



Western Australia

## **Disability Services Amendment Act 1999**

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**No. 44 of 1999**

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**An Act to amend the *Disability Services Act 1993*.**

*[Assented to 25 November 1999]*

The Parliament of Western Australia enacts as follows:

**1. Short title**

This Act may be cited as the *Disability Services Amendment Act 1999*.

**2. Commencement**

This Act comes into operation on the day on which it receives the Royal Assent.

**3. The Act amended**

The amendments in this Act are to the *Disability Services Act 1993*.\*

[\* *Act No. 36 of 1993.*

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 71.]*

**4. Long title amended**

The long title is amended by inserting before “Advisory” —  
“ **Ministerial** ”.

**5. Section 3 amended**

Section 3 is amended as follows:

- (a) by deleting the definition of “Commissioner”;
- (b) in the definition of “Council” by inserting before “Advisory” —  
“ **Ministerial** ”;
- (c) by inserting, in the appropriate alphabetical position, the following definition —

“

“**Director**” means the person appointed under section 7(1) of the *Health Services (Conciliation and Review) Act 1995*;

”.

**6. Section 9 amended**

Section 9(3) is repealed.

**7. Section 12 amended**

Section 12(2) is amended by deleting “The” and inserting instead —

“ Subject to section 12A and Part 4A, the ”.

**8. Section 12A inserted**

After section 12 the following section is inserted —

“

**12A. Contracts to provide goods or services to the Commission**

(1) Subject to the *State Supply Commission Act 1991* and subsection (2), the Commission may —

- (a) engage a person under a contract for services to provide such professional, technical, or other assistance; or
- (b) enter into a contract for the supply of such goods or services,

to the Commission as it considers necessary to enable it to perform its functions.

(2) Except with the approval of the Minister, the Commission is not to enter into a contract under subsection (1) if the amount to be paid under the contract exceeds an amount specified in a written direction given to the Commission by the Minister under section 20(1).

”.

**9. Sections 21A and 21B inserted**

After section 21 the following sections are inserted —

“

**21A. Notification of general policies of the Government**

- (1) The Minister may notify the Commission in writing of general policies of the Government that are to be implemented by the Commission.
- (2) The Commission must ensure that the policies are implemented.
- (3) The Minister may, in writing, exempt the Commission from subsection (2) in relation to specified activities.

**21B. Minister to be consulted on major initiatives**

The Commission must consult the Minister before it enters upon a course of action that in its opinion —

- (a) amounts to a major initiative; or
- (b) is likely to be of significant public interest or of significant interest to people with disabilities, service developers, or service providers.

”

**10. Part 3 heading replaced**

The heading to Part 3 is deleted and the following heading is inserted instead —

“

**Part 3 — Ministerial Advisory Council for  
Disability Services**

”

**11. Section 25 amended**

Section 25(4) is repealed and the following subsections are inserted instead —

“

- (4) Without limiting the terms and conditions that may be included in an agreement referred to in subsection (1), unless the Board considers that it is inappropriate for an agreement to do so, such an agreement is to require the recipient of a grant under section 24(1)(b) or (c) to report to the Commission —
  - (a) the death of any person with a disability;
  - (b) significant physical or psychological harm suffered by a person with a disability;
  - (c) without limiting paragraph (b), an assault (including a sexual assault) of a person with a disability; or
  - (d) neglect of a person with a disability to an extent that results, or is likely to result, in significant physical or psychological harm to that person.
- (5) In subsection (4), a reference to a person with a disability is a reference to —
  - (a) a person with a disability to whom the recipient of a grant is providing a disability service; or
  - (b) a person with a disability who is the subject of the agreement.
- (6) If under subsection (4) the Board decides that it is inappropriate for an agreement to require a recipient of a grant to report to the Commission, the Board is to report to the Minister that it has made that decision.

”

**12. Part 4A inserted**

After Part 4 the following Part is inserted —

“

**Part 4A — Contracts to provide services for people with disabilities**

**26A. Interpretation**

In this Part, unless the contrary intention appears —

“**commencement day**” means the day on which the *Disability Services Amendment Act 1999* comes into operation;

“**supply policies**” has the same definition as it has in section 3(1) of the *State Supply Commission Act 1991*.

**26B. Method of contracting to provide services for people with disabilities**

- (1) If the Commission wishes to contract with a service provider to provide, on behalf of the Commission, services to a person with a disability, or to an individual who resides with such a person and —
- (a) who is related (by blood or marriage) to or is the guardian of the person with a disability; and
  - (b) who looks after or otherwise provides services to the person with a disability,

the Commission is to apply to the Minister for approval of the means of procuring the services.

- (2) If approval is sought under subsection (1), the Minister may direct —
  - (a) that the services be procured by means of a tender conducted in accordance with supply policies relating to tenders;
  - (b) that the Commission by public notice invite expressions of interest from service providers for the provision of the services; or
  - (c) that the Commission enter into negotiations with a service provider for the provision of the services.
- (3) The Commission may renew a contract, including a contract by way of renewal under this subsection —
  - (a) for the type of service referred to in subsection (1) entered into before the commencement day; or
  - (b) entered into under this section,without complying with this section.

**26C. Assignment of benefit of contract**

- (1) A person who after the commencement day has entered into a contract with the Commission for the provision of a service referred to in section 26B(1) may not assign the benefit of that contract without the consent of the Commission.
- (2) When the benefit of a contract is assigned, the assignee is bound, by force of this subsection, to perform the obligations which the assignor was bound under the contract to perform.
- (3) Any purported assignment in contravention of this section is void.

”.

**13. Section 28 amended**

- (1) Section 28(1) is amended by deleting “Each public authority must prepare” and inserting instead —

“ A public authority must have ”.

- (2) Section 28(2) is repealed and the following subsection is inserted instead —

“

- (2) A public authority that does not have a disability service plan must create a plan without delay and, in the case of a public authority established after the commencement of the *Disability Services Amendment Act 1999*, within 12 months of the day on which the authority is established.

”.

- (3) Section 28(3) is repealed.

- (4) Section 28(4) is repealed and the following subsection is inserted instead —

“

- (4) A public authority may amend its disability service plan at any time.

”.

**14. Section 29 replaced**

Section 29 is repealed and the following section is inserted instead —

“

**29. Report about disability service plan**

- (1) A public authority that has a disability service plan must, if required to report under section 62 or 66 of the *Financial Administration and Audit Act 1985*, include in such report, a report about the implementation of the plan.



- (2) A local government or regional local government that has a disability service plan must include in its annual report prepared under section 5.53 of the *Local Government Act 1995* a report about the implementation of the plan.
- (3) A public authority that —
  - (a) has prepared or amended a disability service plan in a year ending 30 June; and
  - (b) is not required to report under subsection (1) or (2),must make a report about the implementation of the plan to the Commission within 2 months after the end of that year.

”.

**15. Section 30 amended**

- (1) Section 30 is amended in the definition of “disability service” as follows:
  - (a) after paragraph (a) by deleting “or”;
  - (b) after paragraph (a) by inserting the following paragraph —
    - “
    - (aa) such a service where it is provided wholly from funds paid to the service provider by the Commonwealth of Australia; or
    - ”.
- (2) Section 30 is amended by inserting, in the appropriate alphabetical position, the following definition —
  - “
  - “member of the staff”** has the same definition as it has in section 3(1) of the *Health Services (Conciliation and Review) Act 1995*;
  - ”.

**16. Section 33 amended**

Section 33(1)(a) is deleted and the following paragraph is inserted instead —

“

- (a) a service provider who or which, at the time the subject matter of the complaint arose, was providing a disability service, whether or not with funds granted under Part 4;

”.

**17. Section 34 amended**

Section 34 is amended by deleting “12” and inserting instead —

“ 24 ”.

**18. Section 40 amended**

- (1) Section 40(4) is repealed and the following subsection is inserted instead —

“

- (4) The purpose of an investigation is to enable the Director to decide whether or not any unreasonable conduct referred to in section 33(2) has occurred and in so deciding, the Director is to have regard to —
  - (a) the principles in Schedule 1 and the objectives in Schedule 2;
  - (b) any agreement entered into by the service provider under section 25, or contract entered into under section 26B or assigned to the service provider under section 26C;
  - (c) any disability service plan prepared under section 28;

- (d) the generally accepted standard of service delivery expected of a service provider or the Commission, as the case may be; and
- (e) such other standards of service for disability service users as are prescribed.

”

- (2) Section 40(6) is repealed and the following subsection is inserted instead —

“

- (6) In conducting an investigation the Director may make use of a member of the staff.

”

**19. Section 43 amended**

- (1) Section 43(1) is amended by deleting “42 days” and inserting instead —

“ 45 days ”.

- (2) Section 43(2) is amended by deleting “42 day” and inserting instead —

“ 45 day ”.

- (3) Section 43(3) is amended by deleting “14 days” and inserting instead —

“ 15 days ”.

**20. Section 49 amended**

Section 49 is amended by deleting “officers appointed under the *Equal Opportunity Act 1984* to assist the Commissioner under that Act, the Commissioner’s” and inserting instead —

“ a member of the staff, the Director’s ”.

**s. 21**

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**21. Section 50 amended**

Section 50 is amended by deleting “Section 167 of the *Equal Opportunity Act 1984*” and inserting instead —

“

Section 71 of the *Health Services (Conciliation and Review) Act 1995*

”.

**22. Various references to “Commissioner” changed to “Director”**

The provisions mentioned in the Table to this section are amended by deleting “Commissioner” and inserting instead —

“ Director ”.

**Table**

s. 31(1)	s. 38(2)	s. 44(1)
s. 31(2)	s. 38(3)	s. 44(2)
s. 32(1)	s. 38(4) (3 places)	s. 44(4)
s. 32(2)	s. 39(1)	s. 45(1) (2 places)
s. 34	s. 39(3)(b) (2 places)	s. 45(2) (2 places)
s. 35(1)	s. 39(4)	s. 45(3) (2 places)
s. 35(2) (3 places)	s. 40(1)	s. 46
s. 35(3)	s. 40(2) (2 places)	s. 47(a)(ii)
s. 35(4) (2 places)	s. 40(3)	s. 48(1)
s. 35(5) (2 places)	s. 40(5)	s. 48(2)
s. 36 (2 places)	s. 41(2) (3 places)	s. 48(3)
s. 37(1) (2 places)	s. 41(3) (2 places)	s. 49 (the first place where it occurs)
s. 37(2) (3 places)	s. 41(5) (2 places)	s. 50 (2 places)
s. 37(3) (2 places)	s. 42 (3 places)	s. 57(2)
s. 37(4) (2 places)	s. 43(1)	s. 57(3)
s. 37(5) (3 places)	s. 43(2) (2 places)	s. 57(4)(e)
s. 38(1)	s. 43(3)	

**23. Various references to “Commissioner’s” changed to “Director’s”**

The provisions mentioned in the Table to this section are amended by deleting “Commissioner’s” and inserting instead —  
“ Director’s ”.

**Table**

s. 32(2)(b)	s. 39(2)
s. 34	s. 44(2)
s. 38(1)	

**24. Section 52 amended**

(1) Section 52(1) is amended after paragraph (b) by inserting the following paragraphs —

“

- (ba) in connection with the investigation of an offence to —
  - (i) a member of the Police Force of Western Australia or the Australian Federal Police;
  - (ii) the Director of Public Prosecutions for Western Australia or the Commonwealth; or
  - (iii) an officer of another law enforcement agency established under the law of a State or Territory or the Commonwealth authorized by regulation to receive confidential information under this paragraph;

**s. 25**

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- (bb) where it is in the public interest to protect the physical safety of an individual;
- (bc) for the purpose of enabling or facilitating the investigation by —
  - (i) the Director-General; or
  - (ii) an officer of the Department,of whether or not a child is a child in need of care and protection;
- (bd) for the purpose of proceedings under the *Child Welfare Act 1947* in relation to a child who may be a child in need of care and protection;

”.

(2) Section 52(2)(c) is amended by inserting after “section 10”—  
“ , 12A or Part 4A ”.

(3) After section 52(2) the following subsection is inserted —  
“

- (3) In subsection (1)(bc) or (1)(bd), “**child**”, “**child in need of care and protection**”, “**Department**”, and “**Director-General**” have the definition that those words and expressions have, respectively, in section 4(1) of the *Child Welfare Act 1947*.

”.

**25. Schedule 3 amended**

(1) Clause 1(1)(b) of Schedule 3 is amended by inserting before “is not” —

“ except in the case of the chairperson, ”.

- (2) Clause 1(1)(c)(i) of Schedule 3 is amended by inserting after “continuously” —

“

or, in the case of a person who has held office for a period greater than 6 years continuously, the end of that period of holding office

”.

- (3) Clause 4 of Schedule 3 is amended by deleting “Public Service Commissioner” and inserting instead —

“ Minister for Public Sector Management ”.

## 26. Schedule 5 amended

Clause 4 of Schedule 5 is amended by deleting “Public Service Commissioner” and inserting instead —

“ Minister for Public Sector Management ”.

## 27. Transitional

- (1) In this section —

“**commencement day**” means the day on which this Act comes into operation;

“**Commissioner**” means the Commissioner for Equal Opportunity appointed under the *Equal Opportunity Act 1984*;

“**Director**” means the person appointed under section 7(1) of the *Health Services (Conciliation and Review) Act 1995*.

- (2) A complaint made under Part 6 of the *Disability Services Act 1993* and pending or in progress on the commencement day may be continued and completed as if this Act had not come into operation.

- (3) The register of complaints and the register of matters referred for investigation established and maintained on the commencement day under section 48 of the *Disability Services Act 1993* held by the Commissioner on the commencement day is to be transferred to the Director.
- (4) A record relating to a complaint made under Part 6 of the *Disability Services Act 1993* held by the Commissioner on the commencement day is to be transferred to the Director.

**28. Consequential amendments**

- (1) Schedule V Part 3 of the *Constitution Acts Amendment Act 1899*\* is amended by deleting “The Advisory Council for Disability Services established under the *Disability Services Act 1992*.” and inserting after the item relating to the Mining and Petroleum Advisory Committee the following item —

“

The Ministerial Advisory Council for Disability Services established under the *Disability Services Act 1993*.

”

[\* *Reprinted as at 15 April 1999.*

*For subsequent amendments see Acts Nos. 53 of 1998 and 5, 8, 26 and 34 of 1999.*]

- (2) Section 10 of the *Health Services (Conciliation and Review) Act 1995*\* is amended after subsection (4) by inserting the following subsection —

“

- (5) The Director is to perform any function conferred on or imposed on the Director under any other Act.

”

[\* *Act No. 75 of 1995.*

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 114.*]



- (3) Section 5.53(2) of the *Local Government Act 1995*\* is amended after paragraph (h) by deleting “and” and inserting instead —

“

- (ha) a matter on which a report must be made under section 29(2) of the *Disability Services Act 1993*; and

”

[\* *Act No. 74 of 1995.*

*For subsequent amendments see 1998 Index to Legislation of Western Australia, Table 1, p. 148 and Acts Nos. 16 and 26 of 1999.]*

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