

Disability Services Amendment Bill 2012

CONTENTS

| | | |
|-----|---|---|
| 1. | Short title | 2 |
| 2. | Commencement | 2 |
| 3. | Act amended | 2 |
| 4. | Section 3 amended | 2 |
| 5. | Section 7 amended | 2 |
| 6. | Section 12 amended | 3 |
| 7. | Section 22 amended | 3 |
| 8. | Section 23 amended | 4 |
| 9. | Section 25 amended | 4 |
| 10. | Section 29A amended | 5 |
| 11. | Section 30A amended | 5 |
| 12. | Section 32 amended | 5 |
| 13. | Section 33 amended | 5 |
| 14. | Section 38 amended | 6 |
| 15. | Section 39 amended | 6 |
| 16. | Section 40 amended | 6 |
| 17. | Section 43A inserted | 7 |
| | 43A. Warrants | 7 |
| 18. | Section 42A (second occurrence) renumbered and amended | 7 |
| 19. | Section 46A amended | 8 |
| 20. | Section 48A inserted | 8 |
| | 48A. Prescribed service provider must give certain information | 8 |
| 21. | Section 57 amended | 9 |
| 22. | Schedules 1 and 2 replaced | 9 |
| | Schedule 1 — Principles applicable to people with disability | |
| | Schedule 2 — Objectives for services and programmes | |

Contents

| | | |
|-----|--|----|
| 23. | Schedule 5 amended | 13 |
| 24. | Various references to “disability” amended | 13 |

Western Australia

LEGISLATIVE COUNCIL

Disability Services Amendment Bill 2012

A Bill for

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

The Parliament of Western Australia enacts as follows:

s. 1

1 **1. Short title**

2 This is the *Disability Services Amendment Act 2012*.

3 **2. Commencement**

4 This Act comes into operation as follows —

- 5 (a) sections 1 and 2 — on the day on which this Act
6 receives the Royal Assent;
- 7 (b) the rest of the Act — on a day fixed by proclamation,
8 and different days may be fixed for different provisions.

9 **3. Act amended**

10 This Act amends the *Disability Services Act 1993*.

11 **4. Section 3 amended**

12 In section 3 insert in alphabetical order:

13

14 ***Disability Services Standards*** are those standards
15 prescribed in accordance with section 12(1)(i);
16

17 **5. Section 7 amended**

18 (1) In section 7(2):

19 (a) in paragraph (b)(iii) delete “in caring for” and insert:

20

21 as a carer of
22

23 (b) in paragraph (d) delete “is to have a relative” and insert:

24

25 has recent experience as a carer of a person
26

1 (2) In section 7(2):

2 (a) after each of paragraphs (a) to (c) insert:

3

4 and

5

6 (b) after each of paragraph (b)(i) and (ii) insert:

7

8 or

9

10 **6. Section 12 amended**

11 (1) Delete section 12(1)(i) and insert:

12

13 (i) to adopt Disability Services Standards as
14 prescribed, and with such modification as is
15 prescribed, and ensure that those standards are
16 met by service providers; and

17

18 (2) In section 12(1) after each of paragraphs (a) to (h) and (j) insert:

19

20 and

21

22 **7. Section 22 amended**

23 (1) After section 22(4)(b) insert:

24

25 (ca) at least 2 of them have had recent experience as
26 a carer of a person with disability; and

27

28 (2) After section 22(4)(a) insert:

29

30 and

31

s. 8

1 **8. Section 23 amended**

2 (1) In section 23(1)(b) delete “standards” and insert:

3

4 quality

5

6 (2) In section 23(1a) delete “undertake public consultation in
7 accordance with the procedure specified in the regulations” and
8 insert:

9

10 ensure that the interests of the public generally, and the interests
11 of affected stakeholders in particular, are considered

12

13 **9. Section 25 amended**

14 In section 25(5):

15 (a) delete “a disability” and insert:

16

17 disability

18

19 (b) in paragraph (a) delete “a disability” (first occurrence)
20 and insert:

21

22 disability

23

24 (c) in paragraph (b) delete “a disability” and insert:

25

26 disability

27

1 **10. Section 29A amended**

2 In section 29A delete “disabilities,” and insert:

3

4 disability,

5

6 **11. Section 30A amended**

7 In section 30A(2) delete “42A.” and insert:

8

9 43B.

10

11 **12. Section 32 amended**

12 (1) After section 32(1) insert:

13

14 (2A) A complaint may be made to the Director under this
15 section by a professional registration Board where that
16 Board becomes aware of one or more of the matters set
17 out in section 33(2) in relation to a member of its
18 profession.

19

20 (2) In section 32(3) delete “to a” and insert:

21

22 to, or is in a de facto relationship with, a

23

24 **13. Section 33 amended**

25 After section 33(2)(f) insert:

26

27 (ga) failed to comply with the Disability Services
28 Standards, or failed to ensure that those
29 standards were met by service providers; or

30

s. 14

1 **14. Section 38 amended**

2 After section 38(4) insert:

3

- 4 (5) If a complaint raises issues that in the opinion of the
5 Director would be better dealt with by a professional
6 registration Board, the Director may, with the written
7 consent of the complainant, refer the complaint to the
8 appropriate Board to be dealt with by that Board's
9 disciplinary powers.

10

11 **15. Section 39 amended**

12 In section 39(6) delete “must investigate the complaint, unless
13 of the opinion that an investigation is not warranted due to” and
14 insert:

15

16 may investigate the complaint, if of the opinion that an
17 investigation is warranted, taking into account

18

19 **16. Section 40 amended**

20 (1) In section 40(4):

21 (a) delete “to —” and insert:

22

23 to the following —

24

25 (b) in paragraph (d) delete “standard” and insert:

26

27 quality

28

1 (c) delete paragraph (e) and insert:

2

3 (e) the Disability Services Standards;

4

5 (2) After section 40(6) insert:

6

7 (7) If the conciliation process is successful in the
8 settlement of a complaint between the complainant and
9 the respondent, the conciliator must make a final report
10 to the Director on the result of that process.

11 (8) A report made under subsection (7) is to include details
12 of any agreement reached.

13

14 **17. Section 43A inserted**

15 After section 42 insert:

16

17 **43A. Warrants**

18 (1) If the Director considers it necessary or appropriate for
19 a particular investigation under this Act, the Director
20 may apply for a warrant under the *Health and*
21 *Disability Services (Complaints) Act 1995* section 63 to
22 further that investigation.

23 (2) If a warrant is issued as a result of that application, the
24 Director may act upon the warrant issued under that
25 Act in accordance with, and subject to the provisions
26 of, Part 4 of that Act.

27

28 **18. Section 42A (second occurrence) renumbered and amended**

29 (1) Renumber section 42A (inserted by Act No. 57 of 2004
30 section 27) as section 43B.

s. 19

1 (2) In section 43B(3)(a) delete “a disability; or” and insert:

2

3 disability; or

4

5 **19. Section 46A amended**

6 In section 46A(2) delete “immediately.” and insert:

7

8 and report the result of the investigation to the presiding officer
9 of the House or committee within any time limit set out in the
10 referral.

11

12 **20. Section 48A inserted**

13 After section 47 insert:

14

15 **48A. Prescribed service provider must give certain**
16 **information**

17 (1) Within the prescribed time after 30 June in each year a
18 prescribed service provider or a service provider that
19 belongs to a prescribed class of service providers must
20 give to the Director a return concerning complaints
21 received and action taken by the service provider
22 during the year that ended on that 30 June.

23 Penalty: a fine of \$1 000.

24 (2) The return is to be in the prescribed form or the form
25 prescribed for the class of service providers, as the case
26 may require.

27

21. Section 57 amended

(1) Delete section 57(2) and insert:

(2) The review is to consider whether the policy objectives of the Act remain valid and whether the provisions of the Act are still appropriate for securing those objectives.

(2) Delete section 57(3) and (4).

22. Schedules 1 and 2 replaced

Delete Schedules 1 and 2 and insert:

Schedule 1 — Principles applicable to people with disability

[s. 12, 23, 24, 28, 40 and 57]

1. People with disability are individuals who have the inherent right to respect for their human worth and dignity without discrimination and with equality of opportunity.
2. People with disability, whatever the origin, nature, type or degree of disability, have the same human rights as other members of society and should be enabled to exercise those human rights.
3. People with disability have the same rights as other members of society to realise their individual capacities for physical, social, emotional, intellectual, cultural and spiritual development.
4. People with disability have the same right as other members of society to access services that will support their choices, assist them to be as independent as possible and enable them to participate in all aspects of life.

s. 22

- 1 5. People with disability have the same right as other members
2 of society to participate in, direct and implement the
3 decisions that affect their lives.
- 4 6. People with disability have the same right as other members
5 of society to receive services in a manner that respects and
6 protects their rights and opportunities and is the least
7 restrictive option in the circumstances.
- 8 7. People with disability have the right to pursue any grievance
9 concerning services.
- 10 8. People with disability have the right to access the type of
11 services and supports that they believe are most appropriate
12 to meet their needs.
- 13 9. People with disability who reside in country areas have a
14 right, as far as is reasonable to expect, to have access to
15 similar services provided to people with disability who
16 reside in the metropolitan area.
- 17 10. People with disability have a right to an environment free
18 from neglect, abuse, violence, intimidation and exploitation.

**Schedule 2 — Objectives for services
and programmes**

[s. 12, 24, 28 and 40]

- 22 1. Programmes and services are to focus on achieving positive
23 outcomes for people with disability, such as increased
24 independence, employment opportunities and inclusion and
25 participation within the community.
- 26 2. Programmes and services are to contribute to ensuring that
27 the conditions of the every day life of people with disability
28 are the same as norms and patterns which are valued in the
29 general community.
- 30 3. Programmes and services are to be integrated with services
31 generally available to members of the community.
- 32 4. Programmes and services are to be flexible and responsive
33 to the individual choices and needs of people with disability,
34 their families, carers and significant others.

- 1 5. Programmes and services are to be designed and
2 administered so as to be sensitive and responsive to the
3 individual and diverse needs of all people with disability
4 taking into account their age, gender, religion,
5 Aboriginality, cultural or linguistically diverse backgrounds
6 or geographic location.
- 7 6. Programmes and services are to be designed and
8 administered to promote awareness of the abilities and
9 contributions of people with disability and foster respect for
10 their rights and dignity.
- 11 7. Programmes and services are to be designed and
12 administered so as to promote the participation of people
13 with disability in the life of the local community through
14 physical, social, economic, emotional, intellectual, cultural
15 and spiritual inclusion in that community.
- 16 8. Programmes and services are to be designed and
17 administered so as to ensure that no single organisation shall
18 exercise control over all or most aspects of an individual's
19 life.
- 20 9. Service provider organisations, whether disability specific
21 or generic, shall be accountable to those people with
22 disability who use their services, their families and carers,
23 their advocates, the State and the community generally for
24 the provision of information from which the quality of their
25 services can be judged.
- 26 10. Programmes and services are to be designed and
27 administered so as to provide opportunities for people with
28 disability to reach goals and enjoy lifestyles that support
29 their choices and are valued by the community.
- 30 11. Programmes and services are to be designed and
31 administered so as to ensure that people with disability have
32 access to advocacy support, to enable them to make choices
33 and participate in decisions about the services they receive
34 or are seeking.
- 35 12. Programmes and services are to be designed and
36 administered so as to ensure that avenues exist for people

s. 22

- 1 with disability to raise, and have resolved, any grievances
2 about services.
- 3 13. Programmes and services are to be designed and
4 implemented in an accessible manner.
- 5 14. Programmes and services are to be designed and
6 administered so as to respect the rights of people with
7 disability to privacy and confidentiality.
- 8 15. Programmes and services are to begin as early as possible so
9 as to prevent the occurrence of, or minimise, disability so
10 people with disability can be as independent as possible and
11 participate in all aspects of life.
- 12 16. Programmes and services are to be designed and
13 implemented to —
- 14 (a) acknowledge, recognise, respect and respond to the
15 role of families, carers and significant others in
16 supporting people with disability; and
- 17 (b) respond to the views and needs of families, carers
18 and significant others; and
- 19 (c) strengthen and build the capacity of families, carers
20 and significant others in supporting people with
21 disability.
- 22 17. Programmes and services are to provide —
- 23 (a) people with disability and their families and carers
24 with opportunities for participating continually in
25 the planning and operation of services they receive;
26 and
- 27 (b) opportunities for people with disability, their
28 families and their carers to be consulted about the
29 development of major policy, programme or
30 operational changes.
31

1 **23. Schedule 5 amended**

2 After Schedule 5 clause 1(1a) insert:

3

4 (1B) Despite subclauses (1) and (1a), the deputy chairperson may
5 have his or her appointment extended for up to a year, at the
6 discretion of the Minister.

7

8 **24. Various references to “disability” amended**

9 In the provisions listed in the Table:

10 (a) delete “**disabilities**” and insert:

11

12 **disability**

13

14 (b) delete “disabilities” (each occurrence) and insert:

15

16 disability

17

18 (c) delete “**disabilities**” and insert:

19

20 **disability**

21

22 (d) delete “a disability” (each occurrence) and insert:

23

24 disability

25

26 **Table**

| | |
|------------------------------------|--|
| Long Title | s. 3 def. of <i>disability service</i> |
| s. 3A(1), (3)(a) and (b) | s. 4(1) |
| s. 7(2)(b), (c), (d) and (e) | s. 7(3)(b) |
| s. 12(1)(a), (e), (f), (g) and (j) | s. 21(4)(a) |

s. 24

| | |
|-----------------------------------|-----------------------|
| s. 21B(b) | s. 22(4) |
| s. 23(1)(a) | Pt. 4 heading |
| s. 24(1)(a) | s. 25(4) |
| s. 30A(1)(c), (e) and (g) and (2) | s. 32(1), (2) and (3) |
| s. 33(2)(g) | s. 42(4)(a) |
| s. 46(a) | s. 53 |

1

Note: Heading to section 26B to read:

2

**Method of contracting to provide services for people with
disability**

3
