICTIONARY**

def “**adult with an intellectual or cognitive disability**” ins 2008 No. 23 s  
13(2)

def “**adult with a skills deficit**” ins 2008 No. 23 s 13(2)

def “**appropriately qualified**” ins 2008 No. 23 s 13(2)

def “**assessment**” ins 2008 No. 23 s 13(2)

def “**authorised guardian**” ins 2008 No. 23 s 13(2)

def “**authorised psychiatrist**” ins 2008 No. 23 s 13(2)

def “**chemical restraint**” ins 2008 No. 23 s 13(2)

def “**chemical restraint (fixed dose)**” ins 2008 No. 23 s 13(2)

def “**chief executive (health)**” ins 2008 No. 23 s 13(2)

def “**commencement**” ins 2008 No. 23 s 13(2)

- def “**community access services**” ins 2008 No. 23 s 13(2)  
 def “**complaints agency**” amd 2006 No. 25 s 241(1) sch 3  
 def “**compliance period**” ins 2008 No. 23 s 13(2)  
 def “**contain**” ins 2008 No. 23 s 13(2)  
 def “**containment or seclusion approval**” ins 2008 No. 23 s 13(2)  
 def “**decision notice**” ins 2008 No. 23 s 13(2)  
 def “**director of mental health**” ins 2008 No. 23 s 13(2)  
 def “**GAA**” ins 2008 No. 23 s 13(2)  
 def “**guardian for a restrictive practice (general) matter**” ins 2008 No. 23 s 13(2)  
 def “**guardian for a restrictive practice matter**” ins 2008 No. 23 s 13(2)  
 def “**guardian for a restrictive practice (respite) matter**” ins 2008 No. 23 s 13(2)  
 def “**guardianship tribunal**” ins 2008 No. 23 s 13(2)  
 def “**harm**” ins 2008 No. 23 s 13(2)  
 def “**health professional**” ins 2008 No. 23 s 13(2)  
 def “**informal decision maker**” ins 2008 No. 23 s 13(2)  
 def “**interested person**” sub 2008 No. 23 s 13(1)–(2)  
 def “**keep and implement**” ins 2008 No. 23 s 13(2)  
 def “**least restrictive**” ins 2008 No. 23 s 13(2)  
 def “**mechanical restraint**” ins 2008 No. 23 s 13(2)  
 def “**multidisciplinary assessment**” ins 2008 No. 23 s 13(2)  
 def “**physical restraint**” ins 2008 No. 23 s 13(2)  
 def “**positive behaviour support plan**” ins 2008 No. 23 s 13(2)  
 def “**previous service provider**” ins 2008 No. 23 s 13(2)  
 def “**private sector health service**” ins 2008 No. 23 s 13(2)  
 def “**relevant decision**” ins 2008 No. 23 s 13(2)  
 def “**relevant decision maker (respite)**” ins 2008 No. 23 s 13(2)  
 def “**respite service provider**” ins 2008 No. 23 s 13(2)  
 def “**respite/community access plan**” ins 2008 No. 23 s 13(2)  
 def “**respite services**” ins 2008 No. 23 s 13(2)  
 def “**restricting access**” ins 2008 No. 23 s 13(2)  
 def “**restrictive practice**” ins 2008 No. 23 s 13(2)  
 def “**seclude**” ins 2008 No. 23 s 13(2)  
 def “**short term approval**” ins 2008 No. 23 s 13(2)  
 def “**short term plan**” ins 2008 No. 23 s 13(2)  
 def “**support network**” ins 2008 No. 23 s 13(2)  
 def “**transitional period**” ins 2008 No. 23 s 13(2)

## **8 List of forms notified or published in the gazette**

(The following information about forms is taken from the gazette and is included for information purposes only. Because failure by a department to notify or publish a form in the gazette does not invalidate the form, you should check with the relevant government department for the latest information about forms (see Statutory Instruments Act, section 58(8)).)

**Form 6-1 Version 2—Application for approval**

pubd gaz 1 February 2008 p 464

**Form 6-2 Version 1—Application for cancellation of approval**

pubd gaz 6 July 2007 p 1279

**Form 9-2 Version 1—DSQ Criminal History Disclosure/Change**

pubd gaz 21 July 2006 p 1368

**Form 10-1 Version 1—Application for criminal history screening (prescribed notice)**

pubd gaz 21 July 2006 p 1368

**Form 10-2 Version 1—Application for criminal history screening—change of details**

pubd gaz 21 July 2006 p 1368

**Form 10-3 Version 1—Application for replacement positive notice card**

pubd gaz 23 March 2007 p 1365

**Form 10-4 Version 1—Change of details of positive notice holder**

pubd gaz 23 March 2007 p 1365

**Form 10-5 Version 1—Application for cancellation of negative notice and issue of positive notice**

pubd gaz 23 March 2007 p 1365

**Form 10-6 Version 1—Application for information from register of engaged persons**

pubd gaz 23 March 2007 p 1365

**Form 14-1 Version 1—Application for Review**

pubd gaz 15 December 2006 p 1861

**Form 15-1 Version 1—Notification about compensation relating to disability**

pubd gaz 23 February 2007 p 872

**Form 16-1 Version 1—Notification of containment or seclusion of an adult**

pubd gaz 4 July 2008 p 1415