

Intellectually Disabled Persons' Services (Amendment) Bill

No.

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LEGISLATIVE ASSEMBLY

Read 1° 14 September 1994

(Brought in by Mr John and Mr Gude)

A BILL

to amend the **Intellectually Disabled Persons' Services Act 1986** and
for other purposes.

Intellectually Disabled Persons' Services (Amendment) Act 1994

The Parliament of Victoria enacts as follows:

1. Purpose

The purpose of this Act is to make miscellaneous
amendments to the **Intellectually Disabled Persons'
Services Act 1986**.

2. Commencement

- (1) Section 1 and this section come into operation on the
day on which this Act receives the Royal Assent.
- (2) Section 9 is deemed to have come into operation on 1
October 1987.

Section headings appear in bold italics and are not part of the Act.
(See **Interpretation of Legislation Act 1984**.)

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- (3) Subject to sub-section (4), the remaining provisions of this Act come into operation on a day or days to be proclaimed.
- (4) If a provision referred to in sub-section (3) does not come into operation before 1 June 1995, it comes into operation on that day.

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No. 53/1986.
Reprinted to
N . 60/1989.
Subsequently
amended by
Nos 62/1992,
68/1992,
124/1993 and
31/1994.

3. Principal Act

In this Act, the **Intellectually Disabled Persons' Services Act 1986** is called the Principal Act.

4. Definition of "intellectual disability"

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In section 3 of the Principal Act—

- (a) in the definition of "**eligible person**", after "8" insert "or 8A";
- (b) for the definition of "**intellectual disability**" substitute—

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"**intellectual disability**", in relation to a person over the age of 5 years, means the concurrent existence of—

- (a) significant sub-average general intellectual functioning; and
- (b) significant deficits in adaptive behaviour—

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each of which became manifest before the age of 18 years;'.

5. Statement of principles

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In section 5 of the Principal Act, after paragraph (n) insert—

- "(o) The families of intellectually disabled persons have an important role to play in nurturing and supporting a family member with an intellectual disability."

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6. Application to assess eligibility

5 (1) In section 7 (3) of the Principal Act, for “60 days of receiving the request during the first 12 months after the commencement of this section and within 30 days of receiving the request after the first 12 months of the commencement of this section” **substitute** “30 days after receiving the request”.

(2) In section 7 of the Principal Act, for sub-section (4) **substitute**—

10 “(4) Despite sub-section (3), the Secretary may defer the undertaking of an assessment of the eligibility of a person for services for up to 3 months after receiving the request or discontinue any uncompleted assessment and defer the undertaking of a further assessment for up to 3 months after discontinuing the assessment, as the case requires, if the Secretary believes on reasonable grounds that any assessment completed before then is unlikely to establish reliably whether or not the person is intellectually disabled.

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25 (5) In an emergency a person is entitled to services before an assessment of the eligibility of the person for those services is undertaken or completed if the Secretary believes that it is likely that the assessment will result in the person being declared to be eligible for services.”.

7. New sections 8 and 8A substituted

30 For section 8 of the Principal Act **substitute**—

“8. Assessment of intellectual disability

35 (1) A person over the age of 5 years is only eligible for services if the Secretary is satisfied that he or she is intellectually disabled.

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- (2) For the purposes of assessing whether or not a person over the age of 5 years is intellectually disabled—
- (a) if a standardised measurement of intelligence is used to assess general intellectual functioning and it—
- (i) indicates that the person has an intelligence not higher than 2 standard deviations below the population average, then he or she must be taken to have significant sub-average general intellectual functioning; 5 10
- (ii) indicates that the person has an intelligence not lower than 2 standard deviations below the population average, then he or she must be taken not to have significant sub-average general intellectual functioning; 15 20
- (iii) is inconclusive as to whether or not the person has an intelligence higher or lower than 2 standard deviations below the population average, then the Secretary may take into account other indicators of general intellectual functioning in determining whether or not the person has significant sub-average general intellectual functioning; 25 30
- (b) if a standardised measurement of adaptive behaviour is used to assess adaptive behaviour and it indicates a score at or below the second percentile of people of the same age and cultural group, then he or she must be taken to have significant deficits in adaptive behaviour. 35 40

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- (3) In applying a standardised measurement of intelligence for the purposes of sub-section (2) (a), the Secretary must consider the test result within the 95% confidence level as determined by the standard error of measurement of the test.
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- (4) Nothing in sub-section (2) requires the Secretary to use a standardised measurement in the assessment of intellectual disability.
- 15
- (5) If the Secretary is satisfied that a person is intellectually disabled, he or she must issue a declaration of eligibility for services within 14 days after the completion of the assessment.
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- (6) If the Secretary is not satisfied that a person is intellectually disabled, he or she must within 14 days after the completion of the assessment—
- (a) give to the person who made the request under section 7 a written statement of reasons why he or she is not satisfied that the person is intellectually disabled; and
- 25
- (b) ensure that arrangements are made to convey those reasons to the person who has been assessed in the language, mode of communication or terms which that person is most likely to understand.
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- (7) A declaration of eligibility entitles the eligible person to receive services under this Act.

8A. *Assessment of developmental delay*

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- (1) Despite section 8 (1), a person under the age of 6 years is eligible for services if the

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Secretary is satisfied that he or she is developmentally delayed.

- (2) In assessing whether or not a person under the age of 6 years is developmentally delayed, a flexible combination of assessments reflecting the various criteria specified in the definition of “developmental delay” and the age of the person is to be used. 5
- (3) Nothing in this Act requires the Secretary to use a formal method of assessment of developmental delay. 10
- (4) If the Secretary is satisfied that a person is developmentally delayed, he or she must issue a declaration of eligibility for services within 14 days after the completion of the assessment. 15
- (5) If the Secretary is not satisfied that a person is developmentally delayed, he or she must within 14 days after the completion of the assessment give to the person who made the request under section 7 a written statement of reasons why he or she is not satisfied that the person is developmentally delayed. 20
- (6) A declaration of eligibility entitles the eligible person to receive services under this Act.”. 25

8. Review of general service plan

- (1) In section 10 (3) of the Principal Act, for “and must” **substitute** “and, subject to sub-section (3C), must”. 30
- (2) In section 10 of the Principal Act, after sub-section (3) **insert**—
- “(3A) An eligible person who is not receiving services and who does not wish to have the mandatory 5 year review of his or her general service plan 35

conducted may give notice in writing of that fact to the Secretary.

5 (3B) The guardian of an eligible person who is not receiving services who does not wish to have the mandatory 5 year review of the eligible person's general service plan conducted may give notice in writing of that fact to the Secretary.

(3C) If the Secretary receives a notice under sub-section (3A) or (3B)—

10 (a) he or she is not required by sub-section (3) to review the general service plan; and

(b) the general service plan ceases to be in force.

15 (3D) Nothing in sub-sections (3A) to (3C) prevents a request being made to the Secretary by the eligible person or his or her parent, guardian or primary-carer for the preparation of a new general service plan in respect of the eligible person in accordance with section 9.

20 (3E) The Secretary must ensure that a general service plan is prepared within a reasonable time of being requested to do so under sub-section (3D).”.

9. *New section 12A inserted*

25 (1) After section 12 of the Principal Act insert—

“12A. *Application of Act to former clients*

30 (1) A person who was a registered client of the Office of Intellectual Disability Services immediately before 1 October 1987 must, for the purposes of this Act, be taken to be—

(a) an eligible person; and

(b) entitled to receive services under this Act after that date; and

35 (c) entitled, if he or she does receive services after that date—

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- (i) to have a general service plan prepared in respect of him or her by the Director-General under section 9 before 1 October 1989; and 5
- (ii) to have an individual program plan prepared in respect of him or her by the Director-General under section 11 before 1 October 1989.
- (2) If a declaration of eligibility is required in respect of a person for any purpose by or under this or any other Act, a declaration can only be issued in respect of the person if the Secretary is satisfied that the person is intellectually disabled after the completion of an assessment in accordance with section 8, even if he or she is a person referred to in sub-section (1).” 15
- (2) Sections 9 (4) and 11 (3) of the Principal Act are repealed. 20

10. *New sections 12B and 12C inserted*

Before section 13 of the Principal Act insert—

“12B. *Re-assessment of eligibility of person entitled to receive services*

- (1) If at any time the Secretary believes on reasonable grounds that an assessment of a person over the age of 5 years who is entitled to receive services under this Act (including a person referred to in section 12A (1)) may result in the person not being assessed as intellectually disabled, he or she may direct that the person be re-assessed in accordance with section 8 or, in the case of a person referred to in section 12A (1), assessed if he or she has not previously been assessed in accordance with section 8. 25 30 35

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- (2) The Secretary may give a direction under sub-section (1) on his or her own initiative or at the request of the person entitled to receive services or of his or her parent, guardian or primary-carer.
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- (3) If after the completion of the re-assessment or assessment the Secretary is not satisfied that the person is intellectually disabled, the Secretary must within 14 days of the re-assessment or assessment being completed—
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- (a) revoke any declaration of eligibility previously issued; and
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- (b) ensure that arrangements are made to convey to the person who has been re-assessed or assessed the reasons why that person is no longer eligible for services in the language, mode of communication or terms which that person is most likely to understand.

12c. *Re-assessment of eligibility of person not entitled to receive services*

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A person who has previously been assessed as not being intellectually disabled may be re-assessed in accordance with section 8 if—

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- (a) that person or his or her parent, guardian or primary-carer requests the Secretary to re-assess that person; and
- 35
- (b) the Secretary believes on reasonable grounds that because of new facts or circumstances that have arisen since the completion of the previous assessment it is likely that the re-assessment would result in the person being assessed as intellectually disabled.”.

11. Confidentiality

In section 16 of the Principal Act, for sub-sections (2) to (6) **substitute—**

“(2) Sub-section (3) applies to—

- (a) a person who is or has been appointed to any office under this Act or employed or engaged under this Act; 5
- (b) a person who is or has been employed or engaged by a contracted service provider or a registered service or who otherwise provides or has provided services under this Act; 10
- (c) a person who is or has been a member of staff of the public service. 15

(3) A person to whom this sub-section applies must not, directly or indirectly, disclose to any person any information relating to an eligible person or a person in respect of whom a request is made under section 7 that is gained by or given to that person in his or her official capacity and that identifies, or is likely to lead to the identification of, the person to whom the information relates. 20

Penalty: 10 penalty units.

(4) Sub-section (3) does not prevent the disclosure of information— 25

- (a) to the extent that is reasonably required in connection with the performance of a duty or the exercise of a power or function under this or any other Act;
- (b) with the consent of the person to whom the information relates or, if that person is dead, of his or her next-of-kin; 30
- (c) to another person to whom sub-section (3) applies, if the disclosure is reasonably required in connection with the provision by that other person of services under this Act to the person to whom the information relates; 35

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- (d) to any person to the extent that is necessary in connection with the provision of care or treatment to the person to whom the information relates if the person to whom the information relates is unable to consent to the disclosure and without the disclosure he or she may, in the opinion of the discloser, suffer detriment;
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- (e) to a court or tribunal in the course of a proceeding before it;
- (f) to the Intellectual Disability Review Panel in the course of a proceeding before it;
- (g) to the Public Advocate;
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- (h) to the Secretary;
- (i) to the Minister;
- (j) to the Commonwealth Minister for the time being responsible for or administering the Medicare scheme, if the disclosure is made in connection with that scheme;
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- (k) to a person to whom in the opinion of the Minister it is in the public interest that the disclosure be made.”.

12. *New section 16A inserted*

After section 16 of the Principal Act insert—

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“16A. *Former clients of Office of Intellectual Disability Services*

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Despite anything to the contrary in this Part, a person referred to in section 12A (1) who has not received services under this Act for a continuous period of at least two years (whether that period is before or after or partly before and partly after the commencement of section 12 of the **Intellectually Disabled Persons' Services (Amendment) Act 1994**) is only

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entitled to receive or again receive

services under this Act if a declaration of eligibility is issued in respect of him or her on the completion of an assessment undertaken in accordance with section 8.”.

13. *Funding and services agreement*

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In section 24 (4) of the Principal Act, after paragraph (k) insert—

“(l) the termination of the agreement by the Secretary if the Secretary is of the opinion that—

- (i) any performance standards specified in the agreement in relation to the provision of the services are not being met by the registered service; or 10
- (ii) the provision of the services is being inefficiently or incompetently managed; or 15
- (iii) the registered service has failed to provide an effective service in accordance with the principles specified in section 23 (3); or
- (iv) the registered service has breached or failed to comply with any provision in the agreement.”. 20

14. *New section 33 substituted*

For section 33 of the Principal Act substitute—

“33. *Proceedings before Review Panel*

- (1) All proceedings before the Intellectual Disability Review Panel are to be open to the public unless the Panel otherwise directs under this section. 25
- (2) The Intellectual Disability Review Panel may, on the application of a party to the proceeding or of any other person with a direct interest in the proceeding— 30

(a) direct that the hearing of the whole or any part of a proceeding be closed to members of the public; or

(b) direct that only persons or classes of persons specified by it may be present during the whole or any part of the hearing of a proceeding.

(3) Any other party or person with a direct interest in the proceeding is entitled to be heard on an application under sub-section (2).

(4) If a direction has been given under this section, the Intellectual Disability Review Panel must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the proceeding is being heard.

(5) A person must not contravene a direction given and posted under this section.

Penalty: 10 penalty units.”.

15. *New section 35A inserted*

In Division 1 of Part 5 of the Principal Act, after section 35 insert—

“35A. *Annual report of Intellectual Disability Review Panel*

(1) The Intellectual Disability Review Panel must as soon as practicable after the end of each financial year and not later than the following 30 September submit to the Minister a report on its operations during the financial year.

(2) The annual report of operations—

(a) must be in a form and contain information determined by the

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Intellectual Disability Review Panel
to be appropriate; and

(b) must contain any other information
required by the Minister.

(3) The Minister must cause the annual report
to be laid before the Legislative Council
and the Legislative Assembly before the
expiration of the 7th sitting day of the
Legislative Council or the Legislative
Assembly, as the case may be, after it is
received by the Minister. 5
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(4) If the Intellectual Disability Review Panel
fails to submit an annual report to the
Minister by 30 September in any year, the
Minister must report or cause to be
reported that failure and the reasons for it
to each House of the Parliament.”. 15

16. Reviewable decisions

In section 51 of the Principal Act—

(a) for paragraph (a) **substitute—** 20

“(a) A decision under section 8 or 8A as to
whether or not a person is intellectually
disabled or developmentally delayed, as the
case requires;”;

(b) after paragraph (c) **insert—** 25

“(ca) A decision under section 12B by the
Secretary as to whether or not a person is
intellectually disabled;”.

17. Review of decisions

In section 52 of the Principal Act, for sub-section (1)
substitute— 30

“(1) Any person who is aggrieved by a reviewable
decision may within 30 days after the making of
that decision—

(a) apply to the Secretary for a review of the decision; or

(b) apply to the Intellectual Disability Review Panel for a review of the decision.

5 (1A) If an application is made under sub-section (1) (a), the Secretary must ensure that the review of the decision is completed and the applicant notified of the outcome within 14 days after the receipt of the application.

10 (1B) An applicant under sub-section (1) (a) who, having been notified of the outcome of the review under sub-section (1A), is still aggrieved may within 14 days after being so notified apply to the Intellectual Disability Review Panel for a review of the decision.

15 (1C) Nothing in this section requires a person to apply under sub-section (1) (a) before making application to the Intellectual Disability Review Panel.

20 (1D) The executive officer must within 7 days after an application for review is made to the Intellectual Disability Review Panel (whether under sub-section (1) (b) or (1B)) cause notice of the making of the application to be given to the Secretary.”

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18. *Transitional provisions*

30 (1) The amendment of the Principal Act made by section 6 (2) applies to requests for assessment received before as well as after the commencement of that section.

35 (2) The amendment of the Principal Act made by section 7 applies only with respect to assessments commenced after the commencement of that section, irrespective of when the request for assessment was received.

(3) The amendment of the Principal Act made by section 14 applies only with respect to hearings begun before

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the Intellectual Disability Review Panel after the commencement of that section.

- (4) The amendment of the Principal Act made by section 17 applies to reviewable decisions made before as well as after the commencement of that section.

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