

**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

## **Disability Inclusion Bill 2014**

### **Explanatory note**

#### **Overview of Bill**

The objects of this Bill are stated in clause 3 of the proposed Act, and include acknowledging that people with disability have the same human rights as other members of the community, promoting the independence and social and economic inclusion of people with disability, enabling people with disability to exercise choice and control in the pursuit of their goals and providing safeguards in relation to the delivery of supports and services for people with disability.

The objects are to be achieved under the proposed Act primarily by:

- (a) stating the disability principles to which people exercising functions under the Act, or providing supports or services to people with disability, are to have regard, and
- (b) providing for a State plan to be prepared by the Department of Family and Community Services setting out whole of government goals relating to providing access to supports and services for people with disability, and for all government departments and local councils to have disability action plans setting out measures to ensure people with disability can access general supports and services available in the community, and
- (c) providing for the making of service standards relating to the provision of supports and services for people with disability, and
- (d) providing for financial assistance to be given to individuals and eligible organisations to facilitate obtaining, or the provision of, supports and services, and
- (e) regulating the use of restrictive interventions on people receiving certain disability services from disability service providers under the proposed Act, and
- (f) amending the *Ombudsman Act 1974* to provide for a monitoring and investigative role for the Ombudsman in relation to certain reportable incidents occurring in supported accommodation facilities of disability service providers.

## Outline of provisions

### Part 1 Preliminary

#### Division 1 Introduction

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

#### Division 2 Objects and principles

**Clause 3** specifies the objects of the proposed Act, which include acknowledging that people with disability have the same human rights as other members of the community, promoting the independence and social and economic inclusion of people with disability, enabling people with disability to exercise choice and control in the pursuit of their goals and providing safeguards in relation to the delivery of supports and services for people with disability.

**Clause 4** specifies the general principles to which persons exercising functions under the proposed Act, or providing supports or services to people with disability, should have regard in the exercise of the function or the provision of supports and services.

**Clause 5** specifies principles that relate to certain groups of people with disability who may have particular needs and states how those needs are to be addressed by disability service providers.

**Clause 6** provides that persons exercising functions under the proposed Act, or providing supports or services to people with disability, should have regard to the disability principles in the exercise of the function or the provision of supports and services.

#### Division 3 Interpretation

**Clause 7** defines certain words and expressions used in the proposed Act.

### Part 2 Disability planning

#### Division 1 State Disability Inclusion Plan

**Clause 8** provides for a State plan (the *State Disability Inclusion Plan*) that is prepared by the Department of Family and Community Services and sets out whole of government goals relating to providing access to supports and services for people with disability. This clause further provides that the Minister administering the proposed Act (the *Minister*) is to table a copy of the plan in each House of Parliament.

**Clause 9** provides that the Minister is to review the State Disability Inclusion Plan at 4 year intervals and table a report of the outcome of the review in each House of Parliament.

#### Division 2 Disability action plans

**Clause 10** provides that each government department and local council must have a plan (a *disability action plan*) that sets out the measures the department or council intends to put in place so that people with disability can access general supports and services available in the community. This clause further provides that each department and local council must, or may, consult with particular persons or entities in preparing its disability action plan. This clause also provides for particular matters to be included in a disability action plan, and for each department and council to give a copy of its plan to the Disability Council NSW (the *Disability Council*) and to make its plan publicly available.

**Clause 11** provides that each government department and local council is to include a report about the implementation of its disability action plan in its annual report. This clause further provides

that the Minister is to table, annually in each House of Parliament, a report about the implementation of disability action plans.

**Clause 12** provides that each government department and local council is to review its disability action plan at 4 year intervals. This clause further provides that, in reviewing its disability action plan, each department or council must consult with people with disability and have regard to any guidelines issued by the Director-General under clause 13.

### **Division 3 Guidelines for disability action plans**

**Clause 13** provides that the Director-General may issue guidelines to help government departments and local councils prepare their disability action plans. This clause further provides that the Director-General must publish the guidelines on the website of the Department of Family and Community Services.

## **Part 3 Disability Council NSW**

**Clause 14** continues in existence the Disability Council of New South Wales and establishes it as the Disability Council NSW under the proposed Act.

**Clause 15** provides for the membership of the Disability Council and its chairperson.

**Clause 16** provides for the functions of the Disability Council.

**Clause 17** provides that the Minister may give assistance, including financial assistance, to the Disability Council.

**Clause 18** provides that the Disability Council is to give reports to the Minister about the exercise of its functions.

## **Part 4 Service standards**

**Clause 19** defines *supported accommodation* for the purposes of the proposed Act.

**Clause 20** provides that the regulations may make provision for or with respect to standards relating to the provision of supports and services for people with disability. This clause further provides that the Director-General must make the standards publicly available.

**Clause 21** provides that the regulations may make provision for or with respect to standards relating to the provision of supports, services and accommodation for people with disability in supported accommodation. This clause further provides that the Director-General must make the standards publicly available.

## **Part 5 Funding arrangements**

### **Division 1 Preliminary**

**Clause 22** provides that the purpose of Part 5 is to facilitate the provision of supports and services to persons in the target group. This clause further provides that the purpose is to be achieved by providing financial assistance directly to individuals, or to eligible organisations, for the purpose of providing supports and services during the transition to the National Disability Insurance Scheme.

**Clause 23** defines *person in the target group* for the purposes of the proposed Act.

### **Division 2 Financial assistance for individuals**

**Clause 24** provides that the Minister may give financial assistance to, or on behalf of, an individual who is a person in the target group. This clause further provides that the financial assistance may be given directly to the individual or a person nominated by the individual, or it may be given to another entity to administer the assistance (as directed by the individual) or to provide supports and services specifically to the individual. The clause also provides that the

financial assistance may be given to an entity, other than a government department or other public sector agency, only if the entity enters into an agreement with the Director-General in relation to the assistance. The clause further provides for matters to which the Minister is to have regard in deciding whether to provide financial assistance and the conditions on which it is provided.

**Clause 25** requires notice to be given to an individual about a decision not to provide financial assistance to, or on behalf of, the individual under Division 2 or to provide the assistance on behalf of the individual instead of directly to the individual. This clause also requires notice of a decision to provide financial assistance to an individual or a person nominated by the individual, on conditions, to be given to the person receiving the assistance.

**Clause 26** provides that the Director-General may enter into agreements in relation to the provision of financial assistance to an individual, or a person nominated by the individual, under Division 2. This clause further states particular matters to be specified in the agreement.

### **Division 3      Financial assistance for eligible organisations**

**Clause 27** provides that the Minister may give financial assistance to an eligible organisation for the purpose of providing supports and services to persons in the target group. This clause further provides that financial assistance may be given to a non-government organisation only if the organisation has entered into an agreement with the Director-General in relation to the assistance. This clause also provides that the Minister may require a government department or other public sector agency to enter into an agreement with the Director-General in relation to financial assistance given to it under Division 3.

**Clause 28** provides that the Director-General may enter into agreements with eligible organisations in relation to the provision of financial assistance under Division 2 or Division 3. This clause further provides that an agreement entered into with a non-government organisation is subject to conditions prescribed under the proposed Act, and states particular matters to be specified in the agreement. This clause also provides that a non-government organisation that is providing supports and services in supported accommodation may be required to comply with the accommodation and service standards in providing the supports and services.

**Clause 29** provides that it is a condition of the provision of financial assistance to a non-government organisation that the organisation gives the Director-General evidence to show it can provide supports and services in compliance with the disability service standards. This clause further provides that it is a condition of the provision of financial assistance to any eligible organisation that the organisation must comply with the disability service standards in providing supports and services to persons in the target group.

**Clause 30** provides that it is a condition of the provision of financial assistance to an eligible organisation that the organisation must not engage a person to work directly with people in the target group unless it is satisfied the person is a suitable person to be involved in the provision of the supports and services. This clause further provides that the organisation must ensure a criminal record check is conducted or obtained in relation to such workers before they are engaged by the organisation, and further criminal record checks are obtained every 4 years after the first check is conducted or obtained. This clause also provides that it is a condition of the provision of financial assistance to the organisation that it must not engage such workers if the worker has been convicted of a criminal offence that is prescribed in Schedule 2 of the proposed Act or is prescribed by the regulations. This clause also provides for the regulations to prescribe matters relating to conducting or obtaining criminal record checks.

### **Division 4      Suspending and terminating financial assistance**

**Clause 31** provides that financial assistance provided under Part 5 of the proposed Act may be suspended on specified grounds (including grounds prescribed by the regulations) for a period of not more than 90 days. This clause further provides that notice of a decision to suspend the assistance must be given to the person receiving the assistance, and that the person may apply for a review of the decision. This clause also provides for the Director-General to further suspend the

financial assistance on the specified grounds, and to arrange for alternative supports and services for a person in the target group while the assistance is suspended.

**Clause 32** provides that financial assistance provided under Part 5 of the proposed Act may be terminated on specified grounds (including grounds prescribed by the regulations). This clause further provides that, before termination of financial assistance, the Director-General must give notice of the proposed termination specifying the grounds for termination, when it is proposed to have effect and, if the proposed termination is for a reason other than the implementation of NDIS arrangements under the National Disability Insurance Scheme or another purpose prescribed by the regulations, inviting the person receiving the assistance to give the Director-General a submission about the proposed termination. Before termination of the financial assistance, the Director-General must consider any submission received in accordance with this proposed clause. This clause also provides that termination of financial assistance has effect despite any agreement relating to the assistance, and that notice of a decision to terminate must be given to the person receiving the assistance.

## **Division 5      Review of decisions**

**Clause 33** provides that particular decisions under Part 5 are administratively reviewable decisions for the purposes of section 28 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*.

## **Division 6      Miscellaneous**

**Clause 34** provides that the Minister may give financial assistance, on the conditions the Minister considers appropriate, to a government department, local council or other entity for the purpose of promoting the objects of the proposed Act.

**Clause 35** provides that the Director-General may, by notice, require a person to give the Director-General information or a document relating to the provision of financial assistance, the obtaining of supports or services or compliance with an agreement entered into under Part 5. This clause also specifies the matters to be included in the notice.

**Clause 36** provides that a person who, acting in good faith, gives information or a document as required under clause 35 is not liable to any civil or criminal action for giving the information or document and cannot be held to have breached any code of professional etiquette or ethics or to have breached standards of professional conduct as a result of giving the information or document.

## **Part 6      Restrictive interventions**

### **Division 1      Preliminary**

**Clause 37** provides that the purpose of Part 6 is to regulate the use of restrictive interventions on persons receiving a disability service with a view to reducing the use of restrictive interventions.

**Clause 38** defines certain words and expressions used in Part 6 of the proposed Act.

**Clause 39** provides that the Director-General may issue guidelines relating to the use of restrictive interventions on persons receiving a disability service. This clause further provides that a person using or proposing to use restrictive interventions must have regard to the guidelines, and that the Director-General is to publish the guidelines on the website of the Department of Family and Community Services.

**Clause 40** provides that Part 6 of the proposed Act does not limit or otherwise affect a function, or the exercise of a function, by the Guardianship Tribunal.

**Clause 41** provides that Part 6 of the proposed Act does not limit or otherwise affect the operation of sections 158 and 175 of the *Children and Young Persons (Care and Protection) Act 1998* or regulations made in accordance with the provisions. This clause further provides that those provisions and regulations prevail to the extent of any inconsistency with Part 6.

## **Division 2      Restricted Practice Authorisations Panels**

**Clause 42** provides that the Director-General or another disability service provider may establish Restricted Practice Authorisation Panels to consider and approve behaviour support plans providing for the use of restraint or seclusion in relation to a person receiving a disability service. This clause further provides for the membership of the panels and the required qualifications or experience of the members.

## **Division 3      Use of restraint or seclusion**

**Clause 43** requires a disability service provider to prepare a behaviour support plan for a person if the provider proposes to use restraint or seclusion in relation to the person. This clause further provides for the matters to be included in a behaviour support plan and the persons with whom the disability service provider must consult in preparing the plan. This clause also provides that a behaviour support plan must not provide for seclusion to be used in relation to a person who is under 18 years of age.

**Clause 44** provides that a behaviour support plan providing for the use of restraint or seclusion must be approved by a Restricted Practice Authorisation Panel before restraint or seclusion in accordance with the plan can be used. This clause further provides that an approval given by a Restricted Practice Authorisation Panel is in effect for not more than 12 months. This clause also provides that each behaviour support plan must be reviewed by the disability service provider every 12 months, and provides who the provider must consult with in reviewing the plan. This clause also provides that a person for whom a behaviour support plan has been prepared may, at any time, ask the disability service provider to review the plan.

**Clause 45** provides that consent is required for the use of restraint or seclusion on a person who is 18 years of age or over. This clause also states who may give the consent.

**Clause 46** provides that consent is required for the use of restraint on a person who is under 18 years of age. This clause also states who may give the consent.

**Clause 47** provides that, subject to the use of restraint or seclusion in an emergency, restraint or seclusion may only be used on a person who is 18 years of age or over in the circumstances stated in the clause.

**Clause 48** provides that, subject to the use of restraint in an emergency, restraint may only be used on a person who is under 18 years of age in the circumstances stated in the clause.

**Clause 49** provides that restraint or seclusion may be used in emergency circumstances stated in the clause. This clause further provides that the use of restraint or seclusion in emergency circumstances stated in the clause must be reported to the Director-General (for a disability service of the Department) or the person in charge of a disability service provider (for a disability service provided by another disability service provider).

**Clause 50** provides that a disability service provider must assess the use of restraint or seclusion on a person in emergency circumstances under clause 49, and prepare and have approved under Part 6 a behaviour support plan for the person if the provider considers future use of restraint or seclusion on the person is likely.

**Clause 51** provides that a person who has given consent to the use of restraint or seclusion under Part 6 may, at any time, withdraw the consent.

**Clause 52** provides that it is an offence for a person to use restraint or seclusion other than in compliance with clause 47, 48 or 49. This clause further provides for a maximum penalty of 300 penalty units for the offence.

## **Division 4      Regulations**

**Clause 53** provides for matters for, or with respect to, which regulations may be made in relation to Part 6 of the proposed Act.

## Part 7 Miscellaneous

**Clause 54** states that the proposed Act binds the Crown.

**Clause 55** provides for the delegation of the Minister's and Director-General's functions under the proposed Act.

**Clause 56** provides for the taking of proceedings under the proposed Act.

**Clause 57** provides that it is an offence (with a maximum penalty of 50 penalty units) for a person to disclose information obtained in connection with the administration or execution of the proposed Act unless the disclosure is made for reasons specified in the clause.

**Clause 58** limits liability for certain matters or things done or omitted to be done in good faith for the purpose of executing the proposed Act.

**Clause 59** provides for the making of regulations for the purposes of the proposed Act.

**Clause 60** repeals the *Disability Services Act 1993*.

**Clause 61** provides for a review of the proposed Act within 5 years from the date of its assent.

## Schedule 1 Provisions relating to Disability Council

**Schedule 1** contains provisions relating to membership and procedure of the Disability Council.

## Schedule 2 Prescribed criminal offences

**Schedule 2** specifies offences in relation to which a conviction will render a person unsuitable to be engaged to work directly with persons in the target group by an organisation receiving financial assistance under Part 5 of the proposed Act.

## Schedule 3 Savings, transitional and other provisions

**Schedule 3** contains savings, transitional and other provisions consequent on the enactment of the proposed Act.

## Schedule 4 Amendment of Acts

**Schedule 4** makes consequential amendments to the *Carers (Recognition) Act 2010*, the *Community Services (Complaints, Reviews and Monitoring) Act 1993*, the *Community Welfare Act 1987*, the *Coroners Act 2009*, the *Home Care Service Act 1988*, the *Land Tax Management Act 1956*, the *National Disability Insurance Scheme (NSW Enabling) Act 2013* and the *Payroll Tax Rebate Scheme (Disability Employment) Act 2011*.

This Schedule also amends the *Ombudsman Act 1974* to include proposed Part 3B in that Act. Proposed Part 3B provides for various matters relating to the occurrence of reportable incidents in supported accommodation within the meaning of the *Disability Inclusion Act 2014*.

Proposed sections 25K and 25L define certain words and expressions used in proposed Part 3B.

Proposed section 25M provides that the Ombudsman is to keep under review the systems of the Department and entities receiving financial assistance under the *Disability Inclusion Act 2014* for preventing, handling and responding to reportable incidents. The Ombudsman may also require the Director-General or principal officer of a service provider to give information about the systems to the Ombudsman.

Proposed section 25N imposes reporting obligations on the Director-General and principal officers of other service providers in relation to reportable allegations or reportable convictions of which the Director-General or principal officer becomes aware.

Proposed section 25O provides that the Ombudsman may exempt any class or kind of incident from being a reportable incident for the purposes of the proposed Part 3B.

Proposed section 25P provides that particular persons may disclose information about reportable incidents to the Ombudsman.

Proposed section 25Q provides that the Ombudsman may monitor the progress of investigations into reportable allegations or reportable convictions. This section further provides that the Ombudsman or an officer of the Ombudsman may be present as an observer at interviews conducted in relation to an investigation and may confer about the conduct and progress of an investigation. This section also provides for the Ombudsman to require the giving of information or documents to the Ombudsman.

Proposed section 25R provides for the Director-General or principal officer of another service provider to give the Ombudsman a report about the conduct of an investigation of a reportable allegation or reportable conviction, and also provides for the Ombudsman to seek further information in relation to an investigation.

Proposed section 25S provides that the Ombudsman may conduct an investigation into reportable allegations or reportable convictions and may also conduct an investigation concerning any inappropriate handling of, or response to, a reportable allegation or reportable conviction. This section further provides that the Ombudsman may exercise relevant powers under the *Ombudsman Act 1974* in relation to such investigations. This section also provides that the Ombudsman may require a deferral of an investigation being conducted by the Director-General or another service provider. The section also provides that the Ombudsman is to provide the Director-General or other service provider with recommendations for action in relation to particular matters relating to investigations.

Proposed section 25T provides that other Acts or laws do not prevent the disclosure of information to the Ombudsman, and that liability is not incurred for such disclosure.

Proposed section 25U extends the application of proposed sections 25N and 25P to other public authorities within the meaning of the *Ombudsman Act 1974*, if the relevant reportable incident arises in the course of employment with the public authority.

Proposed section 25V applies, subject to modifications prescribed by the regulations, the provisions of the *Ombudsman Act 1974* in relation to a matter arising under proposed Part 3B even if it does not involve the conduct of a public authority.



**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

## **Disability Inclusion Bill 2014**

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**NEW SOUTH WALES**  
**DRAFT GOVERNMENT BILL**

**Disability Inclusion Bill 2014**

No. , 2014

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**A Bill for**

An Act relating to the accessibility of mainstream services and facilities, the promotion of community inclusion and the provision of funding, support and specialist services, for people with disability; and for other purposes.

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The Legislature of New South Wales enacts:

## Part 1 Preliminary

### Division 1 Introduction

#### 1 Name of Act

This Act is the *Disability Inclusion Act 2014*.

#### 2 Commencement

This Act commences on a day or days to be appointed by proclamation.

### Division 2 Objects and principles

#### 3 Objects of Act

The objects of this Act are as follows:

- (a) to acknowledge that people with disability have the same human rights as other members of the community, and that the State and the community have a responsibility to facilitate the exercise of those rights,
- (b) to promote the independence and social and economic inclusion of people with disability,
- (c) to enable people with disability to exercise choice and control in the pursuit of their goals and the planning and delivery of their supports and services,
- (d) to provide safeguards in relation to the delivery of supports and services for people with disability,
- (e) to support, to the extent reasonably practicable, the purposes and principles of the *United Nations Convention on the Rights of Persons with Disabilities*,
- (f) to provide for responsibilities of the State during and following the transition to the National Disability Insurance Scheme.

#### 4 General principles

- (1) People with disability have an inherent right to respect for their worth and dignity as individuals.
- (2) People with disability have the right to participate in and contribute to social and economic life.
- (3) People with disability have the right to realise their individual capacities for physical, social, emotional and intellectual development.
- (4) People with disability have the same rights as other members of the community to participate in decisions that affect their lives (including decisions involving risk), and to be supported in making those decisions.
- (5) People with disability have the right to respect for their cultural or linguistic diversity, age, gender, sexual orientation and religious beliefs.
- (6) The right to privacy and confidentiality for people with disability is to be respected.
- (7) People with disability have the right to live free from neglect, abuse and exploitation.
- (8) People with disability have the right to access information in a way that is appropriate for their disability and cultural background, and enables them to make informed choices.

- (9) People with disability have the same right as other members of the community to pursue any grievance.
- (10) The crucial role of families, carers and other significant persons in the lives of people with disability, and the importance of preserving relationships with families, carers and other significant persons, is to be acknowledged and respected.
- (11) The special needs of children with disability as they mature, and their right to respect as equal members of the community, are to be respected.
- (12) The changing abilities, strengths, goals and needs of people with disability as they age are to be respected.

## **5 Principles recognising the needs of particular groups**

- (1) A disability service provider has a responsibility to provide supports and services to Aboriginal and Torres Strait Islander people with disability in a way that:
  - (a) recognises that Aboriginal and Torres Strait Islander people have a right to respect and acknowledgement as the first peoples of Australia and for their unique history, culture and kinship relationships and connection to their traditional land and waters, and
  - (b) recognises that many Aboriginal and Torres Strait Islander people with disability may face multiple disadvantage, and
  - (c) addresses that disadvantage and the needs of Aboriginal and Torres Strait Islander people with disability, and
  - (d) is informed by working in partnership with Aboriginal and Torres Strait Islander people with disability to enhance their lives.
- (2) A disability service provider has a responsibility to provide supports and services to people with disability from culturally and linguistically diverse backgrounds in a way that:
  - (a) recognises that cultural, language and other differences may create barriers to providing the supports and services, and
  - (b) addresses those barriers and the needs of the people with disability, and
  - (c) is informed by consultation with their communities.
- (3) A disability service provider has a responsibility to provide supports and services to women and girls with disability in a way that:
  - (a) recognises that women and girls with disability may face multiple disadvantage and are potentially more vulnerable to risk of abuse or exploitation, and
  - (b) addresses that disadvantage and risk, and the needs of women and girls with disability, and
  - (c) is informed by consultation with women and girls with disability.

## **6 Having regard to disability principles**

A person exercising a function under this Act, or providing supports or services to people with disability, should have regard to the disability principles in the exercise of the function or the provision of supports and services.

**Note.** Under section 28 (2) (b), an agreement relating to the provision of supports and services by an organisation receiving financial assistance is to specify how the organisation intends to have regard to the disability principles in providing the supports and services.

## Division 3 Interpretation

### 7 Definitions

(1) In this Act:

**accommodation and service standards**—see section 21 (1).

**Department** means the Department of Family and Community Services.

**Director-General** means the Director-General of the Department.

**disability**, in relation to a person, includes a long-term physical, mental, intellectual or sensory impairment that, in interaction with various barriers, may hinder the person's full and effective participation in the community on an equal basis with others.

**disability action plan** of a government department or local council—see section 10 (1).

**Disability Council** means the Disability Council NSW established under section 14.

**disability principles** means the principles stated in sections 4 and 5.

**disability service provider** means:

- (a) the part of the Department in which this Act is administered, or
- (b) another eligible organisation receiving financial assistance in accordance with Division 2 or 3 of Part 5.

**disability service standards**—see section 20 (1).

**eligible organisation** means:

- (a) a government department, or other public sector agency within the meaning of the *Public Sector Employment and Management Act 2002*, or
- (b) another entity that is a corporation or body corporate.

**function** includes a power, authority or duty, and **exercise** a function includes perform a duty.

**Minister** means the Minister administering this Act.

**National Disability Insurance Scheme** means the National Disability Insurance Scheme under the *National Disability Insurance Scheme Act 2013* of the Commonwealth.

**NDIS arrangements** has the meaning it has in the *National Disability Insurance Scheme (NSW Enabling) Act 2013*.

**non-government organisation** means an eligible organisation that is not a government department or other public sector agency within the meaning of the *Public Sector Employment and Management Act 2002*.

**person in the target group**—see section 23.

**prescribed conditions**, in relation to financial assistance, means the conditions referred to in sections 29 and 30.

**service** includes a service consisting of the supply of goods, whether or not provided with other services.

**State Disability Inclusion Plan**—see section 8 (1).

**support** means assistance provided to a person with disability to help the person undertake activities to increase the person's independence and facilitate the person's social and economic participation in the community.

**supported accommodation**—see section 19.

(2) Notes included in this Act do not form part of this Act.

## Part 2 Disability planning

### Division 1 State Disability Inclusion Plan

#### 8 Requirement for State Disability Inclusion Plan

- (1) The Department must, from the day prescribed by the regulations, have a State plan (the *State Disability Inclusion Plan*) setting out whole of government goals relating to providing access to supports and services for people with disability and providing the opportunity for people with disability to participate fully in the community.
- (2) The Minister is to table a copy of the State Disability Inclusion Plan in each House of Parliament as soon as practicable after the day prescribed under subsection (1).
- (3) The State Disability Inclusion Plan may be a document or part of a document prepared for another purpose if the document or part fulfils the requirements of subsection (1).
- (4) The Minister is to make the State Disability Inclusion Plan publicly available.

#### 9 Review of plan

- (1) The Minister is to review the State Disability Inclusion Plan before the end of each 4 year period after the day the Department is required to have the plan.
- (2) The purpose of the review is to ensure the State Disability Inclusion Plan is consistent with the whole of government goals required to be set out in the plan.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament as soon as practicable after it is completed.

### Division 2 Disability action plans

#### 10 Requirement for disability action plans

- (1) Each government department and local council must, from the day prescribed by the regulations, have a plan (a *disability action plan*) setting out the measures the department or council intends to put in place so that people with disability can access general supports and services available in the community, and can participate fully in the community.
- (2) In preparing its disability action plan, a government department or local council:
  - (a) must consult with people with disability and have regard to any guidelines issued under section 13, and
  - (b) may consult with other entities the department or council considers appropriate, including the Disability Council.
- (3) A disability action plan must:
  - (a) specify how the department or local council proposes to have regard to the disability principles in its dealings with matters relating to people with disability, and
  - (b) include strategies to support people with disability, including, for example, strategies about the following:
    - (i) providing access to buildings and facilities,
    - (ii) providing access to information,
    - (iii) accommodating the specific needs of people with disability,
    - (iv) supporting employment of people with disability,



- (v) encouraging and creating opportunities for people with disability to access the full range of services and activities available in the community, and
  - (c) include details of the department's or council's consultation about the plan with people with disability, and
  - (d) include the other matters prescribed by the regulations.
- (4) A disability action plan may be a document or part of a document prepared for another purpose if the Director-General is satisfied the document or part fulfils the requirements of subsections (1) and (3).
- (5) A government department or local council must, as soon as practicable after the day it is required to have a disability action plan:
- (a) give a copy of the plan to the Disability Council, and
  - (b) make it publicly available.

## 11 Report on implementation of plans

- (1) A government department or local council must, as soon as practicable after preparing its annual report, give the Minister a copy of the part of the annual report relating to the department's or council's report on the implementation of its disability action plan.
- (2) The Minister is to table a report about the implementation of disability action plans in each House of Parliament as soon as practicable after the end of each financial year.
- (3) In this section:
- annual report:**
- (a) of a department, means its annual report under the *Annual Reports (Departments) Act 1985*, and
  - (b) of a local council, means its annual report under the *Local Government Act 1993*.

## 12 Review of plans

- (1) A government department or local council must review its disability action plan before the end of each 4 year period after the day the department or council is required to have the plan.
- (2) The purpose of the review is to ensure the disability action plan fulfils the requirements of section 10 (1) and (3).
- (3) In reviewing its disability action plan, the government department or local council must consult with people with disability and have regard to any guidelines issued under section 13.

## Division 3 Guidelines for disability action plans

### 13 Guidelines

- (1) The Director-General may issue guidelines to assist government departments and local councils to prepare a disability action plan.
- (2) The Director-General must publish the guidelines on the Department's website.

## Part 3 Disability Council NSW

### 14 Establishment of Disability Council NSW

- (1) The former council is continued in existence and established under this Act as the Disability Council NSW.
- (2) Schedule 1 contains provisions about the members and procedure of the Disability Council.
- (3) In this section:  
*former council* means the Disability Council of New South Wales established under section 16 of the *Community Welfare Act 1987*.

### 15 Membership

- (1) The Disability Council consists of at least 8 but not more than 12 persons appointed by the Governor.
- (2) The members of the Disability Council must include:
  - (a) members of, or persons employed by, organisations concerned especially with the interests of people with disability, and
  - (b) officers of government departments concerned especially with the interests of people with disability, and
  - (c) other persons with appropriate skills and experience in matters relevant to the interests of people with disability.
- (3) The majority of members of the Disability Council must be people with disability.
- (4) The Chairperson of the council is the member who has the qualifications or experience prescribed by the regulations and is appointed by the Governor as the Chairperson.

### 16 Functions

- (1) The Disability Council has the following functions:
  - (a) to monitor the implementation of government policy in relation to people with disability and their families,
  - (b) to advise the Minister on the effect and relevance of services provided to people with disability and their families,
  - (c) to advise the Minister on priorities relating to services provided to people with disability and their families,
  - (d) to advise the Minister on the role of voluntary organisations in relation to services provided to people with disability and their families,
  - (e) to advise government departments and local councils about the content and implementation of disability actions plans,
  - (f) to advise the Minister about the content and implementation of disability action plans,
  - (g) to promote the inclusion of people with disability in the community,
  - (h) to promote community awareness of matters concerning the interests of people with disability and their families,
  - (i) to consult with the National People with Disabilities and Carer Council and other similar bodies,
  - (j) to undertake research about matters relating to people with disability,
  - (k) the functions prescribed by the regulations.

- (2) For the purpose of exercising its functions, the Disability Council may request information or advice from any public or local authority.
- (3) A public or local authority to which a request for information or advice is made is authorised to comply with the request.

## **17 Assistance to Disability Council**

The Minister may give assistance, including financial assistance, to the Disability Council to ensure the proper exercise of its functions.

## **18 Reporting requirements**

- (1) The Disability Council must, if required by the Minister, give the Minister a report about the exercise of its functions.
- (2) The report must include information about the matters directed by the Minister.
- (3) The report may contain other information or advice the Disability Council considers appropriate.

## Part 4 Service standards

**Note.** Compliance with the disability service standards is a prescribed condition for the provision of financial assistance, under Part 5, to non-government organisations. Compliance with the accommodation and service standards may be a condition of the provision of financial assistance to non-government organisations. Compliance would be required only while financial assistance is being provided.

### 19 Meaning of “supported accommodation”

- (1) In this Act, **supported accommodation** means premises in which:
  - (a) a person with disability (the **first person**) is living in a shared living arrangement (whether short-term or permanently) with at least one other person with disability who is not a member of the first person’s family, and
  - (b) support is provided on-site.
- (2) Supported accommodation includes premises, or a type of premises, prescribed by the regulations to be supported accommodation.
- (3) However, supported accommodation does not include:
  - (a) an assisted boarding house within the meaning of the *Boarding Houses Act 2012*, or
  - (b) other premises, or a type of premises, prescribed by the regulations not to be supported accommodation.

### 20 Disability service standards

- (1) The regulations may make provision for or with respect to standards (**disability service standards**) relating to the provision of supports and services for people with disability to improve the quality and effectiveness of the supports and services.
- (2) The Director-General must make the disability service standards publicly available.

### 21 Accommodation and service standards

- (1) The regulations may make provision for or with respect to standards (**accommodation and service standards**) relating to the provision of supports, services and accommodation for people with disability in supported accommodation.
- (2) The Director-General must make the accommodation and service standards publicly available.

## Part 5 Funding arrangements

### Division 1 Preliminary

#### 22 Purpose of Part and its achievement

- (1) The purpose of this Part is to facilitate the provision of supports and services to persons in the target group.
- (2) The purpose is to be achieved by the provision of financial assistance directly to individuals, or to eligible organisations (including the part of the Department in which this Act is administered), for the purpose of providing supports and services.
- (3) The financial assistance is to be provided during the transition to the National Disability Insurance Scheme.

#### 23 Meaning of “person in the target group”

- (1) A *person in the target group* is a person who has a disability, whether or not of a chronic episodic nature, that:
  - (a) is attributable to an intellectual, cognitive, neurological, psychiatric, sensory or physical impairment, or a combination of any of those impairments, and
  - (b) is permanent or likely to be permanent, and
  - (c) results in a significant reduction in the person’s functional capacity in one or more areas of major life activity, including, for example, communication, social interaction, learning, mobility, decision-making, self care and self management, and
  - (d) results in the need for support, whether or not of an ongoing nature requiring significant support services.
- (2) For the purposes of this Act, each of the following persons (within the meaning of the *Mental Health Act 2007*) is a person in the target group if the services provided to the person for his or her care are not inconsistent with the objects and relevant requirements of that Act:
  - (a) an involuntary patient or a forensic patient,
  - (b) a person subject to a community treatment order,
  - (c) a person under detention in a mental health facility.
- (3) For the purposes of this Act, a person in the target group includes a child under 6 years of age who has developmental delay within the meaning of the *National Disability Insurance Scheme Act 2013* of the Commonwealth.
- (4) To remove any doubt, a person with a permanent disability is a person in the target group even if the severity of the person’s impairment because of the disability may improve.

### Division 2 Financial assistance for individuals

#### 24 Provision of financial assistance

- (1) The Minister may provide financial assistance to, or on behalf of, an individual who is a person in the target group to enable the individual to obtain supports and services.
- (2) Financial assistance may be provided:
  - (a) directly to the individual, or
  - (b) to a person nominated by the individual, or

- (c) to an eligible organisation that is a plan manager for the purpose of administering, as directed by the individual, the financial assistance, or
  - (d) to an eligible organisation for the purpose of providing supports and services specifically to the individual, or
  - (e) in a way that is a combination of the ways referred to in paragraphs (a)–(d).
- (3) Financial assistance may be provided to a person referred to in subsection (2) (a) or (b) only if the person has entered into an agreement under section 26 for the assistance.
  - (4) Financial assistance may be provided to a non-government organisation only if the organisation has entered into an agreement under section 28 for the assistance.
  - (5) The Minister may require an eligible organisation to which subsection (4) does not apply to enter into an agreement in relation to financial assistance provided to it under this Division.
  - (6) Financial assistance may be provided on the conditions the Minister considers appropriate, having regard to the circumstances of the individual who is a person in the target group.
  - (7) Without limiting subsection (6), the circumstances may include the particular types of supports or services that the individual can obtain and the types of eligible organisation from which the supports or services can be obtained.
  - (8) In deciding how to provide financial assistance under subsection (2), and the conditions on which it is provided, the Minister:
    - (a) must have regard to the views of the individual who is a person in the target group, and
    - (b) may have regard to other matters the Minister considers appropriate, including, for example, the nature of the supports and services to be obtained and any risks involved in providing assistance directly to the individual.
  - (9) Financial assistance provided to a non-government organisation is also subject to the prescribed conditions.
  - (10) In this section:  
*plan manager* means an eligible organisation that provides a service of administering individual funding for a person in the target group, whether or not it also provides a service of coordinating supports and services for the person.

## 25 Notice about provision of financial assistance

- (1) If the Minister decides not to provide financial assistance under this Division to, or on behalf of, an individual who is a person in the target group, notice of the decision and the reason for it must be given to the individual.
- (2) If the Minister decides to provide financial assistance to a person referred to in section 24 (2) (a) or (b) subject to a condition, notice of the decision must be given to the person specifying:
  - (a) the reason for the decision, and
  - (b) that the person may apply for a review of the decision and how to apply for the review.
- (3) If the Minister decides to provide financial assistance on behalf of an individual who is a person in the target group instead of directly to the individual, notice of the decision must be given to the individual specifying:
  - (a) the reason for the decision, and

- (b) that the individual may apply for a review of the decision and how to apply for the review.

## **26 Agreement about financial assistance**

- (1) The Director-General may enter into an agreement with a person referred to in section 24 (2) (a) or (b) in relation to the provision of financial assistance under this Division.
- (2) The agreement must specify the following:
  - (a) the nature of the supports and services to be obtained with the financial assistance,
  - (b) the outcomes intended to be achieved by the provision of the supports and services,
  - (c) the conditions, if any, on which the assistance is provided,
  - (d) the period for which the agreement is in force,
  - (e) other matters the Director-General considers appropriate.
- (3) The agreement may provide that the financial assistance is to cease if the supports and services for which the assistance is given are provided under the NDIS arrangements.
- (4) Subsections (2) and (3) do not limit the matters that may be included in an agreement.

## **Division 3 Financial assistance for eligible organisations**

### **27 Provision of financial assistance**

- (1) The Minister may provide financial assistance to an eligible organisation to enable the organisation to provide supports and services to persons in the target group.
- (2) Financial assistance may be provided to a non-government organisation only if the organisation has entered into an agreement under section 28 in relation to the assistance.
- (3) The Minister may require an eligible organisation to which subsection (2) does not apply to enter into an agreement in relation to the financial assistance.

### **28 Agreement about financial assistance**

- (1) The Director-General may enter into an agreement with an eligible organisation in relation to financial assistance provided under this Division or Division 2.
- (2) An agreement entered into with a non-government organisation:
  - (a) is subject to the prescribed conditions, and
  - (b) must specify the following:
    - (i) how the organisation intends to have regard to the disability principles in the provision of supports and services,
    - (ii) the purposes for which the financial assistance may be applied,
    - (iii) the particular amounts to be applied for the purposes,
    - (iv) the outcomes to be achieved for persons in the target group as a result of the provision to them by the organisation of the supports and services,
    - (v) the rights of the persons in the target group in relation to the provision of the supports and services or otherwise,

- (vi) the performance indicators to be used to measure the outcomes achieved for persons in the target group as a result of the provision of the supports and services to them by the organisation,
  - (vii) the conditions, other than the prescribed conditions, of the agreement,
  - (viii) other matters prescribed by the regulations.
- (3) If the organisation is to provide supports and services that include accommodation in supported accommodation, it may be a condition of the agreement that the organisation must comply with the accommodation and service standards in providing the supports and services.

## **29 Conditions about disability service standards**

- (1) It is a condition of the provision of financial assistance to a non-government organisation that the organisation must give the Director-General evidence to show the organisation has been assessed, by an entity determined by the Director-General, as an organisation that can provide supports and services in compliance with the disability service standards.
- (2) It is a condition of the provision of financial assistance to any eligible organisation that the organisation must comply with the disability service standards in providing supports and services to persons in the target group.

## **30 Conditions about probity checks on workers**

- (1) It is a condition of the provision of financial assistance to an eligible organisation that the organisation must ensure the requirements of this section relating to its workers are complied with.
- (2) The organisation must not engage a person as a worker unless it is satisfied that the person is a suitable person to be involved in the provision of supports and services to persons in the target group.
- (3) In deciding whether a person is a suitable person for subsection (2), the organisation must ensure that a criminal record check is conducted or obtained in relation to the person before the person is engaged as a worker.
- (4) The organisation must ensure that a new criminal record check is conducted or obtained in relation to a worker of the organisation before the end of each 4 year period after the first criminal record check of the person is conducted or obtained.
- (5) The organisation must not engage or continue to engage a person as a worker of the organisation if:
  - (a) the organisation is satisfied from the person's criminal record check that the person has been convicted of a prescribed criminal offence, or
  - (b) the person refuses to obtain or submit to a criminal record check for the purposes of this section.
- (6) The regulations may make provision relating to obtaining and conducting criminal record checks for the purposes of this section, including the use of a statutory declaration to verify a person's criminal record when a criminal record check cannot be conducted or obtained.
- (7) If the regulations provide for the use of a statutory declaration to verify a person's criminal record and an organisation uses a statutory declaration instead of a criminal record check for the purposes of this section:
  - (a) a requirement in subsection (3) or (4) to conduct or obtain a criminal record check is taken to be a requirement to obtain a statutory declaration about the person's criminal record, and



- (b) subsection (5) (a) applies as if the reference in that subsection to a criminal record check were a reference to a statutory declaration, and
  - (c) subsection (5) (b) applies as if the reference in that subsection to obtain or submit to a criminal record check were a reference to provide a statutory declaration.
- (8) In this section:
- prescribed criminal offence*** means:
- (a) an offence stated in Schedule 2, or
  - (b) another offence prescribed by the regulations.
- worker*** of an eligible organisation means a person engaged by the organisation in working directly with persons in the target group in any of the following capacities:
- (a) as an employee,
  - (b) as a volunteer,
  - (c) as a person undertaking vocational training,
  - (d) as a self-employed person, contractor or subcontractor.

## **Division 4 Suspending and terminating financial assistance**

### **31 Suspension of financial assistance**

- (1) The Director-General may, by notice served on a person or eligible organisation receiving financial assistance under this Part, suspend the assistance on any of the following grounds:
- (a) the Director-General reasonably believes the person in the target group to, or on behalf of, whom it is provided:
    - (i) is no longer using the supports and services, or  
**Note.** For example, a person in the target group may no longer be using supports and services because the person is hospitalised.
    - (ii) is obtaining the supports and services other than by way of the financial assistance,
  - (b) the Director-General reasonably believes the person or organisation receiving the assistance has not complied with:
    - (i) the prescribed conditions, if any, relating to the assistance, or
    - (ii) an agreement under which it is provided, or
    - (iii) a notice given under section 35,
  - (c) the grounds prescribed by the regulations.
- (2) Notice of a decision to suspend financial assistance must specify:
- (a) the reason for the decision and the period, of not more than 90 days, during which the assistance is suspended, and
  - (b) that the person or organisation receiving the assistance may apply for a review of the decision and how to apply for the review.
- (3) Before the period referred to in subsection (2) (a) ends, the Director-General may suspend the financial assistance for a further period in accordance with this section.
- (4) If financial assistance is suspended under this section, the Director-General may arrange for alternative supports and services for the relevant person in the target group while it is suspended.

### 32 Termination of financial assistance

- (1) The Director-General may, by notice served on a person or eligible organisation receiving financial assistance under this Part, terminate a part or all of the financial assistance on any of the following grounds:
  - (a) the Director-General reasonably believes the person or organisation receiving the assistance has not complied with:
    - (i) the prescribed conditions, if any, relating to the assistance, or
    - (ii) an agreement under which it is provided, or
    - (iii) a notice given under section 35,
  - (b) the grounds prescribed by the regulations.
- (2) Before terminating the financial assistance, the Director-General must:
  - (a) give the person or eligible organisation a notice that:
    - (i) specifies the reason for the proposed termination, and
    - (ii) specifies the day, that is reasonable in the circumstances, the termination is to have effect, and
    - (iii) if the proposed termination is not for a prescribed purpose—invites the person or organisation to give the Director-General, within the reasonable period specified in the notice, a submission about the termination, and
  - (b) consider any submission received in accordance with paragraph (a) (iii).
- (3) The termination of financial assistance has effect despite any agreement entered into under this Part by the person or eligible organisation and the Director-General.
- (4) Notice of a decision to terminate financial assistance must specify:
  - (a) the reason for the decision, and
  - (b) if the termination is other than for a prescribed purpose—that the person receiving the assistance may apply for a review of the decision and how to apply for the review.
- (5) In this section:  
***prescribed purpose*** means the implementation of NDIS arrangements or another purpose prescribed by the regulations to be a prescribed purpose.

## Division 5 Review of decisions

### 33 Review of decisions by Civil and Administrative Tribunal

Each of the following decisions is an administratively reviewable decision for the purposes of section 28 (1) (a) of the *Community Services (Complaints, Reviews and Monitoring) Act 1993*:

- (a) a decision under section 24 to impose a condition on the provision of financial assistance to a person referred to in section 24 (2) (a) or (b),
- (b) a decision under section 24 to provide financial assistance on behalf of an individual who is a person in the target group instead of providing the assistance directly to the individual,
- (c) a decision under section 31 to suspend financial assistance,
- (d) a decision under section 32 to terminate financial assistance, if the termination was other than for a prescribed purpose within the meaning of that section.

## Division 6      Miscellaneous

### 34    Financial assistance to promote objects of Act

- (1) The Minister may provide financial assistance to a government department, local council or another entity for the purpose of promoting the objects of this Act.
- (2) The financial assistance may be provided in relation to a particular matter, and subject to the conditions, the Minister considers appropriate.

### 35    Giving information

- (1) This section applies if the Director-General reasonably believes a person receiving, or seeking to receive, financial assistance under this Part has information, or a document in the person's possession or control, relating to:
  - (a) the provision of the financial assistance, or
  - (b) obtaining or providing supports or services with the financial assistance, or
  - (c) compliance with the person's agreement entered into under this Part in relation to the financial assistance.
- (2) The Director-General may, by notice given to the person, require the person to give the information or document to the Director-General.
- (3) The notice must specify:
  - (a) the nature of the information or document, and
  - (b) how the person is to give the information or document, and
  - (c) the reasonable period, of at least 14 days, within which the information or document, is to be given.
- (4) The person must comply with the notice.

**Note.** It is an offence under section 307B of the *Crimes Act 1900* to give false or misleading information to a person exercising a power, authority, duty or function under, or in connection with, a law of the State.

### 36    Protection from liability for giving information

If a person, acting in good faith, gives information or a document in accordance with section 35, the person:

- (a) is not liable to any civil or criminal action for giving the information or document, and
- (b) cannot be held to have breached any code of professional etiquette or ethics or departed from any accepted standards of professional conduct as a result of giving the information or document.

## Part 6 Restrictive interventions

### Division 1 Preliminary

#### 37 Purpose of Part

The purpose of this Part is to regulate the use of restrictive interventions on persons receiving a disability service with a view to reducing the use of restrictive interventions.

#### 38 Definitions

In this Part:

**authorised**, in relation to a behaviour support plan, means the plan has been approved under this Part by a Restricted Practice Authorisation Panel and the approval is in force.

**behaviour support plan** means a plan that:

- (a) is prepared for a person with disability, and
- (b) specifies a range of strategies to be used in supporting the person's behaviour, and
- (c) includes the matters or requirements prescribed for the plan by the regulations.

**chemical restraint** means the use of medication or a chemical substance for the primary purpose of influencing a person's behaviour or movement, but does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable the treatment of, a diagnosed mental disorder, a physical illness or physical condition.

**disability service** of a disability service provider means a service specifically for the support of persons with disability that is provided by the disability service provider.

**emergency use provision** means section 49.

**guardian** has the meaning it has in the *Guardianship Act 1987*.

**guidelines** means the guidelines for using restraint or seclusion issued by the Director-General under section 39.

**mechanical restraint** means the use of a device to prevent, restrict or subdue a person's movement for the primary purpose of influencing a person's behaviour, but does not include the use of a device for therapeutic or non-behavioural purposes (for example, the use of a device to assist a person with functional activities as part of occupational therapy or to allow for safe transportation).

**person in need of a guardian** has the meaning it has in the *Guardianship Act 1987*.

**physical restraint** means the sustained or prolonged use of physical force to prevent, restrict or subdue movement of a person's body, or a part of a person's body, for the primary purpose of influencing the person's behaviour, but does not include an action taken to guide or direct a person away from potential harm or injury consistent with the reasonable exercise of care towards the person.

**restraint** means chemical restraint, mechanical restraint or physical restraint.

**Restricted Practice Authorisation Panel** means a panel established under section 42.

**restrictive intervention** means chemical restraint, mechanical restraint, physical restraint or seclusion.

**seclusion** means the sole confinement of a person with disability in a room or physical space, at any time, from which voluntary exit is prevented, not facilitated or implied not to be allowed.

## **39 Guidelines**

- (1) The Director-General may issue guidelines (not inconsistent with this Act or the regulations) relating to the use of restrictive interventions to assist people who are using, or proposing to use, restraint or seclusion on a person receiving a disability service.
- (2) The guidelines may specify persons the Director-General considers to be appropriate persons with whom a disability service provider must consult in preparing or reviewing a behaviour support plan.
- (3) A person who is using, or proposing to use, restraint or seclusion on a person receiving a disability service must have regard to the guidelines in relation to the use or proposed use.
- (4) The Director-General must publish the guidelines on the Department's website.

## **40 Relationship with Guardianship Tribunal**

This Part does not limit or otherwise affect a function of, or the exercise of a function by, the Guardianship Tribunal under the *Guardianship Act 1987*.

## **41 Relationship with Children and Young Persons (Care and Protection) Act 1998**

- (1) This Part does not limit or otherwise affect the operation of sections 158 and 175 of the *Children and Young Persons (Care and Protection) Act 1998*, including any regulations made in accordance with the provisions.
- (2) If there is an inconsistency between this Part and the provisions or regulations referred to in subsection (1), the provisions and regulations prevail to the extent of the inconsistency.

## **Division 2 Restricted Practice Authorisation Panels**

### **42 Establishment and membership**

- (1) The Director-General may establish panels of persons for the purpose of considering and approving behaviour support plans that provide for the use of restraint or seclusion in a disability service of the Department.
- (2) A disability service provider, other than a provider referred to in subsection (1), may establish panels of persons for the purpose of considering and approving behaviour support plans that provide for the use of restraint or seclusion in a disability service of the provider.
- (3) A panel established under subsection (1) or (2) is called a Restricted Practice Authorisation Panel.
- (4) A Restricted Practice Authorisation Panel consists of 3 persons appointed by the Director-General or disability service provider that establishes the panel, at least one of whom must be a person who is independent of the Department or provider and has the qualifications or experience prescribed by the regulations.

## **Division 3 Use of restraint or seclusion**

### **43 Behaviour support plan to provide for use of restraint or seclusion**

- (1) If a disability service provider proposes to use restraint or seclusion on a person receiving a disability service of the provider, the disability service provider must prepare a behaviour support plan for the person that:
  - (a) includes positive strategies to help in dealing with the person's behaviour, and

- (b) specifies the circumstances in which the proposed form of restraint or seclusion is to be used, and
  - (c) explains how the use of the restraint or seclusion will be of benefit to the person, and
  - (d) demonstrates that the use of the restraint or seclusion is the option that is the least restrictive of the person as is possible in the circumstances, and
  - (e) includes strategies to reduce or stop the use of restraint or seclusion over time, and
  - (f) specifies that restraint or seclusion is to be used only in circumstances in which other strategies for dealing with the person's behaviour have not worked.
- (2) A behaviour support plan must not provide for the use of seclusion on a person under 18 years of age.
- (3) In preparing a behaviour support plan, the disability service provider must consult with:
- (a) the person for whom the plan is being prepared, and
  - (b) if a person other than the person for whom the plan is being prepared must give consent to the use and form of restraint or seclusion—that person, and
  - (c) the persons specified in the guidelines as appropriate persons with whom a disability service provider must consult in preparing a plan.

#### **44 Approval and review of behaviour support plan including restraint or seclusion**

- (1) A behaviour support plan prepared by a disability service provider must be approved by a Restricted Practice Authorisation Panel established by the provider before restraint or seclusion in accordance with the plan may be used.
- (2) Approval of a behaviour support plan under subsection (1) may be for not more than 12 months.
- (3) The disability service provider that prepared a behaviour support plan must review the plan at intervals of not more than 12 months.
- (4) A person for whom a behaviour support plan has been prepared may at any time ask the disability service provider to review the plan.
- (5) In reviewing a behaviour support plan, the disability service provider must consult with:
- (a) the person for whom the plan was prepared, and
  - (b) if a person other than the person for whom the plan was prepared must give consent to the use and form of restraint or seclusion—that person, and
  - (c) the persons specified in the guidelines as appropriate persons with whom a disability service provider must consult in reviewing a plan.

#### **45 Consent to use and form of restraint or seclusion on person 18 years of age or over**

- (1) Subject to the emergency use provision, consent in accordance with this section is required for the use under this Part of restraint or seclusion on a person who is 18 years of age or over.
- (2) If a person receiving a disability service is 18 years of age or over, consent to the use and form of restraint or seclusion may only be given by:
- (a) if the person is not a person in need of a guardian—the person receiving the disability service, or

- (b) if the person is a person in need of a guardian—a guardian of the person who has the function, under the *Guardianship Act 1987*, of making a decision in relation to the person about the giving of the consent.

#### **46 Consent to use of restraint on person under 18 years of age**

- (1) Subject to the emergency use provision, consent in accordance with this section is required for the use under this Part of restraint on a person who is under 18 years of age.
- (2) If a person receiving a disability service is under 18 years of age, consent to the use and form of restraint may only be given by:
  - (a) if the person is 16 years of age or over and is not a person in need of a guardian—the person, a parent of the person or someone else who, under an Act or other law, has parental responsibility for the person receiving the disability service, or
  - (b) if the person is a person in need of a guardian—a guardian of the person who has the function, under the *Guardianship Act 1987*, of making a decision in relation to the person about the giving of the consent, or
  - (c) otherwise—a parent of the person or someone else who, under an Act or other law, has parental responsibility for the person receiving the disability service.
- (3) Despite subsection (2), if the restraint involves special medical treatment within the meaning of section 175 (5) of the *Children and Young Persons (Care and Protection) Act 1998* in relation to which consent is required to be given in compliance with that Act or the regulations made under that Act, the consent for the purposes of this Part may only be given in compliance with that Act and those regulations.

**Note.** Under this Part, seclusion cannot be used on a person who is under 18 years of age.

#### **47 Use of restraint or seclusion on person 18 years of age or over**

Subject to the emergency use provision, restraint or seclusion may only be used on a person who is 18 years of age or over if:

- (a) the consent, required under this Division, to the use and form of restraint or seclusion is in effect and has not been withdrawn, and
- (b) the use of restraint or seclusion is necessary to prevent the person from:
  - (i) causing physical harm to himself or herself or to someone else, or
  - (ii) destroying property if the destruction could involve the risk of harm to the person or someone else, and
- (c) the use and form of restraint or seclusion is the option that is the least restrictive of the person as is possible in the circumstances, and
- (d) the use and form of restraint or seclusion:
  - (i) is provided for in the person's authorised behaviour support plan, and
  - (ii) is in accordance with the plan, and
  - (iii) is not applied for more than the shorter of the following periods:
    - (A) the period authorised in the plan,
    - (B) the period during which the use of restraint or seclusion is necessary under paragraph (b), and
- (e) if seclusion is used, the person:
  - (i) is given bedding and clothing that is appropriate in the circumstances, and
  - (ii) has access to adequate heating or cooling that is appropriate in the circumstances, and

- (iii) is given food and drink at the appropriate times, and
- (iv) is provided with adequate toilet arrangements, and
- (f) the use of restraint or seclusion is consistent with the guidelines.

#### **48 Use of restraint on person under 18 years of age**

Subject to the emergency use provision, restraint may only be used on a person who is under 18 years of age if:

- (a) the consent, required under this Division, to the use and form of restraint is in effect and has not been withdrawn, and
- (b) the use of restraint is necessary to prevent the person from causing physical harm to himself or herself or to someone else, and
- (c) the use and form of restraint is the option that is the least restrictive of the person as is possible in the circumstances, and
- (d) the use and form of restraint:
  - (i) is provided for in the person's authorised behaviour support plan, and
  - (ii) is in accordance with the plan, and
  - (iii) is not applied for more than the shorter of the following periods:
    - (A) the period authorised in the plan,
    - (B) the period during which the use of restraint is necessary under paragraph (b), and
- (e) the use of restraint is consistent with the guidelines.

#### **49 Use of restraint or seclusion in emergency**

- (1) This section applies if:
  - (a) a person receiving a disability service of a disability provider:
    - (i) does not have an authorised behaviour support plan, or
    - (ii) has an authorised behaviour support plan that does not provide for the use of restraint or seclusion in the circumstances referred to in paragraph (b), and
  - (b) a member of the staff of the disability service provider considers that there is an emergency because:
    - (i) there is an imminent risk of a person causing serious physical harm to himself or herself or to someone else, and
    - (ii) it is necessary to use restraint or seclusion to prevent the risk.
- (2) If the person is 18 years of age or over, restraint or seclusion may be used on the person if:
  - (a) the use and form of restraint or seclusion is the option that is the least restrictive of the person as is possible in the circumstances, and
  - (b) the use of restraint or seclusion is consistent with the guidelines.
- (3) If the person is under 18 years of age, restraint may be used on the person if:
  - (a) the use and form of restraint is the option that is the least restrictive of the person as is possible in the circumstances, and
  - (b) the use of restraint is consistent with the guidelines.
- (4) A member of the staff of the disability service provider who uses restraint or seclusion under this section must, as soon as practicable but within 14 days after its use, give a report about the use to:



- (a) if the provider is the part of the Department in which this Act is administered—the Director-General, or
- (b) otherwise—the person in charge of the provider.

## **50 Assessment of restraint or seclusion used in emergency**

- (1) As soon as practicable after a member of the staff of a disability service provider uses restraint or seclusion under the emergency use provision, the provider must assess the likelihood of a need for any future use of restraint or seclusion on the person.
- (2) If the assessment identifies that future use of restraint or seclusion on the person is likely, the provider must prepare and have approved, under this Part, a behaviour support plan for the person.

## **51 Withdrawal of consent to restraint or seclusion**

A person who has given consent under this Part to the use of restraint or seclusion on a person receiving a disability service of a disability service provider may, at any time by notice to the disability service provider, withdraw the person's consent to use of the restraint or seclusion.

## **52 Offence**

A person must not use restraint or seclusion on a person receiving a disability service other than in compliance with section 47, 48 or 49.

Maximum penalty: 300 penalty units.

## **Division 4 Regulations**

### **53 Regulations**

The regulations may make provision for or with respect to the following:

- (a) the way in which a request for consent to restraint or seclusion may be made,
- (b) the way in which consent may be given,
- (c) the appointment of persons to a Restricted Practice Authorisation Panel.

## Part 7 Miscellaneous

### 54 Act to bind Crown

This Act binds the Crown in right of New South Wales and, in so far as the legislative power of the Parliament of New South Wales permits, the Crown in all its other capacities.

### 55 Delegations

- (1) The Minister may delegate to the Director-General any of the Minister's functions under this Act, other than this power of delegation.
- (2) The Director-General may delegate to an appropriately qualified employee of the Department any of the Director-General's functions under this Act.
- (3) However, the Director-General may delegate a function delegated to the Director-General under subsection (1) only if authorised in writing to do so by the Minister.

### 56 Proceedings for offence

Proceedings for an offence under this Act may be dealt with summarily.

### 57 Disclosure of information

A person must not disclose information obtained in connection with the administration or execution of this Act unless the disclosure is made:

- (a) with the consent of the person from whom the information was obtained, or
- (b) in connection with the administration or execution of this Act, or
- (c) for the purposes of legal proceedings arising out of this Act or of any report of the proceedings, or
- (d) in accordance with a requirement imposed under the *Ombudsman Act 1974*, or
- (e) with other lawful excuse.

Maximum penalty: 50 penalty units.

### 58 Protection from personal liability

A matter or thing done or omitted to be done by the Minister or another person does not, if the matter or thing was done or omitted to be done in good faith for the purpose of executing this Act, subject the Minister or person so acting personally to any action, liability, claim or demand.

### 59 Regulations

The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

### 60 Repeal of Disability Services Act 1993 No 3

The *Disability Services Act 1993* is repealed.

### 61 Review of Act

- (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

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- (2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.
- (3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

## Schedule 1 Provisions relating to Disability Council

(Section 14 (2))

### Part 1 General

#### 1 Definitions

In this Schedule:

*council* means the Disability Council.

*member* means a member of the council.

### Part 2 Members

#### 2 Terms of office of members

Subject to this Schedule and the regulations, a member holds office for the period (not exceeding 4 years) specified in the member's instrument of appointment, but is eligible (if otherwise qualified) for re-appointment.

#### 3 Remuneration of members

A member (other than a person who is a public servant) is entitled to be paid the remuneration (including travelling and subsistence allowances) the Minister may from time to time determine in respect of the member.

#### 4 Vacancy in office of member

(1) The office of a member becomes vacant if the member:

- (a) dies, or
- (b) completes a term of office and is not re-appointed, or
- (c) resigns the office by instrument in writing addressed to the Minister, or
- (d) is removed from office by the Governor, or
- (e) is absent from 4 consecutive meetings of the council of which reasonable notice has been given to the member personally or by post, except on leave granted by the council or unless the member is excused by the council for having been absent from those meetings, or
- (f) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with his or her creditors or makes an assignment of his or her remuneration for their benefit, or
- (g) can no longer exercise the functions of a member, or
- (h) is convicted in New South Wales of an offence that is punishable by imprisonment for 12 months or more or is convicted elsewhere than in New South Wales of an offence that, if committed in New South Wales, would be an offence so punishable.

(2) The Governor may remove a member from office at any time.

#### 5 Filling of vacancy in office of member

If the office of any member becomes vacant, a person is, subject to this Act, to be appointed to fill the vacancy.

## **6 Effect of certain other Acts**

- (1) Chapter 1A of the *Public Sector Employment and Management Act 2002* does not apply to or in respect of the appointment of a member.
- (2) If by or under any Act provision is made:
  - (a) requiring a person who is the holder of a specified office to devote the whole of his or her time to the duties of that office, or
  - (b) prohibiting the person from engaging in employment outside the duties of that office,the provision does not operate to disqualify the person from holding that office and also the office of a member or from accepting and retaining any allowance payable to the person under this Act as a member.

## **Part 3 Procedure**

### **7 General procedure**

The procedure for calling meetings of the council and for the conduct of business at the meetings is, subject to this Schedule and the regulations, to be determined by the council.

### **8 Quorum**

The quorum for a meeting of the council is a majority of the members (including the Chairperson) for the time being.

### **9 Presiding member**

- (1) The Chairperson of the council (or, in the absence of the Chairperson, a member elected to chair the meeting by the members present) is to preside at a meeting of the council.
- (2) The person presiding has a deliberative vote and, in the event of an equality of votes, has a second or casting vote.

### **10 Voting**

A decision supported by a majority of the votes cast at a meeting of the council at which a quorum is present is the decision of the council.

### **11 First meeting**

The Minister may call the first meeting of the council in such manner as the Minister thinks fit.

## Schedule 2 Prescribed criminal offences

(Section 30 (8))

### Prescribed criminal offences

- (1) For the purposes of paragraph (a) of the definition of *prescribed criminal offence* in section 30 (8), the following offences are prescribed criminal offences:
  - (a) murder,
  - (b) a prescribed sexual offence as defined in the *Criminal Procedure Act 1986*,
  - (c) an offence under any of the following provisions of Part 3 of the *Crimes Act 1900* for which the offender has been sentenced to 2 or more years imprisonment:
    - (i) sections 26–30,
    - (ii) section 33,
    - (iii) sections 35 and 35A,
    - (iv) sections 37 and 38,
    - (v) section 39,
    - (vi) section 44,
    - (vii) sections 56–59A,
  - (d) an offence under section 98 of the *Crimes Act 1900* for which the offender has been sentenced to 2 or more years imprisonment,
  - (e) an offence under section 13 or 14 of the *Crimes (Domestic and Personal Violence) Act 2007* for which the offender has been sentenced to 2 or more years imprisonment.
- (2) A prescribed criminal offence includes an offence committed outside of the State that, if it had been committed in the State, would have constituted an offence of a kind referred to in subclause (1).

## Schedule 3 Savings, transitional and other provisions

### Part 1 General

#### 1 Regulations

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of this Act or any Act that amends this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication on the NSW legislation website, the provision does not operate so as:
  - (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

### Part 2 Provisions consequent on enactment of this Act

#### 2 Definitions

In this Part:

**commencement** means the commencement of the provision in which the term is used.

**repealed Act** means the repealed *Disability Services Act 1993*.

#### 3 Application of section 30

Section 30 (1)–(4) does not apply to an organisation receiving financial assistance under Division 2 of Part 2 of the repealed Act immediately before the commencement until the day, not more than 1 year after the commencement, prescribed by the regulations.

#### 4 Continuation of financial assistance

- (1) An organisation receiving financial assistance under Division 2 of Part 2 of the repealed Act immediately before the commencement is taken to be receiving financial assistance under this Act.
- (2) Subject to clause 3, the financial assistance is provided subject to the prescribed conditions and any other conditions to which the assistance was subject immediately before the commencement.

#### 5 Membership of Disability Council

- (1) A person who was a member of the former council immediately before the commencement is taken to be a member of the Disability Council.
- (2) The person who was chairperson of the former council immediately before the commencement is taken to be the chairperson of the Disability Council.
- (3) The term of office, as a member of the Disability Council, of a person referred to in subclause (1) or (2) ends on the day it would have ended under the person's instrument of appointment to the former council, unless sooner ended under this Act.

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- (4) In this clause:  
*former council* has the meaning it has in section 14 (3).



## **Schedule 4 Amendment of Acts**

### **4.1 Carers (Recognition) Act 2010 No 20**

#### **Section 5 Meaning of “carer”**

Omit section 5 (1) (a). Insert instead:

- (a) is a person with disability within the meaning of the *Disability Inclusion Act 2014*, or

### **4.2 Community Services (Complaints, Reviews and Monitoring) Act 1993 No 2**

#### **[1] Section 4 Definitions**

Omit “*Disability Services Act 1993*” from paragraph (e) of the definition of *community welfare legislation* in section 4 (1).

Insert instead “*Disability Inclusion Act 2014*”.

#### **[2] Section 28 Applications to Tribunal for administrative reviews of decisions**

Omit “section 20 of the *Disability Services Act 1993*” from section 28 (1) (a).

Insert instead “section 33 of the *Disability Inclusion Act 2014*”.

#### **[3] Section 34C Establishment and composition of the Team**

Omit “*Disability Services Act 1993*” from section 34C (4) (g).

Insert instead “*Disability Inclusion Act 2014*”.

#### **[4] Section 35 Application of Part**

Omit “in a target group within the meaning of the *Disability Services Act 1993*” from section 35 (1) (g).

Insert instead “a person in the target group within the meaning of the *Disability Inclusion Act 2014*”.

### **4.3 Community Welfare Act 1987 No 52**

#### **[1] Section 3 Definitions**

Omit the definitions of *council* and *Disability Council* from section 3 (1).

#### **[2] Section 7 Assistance funds for community welfare and social development programs**

Omit “Division 2 of Part 2 of the *Disability Services Act 1993*” from section 7 (3A).

Insert instead “Part 5 of the *Disability Inclusion Act 2014*”.

#### **[3] Part 2, Division 2, heading**

Omit “**Council and committees**”. Insert instead “**Committees**”.

#### **[4] Section 16 Disability Council of New South Wales**

Omit the section.

#### **[5] Section 18 Assistance to committees**

Omit “the council or” from section 18 (1).

**[6] Section 19**

Omit the section. Insert instead:

**19 Reports**

- (1) Each committee must give the Minister, at the times and in respect of the periods the Minister directs, reports on the activities of the committee.
- (2) A report must deal with the matters the Minister directs and the other matters the committee considers appropriate to include in the report.

**[7] Section 78 Regulations**

Omit “the council or” from section 78 (1) (a).

**[8] Schedule 1 Constitution of council**

Omit the Schedule.

**[9] Schedule 2 Procedure of committees**

Omit “(Sections 14, 15, 16, 17)” from the source reference. Insert instead “(Section 17)”.

**[10] Schedule 2, clause 1**

Omit “the council or”.

**[11] Schedule 2, clause 2**

Omit the clause. Insert instead:

**2 Quorum**

The quorum for a meeting of a committee is a majority of the members of the committee.

**[12] Schedule 2, clauses 3, 4, 9 and 12**

Omit “the council or” wherever occurring. Insert instead “a”.

**[13] Schedule 2, clause 5**

Omit the clause. Insert instead:

**5 Voting**

A decision supported by a majority of votes cast at a meeting of a committee at which a quorum is present is the decision of the committee.

**[14] Schedule 2, clause 7 (1)**

Omit the clause. Insert instead:

- (1) The frequency of meetings of a committee and the procedures for the conduct of business at the meetings is, subject to any directions of the Minister, as determined by the committee.

**[15] Schedule 2, clause 8**

Omit the clause. Insert instead:

**8 Minutes**

The chairperson of a committee must cause minutes of the proceedings and decisions at each meeting of the committee to be kept, and must give a copy

of the minutes to the Director-General as soon as practicable after each meeting.

**[16] Schedule 2, clause 10**

Omit the clause. Insert instead:

**10 Subcommittees**

- (1) A committee may establish subcommittees (whether or not consisting of members of the committee) for the purpose of advising the committee about matters within the scope of the committee's functions as may be referred to the subcommittee by the committee.
- (2) The convenor of a subcommittee must be a member of the committee that establishes it.

**[17] Schedule 2, clause 11**

Omit the clause. Insert instead:

**11 Representatives of departments and authorities**

A committee may invite representatives of other organisations (including State or Commonwealth departments and public or local authorities) to participate, but not vote, in the proceedings and deliberations of the committee.

**[18] Schedule 2, clause 13**

Omit "the council or committee in the same way as they apply to the council or".

Insert instead "a committee in the same way as they apply to the".

**4.4 Coroners Act 2009 No 41**

**[1] Section 24 Jurisdiction concerning deaths of children and disabled persons**

Omit "*Disability Services Act 1993*" from section 24 (1) (e).

Insert instead "*Disability Inclusion Act 2014*".

**[2] Section 24 (1) (f)**

Omit "in a target group within the meaning of the *Disability Services Act 1993*".

Insert instead "a person in the target group within the meaning of the *Disability Inclusion Act 2014*".

**4.5 Home Care Service Act 1988 No 6**

**Section 7AA Certain functions to be exercised in accordance with Disability Inclusion Act 2014**

Omit "Division 2 of Part 2 of the *Disability Services Act 1993*".

Insert instead "Part 5 of the *Disability Inclusion Act 2014*".

**4.6 Land Tax Management Act 1956 No 26**

**Section 3B Concessional trust—meaning**

Omit "*Disability Services Act 1993*" from section 3B (1) (b) (iii).

Insert instead "*Disability Inclusion Act 2014*".

#### **4.7 National Disability Insurance Scheme (NSW Enabling) Act 2013 No 104**

**[1] Section 4 Interpretation—key definitions**

Omit paragraph (a) from the definition of *disability services legislation*. Insert instead:

(a) *Disability Inclusion Act 2014*,

**[2] Section 22 General relationship of Act with other State legislation**

Omit “*Disability Services Act 1993*” from section 22 (1) (c).

Insert instead “*Disability Inclusion Act 2014*”.

#### **4.8 Ombudsman Act 1974 No 68**

**[1] Part 3B**

Insert after Part 3A:

### **Part 3B Protection of people with disability**

#### **25K Definitions**

In this Part:

***Department*** means the Department of Family and Community Services.

***Director-General*** means the Director-General of the Department.

***disability*** has the meaning it has in the *Disability Inclusion Act 2014*.

***employee*** of the Department or a funded provider means any individual engaged by the Department or provider to provide services to people with disability (including in the capacity of a volunteer or contractor) that involve face-to-face or physical contact with, or access to the finances of, people with disability.

***funded provider*** means an organisation receiving financial assistance under the *Disability Inclusion Act 2014* to provide supports and services for people with disability living in supported accommodation.

***principal officer*** of a funded provider means the chief executive officer or other principal officer of the provider.

***reportable allegation*** means an allegation against a person of a reportable incident, or an allegation of behaviour that may involve a reportable incident.

***reportable conviction*** means a conviction (within the meaning of the *Criminal Records Act 1991*) of an offence involving a reportable incident.

***reportable incident***—see section 25L.

***supported accommodation*** has the meaning it has in the *Disability Inclusion Act 2014*.

#### **25L Meaning of “reportable incident”**

(1) A ***reportable incident*** means:

(a) an incident involving any of the following in connection with an employee of the Department or a funded provider and a person with disability living in supported accommodation:

(i) any sexual offence committed against, with or in the presence of the person with disability,

- (ii) sexual misconduct committed against, with or in the presence of the person with disability, including grooming of the person for sexual activity,
  - (iii) an assault of the person with disability, not including:
    - (A) the use of reasonable force for the purpose of managing the care of the person, or
    - (B) the use of a restrictive intervention in accordance with Part 6 of the *Disability Inclusion Act 2014*, or
    - (C) the use of physical force that, in all the circumstances, is trivial or negligible, but only if the matter is to be investigated under workplace employment procedures,
  - (iv) an offence under Part 4AA of the *Crimes Act 1900* committed against the person with disability,
  - (v) ill-treatment or neglect of the person with disability, or
  - (b) an incident involving an assault of a person with disability living in supported accommodation by another person with disability living in the same supported accommodation that:
    - (i) is a sexual offence, or
    - (ii) causes serious injury, including, for example, a fracture, burns, deep cuts, extensive bruising or concussion, or
    - (iii) involves the use of a weapon, or
    - (iv) is part of a pattern of abuse of the person with disability by the other person.
- (2) However, a reportable incident does not include an incident of a class or kind exempted by the Ombudsman under section 25O.

**25M Ombudsman to keep systems under scrutiny**

- (1) The Ombudsman is to keep under scrutiny the systems of the Department and funded providers for preventing, and for handling and responding to, reportable incidents.
- (2) For the purposes of subsection (1), the Ombudsman may require the Director-General or principal officer of a funded provider to give information about the systems to the Ombudsman.

**25N Reporting of reportable allegations or reportable convictions**

- (1) The Director-General or principal officer of a funded provider must give the Ombudsman notice of a reportable allegation or reportable conviction of which the Director-General or officer becomes aware.
- (2) The notice must:
  - (a) state whether the Department or funded provider intends to take any disciplinary or other action in relation to the reportable allegation or reportable conviction and the reasons for taking or not taking the action, and
  - (b) include any written submission made to the Director-General or principal officer that a person wished to have considered in determining what, if any, disciplinary or other action should be taken in relation to the person.

- (3) The notice must be given to the Ombudsman:
  - (a) as soon as practicable, but not less than 30 days, after the Director-General or principal officer becomes aware of the reportable allegation or reportable conviction, or
  - (b) by the later day agreed to by the Ombudsman.
- (4) The Director-General or principal officer must make arrangements to require employees of the Department or funded provider to notify the Director-General or principal officer of any reportable allegation or reportable conviction of which the employee becomes aware.

**25O Ombudsman may exempt incidents from reporting**

- (1) The Ombudsman may exempt any class or kind of incident from being a reportable incident.
- (2) The Ombudsman must notify the Director-General or principal officer of a funded provider of an exemption under subsection (1).

**25P Disclosure of information about reportable incidents**

The Director-General, a principal officer of a funded provider, or an employee of the Department or a funded provider (each a *relevant person*) may disclose to the Ombudsman or an officer of the Ombudsman any information that leads the relevant person to believe a reportable incident has occurred.

**25Q Monitoring by Ombudsman of investigations**

- (1) The Ombudsman may monitor the progress of the investigation by the Department or a funded provider of a reportable allegation or reportable conviction if the Ombudsman considers it is in the public interest to do so.
- (2) The Ombudsman or an officer of the Ombudsman may be present as an observer during interviews conducted by or on behalf of the Department or funded provider for the purpose of the investigation and may confer with the persons conducting the investigation about its conduct and progress.
- (3) The Director-General or principal officer of the funded provider must give the Ombudsman the information or documents relating to the investigation required by the Ombudsman.

**25R Results of investigation and action taken to be reported to Ombudsman**

- (1) This section applies to an investigation of a reportable allegation or reportable conviction that the Ombudsman monitors under this Part.
- (2) The Director-General or principal officer of the funded provider must, as soon as practicable after being satisfied that the investigation is concluded:
  - (a) send to the Ombudsman a copy of any report, prepared by or given to the Director-General or principal officer, about the progress or results of the investigation and a copy of all statements taken in the course of the investigation and all other documents on which the report is based, and
  - (b) provide the Ombudsman with comments on the report and statements that the Director-General or principal officer considers appropriate, and
  - (c) inform the Ombudsman of the action taken or proposed to be taken in relation to the reportable allegation or reportable conviction the subject of the investigation.

- (3) After receiving the material and information referred to in subsection (2), the Ombudsman may require the Director-General, principal officer or any other person involved in the investigation to give the Ombudsman any additional information the Ombudsman considers necessary to determine whether the reportable allegation or reportable conviction was properly investigated and whether appropriate action was taken as a result of the investigation.
- (4) In subsection (3), *appropriate action* includes any penalty for the making of a reportable allegation that is shown to be false and malicious.

## **25S Investigation by Ombudsman**

- (1) The Ombudsman may conduct an investigation concerning any reportable allegation or reportable conviction notified to the Ombudsman under this Part or of which the Ombudsman becomes aware.
- (2) The Ombudsman may also conduct an investigation concerning any inappropriate handling of or response to the reportable allegation or reportable conviction, whether on the Ombudsman's own initiative or in response to a complaint.
- (3) The Ombudsman may exercise any conciliation or other relevant powers under this Act in connection with an investigation by the Ombudsman.
- (4) The Director-General or principal officer of a funded provider is to defer an investigation into a matter if the Ombudsman notifies the Director-General or principal officer that the Ombudsman intends to investigate the matter under this Act and that the investigation of the matter should be deferred.
- (5) At the conclusion of an investigation by the Ombudsman, or on a decision by the Ombudsman to refer the matter back to the Department or funded provider, the Ombudsman is to provide the Department or provider with any recommendations for action to be taken in relation to the matter, together with any necessary information relating to the recommendations.

## **25T Protection and other provisions relating to disclosure of information**

- (1) A provision of any Act or law that prohibits or restricts the disclosure of information does not operate to prevent or restrict the disclosure of information (or affect a duty to disclose information) under this Part.
- (2) If a disclosure of information is made under this Part, no liability for defamation or other civil liability is incurred because of the disclosure.
- (3) This Part does not affect an obligation or power to provide information apart from the Part.

## **24U Extension of reporting and disclosure provisions to all public authorities**

The obligation to report under section 25N, and the authority to disclose information under section 25P, with respect to the Department extends to other public authorities if the reportable incident concerned arises in the course of employment with the public authority.

## **25V Application of other provisions of this Act**

- (1) The provisions of this Act apply in relation to a matter arising under this Part even though the matter may not involve the conduct of a public authority, subject to any modifications prescribed by the regulations.
- (2) For the purpose of subsection (1), a reference in the provisions to a public authority includes a reference to a funded provider and its employees.

#### **4.9 Payroll Tax Rebate Scheme (Disability Employment) Act 2011 No 54**

##### **Section 6 Eligible employees**

Omit “in the target group under the *Disability Services Act 1993*” from section 6 (1).

Insert instead “a person in the target group within the meaning of the *Disability Inclusion Act 2014*”.