



New South Wales

Disability Inclusion Act 2014 No 41

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New South Wales

Disability Inclusion Act 2014 No 41

Act No 41, 2014

An Act relating to the accessibility of mainstream services and facilities, the promotion of community inclusion and the provision of funding, support and services for people with disability; and for other purposes. [Assented to 26 August 2014]

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) For the purposes of this Act, the *disability principles* relating to people with disability are the general principles set out in this section.
- (2) People with disability have an inherent right to respect for their worth and dignity as individuals.
- (3) People with disability have the right to participate in and contribute to social and economic life and should be supported to develop and enhance their skills and experience.
- (4) People with disability have the right to realise their physical, social, sexual, reproductive, emotional and intellectual capacities.
- (5) People with disability have the same rights as other members of the community to make decisions that affect their lives (including decisions involving risk) to the full extent of their capacity to do so and to be supported in making those decisions if they want or require support.
- (6) People with disability have the right to respect for their cultural or linguistic diversity, age, gender, sexual orientation and religious beliefs.

- (7) The right to privacy and confidentiality for people with disability is to be respected.
Note. This principle does not affect the operation of Chapter 16A of the *Children and Young Persons (Care and Protection) Act 1998*. The disability principles are principles that certain entities have regard to under this Act (see section 6).
- (8) People with disability have the right to live free from neglect, abuse and exploitation.
- (9) 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.
- (10) People with disability have the same right as other members of the community to pursue complaints.
- (11) 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.
Note. The NSW Carers Charter under the *Carers (Recognition) Act 2010* recognises the role and contribution of carers to our community and to the people they care for.
- (12) The needs of children with disability as they mature, and their rights as equal members of the community, are to be respected.
- (13) 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) For the purposes of this Act, the *disability principles* relating to people with disability also include the principles set out in this section.
- (2) Supports and services provided to Aboriginal and Torres Strait Islander people with disability are to be provided in a way that:
 - (a) recognises that Aboriginal and Torres Strait Islander people have a right to respect and acknowledgment 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.
- (3) Supports and services provided to people with disability from culturally and linguistically diverse backgrounds are to be provided 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 those people with disability, and
 - (c) is informed by consultation with their communities.
- (4) Supports and services provided to women with disability are to be provided in a way that:
 - (a) recognises that women 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 with disability, and
 - (c) is informed by consultation with women with disability.

- (5) Supports and services provided to children with disability are to be provided in a way that:
- (a) recognises that a child with disability has the right to a full life in conditions that ensure the child's dignity, promote self-reliance and facilitate the child's active and full participation in family, cultural and social life, and
 - (b) recognises that children are more vulnerable to risk of abuse or exploitation, and
 - (c) addresses that right and risk, and ensures the best interests of the child is the primary concern in making decisions affecting the child while also respecting the responsibilities, rights and duties of a parent or other person legally responsible for the child in relation to giving appropriate direction and guidance for the child's welfare, and
 - (d) respects the views of the child with disability (having regard to the child's age and maturity).
- (6) This section does not impose an obligation on anyone to provide supports and services.

6 Having regard to disability principles

A person exercising a function under this Act, or providing supports or services to people with disability in connection with the provision of financial assistance under Part 5, should have regard to the disability principles in the exercise of the function or the provision of the supports or services.

Note. Under section 12, a public authority's disability inclusion action plan must specify how the public authority proposes to have regard to the disability principles in its dealings with matters relating to people with disability. Under section 30 (2) (b), an agreement relating to the provision of supports and services by an entity receiving financial assistance is to specify how the entity 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).
- carer** means a carer within the meaning of the *Carers (Recognition) Act 2010*.
- Department** means the Department of Family and Community Services.
- disability**, in relation to a person, includes a long-term physical, psychiatric, 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 Council**—see section 15 (1).
- disability inclusion action plan**—see section 12 (1).
- disability principles**—see sections 4 and 5.
- disability service provider** means:
- (a) the part of the Department in which this Act is administered, or
 - (b) another eligible entity receiving financial assistance in accordance with Division 3 or 4 of Part 5.
- disability service standards**—see section 20 (1).
- eligible entity** means:
- (a) a Public Service agency, or

- (b) a local council, or
- (c) another entity that is a corporation or body corporate, or
- (d) an entity prescribed by the regulations to be an eligible entity for the purposes of this definition.

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

government department means a Department of the Public Service listed in Part 1 of Schedule 1 to the *Government Sector Employment Act 2013*.

guardian means a guardian within the meaning of section 3 (1) of the *Guardianship Act 1987*.

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 entity that is not a Public Service agency.

person in the target group—see section 24.

prescribed conditions, in relation to financial assistance, means the conditions referred to in sections 31 and 32.

public authority means all of the following:

- (a) a government department,
- (b) a local council,
- (c) another entity prescribed by the regulations to be a public authority for the purposes of this definition.

Public Service agency means a Public Service agency within the meaning of the *Government Sector Employment Act 2013*.

Secretary means the Secretary of the Department.

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

State Disability Inclusion Plan—see section 10 (1).

supports means assistance provided to a person with disability to do one or more of the following:

- (a) to help the person undertake his or her day to day activities,
- (b) to increase the person's independence,
- (c) to facilitate the person's social and economic inclusion in the community.

supported group accommodation—see section 22.

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

Part 2 Disability planning

Division 1 Preliminary

8 Purpose of Part

The purpose of this Part is to provide for:

- (a) the making of a plan setting out a co-ordinated whole of government approach to creating a more inclusive community in which mainstream services and community facilities are accessible to people with disability to help them achieve their full potential, and
- (b) the making of other plans setting out specific measures public authorities are to put in place in relation to people with disability.

9 Guidelines

- (1) The Secretary may issue guidelines to assist public authorities to prepare a disability inclusion action plan.
- (2) The Secretary must publish the guidelines on the Department's website.

Division 2 State Disability Inclusion Plan

10 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*) that:
 - (a) sets out whole of government goals that support the inclusion in the community of people with disability and improve access to mainstream services and community facilities by people with disability, and
 - (b) provides for collaboration and co-ordination among government departments, local councils and other entities in the provision of supports and services.
- (2) In preparing the State Disability Inclusion Plan, the Department must consult with people with disability.
- (3) 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).
- (4) 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).
- (5) The Minister is to make the State Disability Inclusion Plan publicly available.

11 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 that the whole of government goals set out in the State Disability Inclusion Plan continue to support the inclusion in the community of people with disability and to improve access to mainstream services and community facilities by people with disability.
- (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 3 Disability inclusion action plans

12 Requirement for disability inclusion action plans

- (1) Each public authority must, from the day prescribed by the regulations, have a plan (a *disability inclusion action plan*) setting out the measures it intends to put in place (in connection with the exercise of its functions) 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 inclusion action plan, a public authority:
 - (a) must consult with people with disability and have regard to any guidelines issued under section 9, and
 - (b) may consult with individuals or other entities the authority considers appropriate, including the Disability Council.
- (3) A disability inclusion action plan must:
 - (a) specify how the public authority 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, events 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 authority's consultation about the plan with people with disability, and
 - (d) explain how the plan supports the goals of the State Disability Inclusion Plan, and
 - (e) include any other matters prescribed by the regulations.
- (4) A disability inclusion action plan may be a document or part of a document prepared for another purpose if the Secretary is satisfied the document or part fulfils the requirements of subsections (1) and (3).
- (5) A public authority must, as soon as practicable after the day it is required to have a disability inclusion action plan:
 - (a) give a copy of the plan to the Disability Council, and
 - (b) make the plan publicly available.

13 Report on implementation of plans

- (1) A public authority that is 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 inclusion action plan.
- (2) A public authority that is not a government department or local council must, as soon as practicable after the end of each financial year, give the Minister a report relating to the authority's implementation of its disability inclusion action plan during the financial year.

- (3) The Minister is to table a report about the implementation of disability inclusion action plans in each House of Parliament as soon as practicable after the end of each financial year.
- (4) In this section:
annual report means:
 - (a) of a government department—its annual report under the *Annual Reports (Departments) Act 1985*, and
 - (b) of a local council—its annual report under the *Local Government Act 1993*.

14 Review of plans

- (1) A public authority must review its disability inclusion action plan before the end of each 4-year period after the day the authority is required to have the plan.
- (2) The purpose of the review is to ensure the disability inclusion action plan fulfils the requirements of section 12 (1) and (3).
- (3) In reviewing its disability inclusion action plan, the public authority must consult with people with disability and have regard to any guidelines issued under section 9.

Part 3 Disability Council NSW

15 Continuation of Disability Council of New South Wales

- (1) The former council is continued in existence under the name Disability Council NSW (the *Disability Council*).
- (2) In this section:
former council means the Disability Council of New South Wales established under section 16 of the *Community Welfare Act 1987*.

16 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) 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) There is to be a chairperson and a deputy chairperson of the Disability Council.
- (5) The chairperson is the member who:
 - (a) is a person with disability, and
 - (b) has the qualifications or experience, and is appointed in the way, prescribed by the regulations.
- (6) The deputy chairperson is the member appointed as the deputy chairperson in the way prescribed by the regulations.
- (7) Schedule 1 contains provisions relating to the membership and procedure of the Disability Council.

17 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 emerging issues relating to people with disability,
 - (c) to advise public authorities about the content and implementation of disability inclusion action plans,
 - (d) to advise the Minister about the content and implementation of the State Disability Inclusion Plan and disability inclusion action plans,
 - (e) to promote the inclusion of people with disability in the community,
 - (f) to promote community awareness of matters concerning the interests of people with disability and their families,
 - (g) to consult with the National People with Disabilities and Carer Council and other similar bodies,
 - (h) to consult with people with disability and undertake research about matters relating to people with disability,
 - (i) any other functions prescribed by the regulations.

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

18 Assistance to Disability Council

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

19 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. If disability service standards are made, compliance with the standards is a prescribed condition for the provision of financial assistance, under Part 5, to particular entities. If accommodation and service standards are made, compliance with the 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.

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 in order to improve the quality and effectiveness of the supports and services.
- (2) The Secretary 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 group accommodation.
- (2) The Secretary must make the accommodation and service standards publicly available.

22 Meaning of “supported group accommodation”

- (1) In this Act, *supported group accommodation* means premises in which:
 - (a) a person with disability is living in a shared living arrangement (whether short-term or permanently) with at least one other person with disability, other than an arrangement in which one or more of the persons with disability is living with a guardian of the person or a member of the person’s family who is responsible for the care of the person, and
 - (b) support is provided on-site:
 - (i) for a fee, or
 - (ii) whether or not for a fee if the support is provided as respite care.
- (2) Supported group accommodation includes premises, or a type of premises, prescribed by the regulations to be supported group accommodation.
- (3) However, supported group 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 group accommodation.
- (4) In this section:
respite care means short-term care for people with disability that is provided for the purpose of relieving families or carers from their caring responsibilities in the short-term before resuming their caring responsibilities at the end of the period of care.

Part 5 Provision of supports and services

Division 1 Preliminary

23 Purpose of Part

- (1) The purpose of this Part is to facilitate the provision of supports and services to persons in the target group and the transition of funding for persons in the target group to funding under the National Disability Insurance Scheme.
- (2) The purpose is to be achieved by the provision of supports and services directly to persons in the target group and the provision of financial assistance directly to individuals, or to eligible entities (including the part of the Department in which this Act is administered).
- (3) Financial assistance under this Part, other than section 37, is only to be provided during the transition to the National Disability Insurance Scheme.

24 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.
- (2) To remove any doubt, each of the following persons (within the meaning of the *Mental Health Act 2007*) is a person in the target group if the person has a disability referred to in subsection (1):
 - (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) 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 diminish over time or the person’s condition may improve.

Division 2 Supports and services provided by Secretary

25 Secretary may provide supports and services

- (1) The Secretary may provide supports and services to persons in the target group.
- (2) The supports and services may be provided directly to persons in the target group or indirectly through other persons.
- (3) The supports and services are to be provided in compliance with the disability service standards.

- (4) The Secretary may provide the supports and services in addition to the provision of financial assistance under this Part.

Division 3 Financial assistance for individuals

26 Provision of financial assistance

- (1) The Secretary 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 in any of the following ways:
- (a) directly to the individual,
 - (b) to a person nominated by the individual, or to a person otherwise nominated, if the person is determined by the Secretary to be an appropriate person to receive financial assistance on behalf of the individual (for example, a member of the individual's family or a carer),
 - (c) to an eligible entity that is a plan manager for the purpose of administering, as directed by the individual, the financial assistance,
 - (d) to an eligible entity for the purpose of providing supports and services specifically to the individual,
 - (e) in a way that is a combination of the ways referred to in paragraphs (a)–(d).
- (3) In deciding how to provide financial assistance under subsection (2), and the conditions on which it is provided, the Secretary:
- (a) must have regard to the wishes of the individual who is a person in the target group, and
 - (b) if the individual is a managed person within the meaning of the *NSW Trustee and Guardian Act 2009*—must have regard to the views of the person who is the manager under that Act of the estate of the individual, and
 - (c) may have regard to the views of members of the individual's family, a carer or guardian of the individual, an attorney to the individual under a power of attorney, or any other person who is significant in the life of the individual, and
 - (d) may have regard to other matters the Secretary considers appropriate, including, for example, the nature of the supports and services to be obtained and any risks to the individual that may arise in providing assistance directly to the individual.
- (4) 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 28 for the assistance.
- (5) Financial assistance may be provided to a non-government organisation only if the organisation has entered into an agreement under section 30 for the assistance.
- (6) The Secretary may require an eligible entity to which subsection (5) does not apply to enter into an agreement in relation to financial assistance provided to it under this Division.
- (7) Financial assistance may be provided on the conditions the Secretary considers appropriate, having regard to the circumstances of the individual who is a person in the target group.
- (8) Without limiting subsection (7), the circumstances may include the particular types of supports or services that the individual can obtain and the types of eligible entity from which the supports or services can be obtained.

- (9) In this section:

plan manager means an eligible entity that provides a service of administering individual funding for a person in the target group, whether or not it also provides a service of co-ordinating supports and services for the person.

27 Notice about provision of financial assistance

- (1) If the Secretary decides not to provide financial assistance under this Division to or on behalf of an individual who is a person in the target group (in response to an application for financial assistance), notice of the decision must be given to the individual.
- (2) If the Secretary decides to provide financial assistance to a person referred to in section 26 (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 Secretary 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.

28 Agreement about financial assistance

- (1) The Secretary may enter into an agreement with a person referred to in section 26 (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 Secretary considers appropriate.
- (3) The agreement must include a plan setting out the goals and aspirations of the person and including matters relevant to the provision of supports and services to the person (for example, the person's preferred supports and services for achieving his or her goals and any identified risks and safeguards associated with providing the supports and services).
- (4) The agreement may provide that the financial assistance is to cease if the Secretary considers that it is no longer required because of the implementation of NDIS arrangements.
- (5) Subsections (2)–(4) do not limit the matters that may be included in an agreement.

Division 4 Financial assistance for eligible entities

29 Provision of financial assistance

- (1) The Secretary may provide financial assistance to an eligible entity to enable it 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 30 in relation to the assistance.
- (3) The Secretary may require an eligible entity to which subsection (2) does not apply to enter into an agreement in relation to the financial assistance.

30 Agreement about financial assistance

- (1) The Secretary may enter into an agreement with an eligible entity in relation to financial assistance provided under Division 3 or 4.
- (2) An agreement entered into with a non-government organisation:
 - (a) is subject to the prescribed conditions relating to the provision of financial assistance to the organisation, and
 - (b) must specify the following:
 - (i) the rights of the persons in the target group in relation to the provision of supports and services or otherwise,
 - (ii) how the organisation intends to have regard to the disability principles in the provision of supports and services,
 - (iii) the purposes for which the financial assistance may be applied,
 - (iv) the particular amounts to be applied for those purposes,
 - (v) the outcomes to be achieved for persons in the target group as a result of the provision by the organisation of the supports and services,
 - (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 by the organisation,
 - (vii) the conditions, other than the prescribed conditions, of the agreement,
 - (viii) other matters prescribed by the regulations.
- (3) If the non-government organisation is to provide supports and services that include accommodation in supported group 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.

31 Conditions about disability service standards

- (1) It is a condition of the provision of financial assistance to a non-government organisation (other than an organisation prescribed by the regulations) that it must give the Secretary evidence to show it has been assessed by another entity determined by the Secretary as an entity 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 entity (other than an entity prescribed by the regulations) that it must comply with the disability service standards in providing supports and services to persons in the target group.

32 Conditions about probity checks—eligible entities receiving financial assistance

- (1) It is a condition of the provision of financial assistance to an eligible entity that the requirements of this section relating to its relevant workers and relevant board members must be complied with.
- (2) The eligible entity must ensure a person is not engaged as a relevant worker or relevant board member of the entity 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 the purposes of subsection (2), the eligible entity must ensure that, before the person is engaged as a relevant worker or relevant board member:
 - (a) a criminal record check is conducted or obtained in relation to the person, and
 - (b) the eligible entity obtains a reference for the relevant worker or relevant board member from at least one referee nominated by the worker or member.
- (4) The eligible entity must ensure that a further criminal record check is conducted or obtained in relation to each relevant worker and relevant board member of the entity at least every 4 years.
- (5) The eligible entity must not engage or continue to engage a person as a relevant worker if:
 - (a) the entity is satisfied, having regard to 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 eligible entity must ensure a person is not engaged, or allowed to continue to be engaged, as a relevant board member of the entity if:
 - (a) the entity is satisfied, having regard to 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.
- (7) Despite subsections (5) (a) and (6) (a), the eligible entity may engage or continue to engage a person as a relevant worker or relevant board member if the engagement or continued engagement is in accordance with:
 - (a) all of the following:
 - (i) the entity is satisfied, having regard to the person's criminal record check, that the person has not been convicted of a prescribed sexual offence as defined in the *Criminal Procedure Act 1986*,
 - (ii) if the person has been convicted of a prescribed criminal offence (other than a prescribed sexual offence)—the person's criminal record check shows that the person has not been convicted of any further prescribed criminal offence within the 10-year period immediately before the criminal record check was conducted or obtained and the person has not served any period of imprisonment during that period for a prescribed criminal offence,
 - (iii) the entity 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, and
 - (b) any circumstances prescribed by the regulations.

- (8) 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.
- (9) If the regulations provide for the use of a statutory declaration to verify a person's criminal record and an eligible entity 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) subsections (5) (a), (6) (a) and (7) (a) apply as if a reference in those paragraphs to a criminal record check were a reference to a statutory declaration, and
 - (c) subsections (5) (b) and (6) (b) apply as if the reference in those paragraphs to obtain or submit to a criminal record check were a reference to provide a statutory declaration.
- (10) This section does not affect a person's engagement in any employment or role with an eligible entity other than as a relevant worker or relevant board member.
- (11) In this section:
- prescribed criminal offence*** means:
- (a) an offence stated in Schedule 2, or
 - (b) another offence prescribed by the regulations.
- relevant board member*** of an entity means a person who is a member of the governing body (whatever called) of the entity and who works, or is likely to work, directly with persons in the target group in a way that involves face to face or physical contact with those persons.
- relevant worker*** of an eligible entity means a person who is engaged by the entity in any of the following capacities to provide supports and services directly to persons in the target group in a way that involves face to face or physical contact with those persons:
- (a) as an employee,
 - (b) as a volunteer,
 - (c) as a person undertaking training as part of an educational or vocational course or program (other than a school student on work experience),
 - (d) as a self-employed person, contractor or subcontractor,
 - (e) as a person of a type prescribed by the regulations.

Division 5 Suspending and terminating financial assistance

33 Suspension of financial assistance

- (1) The Secretary may, by notice served on a person or eligible entity receiving financial assistance under this Part, suspend the assistance on any of the following grounds:
- (a) the Secretary reasonably believes the person in the target group to, or on behalf of, whom the assistance is provided:
 - (i) is no longer using the supports and services, or
 - (ii) is obtaining the supports and services other than by way of the financial assistance,

- (b) the Secretary reasonably believes the person or entity 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 38,
 - (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 (not more than 90 days) during which the assistance is suspended, and
 - (b) that the person or entity 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 Secretary may suspend the financial assistance for a further period in accordance with this section.
- (4) If financial assistance is suspended under this section, the Secretary may arrange for alternative supports and services for the relevant person in the target group while it is suspended.

34 Termination of financial assistance

- (1) The Secretary may, by notice served on a person or eligible entity receiving financial assistance under this Part, terminate a part or all of the financial assistance on any of the following grounds:
- (a) the Secretary reasonably believes the person or eligible entity 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 38,
 - (b) the Secretary considers that the assistance is no longer required because of the implementation of NDIS arrangements,
 - (c) the grounds prescribed by the regulations.
- (2) Before terminating the financial assistance, the Secretary must:
- (a) give the person or eligible entity 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 entity to give the Secretary, 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 entity and the Secretary.
- (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 or eligible entity 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 6 Review of decisions

35 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 26 to impose a condition on the provision of financial assistance to a person referred to in section 26 (2) (a) or (b),
- (b) a decision under section 26 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 33 to suspend financial assistance,
- (d) a decision under section 34 to terminate financial assistance if the termination was other than for a prescribed purpose within the meaning of that section.

Division 7 Miscellaneous

36 Secretary to conduct probity check of particular departmental workers

- (1) The Secretary must ensure that a person is not engaged as a relevant worker of the Department unless the Secretary 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.
- (2) In deciding whether a person is a suitable person for the purposes of subsection (1), the Secretary must ensure that, before the person is engaged as a relevant worker:
 - (a) a criminal record check is conducted or obtained in relation to the person, and
 - (b) the Secretary obtains a reference for the relevant worker from at least one referee nominated by the worker.
- (3) The Secretary must ensure that a further criminal record check is conducted or obtained in relation to a relevant worker at least every 4 years.
- (4) The Secretary must not engage or continue to engage a person as a relevant worker if:
 - (a) the Secretary is satisfied, having regard to 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.
- (5) Despite subsection (4) (a), the Secretary may engage or continue to engage a person as a relevant worker if the engagement or continued engagement is in accordance with:
 - (a) all of the following:
 - (i) the Secretary is satisfied, having regard to the person's criminal record check, that the person has not been convicted of a prescribed sexual offence as defined in the *Criminal Procedure Act 1986*,
 - (ii) if the person has been convicted of a prescribed criminal offence (other than a prescribed sexual offence)—the person's criminal record check shows that the person has not been convicted of any further prescribed criminal offence within the 10-year period immediately before the criminal record check was conducted or obtained and the person has not

- served any period of imprisonment during that period for a prescribed criminal offence,
- (iii) the Secretary 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, and
 - (b) any circumstances prescribed by the regulations.
- (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 the Secretary uses a statutory declaration instead of a criminal record check for the purposes of this section:
- (a) a requirement in subsection (2) or (3) 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 (4) (a) applies as if the reference in that paragraph to a criminal record check were a reference to a statutory declaration, and
 - (c) subsection (4) (b) applies as if the reference in that paragraph to obtain or submit to a criminal record check were a reference to provide a statutory declaration.
- (8) This section does not affect a person's engagement in any employment or role with the Department other than as a relevant worker.
- (9) In this section:
- prescribed criminal offence*** has the same meaning as in section 32.
- relevant worker*** of the Department means a person who is engaged by the Department in any of the following capacities to provide supports and services directly to persons in the target group in a way that involves face to face or physical contact with those persons:
- (a) as a Public Service employee within the meaning of the *Government Sector Employment Act 2013*,
 - (b) as a volunteer,
 - (c) as a person undertaking training as part of an educational or vocational course or program (other than a school student on work experience),
 - (d) as a self-employed person, contractor or subcontractor,
 - (e) as a person of a type prescribed by the regulations.

37 Financial assistance to promote objects of Act

- (1) The Secretary 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 Secretary considers appropriate.

38 Giving information

- (1) This section applies if the Secretary 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 Secretary may, by notice given to the person, require the person to give the information or document to the Secretary.
- (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.

39 Protection from liability for giving information

If a person, acting in good faith, gives information or a document in accordance with section 38, 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.

40 Relationship with other Acts and laws

- (1) A prohibition on employment under this Act prevails to the extent of any inconsistency between it and any other Act or law.
- (2) The Industrial Relations Commission or any other court or tribunal does not have jurisdiction under any Act or law to order:
 - (a) the reinstatement or re-employment of a person or worker contrary to a prohibition on employment imposed by this Act, or
 - (b) the payment of damages or compensation for any removal of a person from employment prohibited under this Act.

41 Guidelines

- (1) The Secretary may issue guidelines to assist eligible entities in relation to compliance with the prescribed condition under section 32.
- (2) The Secretary must publish the guidelines on the Department's website.

Part 6 Miscellaneous

42 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.

43 Delegations

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

44 Proceedings for offence

Proceedings for an offence under this Act may be dealt with summarily before the Local Court.

45 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.

46 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.

47 Sections 3–6 do not give rise to or affect a cause of action

- (1) Nothing in sections 3–6 nor in any application of those sections by this Act gives rise to, or can be taken into account in, any civil cause of action.
- (2) In this section:
civil cause of action does not include a proceeding before the Civil and Administrative Tribunal on an application for an administrative review of a decision referred to in section 35.

48 Dealing with particular accounts and funds

Schedule 3 contains provisions about dealing with particular accounts and funds relating to people with disability who are residents of government residential centres as defined under clause 1 of that Schedule.

49 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.

50 Repeal of Disability Services Act 1993 No 3

The *Disability Services Act 1993* is repealed.

51 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.
- (2) The review is to be undertaken as soon as possible after the period of 4 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 4 years.

Schedule 1 Provisions relating to Disability Council

(Section 16 (7))

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, chairperson and deputy chairperson

- (1) 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.
- (2) The chairperson and deputy chairperson of the council each hold office for the period (not more than one year) specified in the chairperson's or deputy chairperson's instrument of appointment, but are eligible for re-appointment.
- (3) This clause applies subject to this Schedule and the regulations.

3 Remuneration of members

A member is entitled to be paid the remuneration (including travelling and subsistence allowances) as 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) The provisions of the *Government Sector Employment Act 2013* relating to the employment of Public Service employees do 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 is to preside at a meeting of the council.
- (2) In the absence of the chairperson, the deputy chairperson is to preside at a meeting of the council.
- (3) In the absence of the chairperson and the deputy chairperson, a member elected to chair the meeting by the members present is to preside at a meeting of the council.
- (4) 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 32 (11))

Prescribed criminal offences

- (1) For the purposes of paragraph (a) of the definition of *prescribed criminal offence* in section 32 (11) of this Act, 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,
 - (viii) section 61,
 - (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 Residents' amenities accounts

(Section 48)

1 Definitions

In this Schedule:

amenities includes supports and services.

government residential centre means:

- (a) Kanangra Centre, Morisset, or
- (b) Marsden Centre, Westmead, or
- (c) Riverside Centre, Orange, or
- (d) Rydalmere Centre, Rydalmere, or
- (e) Stockton Centre, Stockton, or
- (f) Tomaree Centre, Shoal Bay, or
- (g) any other residential institution (whether still operating or not) that was operated by the Minister for Health before 1 July 1989 for the benefit of individual residents with disability.

resident of a government residential centre means a resident of the centre with disability.

residents' amenities account, in relation to a government residential centre, means any account (whatever called) or any fund established in respect of the centre before 1 July 1989:

- (a) in which money is held for the purpose of providing funds for the provision of amenities to be used for the benefit of residents of the centre, and
- (b) in respect of which the money or some of the money held in the account or fund has been derived (whether in the form of income or capital gain) from the investment of money in accounts held on behalf of residents.

2 Use of money held in residents' amenities accounts if centre still operating

- (1) This clause applies in respect of a residents' amenities account maintained in respect of a government residential centre if the centre is operating at the commencement of this Schedule and has not since ceased to operate.
- (2) The person in charge of the government residential centre may use money held in the residents' amenities account for the purpose of providing amenities for the benefit of residents of the centre, but only in accordance with a scheme approved by the Secretary.
- (3) Money held in the residents' amenities account may be used for the provision of amenities at the government residential centre even though the persons who will benefit from the amenities may not have been residents of the centre when the money was originally credited to the account.
- (4) A scheme for the use of money held in a residents' amenities account must specify:
 - (a) the outcomes expected to be achieved from the use of the money, and
 - (b) the performance indicators to be used to determine whether or not the outcomes are achieved, and
 - (c) the period within which the outcomes are expected to be achieved.

- (5) The Secretary may approve a scheme for the use of money held in a residents' amenities account for a government residential centre only:
- (a) after consultation with:
 - (i) persons who are residents of the centre, and
 - (ii) persons who the Secretary considers are concerned with the welfare of the residents and represent the interests of some or all of the residents, and
 - (b) if satisfied that the money will be used in accordance with the objects of this Act.

3 Use of money held in residents' amenities accounts if centre no longer operates

- (1) This clause applies in respect of a residents' amenities account maintained in respect of a government residential centre if the centre has ceased to operate since 30 June 1989 or ceases to operate after the commencement of this Schedule.
- (2) The Secretary may pay money held in the residents' amenities account:
- (a) to a person in charge of a government residential centre that is still operating so that the money may be used in accordance with a scheme approved for the centre under clause 2, or
 - (b) to a person in charge of premises under the control of the Secretary that are used for the purpose of providing accommodation, supports or services to residents of the premises so that the money can be used for the benefit of the residents.
- (3) The Secretary may pay money under subclause (2) only if satisfied that the money will be used in accordance with the objects of this Act.
- (4) The Secretary may impose conditions on the use of money paid to a person in charge of premises referred to in subclause (2) (b).
- (5) A person in charge of a government residential centre who is paid money under subclause (2) (a) must use the money only in accordance with the scheme approved for the centre.
- (6) A person in charge of premises referred to in subclause (2) (b) who is paid money under that paragraph must use the money in accordance with any conditions imposed under subclause (4).

4 Investment of money pending its use

Pending its use in accordance with clause 2 or 3, money held in a residents' amenities account may be invested in any way authorised for the investment of trust funds.

Schedule 4 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 Definition

In this Part:

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

3 Application of provisions about probity checks

- (1) Section 32 of this Act does not apply to an organisation receiving financial assistance under Division 2 of Part 2 of the repealed Act immediately before the commencement of section 32 of this Act until the day (not more than one year after that commencement) prescribed by the regulations.
- (2) Section 36 of this Act does not apply to the Secretary until the day (not more than one year after the commencement of that section) prescribed by the regulations.

4 Continuation of financial assistance and agreements

- (1) An individual or organisation receiving financial assistance under Division 2 of Part 2 of the repealed Act immediately before the commencement of section 29 of this Act is taken to be receiving the financial assistance under this Act.
- (2) Unless the regulations otherwise provide, the financial assistance is provided subject to:
 - (a) the conditions to which the provision of the assistance was subject immediately before that commencement, and
 - (b) for assistance provided to an organisation—the prescribed conditions.
- (3) For the purposes of this Act, and subject to subclause (2), an agreement entered into with the Minister under section 17 of the repealed Act and in force immediately before the commencement of section 29 of this Act:
 - (a) is taken to be an agreement entered into with the Secretary under:
 - (i) if the agreement was entered into with an individual—section 28 of this Act, or

- (ii) if the agreement was entered into with an organisation—section 30 of this Act, and
 - (b) is taken to comply with any requirements relating to the agreement under section 28 or 30.
- (4) This clause is subject to clause 3.

5 Membership of Disability Council

- (1) A person who was a member of the former council immediately before the commencement of section 15 of this Act is taken to be a member of the Disability Council.
- (2) The person who was chairperson of the former council immediately before that commencement is taken to be the chairperson of the Disability Council.
- (3) The person who was deputy chairperson of the former council immediately before that commencement is taken to be the deputy chairperson of the Disability Council.
- (4) The term of office, as a member of the Disability Council, of a person referred to in subclause (1) 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.
- (5) The term of office, as the chairperson or deputy chairperson of the Disability Council, of a person referred to in subclause (2) or (3) ends on the day a member of the Disability Council is first appointed as the chairperson or deputy chairperson under this Act.
- (6) A person referred to in subclause (2) or (3) may be re-appointed as the chairperson or deputy chairperson of the Disability Council.
- (7) In this clause:
former council has the meaning it has in section 15 (2).

6 Schemes relating to residents' amenities accounts

A scheme approved by the Minister under clause 2 of Schedule 3 to the repealed Act and in effect immediately before the commencement of Schedule 3 to this Act is taken to be a scheme approved by the Secretary under clause 2 of Schedule 3 to this Act.

Schedule 5 Amendment of Acts

5.1 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

5.2 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 35 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*”.

5.3 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, heading

Omit “**council and**”.

[10] Schedule 2

Omit “(Sections 14, 15, 16, 17)”. Insert instead “(Section 17)”.

[11] Schedule 2, clause 1

Omit “the council or”.

[12] 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.

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

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

[14] 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.

[15] Schedule 2, clause 7

Omit the clause. Insert instead:

7 Meetings

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.

[16] 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 Secretary as soon as practicable after each meeting.

[17] 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.

[18] 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.

[19] 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".

5.4 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*".

5.5 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*".

5.6 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*”.

5.7 National Disability Insurance Scheme (NSW Enabling) Act 2013 No 104

[1] Section 4 Interpretation—key definitions

Omit paragraph (a) of 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*”.

5.8 Ombudsman Act 1974 No 68

[1] Part 3C

Insert before Part 4:

Part 3C Protection of people with disability

250 Definitions

In this Part:

Department means the Department of Family and Community Services.

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, or by another entity under a contract or other arrangement with 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 group accommodation.

head 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 25P.

Secretary means the Secretary of the Department.

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

25P 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 group 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 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 group accommodation by another person with disability living in the same supported group 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, or
 - (c) an incident occurring in supported group accommodation and involving a contravention of an apprehended violence order made for the protection of a person with disability, regardless of whether the order is contravened by an employee of the Department or a funded provider, a person with disability living in the supported group accommodation or another person, or
 - (d) an incident involving an unexplained serious injury to a person with disability living in supported group accommodation.
- (2) However, a reportable incident does not include an incident of a class or kind exempted by the Ombudsman under section 25S.
- (3) In this section:
apprehended violence order has the meaning it has in the *Crimes (Domestic and Personal Violence) Act 2007*.

25Q 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 Secretary or head of a funded provider to give information about the systems to the Ombudsman.

25R Reporting of reportable allegations or reportable convictions

- (1) The Secretary or head of a funded provider must give the Ombudsman notice of a reportable allegation or reportable conviction of which the Secretary or head 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 Secretary or head of the funded provider 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 more than 30 days) after the Secretary or head of the funded provider becomes aware of the reportable allegation or reportable conviction, or
 - (b) by the later day agreed to by the Ombudsman.
- (4) The Secretary or head of the funded provider must make arrangements to require employees of the Department or funded provider to notify the Secretary or head of any reportable allegation or reportable conviction of which the employee becomes aware.

25S 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 Secretary or head of a funded provider of an exemption under subsection (1).

25T Disclosure of information about reportable incidents

The Secretary, a head 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.

25U 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 Secretary or head of the funded provider must give the Ombudsman the information or documents relating to the investigation required by the Ombudsman.

25V 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 Secretary or head 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 Secretary or head, 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 Secretary or head 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 Secretary, head of the funded provider 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.

25W 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 Secretary or head of a funded provider is to defer an investigation into a matter if the Ombudsman notifies the Secretary or head 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.

25X 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.

25Y Extension of reporting and disclosure provisions to all public authorities

The obligation to report under section 25R, and the authority to disclose information under section 25T, 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.

25Z 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.

[2] Schedule 1 Excluded conduct of public authorities

Insert at the end of paragraph (d) of clause 12 of Schedule 1:

, or

- (e) relates to a reportable incident or a reportable conviction (within the meaning of Part 3C of this Act), or to the inappropriate handling or response to such an incident or conviction.

5.9 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) (a).

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

[Second reading speech made in—
Legislative Council on 28 May 2014
Legislative Assembly on 14 August 2014]