

Intellectually Disabled Persons' Services (Amendment) Bill

EXPLANATORY MEMORANDUM

Clause 1 states the purpose of the Bill.

Clause 2 provides for the commencement of the Bill.

Clause 3 states that the "**Intellectually Disabled Persons' Services Act 1986**" ("the Act") is the Principal Act.

Clause 4 inserts a new definition of "intellectual disability" into section 3 (1) of the Principal Act. The new definition is simply a clarification of the existing definition.

Clause 5 inserts a new section 5 (o) into the Principal Act to provide recognition of the role that families play in providing support for family members who have an intellectual disability.

Clause 6 amends section 7 of the Principal Act. The amendment to section 7 (3) removes the obsolete transitional provision.

Clause 6 (2) inserts a power into the Principal Act for the Secretary to defer the undertaking of an assessment or discontinue an uncompleted assessment if he believes on reasonable grounds that any assessment completed before then is unlikely to establish reliably whether or not the person is intellectually disabled.

The need to defer assessment may arise if the person is suffering from acute mental or physical illness such that testing is made impossible, or if conducted within 30 days, would be unlikely to yield a result representative of the applicant's usual abilities.

Clause 7 amends section 8 and inserts a new section 8A into the Principal Act.

Section 8 of the Principal Act provides for the assessment of a person's intellectual disability. The section as amended makes it clear that the Secretary must be satisfied that a person is intellectually disabled before they are eligible for services under the Act. The section does not prescribe how the Secretary is to satisfy himself regarding each of the three criteria of intellectual disability however, if standardised testing is used, the section specifies the interpretation that must be given to the results.

Because standardised measurements of general intellectual functioning are not 100% reliable, all tests used specify an error of measurement associated with the test. The standard error of measurement is an estimate of the amount of error usually attached to the person's score obtained on that test. When someone is assessed by a standardised test, there is always some uncertainty about a person's true score. Therefore a range is specified within which the person's intelligence probably falls.

The new section 8 (2) specifies that if the Secretary uses a standardised measurement of intelligence to assess general intellectual functioning, if the full range within which a person's intelligence falls is below a certain statistical point the person must be taken to have significant sub-average general intellectual functioning. If the full range within which the intelligence falls is higher than a certain statistical point, the person must not be taken to have significant sub-average general intellectual functioning. Section 8 (2) (a)

(iii) provides that if the score falls between those two statistical points, (ie: the range is such that it falls both sides of the statistical level specified) the Secretary may take into account other indicators of general intellectual functioning in determining whether or not a person has significant sub-average general intellectual functioning. Once the Secretary determines to use a standardised test of general intellectual functioning, it is only in these borderline cases that the Secretary may take other factors into account to determine general intellectual functioning.

The statistical level that has been specified is two standard deviations below the population average. This is consistent with international definitions of significant sub-average general intellectual functioning.

The range within which a person's intelligence falls will vary depending on whether the examiner is 50% confident they fall within that range or 95% confident they fall within that range. New Section 8 (3) specifies that the Secretary in determining whether someone's full range falls below two standard deviations below the population average, above two standard deviations below the population average or whether it is inconclusive as to whether they are two standard deviations below the population average, (ie: falls both sides of that point) the statistical standard that must be applied is a 95% confidence level as determined by the standard error of measurement of the test.

The new section 8 (2) (b) provides that if a standardised test of adaptive behaviour is used, a score below a certain statistical measure means that the person must be taken to have significant deficits in adaptive behaviour.

New section 8A simply replicates the existing section 8 (1) (a) of the Principal Act. It does not alter the assessment procedure relevant to developmental delay.

Clause 8 inserts a new sub-section (3B) into section 10 of the Principal Act to give an eligible person or their guardian the right to refuse a mandatory review of a general service plan if the eligible person is not currently receiving services under the Act. Many people, although eligible for services do not receive or want to receive services that may exist. If people are not receiving services, it is contrary to the principles of the Act that they be required to co-operate with a review of a general service plan if they do not want to. This provision has been included to give them the entitlement to refuse such a review and then request a general service plan at a later time if they wish to resume services thereby giving the person control over receipt of services.

Clause 9 inserts a new section 12A into the Principal Act.

The intention of the Principal Act was that clients who were registered with the Office of Intellectual Disability Services at the time that the Act became operational would be entitled to request a general service plan and an individual program plan if they continued to receive services. It is unclear from the Act, whether these clients are entitled to ongoing services and what their status is in respect to all the other provisions of the Act. Sections 9 (4) and 11 (3) of the Principal Act which cover their entitlements do not make any other transitional arrangements in respect of these clients.

Clause 9 provides a retrospective transitional provision to correct this oversight in the legislation. The section deems these people to be eligible persons under the Act and entitled to receive services. The section also makes it clear that in any situation where a declaration of eligibility is required, a client who is eligible by virtue of this section only

will be required to undergo an assessment of eligibility in accordance with section 8. For example, a declaration of eligibility may be required under the Sentencing Act.

Clause 10 inserts new sections 12b and 12c into the Principal Act.

New section 12b provides for the assessment or reassessment of people over the age of five years who are currently eligible for services under the Act. If the person is assessed and they are not intellectually disabled, any declaration of eligibility that may exist in respect of that person will be revoked. The outcome of an assessment or reassessment of a person under this provision is a reviewable decision by the Intellectual Disability Review Panel. The provision will enable the provision of services under the Principal Act to be limited to people with an intellectual disability.

New section 12c provides for the re-assessment of a person who has been assessed under section 8 of the Principal Act and found not to be intellectually disabled. At present, the Principal Act is not clear about the right of these people to request a further assessment by the Secretary of their intellectual disability. This section makes it clear that the person may be reassessed by the Secretary if there are new facts or circumstances which the Secretary believes on reasonable grounds are such that it is likely the reassessment would result in the person being assessed as intellectually disabled. The result of any further assessment undertaken would be reviewable as is any decision made under section 8.

Clause 11 amends section 16 of the Principal Act to rectify numerous problems with the provision. Section 16 relates to the confidentiality of information that is received by specified persons in their official capacity.

The amendments attempt to ensure that all people who have functions, powers, or duties under the Act or are involved with the provision of services to intellectually disabled people are bound by the confidentiality provision. The amendment provides that it is not an offence to disclose information in certain specified circumstances. The amendment simply enables disclosure to occur without penalty, it does not in any circumstance compel the disclosure of information if one of the exceptions applies.

The Guardianship and Administration Board is no longer listed as a specific exemption because it is already covered by 16 (4) (e) which allows for disclosure to a court or tribunal.

There is also no longer a reference to the **Freedom of Information Act 1982** because it is unnecessary. This provision does not limit the operation of the Freedom of Information Act.

Clause 12 inserts a new section 16A into the Principal Act to require clients of the Department prior to 1 October 1987 to undergo an assessment of eligibility for services under section 8 of the Principal Act, if they have not been in receipt of services for a continuous period of two years.

Clause 13 amends section 24 (4) of the Principal Act to make the power to terminate a funding and services agreement with a registered service consistent with the power to terminate a contract with a contracted service provider under section 22A (2) (b).

Clause 14 substitutes a new section 33 of the Principal Act to provide that proceedings before the Intellectual Disability Review Panel are to be open to the public. The provision

allows for parties or persons with a direct interest in the proceedings to make application to the Tribunal for a particular matter to be closed. It also gives other parties or persons with a direct interest in the proceedings the right to be heard on the issue of whether proceedings in any particular matter should be closed. This is consistent with provisions relating to other appeal bodies.

Clause 15 inserts a new section 35A into the Principal Act which provides that the Intellectual Disability Review Panel is to prepare an annual report for the Minister. The annual reporting requirement is consistent with provisions relating to annual reports in other legislation.

Clause 16 makes consequential amendments to section 51 of the Principal Act which provides for the review of decisions by the Intellectual Disability Review Panel.

Clause 17 amends section 52 of the Principal Act to provide that a person who is aggrieved by a reviewable decision can seek review of the decision by the Secretary prior to seeking review by the Intellectual Disability Review Panel. This does not diminish the persons right to seek review from the Intellectual Disability Review Panel, nor is a person obliged to apply for review by the Secretary prior to making application to the Intellectual Disability Review Panel. The provision is included simply to provide a quick mechanism for review with the Secretary, if the matter is one that the person believes can be solved by the Secretary.

If after review by the Secretary, the person is still aggrieved, they have a further fourteen days to apply to the Intellectual Disability Review Panel for review of the decision.

Clause 18 provides for the transitional arrangements that are to apply.