

**Legislative Council—No 40**

As introduced and read a first time, 4 April 2012

South Australia

**Disability Services (Miscellaneous) Amendment  
Bill 2012**

A BILL FOR

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

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**The Parliament of South Australia enacts as follows:**

**Part 1—Preliminary**

**1—Short title**

This Act may be cited as the *Disability Services (Miscellaneous) Amendment Act 2012*.

5 **2—Commencement**

This Act will come into operation on a day to be fixed by proclamation.

**3—Amendment provisions**

In this Act, a provision under a heading referring to the amendment of a specified Act amends the Act so specified.

10 **Part 2—Amendment of *Disability Services Act 1993***

**4—Insertion of heading to Part 1**

Before section 1 insert:

**Part 1—Preliminary**

**5—Amendment of section 3—Interpretation**

15 (1) Section 3—before the definition of *disability* insert:

*behaviour support plan* means a behaviour support plan under section 81;

*Commissioner* means the person appointed, or from time to time acting, as the Commissioner under Part 3;

20 *chemical restraint* means the administration of a chemical substance to a person for the primary purpose of subduing or controlling the behaviour of that person;

**Department** means the administrative unit that is, under the Minister, responsible for the administration of this Act;

(2) Section 3—after the definition of **disability services** insert:

**disability service provider** means a person that provides disability services;

**mechanical restraint** means the use of an object or device for the primary purpose of restricting the free movement of a person but does not include the use of objects or devices for therapeutic purposes or to enable the safe transportation of that person;

**Public Advocate** means the person holding or acting in the office of Public Advocate under the *Guardianship and Administration Act 1993*, and includes any person acting on behalf of the Public Advocate in accordance with that Act;

**physical restraint** means the use of any part of another person's body to restrict the free movement of a person with the aim of controlling that person's behaviour;

**register** means register, license, approve, admit, certify (including by way of practising certificate) or authorise in any other manner pursuant to an Act (including pursuant to the *Health Practitioner Regulation National Law (South Australia)*) a person to provide a health or community service or to practise as a health or community service provider;

**registered service provider** means a disability service provider registered by a registration authority;

**registration authority** means—

- (a) the body with the function, under a registration law, of determining an application for registration under that law and includes a body vested with disciplinary powers under a registration law; or
- (b) any other body brought within the ambit of this definition by the regulations;

**registration law** means—

- (a) the *Health Practitioner Regulation National Law*; or
- (b) the *Health Practitioner Regulation National Law (South Australia) Act 2010*; or
- (c) the *Occupational Therapy Practice Act 2005*; or
- (d) an Act brought within the ambit of this definition by the regulations;

(3) Section 3—after the definition of **researcher** insert:

**residential services** means accommodation and other types of support (including assistance with day-to-day living, intensive forms of care, and assistance towards independent living) when provided to residents with a disability at a special purpose facility;

**restraint** means chemical, physical or mechanical restraint;

*restrictive intervention* means any intervention that is used to restrict the rights or freedom of movement of a person with a disability including—

- (a) restraint;
- (b) seclusion;
- (c) segregation;

*State Ombudsman* means the person holding or acting in the office of Ombudsman under the *Ombudsman Act 1972*, and includes any person acting on behalf of the Ombudsman in accordance with that Act.

## 6—Insertion of heading to Part 2

After section 3 insert:

### Part 2—Funding

## 7—Insertion of Part 3

After section 7 insert:

### Part 3—Disability Services Commissioner

#### Division 1—Appointment and conditions of office

##### 8—Appointment

- (1) There is to be a *Disability Services Commissioner (the Commissioner)*.
- (2) The Commissioner is appointed by the Governor.

##### 9—Term of office and conditions of appointment

- (1) The Commissioner is appointed on conditions determined by the Governor and for a term, not exceeding 7 years, specified in the instrument of appointment.
- (2) An appointment may be renewed but a person must not hold office as Commissioner for more than 2 consecutive terms.
- (3) The Governor may remove the Commissioner from office on the presentation of an address to the Governor from both Houses of Parliament seeking the Commissioner's removal.
- (4) The Governor may suspend the Commissioner from office on the ground of incompetence or misbehaviour and, in that event—
  - (a) a full statement of the reason for the suspension must be laid before both Houses of Parliament within 3 sitting days of the suspension; and
  - (b) if, at the expiration of 1 month from the date on which the statement was laid before Parliament, an address from both Houses of Parliament seeking the Commissioner's removal has not been presented to the Governor, the Commissioner must be restored to office.

(5) The office of Commissioner becomes vacant if the Commissioner—

- (a) dies; or
- (b) resigns by written notice given to the Minister; or
- (c) completes a term of office and is not reappointed; or
- 5 (d) is removed from office by the Governor under subsection (3); or
- (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
- 10 (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
- 15 (h) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office.

(6) Except as is provided by this section, the Commissioner may not be removed or suspended from office, nor will the office of the Commissioner become vacant.

## **10—Remuneration**

The Commissioner is entitled to remuneration, allowances and expenses determined by the Governor.

## **11—Temporary appointments**

The Minister may appoint a person (who may but need not be an employee in the Public Service) to act as the Commissioner—

- (a) during a vacancy in the office of Commissioner; or
- (b) when the Commissioner is absent from, or unable to discharge, official duties; or
- 30 (c) if the Commissioner is suspended from office under this Act.

## **Division 2—Functions and powers**

### **12—Functions**

(1) The Commissioner has the following functions:

- 35 (a) to receive, assess, investigate and resolve complaints relating to disability services;
- (b) if appropriate—to conciliate where a complaint has been made in relation to a disability service provider;

- 5
- (c) to make recommendations for improving disability services and preserving and increasing the rights of people who use those services;
- (d) to review and identify the causes of complaints and to recommend ways to remove, resolve or minimise those causes;
- 10
- (e) to provide information, education and advice in relation to—
- (i) disability service rights and responsibilities; and
  - (ii) procedures for resolving complaints; and
  - (iii) other matters (if any) determined to be appropriate by the Commissioner;
- (f) to encourage and assist disability service users to resolve complaints directly with disability service providers;
- 15
- (g) to assist disability service providers to develop or improve training and procedures to deal with and resolve complaints;
- (h) maintain a record of all complaints received by the Commissioner;
- 20
- (i) to inquire into and report on any matter relating to disability services on the Commissioner's own motion or at the request of the Minister;
- (j) to advise, and report to, the Minister on any matter relating to disability services or the administration or operation of this Act;
- 25
- (k) to provide information, advice and reports to registration authorities and to work with registration authorities to develop or improve procedures relating to the assessment and investigation of complaints and grievances;
- (l) to maintain links with—
- (i) disability service providers; and
  - (ii) organisations that have an interest in the provision of disability services; and
  - (iii) organisations that represent the interests of the users of disability services;
- 30
- (m) to consult and cooperate with other agencies and authorities that are involved in protecting the interests and rights of members of the community in the area of the provision of disability services, including—
- (i) the Public Advocate; and
  - (ii) the State Ombudsman; and
  - (iii) the Australian Human Rights Commission; and
- 35
- 40

(n) to perform other functions conferred on the Commissioner by or under this or any other Act.

(2) The Commissioner must, in providing information and advice, and in the assessment and consideration of any complaint, take into account, to such extent as may be appropriate, the position of persons within special needs groups.

(3) For the purposes of subsection (2), *special needs groups* are particular classes of persons who, because of the nature of the classes to which they belong, may suffer disadvantage in the provision of services unless their needs are recognised.

(4) The Commissioner must, in acting under this Act, give particular attention to the position of volunteers and to their value in providing disability services within the community and should not unnecessarily involve them in any proceedings under this Act.

### **13—Powers**

The Commissioner has the powers necessary or expedient for, or incidental to, the performance of the Commissioner's functions.

### **14—Independence**

(1) In performing and exercising his or her functions and powers under this Act, the Commissioner must act independently, impartially and in the public interest.

(2) Subject to this Act, the Minister cannot control how the Commissioner is to exercise the Commissioner's statutory functions and powers<sup>1</sup>.

#### **Note—**

1 This provision does not derogate from any express power of the Minister under this Act.

## **Division 3—Other matters**

### **15—Staff**

(1) The Commissioner's staff consists of—

- (a) Public Service employees assigned to work in the office of the Commissioner under this Act; and
- (b) any person appointed under subsection (3).

(2) The Minister may, by notice in the Gazette—

- (a) exclude Public Service employees who are members of the Commissioner's staff from specified provisions of the *Public Sector Act 2009*; and
- (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)—determine that those provisions will apply,

and such a notice will have effect according to its terms.

- 5
- (3) The Commissioner may, with the consent of the Minister, appoint staff for the purposes of this Act.
- (4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person will not be a Public Service employee.
- 10
- (5) The Commissioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

### **16—Annual report**

- 15
- (1) The Commissioner must, on or before 30 September in every year, forward a report to the Minister on the work of the Commissioner under this Act during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

### **17—Other reports**

- 20
- (1) The Commissioner may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the Commissioner's functions under this Act.
- 25
- (2) Subject to subsection (3), the Minister must, within 2 weeks after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
- (3) If the Minister cannot comply with subsection (2) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—
- 30
- (a) immediately cause the report to be published; and
- (b) lay the report before their respective Houses at the earliest opportunity.
- (4) A report will, when published under subsection (3)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.
- 35

### **18—Delegations**

- 40
- (1) The Commissioner may delegate a power or function vested in or conferred on the Commissioner (as the case may be) under this Act—
- (a) to a particular person or body; or

- (b) to the person for the time being occupying a particular office or position.
- (2) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- 5 (3) A delegation—
- (a) may be absolute or conditional; and
- (b) does not derogate from the power of the delegator to act in a matter; and
- (c) is revocable at will by the delegator.
- 10 (4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Commissioner, containing particulars of a delegation under this section, will, in the absence of proof to the contrary, be accepted as proof that the delegation was made in accordance with the particulars.

## 15 **Part 4—Senior Practitioner**

### **19—Appointment**

- (1) There is to be a *Senior Practitioner*.
- (2) The Senior Practitioner is appointed by the Governor (being satisfied that the person appointed has the appropriate clinical qualifications and experience to perform the functions and exercise the powers conferred on the Senior Practitioner under this Act).
- 20

### **20—Term of office and conditions of appointment**

- (1) The Senior Practitioner is appointed on conditions determined by the Governor and for a term, not exceeding 3 years, specified in the instrument of appointment.
- 25 (2) An appointment may be renewed but a person must not hold office as Senior Practitioner for more than 2 consecutive terms.
- (3) The Governor may suspend the Senior Practitioner from office on the ground of incompetence or misbehaviour.
- 30 (4) The Governor may remove the Senior Practitioner from office on the ground of—
- (a) mental or physical incapacity to carry out official duties satisfactorily; or
- (b) neglect of duty; or
- 35 (c) dishonourable conduct; or
- (d) any other ground that the Executive Council considers sufficient.
- (5) The office of Senior Practitioner becomes vacant if the Senior Practitioner—
- 40 (a) dies; or

- (b) resigns by written notice given to the Minister; or
- (c) completes a term of office and is not reappointed; or
- (d) is removed from office by the Governor under subsection (4); or
- 5 (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
- (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
- 10 (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or
- 15 (h) becomes, in the opinion of the Governor, mentally or physically incapable of carrying out satisfactorily the duties of office.

- (6) Except as is provided by this section, the Senior Practitioner may not be removed or suspended from office, nor will the office of the Senior Practitioner become vacant.

## **21—Remuneration**

20 The Senior Practitioner is entitled to remuneration, allowances and expenses determined by the Governor.

## **22—Temporary appointments**

The Minister may appoint a person (who may but need not be an employee in the Public Service) to act as the Senior Practitioner—

- 25 (a) during a vacancy in the office of Senior Practitioner; or
- (b) when the Senior Practitioner is absent from, or unable to discharge, official duties; or
- (c) if the Senior Practitioner is suspended from office under this Act.

## **23—Functions**

30 The Senior Practitioner has the following functions:

- (a) to develop guidelines and standards with respect to restrictive interventions and compulsory treatment;

**Note—**

35 The guidelines and standards may include clinical matters.

- (b) to provide education and information to disability service providers with respect to restrictive interventions and compulsory treatment;

- 5
- (c) to provide information with respect to the rights of persons with a disability who may be subject to the use of restrictive interventions and compulsory treatment;
- (d) to provide advice to disability service providers to improve practice in relation to restrictive interventions and compulsory treatment;
- 10
- (e) to give directions to disability service providers in relation to restrictive interventions and compulsory treatment and behaviour support plans and treatment plans;
- (f) to develop links and access to professional bodies and academic institutions for the purpose of facilitating knowledge and training in clinical practice for persons working with persons with a disability;
- 15
- (g) to undertake research into restrictive interventions and compulsory treatment and provide information on practice options to disability service providers;
- (h) to evaluate and monitor the use of restrictive interventions across disability services and to recommend improvements in practice to the Minister;
- 20
- (i) to undertake any function relating to persons with a disability as may be directed in writing by the Minister;
- (j) to perform other functions conferred on the Senior Practitioner by or under this or any other Act.

#### **24—Powers**

25                   The Senior Practitioner has the powers necessary or expedient for, or incidental to, the performance of the Senior Practitioner's functions.

#### **25—Powers in relation to restrictive practices**

- 30           (1) Without limiting any other power of the Senior Practitioner, the Senior Practitioner has the following additional powers in relation to restrictive interventions or compulsory treatments:
- 35                   (a) to visit and inspect any part of premises where disability services are being provided (provided that premises, or a part of premises, used as a private residence that is not a residential service may only be visited and inspected if there are, in the opinion of the Senior Practitioner, reasonable grounds to do so);
- 40                   (b) to meet with any person who is subject to any restrictive intervention or compulsory treatment;
- (c) to investigate, audit and monitor the use of restrictive interventions and compulsory treatment;
- (d) to inspect and make copies of, or take extracts from, any document relating to any person who is subject to any restrictive intervention or compulsory treatment;

- 5
- (e) to meet with any person involved in the development, implementation or authorisation of any restrictive intervention or compulsory treatment upon request;
- (f) to request information from a disability service provider relating to any restrictive intervention or compulsory treatment;
- (g) to authorise by written order given to the disability service provider the use of a restrictive intervention.
- 10 (2) The Senior Practitioner may, by written order, direct a disability service provider—
- (a) to discontinue or alter as specified in the order, a practice, procedure or treatment observed or carried out by the disability service provider;
- 15 (b) to observe or carry out a practice, procedure or treatment specified in the order;
- (c) to provide a practice, procedure or treatment, or a particular practice, procedure or treatment specified in the order, to a person with a disability who is specified in the order.
- 20 (3) If the Senior Practitioner gives a direction under subsection (2)(a) to discontinue a practice, procedure or treatment, the Senior Practitioner must provide assistance in developing alternative strategies for the management of the behaviour of the person affected.
- (4) The Senior Practitioner must as soon as practicable advise in writing a person with a disability of—
- 25 (a) any authorisation given in relation to that person under subsection (1)(g); or
- (b) any direction given in relation to that person under subsection (2).
- 30 (5) If the Senior Practitioner wishes to perform or exercise, or is performing or exercising, any power, duty or function under this Act, the disability service provider and every member of the staff or management of the disability service provider must provide the Senior Practitioner with any reasonable assistance that the Senior Practitioner requires to perform or exercise that power, duty or
- 35 function effectively.
- (6) A disability service provider or member of the staff or management of a disability service provider must—
- (a) reasonably render assistance when required to do so under subsection (5); and
- 40 (b) give full and true answers to the best of that person's knowledge to any questions asked by the Senior Practitioner in the performance or exercise of any power, duty or function under this Act.

Maximum penalty: \$5 000.

## **26—Delegations**

- (1) The Senior Practitioner may delegate any of his or her functions or powers under this Act other than this power of delegation.
- (2) A delegation —
- 5                   (a) may be made to a person who, in the opinion of the Senior Practitioner—
- (i) has sufficient knowledge and expertise in respect of persons with a disability; and
- 10                   (ii) has appropriate skills and qualifications in respect of the power, duty or function being delegated; and
- (b) may be made subject to conditions and limitations specified in the instrument of delegation; and
- (c) is revocable at will and does not derogate from the power of the Senior Practitioner to act in a matter.
- 15                   (3) A power or function delegated under this section may, if the instrument of delegation so provides, be further delegated.
- (4) In any legal proceedings an apparently genuine certificate, purportedly signed by the Senior Practitioner, containing particulars of a delegation under this section, will, in the absence of proof to the
- 20                   contrary, be accepted as proof that the delegation was made in accordance with the particulars.

## **27—Staff**

- (1) The Senior Practitioner's staff consists of—
- 25                   (a) Public Service employees assigned to work in the office of the Senior Practitioner under this Act; and
- (b) any person appointed under subsection (3).
- (2) The Minister may, by notice in the Gazette—
- 30                   (a) exclude Public Service employees who are members of the Senior Practitioner's staff from specified provisions of the *Public Sector Act 2009*; and
- (b) if the Minister thinks that certain provisions should apply to such employees instead of those excluded under paragraph (a)—determine that those provisions will apply, and such a notice will have effect according to its terms.
- 35                   (3) The Senior Practitioner may, with the consent of the Minister, appoint staff for the purposes of this Act.
- (4) The terms and conditions of employment of a person appointed under subsection (3) will be determined by the Governor and such a person will not be a Public Service employee.

- (5) The Senior Practitioner may, by agreement with the Minister responsible for an administrative unit of the Public Service, make use of the services of the staff, equipment or facilities of that administrative unit.

## **28—Annual report**

- (1) The Senior Practitioner must, on or before 30 September in every year, forward a report to the Minister on the work of the Senior Practitioner under this Act during the financial year ending on the preceding 30 June.
- (2) The Minister must, within 6 sitting days after receiving a report under this section, have copies of the report laid before both Houses of Parliament.

## **29—Other reports**

- (1) The Senior Practitioner may, at any time, prepare a report to the Minister on any matter arising out of the exercise of the Senior Practitioner's functions under this Act.
- (2) Subject to subsection (3), the Minister must, within 2 weeks after receiving a report under this section, have copies of the report laid before both Houses of Parliament.
- (3) If the Minister cannot comply with subsection (2) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—
- (a) immediately cause the report to be published; and
  - (b) lay the report before their respective Houses at the earliest opportunity.
- (4) A report will, when published under subsection (3)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.

## **Part 5—Community Visitors**

### **30—Preliminary**

- (1) This Part applies to premises at which a disability service provider is providing residential services.
- (2) In this Part—
- resident* means a person with a disability who resides at premises to which this Part applies.

### **31—Community Visitors**

- (1) The Governor may, on the recommendation of the Public Advocate, appoint community visitors for the purposes of this Part.

- (2) Each Community Visitor—
- (a) holds office for a period of 3 years; and
  - (b) is eligible for re-appointment at the end of the term of office; and
  - (c) is entitled to be paid any fees and travelling and other allowances fixed by the Governor; and
  - (d) is excluded from the Public Service.
- (3) A person may not be appointed as a community visitor if that person—
- (a) holds any appointment or employment with the Department; or
  - (b) has any pecuniary interest in relation to any contract to which the Department is a party.
- (4) In nominating persons for appointment as community visitors the Public Advocate must, as reasonably practicable as possible, nominate an equal number of males and females.

### **32—General provisions as to community visitors**

- (1) The Governor may specify terms and conditions of appointment in the instrument of appointment of a person as a community visitor.
- (2) The Governor may on the recommendation of the Public Advocate remove a community visitor from office.
- (3) A person may resign from the office of community visitor by notice in writing given to the Governor.
- (4) A position of Community Visitor, becomes vacant if the person appointed to the position—
  - (a) dies; or
  - (b) resigns by written notice given to the Governor; or
  - (c) completes a term of appointment and is not reappointed; or
  - (d) is removed from the position by the Governor under subsection (2); or
  - (e) becomes bankrupt or applies as a debtor to take the benefit of the laws relating to bankruptcy; or
  - (f) is convicted of an indictable offence or sentenced to imprisonment for an offence; or
  - (g) becomes a member of the Parliament of this State or any other State of the Commonwealth or of the Commonwealth or becomes a member of a Legislative Assembly of a Territory of the Commonwealth; or

- (h) becomes, in the opinion of the Governor, mentally or physically incapable of performing satisfactorily the functions of the position.

### **33—Functions of community visitors**

- 5           (1) Community visitors have the following functions:
- (a) to visit premises to which this Part applies and to inquire into the following matters:
- (i) the appropriateness and standard of the premises for the accommodation of residents;
- 10           (ii) the adequacy of opportunities for inclusion and participation by residents in the community;
- (iii) whether the residential services are being provided in accordance with the principles and objectives specified in Schedules 1 and 2;
- 15           (iv) whether residents are provided with adequate information to enable them to make informed decisions about their accommodation, care and activities;
- (v) any case of abuse or neglect, or suspected abuse or neglect, of a resident;
- 20           (vi) the use of restrictive interventions and compulsory treatment;
- (vii) any failure to comply with the provisions of this Act;
- 25           (viii) any complaint made to a community visitor by a resident, a guardian, medical agent, relative, carer or friend of a resident, or any other person providing support to a resident;
- (ix) any other matter prescribed by or under this Act or any other Act;
- 30           (b) to refer matters of concern relating to the organisation or delivery of disability services in South Australia to the Public Advocate, the Senior Practitioner, the Commissioner or any other appropriate person or body;
- 35           (c) to act as advocates for residents to promote the proper resolution of issues relating to the care, treatment or control of residents, including issues raised by a guardian, medical agent, relative, carer or friend of a resident or any person who is providing support to a resident;
- 40           (d) any other functions assigned to community visitors by or under this Act or any other Act.

(2) A community visitor will, for the purposes of carrying out the functions of a community visitor, have the authority to enter premises to which this Part applies at anytime and, while on the premises, to—

- (a) meet with a resident; and
- (b) inspect the premises or any equipment or other thing on the premises; and
- (c) require any person to produce any documents or records; and
- (d) examine any documents or records and take extracts from, or make copies of, any of them.

### **34—Visits to premises**

- (1) A community visitor may visit any premises to which this Part applies with or without any previous notice at the times and periods that the community visitor thinks fit.
- (2) The Minister may direct a community visitor to visit premises to which this Part applies at the times that the Minister directs.
- (3) If a community visitor wishes to perform or exercise, or is performing or exercising, any power, duty or function under this Act, the disability service provider and any member of the staff or management of the residential service must provide the community visitor with such reasonable assistance as the community visitor requires to perform or exercise that power, duty or function effectively.
- (4) A disability service provider or member of the staff or management of a residential service must—
  - (a) reasonably render assistance when required to do so under subsection (3); and
  - (b) give full and true answers to the best of that person's knowledge to any questions asked by a community visitor in the performance or exercise of any power, duty or function under this Act.

Maximum penalty: \$5 000.

### **35—Requests to see community visitors**

- (1) A resident or a guardian, medical agent, relative, carer or friend of a resident or any person who is providing support to a resident may make a request to see a community visitor.
- (2) If a request is made under subsection (1) to a manager of, or a person in a position of authority at, premises to which this Part applies that person must advise a community visitor of the request within 2 days after receipt of the request.

### **36—Reports by community visitors**

- (1) A community visitor must, at least twice a year, submit a report to the Community Visitors Board on all visits made since the last report.
- 5 (2) A community visitor must, at least once a year, submit a report to the Community Visitors Board containing recommendations that the community visitor considers should be considered by the Community Visitors Board.

### **37—Community Visitor Board**

- 10 (1) The Community Visitors Board is established.
- (2) The Community Visitors Board consists of—
- (a) the Public Advocate; and
  - (b) 2 community visitors elected by community visitors in accordance with the regulations.
- 15 (3) The Community Visitors Board has the following functions:
- (a) to represent community visitors;
  - (b) to prepare and distribute information explaining the role of community visitors;
  - (c) to develop training programs for community visitors;
  - 20 (d) to supervise the training of community visitors;
  - (e) to report a matter to the Public Advocate or the Minister;
  - (f) to refer a matter under section 38;
  - (g) any other function assigned to the Community Visitors Board by or under this Act or any other Act.

### **38—Referral by Community Visitors Board**

Without limiting the ability of the Community Visitors Board to refer a matter to any other person, the Community Visitors Board may refer a matter reported by a community visitor to whichever of the following the Community Visitors Board considers is the appropriate person to deal with that matter—

30

- (a) the Minister;
- (b) the Commissioner;
- (c) the Senior Practitioner;
- (d) the Ombudsman.

### **39—Annual report**

- 35 (1) The Public Advocate must, on or before 30 September in every year, forward a report to the Minister on the work of the community visitors during the financial year ending on the preceding 30 June.

- 5
- (2) The Minister must, within 6 sitting days after receiving a report under subsection (1), have copies of the report laid before both Houses of Parliament.
- (3) The Public Advocate may, at any time, prepare a special report to the Minister on any matter arising out of the performance of the community visitors' functions.
- (4) Subject to subsection (5), the Minister must, within 2 weeks after receiving a special report, have copies of the report laid before both Houses of Parliament.
- 10
- (5) If the Minister cannot comply with subsection (4) because Parliament is not sitting, the Minister must deliver copies of the report to the President and the Speaker and the President and the Speaker must then—
- 15
- (a) immediately cause the report to be published; and
- (b) lay the report before their respective Houses at the earliest opportunity.
- (6) A report will, when published under subsection (5)(a), be taken for the purposes of any other Act or law to be a report of the Parliament published under the authority of the Legislative Council and the House of Assembly.
- 20

## **Part 6—Complaints**

### **Division 1—Making a complaint**

#### **40—Who may complain**

- 25
- A complaint about a disability service used, received by or sought by a person (a *disability service user*) may be made to the Commissioner by—
- (a) the disability service user; or
- (b) if the disability service user is a child—
- 30
- (i) the child; or
- (ii) if the child has attained the age of 16 years—a person appointed by the child to make the complaint on the child's behalf; or
- (iii) if the child has not attained the age of 16 years—a parent or guardian of the child; or
- 35
- (c) the donee of a power of attorney from the disability service user or an enduring guardian of the disability service user; or
- (d) a person who is acting on behalf of the disability service user under another law or an order of a court; or
- (e) a Member of Parliament; or

- 5
- (f) if the Commissioner is satisfied that it is unreasonable to expect the disability service user to make a complaint personally—a person approved by the Commissioner to act on behalf of the user; or
- (g) a disability service provider if the complaint is made on the ground that the service is or has been provided or is or was necessary because of the actions of another disability service provider; or
- 10 (h) if the disability service user has died—a person who can demonstrate to the Commissioner that he or she had an enduring relationship with the deceased person, or a personal representative of the deceased person; or
- (i) the Minister; or
- (j) the Chief Executive of the Department; or
- 15 (k) any other person, or any body, that, in the opinion of the Commissioner, should be able to make a particular complaint in the public interest.

#### **41—Grounds on which a complaint may be made**

- 20 (1) A complaint may be made (and may only be made under this Act) on one or more of the following grounds:
- (a) that a disability service provider has acted unreasonably by not providing a disability service, or by discontinuing (or proposing to discontinue) a disability service provided to a particular person;
- 25 (b) that the provision of a disability service or of part of a disability service was not necessary or was inappropriate;
- (c) that a disability service provider has acted unreasonably in the manner of providing a disability service;
- 30 (d) that a disability service provider has failed to exercise due skill;
- (e) that a disability service provider has failed to treat a disability service user in an appropriate professional manner;
- 35 (f) that a disability service provider has failed to respect a disability service user's privacy or dignity;
- (g) that a disability service provider has acted unreasonably by failing to provide a disability service user—
- 40 (i) with sufficient information, in language and terms understandable to the user, on the service in order to enable the user to make an informed decision; or
- (ii) with a reasonable opportunity to make an informed choice of the services available; or

- (iii) with adequate information on the availability of relevant education programs (if any); or
- (iv) with adequate information on the services received;
- 5 (h) that a disability service provider has acted unreasonably by denying a disability service user access to, or restricting the user's reasonable access to, records relating to the user that were in the provider's possession;
- 10 (i) that a disability service provider has acted unreasonably in disclosing information in relation to a disability service user to a third person;
- (j) that a disability service provider has acted unreasonably by not taking proper action in relation to a complaint made to him or her by the user about a provider's action of a kind referred to in this section;
- 15 (k) that a disability service provider has acted in any other manner that is inconsistent with the principles and objectives in Schedules 1 and 2;
- 20 (l) that a disability service provider has acted in any other manner that did not conform with the generally accepted standard of service delivery expected of a provider of the kind of service to which the complaint relates.
- (2) Nothing in subsection (1) requires a disability service provider to act, or to provide advice or information with respect to a matter, outside the field of expertise associated with the provider's profession or
- 25 occupational group.
- (3) For the purposes of subsection (1), information appropriately provided to a person lawfully acting on behalf of a disability service user at the time the information is provided will be taken to have been appropriately provided to the disability service user.
- 30 (4) Subsection (1)(i) does not apply in relation to the disclosure of information to—
- (a) a legal practitioner in connection with a related legal matter; or
- 35 (b) an insurer who has an appropriate interest in the information; or
- (c) any other person of a prescribed class.
- (5) If a complaint relates to an act or omission of a volunteer while working for another person or body, the complaint will be taken to be a complaint against the other person or body (as the case may be) and the volunteer cannot be required to participate in any
- 40 proceedings under this Act and in particular cannot be the subject of the exercise of any power under section 33(1)(b).

#### **42—Form of complaint**

- 5
- (1) A complaint is to be made in a manner approved or determined by the Commissioner.
  - (2) A person must, in making a complaint, disclose to the Commissioner, to the best of the person's abilities, all grounds of complaint on which he or she intends to rely.

#### **43—Time within which a complaint may be made**

- 10
- (1) Subject to subsection (2), a complaint must be made within 6 months from the day on which the complainant first had notice of the circumstances giving rise to the complaint.
  - (2) The Commissioner may extend the period under subsection (1) in a particular case if satisfied that it is appropriate to do so after taking into account any of the following matters:
    - 15 (a) whether a proper investigation of the complaint should still be possible;
    - (b) whether the complaint should still be amenable to resolution under the provisions of this Act;
    - (c) whether it would be in the public interest to entertain the complaint;
    - 20 (d) any other matter considered relevant by the Commissioner.
  - (3) For the purposes of subsection (1), a complainant will be presumed to have notice of the circumstances giving rise to the complaint at the time he or she might reasonably be expected to have had such notice.

#### **44—Further information may be required**

- 25
- (1) The Commissioner may, at any time, require a complainant—
    - (a) to provide further information or documents;
    - (b) to verify all or any part of the complaint by statutory declaration.
  - 30 (2) When making a requirement under subsection (1), the Commissioner must specify a reasonable period within which the requirement is to be satisfied.
  - (3) The Commissioner may extend the period specified under subsection (2) (whether before or after its expiry).

## Division 2—Assessment

### 45—Assessment

- 5 (1) The Commissioner must assess a complaint and make a determination in accordance with this section within 45 days after receiving it (or within such longer period as may be necessary in view of any delays that have occurred while the Commissioner or another person takes steps required by or under this Act, or while the Commissioner is undertaking a preliminary inquiry under section 46).
- 10 (2) Subject to this Act, the Commissioner may—
- (a) refer the complaint to a conciliator under Division 5; or
  - (b) investigate the complaint under Part 7; or
  - 15 (c) if of the opinion that the complaint relates to a matter that falls within the functions conferred on another person or body and that it is appropriate in the circumstances to make a referral under this provision, refer the complaint to the other person or body; or
  - (d) determine to take no further action on the complaint.
- 20 (3) If a complaint is against or directly involves an approved provider under the *Aged Care Act 1997* of the Commonwealth—
- (a) the Commissioner must consult with the relevant complaints resolution bodies under that Act about the management of the complaint; and
  - 25 (b) the Commissioner may refer the complaint to another authority for investigation or resolution under that Act; and
  - (c) the Commissioner may provide information and assistance to another authority concerned with the investigation or resolution of the complaint under that Act.
- 30 (4) The Commissioner must not refer a complaint to a conciliator if the complaint appears to the Commissioner to indicate—
- (a) the existence of a significant issue of public safety, interest or importance; or
  - (b) a significant question as to the practice of a disability service provider.
- 35 (5) A complaint should not proceed under this Act if it appears to the Commissioner that the complainant has failed, without good reason, to take reasonable steps to resolve the matter with the relevant disability service provider before making the complaint.
- 40 (6) Within 14 days after making a determination under subsection (1), the Commissioner must provide written notice of the determination—
- (a) to the complainant; and

(b) except where the Commissioner has determined to dismiss the complaint, to the disability service provider.

- (7) In subsection (1), *complaint* includes a complaint that has been referred, or referred back to the Commissioner, by the State Ombudsman or other person or body referred to in subsection (2).

#### **46—Preliminary inquiries**

(1) The Commissioner may, in such manner as the Commissioner thinks fit, undertake a preliminary inquiry in connection with making a determination under section 45.

(2) For the purposes of an inquiry, the Commissioner may require a disability service provider to provide information, or any response or explanation, about any matter relevant to the inquiry.

(3) The Commissioner must specify a reasonable period within which a health and community service provider is to comply with a requirement under subsection (2).

(4) The Commissioner may extend the period specified under subsection (3) (whether before or after its expiry).

(5) A disability service provider must comply with a requirement under subsection (2).

Maximum penalty: \$10 000.

(6) However, a person is not obliged to comply with a requirement under subsection (2) if to do so might tend to incriminate the person or make the person liable to a criminal penalty.

(7) During the conduct of a preliminary inquiry, the Commissioner may assist the parties towards resolution of the complaint through informal mediation.

(8) Informal mediation should not occur if the complaint appears to the Commissioner to indicate—

(a) the existence of a significant issue of public safety, interest or importance; or

(b) a significant question as to the practice of a disability service provider.

(9) Informal mediation will occur in such manner, and subject to such conditions, as the Commissioner thinks fit.

(10) Anything said or done during an informal mediation, other than something that reveals a significant issue of public safety, interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of the parties.

(11) An informal mediation must be brought to an end—

(a) if the informal mediation reveals, in the opinion of the Commissioner—

- (i) a significant issue of public safety, interest or importance; or
- (ii) a significant question as to the practice of a disability service provider; or

- 5 (b) at the request of a party to the informal mediation.
- (12) The Commissioner may bring an informal mediation to an end at any time.
- (13) For the purposes of conducting any inquiry or informal mediation under this section, the Commissioner may obtain the assistance of a professional mentor.
- 10 (14) The Commissioner may discuss any matter relevant to making a determination under section 45 or with respect to the operation of this section with a professional mentor.

#### **47—Provision of documents etc on referral of complaint**

- 15 (1) If the Commissioner has referred a complaint to another person or body under this Part, the Commissioner may give to the other person or body all documents and information in the possession of the Commissioner that relate to the complaint.
- (2) The Commissioner may—
- 20 (a) make and retain a record of information referred to in subsection (1); and
- (b) make copies of, or take extracts from, a document referred to in subsection (1) and retain those copies or extracts.

#### **48—Splitting or joining of complaints**

- 25 (1) If it is administratively or otherwise appropriate to do so, the Commissioner may determine that a complaint that—
- (a) deals with more than one subject matter; or
- (b) deals with more than one set of circumstances; or
- (c) makes allegations against more than one disability service provider; or
- 30 (d) makes more than one allegation against a disability service provider; or
- (e) for any other reason is susceptible to being dealt with in separate parts,
- 35 be treated as 2 or more complaints for the purposes of this Act.
- (2) If it is administratively or otherwise appropriate to do so, the Commissioner may determine that 2 or more complaints that—
- (a) deal with the same subject matter; or
- (b) deal with the same set of circumstances; or

(c) make allegations against the same disability service provider; or

(d) for any other reasons are susceptible to amalgamation, be treated as 1 complaint for the purposes of this Act.

5 (3) The Commissioner may give such directions or make such incidental determinations as the Commissioner thinks necessary or convenient in view of a determination under subsection (1) or (2).

(4) A determination or direction of the Commissioner will have effect according to its terms.

10 (5) The Commissioner must not make a determination under subsection (1) or (2) if it appears to the Commissioner that any attempt at resolution or conciliation is likely to be prejudiced by the making of the determination.

### **Division 3—No further action on complaint**

#### **15 49—No further action on complaint**

(1) The Commissioner may at any stage of proceedings under this Act determine to take no further action on a complaint, or to suspend action on a complaint, if the Commissioner considers or is satisfied that—

20 (a) the complainant is not entitled to make the complaint under this Act; or

(b) the complaint does not disclose a ground of complaint under this Act; or

25 (c) the matter should be determined by way of legal proceedings; or

(d) proceedings that relate to the subject matter of the complaint have been commenced before a tribunal, authority or other person or body; or

30 (e) the complainant has been given reasonable explanations or information and there would be no benefit in further entertaining the complaint; or

(f) the complainant is seeking to act on a ground that should have been disclosed by the complainant at an earlier time in accordance with the requirements of section 42(2); or

35 (g) the complaint lacks substance, is unnecessary or unjustifiable, or is frivolous, vexatious or not made in good faith; or

40 (h) the complainant has failed, without good reason, to comply with a requirement under this Act within a reasonable time, or to take a reasonable step in connection with making the complaint or proceeding with the complaint under this Act; or

- 5
- (i) the commencement or continuance of proceedings on the complaint would otherwise be an abuse of the processes under this Act; or
- (j) the complaint has been resolved or abandoned; or
- (k) there is some other reasonable cause that justifies the discontinuance or suspension of proceedings under this Act, (and such a determination will have effect according to its terms).
- 10 (2) The Commissioner must take no further action on a complaint if the Commissioner is satisfied that all issues arising out of the subject matter of the complaint have been adjudicated by a court, tribunal, authority or other person or body acting under a law of the State, another State, a Territory or the Commonwealth.
- (3) The Commissioner must suspend action on a complaint if the Commissioner is satisfied—
- 15 (a) that proceedings that relate to the subject matter of the complaint have been commenced before the court; or
- (b) that an inquest that relates to the subject matter of the complaint has been commenced by a coroner.
- 20 (4) The Commissioner must, in a case where subsection (1), (2) or (3) applies, give written notice relating to the matter—
- (a) to the complainant; and
- (b) except where notice of the complaint has not been given to the disability service provider, to the disability service provider.
- 25 (5) The Commissioner may recommence action on a suspended complaint for any reasonable cause by giving written notice—
- (a) to the complainant; and
- (b) to the disability service provider.

## **Division 4—Miscellaneous**

### **50—Withdrawal of complaint**

- 30 (1) A complainant may withdraw a complaint at any time by written notice to the Commissioner.
- (2) If a complaint is withdrawn—
- 35 (a) any investigation under this Act in relation to the matter will cease unless the Commissioner has determined to conduct or continue an investigation under section 59(1)(c); and
- (b) the Commissioner must—
- 40 (i) if the disability service provider has been notified of the receipt of the complaint—notify that provider of the withdrawal within 14 days; and

(ii) if the Commissioner has determined to conduct or continue an investigation under section 59(1)(c)—advise the disability service provider about the effect of the determination despite the withdrawal of the complaint.

(3) If the Commissioner has referred a complaint to another person or body under this Act, the withdrawal of that complaint under subsection (1) does not affect the performance and exercise by the person or body of his, her or its functions and powers in respect of the matters raised by or in the complaint.

## **Division 5—Conciliation of complaints**

### **51—Function of conciliator**

- (1) The function of a conciliator is to encourage the settlement of a complaint by—
- (a) arranging discussions or negotiations between the complainant and the disability service provider;
  - (b) assisting in the conduct of those discussions or negotiations;
  - (c) assisting the complainant and the disability service provider to reach agreement;
  - (d) assisting in the resolution of the complaint in any other way.
- (2) A conciliator may, if the conciliator thinks it appropriate to do so, undertake a conciliation without bringing the parties together.

### **52—Public interest**

- (1) Before the conciliation of a complaint begins, the Commissioner must identify and inform the conciliator about any issue raised by the complaint that the Commissioner considers involves the public interest.
- (2) At the start of the conciliation, the conciliator must draw any issues involving the public interest of which he or she has been informed under subsection (1) to the attention of the complainant and the disability service provider.
- (3) In the course of the conciliation, the conciliator must (at an appropriate time) draw to the attention of the parties any issues involving the public interest that the conciliator considers are raised by the complaint.
- (4) The conciliator must report to the Commissioner any issue involving the public interest that the conciliator considers is raised by the complaint (other than an issue identified under subsection (1)).
- (5) The Commissioner may, with respect to any issue that the Commissioner considers involves the public interest, consult with any other person or body despite the fact that a conciliation may be proceeding.

**53—Assistance at conciliation**

- 5
- (1) A party to a conciliation may be assisted by another person.
  - (2) However, a party cannot be assisted by a particular person if the conciliator has directed that that person not be allowed to act in the particular matter.
  - (3) A party in a conciliation process may not be represented by another person except where the Commissioner is satisfied that such representation is likely to assist substantially in resolving the complaint.

10 **54—Reports from conciliator**

- 15
- (1) Without limiting subsection (2), a conciliator must provide to the Commissioner a written report of the progress of a conciliation when requested to do so by the Commissioner.
  - (2) A conciliator must provide to the Commissioner a written report of the results of a conciliation when the conciliator is satisfied—
    - 20 (a) that the complainant and the disability service provider have reached agreement on all issues raised by a complaint on which the conciliator considers agreement to be possible; or
    - (b) that an agreement between the complainant and disability service provider is not possible, or is not possible to reach within a reasonable period of time.

**55—Conciliation may be brought to an end**

- 25
- (1) A conciliator may end a conciliation for any reasonable cause at any reasonable time.
  - (2) A conciliation must be brought to an end at the direction of the Commissioner.
  - (3) A conciliation must be brought to an end if the conciliation reveals, in the opinion of the conciliator or the Commissioner—
    - 30 (a) the existence of a significant issue of public safety, interest or importance; or
    - (b) a significant question as to the practice of a disability service provider.
  - (4) A conciliation must be brought to an end at the request of a party to the conciliation.
  - 35 (5) If a conciliation is brought to an end without resolution of all relevant matters, the Commissioner may—
    - (a) refer the complaint to another conciliator; or
    - (b) investigate the complaint under Part 6; or
    - (c) deal with the complaint under Part 7; or
    - 40 (d) refer the complaint to another person or body; or

- (e) decide to take no further action on the complaint.

### **56—Privilege and confidentiality**

- 5 (1) Anything said or done during conciliation under this Part, other than something that reveals a significant issue of public safety, interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of all parties to the conciliation.
- 10 (2) Except where a disclosure is authorised under this Part, a conciliator must not disclose information gained during conciliation—
- (a) in any further conciliation; or
- (b) to any person appointed, employed or engaged for the purposes of this Act.

Maximum penalty: \$5 000.

### **57—Professional mentor**

- 15 (1) The Commissioner may appoint a professional mentor to be available to advise a conciliator in the performance of his or her functions.
- (2) A conciliator may discuss any matter arising in relation to the performance of his or her functions with a professional mentor.
- 20 (3) A professional mentor must not disclose to a third person (other than the Commissioner) information that was gained by a conciliator during conciliation and communicated by the conciliator to the professional mentor.

Maximum penalty: \$5 000.

### **58—Enforceable agreements**

- 25 (1) Any agreement reached between a complainant and a disability service provider in the course of the conciliation process may be made in a binding form.
- (2) However, an agreement is not binding unless it is—
- 30 (a) in writing; and
- (b) entered into within 14 days after the verbal agreement is reached in the course of the conciliation.
- (3) Subsection (1) does not affect the effectiveness of any agreement reached outside the conciliation process.
- 35 (4) A conciliator must not be a party to any agreement between a complainant and a disability service provider relating to a matter that has been dealt with in a process of conciliation.

## Part 7—Investigations

### Division 1—Application of Part

#### 59—Matters that may be investigated

(1) The Commissioner may investigate—

- 5
- (a) any matter specified in a written direction given by the Minister; and
  - (b) a complaint that the Commissioner has determined to investigate under this Act; and
  - 10 (c) an issue or question arising from a complaint if it appears to the Commissioner—
    - (i) to be a significant issue of public safety, interest or importance; or
    - (ii) to be a significant question as to the practice of a disability service provider; and
  - 15 (d) on his or her own motion, any other matter relating to the provision of disability services in South Australia.

(2) An investigation under subsection (1)(c) may be carried out whether or not—

- 20
- (a) the process of assessment of the relevant complaint has been completed; or
  - (b) any process of conciliation of the relevant complaint has been completed; or
  - (c) the relevant complaint has been withdrawn; or
  - 25 (d) the Commissioner has decided not to take action (or further action) on the relevant complaint.

(3) Despite subsection (2), an investigation referred to in subsection (1)(c) should not be carried out to the extent that it interferes with a process of conciliation.

30 (4) The Commissioner is not required to cease an investigation referred to in subsection (1)(b) or (c) only because the relevant complaint has been resolved.

35 (5) Without limiting the operation of a preceding subsection, an investigation under subsection (1)(c) may be carried out on the basis of fresh evidence that comes to the attention of the Commissioner following the completion of a particular investigation.

#### 60—Limitation of powers

The powers conferred by this Part may be exercised only for purposes of an investigation.

## **Division 2—Conduct of investigations**

### **61—Conduct of investigation**

- (1) An investigation is to be conducted in such manner as the Commissioner considers appropriate.
- 5 (2) The Commissioner may, in conducting an investigation under this Part, obtain expert advice, or any other advice or support, in order to assist the Commissioner in the investigation.
- (3) The Commissioner may, at any time, decide to attempt to deal with a complaint by conciliation.
- 10 (4) The Commissioner may, in attempting conciliation under subsection (3), act personally or through a member of his or her staff.
- (5) The Commissioner may, if satisfied that the subject of a complaint has been properly resolved by conciliation under subsection (3), determine that the complaint should not be further investigated under this Part.
- 15 (6) Anything said or done during conciliation under subsection (3), other than something that reveals a significant issue of public safety, interest or importance, is not to be disclosed in any other proceedings (whether under this or any other Act or law) except by consent of all parties to the conciliation.
- 20

### **62—Representation**

- (1) Subject to subsection (2), a person required to appear or to produce documents under this Part may be assisted or represented by another person.
- 25 (2) The Commissioner may determine whether any person involved in proceedings under this Part may have legal or other representation during the conduct of an investigation or proceedings relating to an investigation.
- (3) The Commissioner must, in making any determination under subsection (2), to such extent as is reasonably practicable, have regard to the need to ensure that representation is balanced between the parties and that any determination is fair to all persons who are involved in proceedings under this Part.
- 30

### **63—Use and obtaining of information**

- (1) If the Commissioner has obtained a document or information under or in connection with the operation of this Act, the Commissioner may use that document or information for the purposes of this Part.
- 35

(2) If the Commissioner has reason to believe that a person is capable of providing information or producing a document relevant to an investigation, the Commissioner may, by notice in writing provided to the person, require the person to do one or more of the following:

- 5                   (a) to provide that information to the Commissioner in writing signed by that person or, in the case of a body corporate, by an officer of the body corporate;
- (b) to produce that document to the Commissioner;
- 10                   (c) to attend before a person specified in the notice and answer questions or produce documents relevant to the investigation.

(3) A notice under subsection (2) is to specify the period within which, or the time, day and place at which, the person is required to provide the information or document, or to attend.

15                   (4) A notice under subsection (2) must provide a period of time for compliance with a requirement under that subsection that has been determined by the Commissioner to be reasonable in the circumstances.

20                   (5) A person must comply with a requirement under subsection (2).  
Maximum penalty: \$5 000.

(6) If a document is produced in accordance with a requirement under this section, the Commissioner or other appropriate person may take possession of, make copies of, or take extracts from, the document.

#### **64—Power to examine witnesses etc**

25                   (1) The Commissioner, or a person who is to receive information under section 63(2), may administer an oath or affirmation to a person required to attend before him or her under this Part and may examine the person on oath or affirmation.

30                   (2) The Commissioner may require a person to verify by statutory declaration—

- (a) any information or document produced under this Part; or
- (b) a statement that the person has no relevant information or documents or no further relevant information or documents.

35                   (3) A person must comply with a requirement under subsection (2).  
Maximum penalty: \$5 000.

#### **65—Search powers and warrants**

(1) On the application of the Commissioner, a magistrate may issue a warrant if the magistrate is satisfied that there are reasonable grounds—

- 40                   (a) for believing that entry and inspection of premises are necessary to enable the Commissioner to carry out an investigation under this Part; or

- (b) for suspecting that there may be on premises a document or other thing relevant to a matter the Commissioner is investigating under this Part.
- (2) A warrant authorises a person named in the warrant, and any person assisting that person, with such force as is necessary—
- (a) to enter and remain in the premises specified in the warrant; and
- (b) to search those premises and any person or thing in those premises; and
- (c) to break open and search anything in those premises in which any document or other thing relevant to the investigation may be contained; and
- (d) to take photographs; and
- (e) to seize and remove anything in those premises which that person has reasonable grounds for believing is relevant to the investigation; and
- (f) to examine, seize and remove, make copies of, or take extracts from, any document in those premises which that person has reasonable grounds for believing is relevant to the investigation; and
- (g) to require a disability service provider or any other person employed in those premises to provide information by answering questions which that person considers relevant to the investigation.
- (3) A warrant must—
- (a) be in a prescribed form; and
- (b) specify the premises in respect of which it is made.
- (4) A warrant has effect for a period of 30 days after the day on which it is issued.

### **66—Reimbursement of expenses**

A person required to attend before the Commissioner or another person under this Part is entitled to be paid the expenses and allowances that the Commissioner may allow.

### **67—Reference to another authority for investigation**

- (1) If the Commissioner considers that a matter raised by, or during the course of, an investigation should be investigated by the State Ombudsman, a registration authority or another person or body that has functions under any law of South Australia, another State, a Territory or the Commonwealth, the Commissioner may refer the matter to the State Ombudsman, registration authority or other person or body (as the case requires) for investigation.

- 5
- (2) The Commissioner must not refer a matter to a registration authority without first consulting that authority.
  - (3) The Commissioner's powers to investigate a matter are not affected by the matter having been referred for investigation under subsection (1).

### **68—Possession of document or other seized item**

- 10
- (1) If the Commissioner or another person has taken possession of or seized a document or other thing under this Part, the Commissioner may retain possession of the document or other thing for such period as may be necessary for the purposes of an investigation.
  - (2) If the Commissioner or another person has taken possession of a document, the Commissioner must—
    - 15 (a) provide the person from whom it was taken with a copy of the document as soon as practicable after it was taken; and
    - (b) allow a person who would be entitled to inspect the document if it were not in the possession of the Commissioner to inspect, make a copy of, or take an extract from, it at any reasonable time.

## **Division 3—Privilege**

### **69—Privilege**

- 20
- (1) A person is not obliged to answer a question or to provide or produce, or provide a copy of, any information or document under this Part if to do so might tend to incriminate the person or make the person liable to a criminal penalty.
  - 25 (2) A person is not obliged to provide information that is privileged on the ground of legal professional privilege.

## **Division 4—Action on investigation**

### **70—Reports**

- 30
- (1) The Commissioner—
    - (a) may prepare a report of his or her findings and conclusions at any time during an investigation; and
    - (b) must prepare such a report at the conclusion of an investigation.
  - 35 (2) The Commissioner may provide copies of a report to such persons as the Commissioner thinks fit.
  - (3) A report may contain information, comments, opinions and recommendations for action.
  - (4) No action lies against the Commissioner in respect of the contents of a report under this section.

- 5
- (5) The Commissioner may require a State Government agency to, in connection with any recommendations contained in a report under this section, outline to the Commissioner what action (if any) the agency has taken, or intends to take, in response to the recommendations made in the report.

### **71—Notice of action to providers**

- 10
- (1) If, after investigating a complaint, the Commissioner decides that the complaint is justified but appears to be incapable of being resolved, the Commissioner may—

- 10
- (a) provide to the disability service provider a notice of recommended action; and
- (b) advise the complainant of the provision of the notice.

- (2) A notice must set out—

- 15
- (a) the particulars of the complaint; and
- (b) the reasons for making the decision referred to in subsection (1); and
- (c) any action that the Commissioner considers the disability service provider should take in order to remedy each unresolved grievance disclosed by the complaint.

- 20
- (3) If the service provider is a registered service provider, the Commissioner must provide a copy of the notice to the relevant registration authority.

- 25
- (4) The Commissioner may require the service provider to, in connection with the provision of a notice under subsection (1), outline to the Commissioner what action (if any) the service provider has taken, or intends to take, in response to the matters raised in the notice.

- 30
- (5) The Commissioner must allow the service provider and, if relevant, a registration authority, at least 28 days to make representations in relation to the matter and, in the case of the service provider, to comply with a requirement under subsection (4).

- (6) After receipt of representations under subsection (4), or after the expiration of the period allowed under subsection (5), the Commissioner may publish a report or reports in relation to the matter in such manner as the Commissioner thinks fit.

- 35
- (7) The Commissioner must, before publishing a report under subsection (6), provide a copy of the report to the relevant disability service provider and then allow the service provider at least 14 days to make representations in relation to the content of the report.

- 40
- (8) A report under this section may include such material, comments, commentary, opinions or recommendations as the Commissioner considers appropriate.

- (9) The Commissioner may provide copies of a report to such persons as the Commissioner thinks fit.

(10) The Commissioner must provide a copy of a report to any complainant and service provider that has been a party to the relevant proceedings.

(11) No action lies against the Commissioner in respect of the contents of any document published by the Commissioner under this section.

## 72—Right of appeal

(1) A disability service provider who is named in a report published by the Commissioner under this Division may appeal to the Administrative and Disciplinary Division of the District Court (the *Court*) against any aspect of the procedures of the Commissioner relating to the preparation of that report that is not procedurally fair.

(2) An appeal must be made within 14 days after the service provider receives a copy of the relevant report from the Commissioner.

(3) The Court may, on an appeal—

(a) determine that the report should stand; or

(b) remit the matter to the Commissioner for further consideration in accordance with any directions of the Court; or

(c) direct the Commissioner to take steps specified by the Court (which may include the publication of a new or revised report or other statements or materials).

## Part 8—Restrictive interventions

### 73—Purpose of Part

The purpose of this Part is to protect the rights of persons with a disability who are subject to restrictive interventions by ensuring that restrictive interventions are only used if the requirements imposed by this Part are complied with.

### 74—Use of restrictive interventions

A disability service provider must not use a restrictive intervention unless there is an approval in force under section 75.

Maximum penalty: \$10 000.

### 75—Approval to use restrictive interventions

(1) A disability service provider who proposes to use restrictive interventions in the provision of a disability service must apply to the Minister for approval.

(2) An application for approval must include—

(a) the prescribed details; and

(b) a request for approval of the title and rank of any position and the name of the holder of the position to be appointed as an Authorised Program Officer for the disability service provider.

5 (3) The Minister may grant an application for approval subject to any conditions that the Minister considers appropriate.

(4) In the case of a disability service in respect of which the disability service provider is the Minister, the Minister—

10 (a) is to be taken to be approved to use restrictive interventions; and

(b) must ensure that an Authorised Program Officer is appointed for the disability service; and

15 (c) must approve the title and rank of any position and the name of the holder of the position to be appointed as the Authorised Program Officer.

#### **76—Revocation of approval**

(1) The Minister may revoke the approval of a disability service provider to use restrictive interventions if the Minister considers it appropriate to do so.

20 (2) For the purposes of subsection (1), the Minister may have regard to the following:

(a) that the registration of the disability service provider has been revoked;

25 (b) that the disability service provider has failed to comply with requirements under this Act;

(c) any other circumstances that the Minister considers relevant.

#### **77—Notice of refusal or revocation**

30 (1) The Minister must not refuse an application under section 75 or revoke the approval of a disability service provider to use restrictive interventions under section 76(1) unless the Minister has given a notice in writing to the disability service provider in accordance with subsection (2) and has considered any submission made by the disability service provider.

(2) A notice under subsection (1) must specify—

35 (a) the proposed decision and the reasons for the proposed decision; and

(b) that the disability service provider may make a written submission in response to the notice within 14 days of the notice being given.

### **78—Application for review**

- (1) A disability service provider may apply to the Administrative and Disciplinary Division of the District Court for a review of a decision by the Minister—
- 5           (a) to refuse an application under section 75; or
- (b) to revoke the approval of a disability service provider to use restrictive interventions under section 76(1).
- (2) An application for review must be made within 28 days after the day on which the decision is made.

### **79—Authorised program officers**

- (1) An Authorised Program Officer must ensure that any restrictive intervention used in the provision of a disability service for which the Authorised Program Officer is responsible is administered in accordance with this Part.
- 15           (2) A disability service provider must advise the Senior Practitioner of the name and qualifications of any person appointed as an Authorised Program Officer in the manner and within the period determined by the Senior Practitioner.
- Maximum penalty: \$5 000.
- 20           (3) The Senior Practitioner must keep a register of the name and qualifications of each Authorised Program Officer.

### **80—Use of restraint, seclusion and segregation**

Unless section 86 applies, restraint, seclusion or segregation can only be used—

- 25           (a) if the use of restraint or seclusion is necessary—
- (i) to prevent the person from causing physical harm to themselves or any other person; or
- (ii) to prevent the person from destroying property where to do so could involve the risk of harm to themselves or any other person; and
- 30           (b) if the use and form of restraint, seclusion or segregation is the option which is the least restrictive of the person as is possible in the circumstances; and
- (c) if the use and form of restraint, seclusion or segregation—
- 35                 (i) is included in the person's behaviour support plan; and
- (ii) is in accordance with the person's behaviour support plan; and
- (iii) is only applied for the period of time that has been authorised by the Authorised Program Officer; and
- 40           (d) if seclusion is to be used—

- 5
- (i) the person is supplied with bedding and clothing which is appropriate in the circumstances; and
  - (ii) the person has access to adequate heating or cooling as is appropriate in the circumstances; and
  - (iii) the person is provided with food and drink at the appropriate times; and
  - (iv) the person is provided with adequate toilet arrangements; and
- 10
- (e) if any other requirements imposed by the Senior Practitioner are complied with.

**81—Use of restraint and seclusion must be included in behaviour support plan**

- 15
- (1) This section applies if a disability service provider providing a disability service to a person with a disability—
    - 15 (a) is satisfied that the criteria specified in sections 80(a) and 80(b) apply; and
    - (b) proposes to use restraint, seclusion or segregation on the person with a disability.
  - 20 (2) The disability service provider must develop a behaviour support plan for the person with a disability that includes provisions which—
    - 25 (a) state the circumstances in which the proposed form of restraint, seclusion or segregation is to be used for behaviour management;
    - (b) explain how the use of restraint, seclusion or segregation will be of benefit to the person;
    - (c) demonstrate that the use of restraint, seclusion or segregation is the option which is the least restrictive of the person as is possible in the circumstances.
  - 30 (3) In preparing the behaviour support plan, the disability service provider must consult with—
    - 35 (a) the person with a disability to whom the plan relates; and
    - (b) if the person with a disability has a guardian—the guardian; and
    - (c) if other disability service providers provide disability services to the person with a disability—a representative of each disability service provider; and
    - (d) any other person that the disability service provider considers integral to the development of the behaviour support plan.

## 82—Review of behaviour support plan by disability service provider

- 5
- (1) A behaviour support plan prepared under section 81 must be reviewed by the disability service provider at intervals of not more than—
- (a) 12 months; or
  - (b) if the Authorised Program Officer or the Senior Practitioner specify a shorter period—that shorter period.
- 10
- (2) A person with a disability may at any time request the disability service provider to review the behaviour support plan prepared under section 81.
- (3) In reviewing the behaviour support plan, the disability service provider must consult with—
- 15 (a) the person with a disability to whom the plan relates; and
  - (b) if the person with a disability has a guardian—the guardian; and
  - (c) if other disability service providers provide disability services to the person with a disability—a representative of each disability service provider; and
  - 20 (d) any other person that the disability service provider considers integral to the development of the behaviour support plan.

## 83—Independent person

- 25
- (1) An Authorised Program Officer must ensure that an independent person is available to explain to a person with a disability—
- (a) the inclusion of the proposed use of restraint, seclusion or segregation in the person's proposed behaviour support plan; and
  - 30 (b) that the person with a disability can seek a review of the decision to include the proposed use of restraint, seclusion or segregation in the person's proposed behaviour support plan if the person wants to do so; and
  - (c) if the person is currently subject to a behaviour support plan—how the proposed behaviour support plan is different to the current plan; and
  - 35 (d) in the case of a review of the behaviour support plan by the disability service provider—any matter related to the inclusion of restraint, seclusion or segregation in the behaviour support plan.

- (2) If the independent person considers that—
- (a) a person with a disability is not able to understand the inclusion of the use of restraint, seclusion or segregation in the person's behaviour support plan; and
  - (b) the requirements of this Part are not being complied with;
- the independent person may report the matter to the Public Advocate.
- (3) An independent person assisting a person with a disability must not—
- (a) be a disability service provider or a representative of a disability service provider; or
  - (b) have any interest (whether direct or indirect) in a disability service provider which is providing, or has provided, disability services to the person with a disability.
- (4) If a person with a disability advises the disability service provider or the Authorised Program Officer that he or she does not consider that the person assisting him or her is an independent person, the Authorised Program Officer must arrange for an independent person to assist the person with a disability.

#### **84—Powers of Public Advocate**

After considering a report received under section 83(2), the Public Advocate may refer the matter to the Senior Practitioner or the Commissioner.

#### **85—Requirements for the use of restraint and seclusion**

- (1) Before any restraint, seclusion or segregation can be used on a person with a disability, the inclusion of the use of restraint, seclusion or segregation in the behaviour support plan prepared under section 81 or reviewed under section 82 must be approved by the Authorised Program Officer.
- (2) The Authorised Program Officer must not approve the inclusion of the proposed use of restraint, seclusion or segregation in the behaviour support plan unless the Authorised Program Officer is satisfied that the behaviour support plan has been prepared or reviewed in accordance with this Act.
- (3) If the Authorised Program Officer has approved the inclusion of the proposed use of restraint, seclusion or segregation in the behaviour support plan under subsection (1), the disability service provider must at least 2 days before the proposed use of restraint, seclusion or segregation notify in writing the person with a disability—
- (a) that the Authorised Program Officer has approved the inclusion of the proposed use of restraint, seclusion or segregation in the person's behaviour support plan; and

(b) that the person with a disability has a right to apply to the Senior Practitioner for a review of the decision to include the use of restraint, seclusion or segregation in the person's behaviour support plan.

5 (4) The Authorised Program Officer must within 2 working days of approving the inclusion of restraint, seclusion or segregation in the behaviour support plan under subsection (1) provide to the Senior Practitioner—

(a) a copy of the behaviour support plan; and

10 (b) the name and details of the independent person who assisted the person with a disability.

### **86—Use of restraint, seclusion or segregation in an emergency**

(1) This section applies if—

15 (a) a person with a disability does not have a behaviour support plan approved by an Authorised Program Officer which provides for the use of restraint, seclusion or segregation; and

(b) an approved disability service provider is of the opinion that there is an emergency because—

20 (i) there is an imminent risk of a person with a disability causing serious physical harm to themselves or any other person; and

(ii) it is necessary to use restraint, seclusion or segregation to prevent that risk.

25 (2) If this section applies, the approved disability service provider may use restraint, seclusion or segregation on the person with a disability if—

30 (a) the use and form of restraint, seclusion or segregation is the option which is the least restrictive of the person as is possible in the circumstances; and

(b) the use of restraint, seclusion or segregation is authorised by the person in charge of the disability service; and

(c) the Authorised Program Officer is notified immediately of the use of restraint, seclusion or segregation.

35 (3) The Authorised Program Officer must within 7 days after the end of each month prepare and send to the Senior Practitioner a report in respect of the use of restraint, seclusion or segregation in an emergency to which this section applies in accordance with subsection (4).

40 (4) A report under subsection (3) must specify the following in relation to each month—

(a) the form of restraint used or the period of time during which seclusion was used;

- (b) the reasons why restraint, seclusion or segregation was used;
- (c) the effect that the use of the restraint, seclusion or segregation had on the person's behaviour;
- (d) the name of the person who approved the use of restraint, seclusion or segregation;
- (e) the name of the person who applied the restraint or kept the person in seclusion.

### **87—Reports**

(1) The Senior Practitioner must—

- (a) monitor whether the use of the restraint, seclusion or segregation is in accordance with this Part; and
- (b) subject to any guidelines issued under subsection (3), advise the Authorised Program Officer authorising the restraint, seclusion or segregation as to the intervals, not exceeding 12 months, within which the Authorised Program Officer is to provide a report on the implementation of a person's behaviour support plan in accordance with subsection (2) to the Senior Practitioner.

(2) A report required under subsection (1) must—

- (a) be provided within 7 days after the end of the interval advised under subsection (1); and
- (b) contain the information required in a report under section 147; and
- (c) include a record of all instances in which restraint, seclusion or segregation has been applied during the period for which the report is prepared; and
- (d) specify any details required by the Senior Practitioner in respect of each instance included under paragraph (b); and
- (e) have attached a copy of the person's current behaviour support plan if the use of restraint, seclusion or segregation is being continued.

(3) For the purposes of this section, the Senior Practitioner may make and issue guidelines relating to the preparation of reports including enabling the preparation of a consolidated report by an Authorised Program Officer where more than one approved disability service providers are providing disability services to a person with a disability involving the use of restraint, seclusion or segregation.

### **88—Offence**

A disability service provider who, except as provided in section 80 or 86, applies restraint, seclusion or segregation to a person with a disability is guilty of an offence against this Act.

Maximum penalty: \$35 000.

## 89—Use of other restrictive interventions

- (1) In this section, *other restrictive interventions* means restrictive interventions other than restraint, seclusion or segregation.
- (2) The Senior Practitioner may in respect of other restrictive interventions used by disability service providers—
- (a) require a disability service provider to provide a report to the Senior Practitioner on the use of other restrictive interventions in disability services provided by the disability service provider; and
  - (b) require a disability service provider to develop a behaviour support plan for a person with a disability in respect of whom the disability service provider is using other restrictive interventions; and
  - (c) develop guidelines and standards in relation to the use of other restrictive interventions; and
- Note—**
- The guidelines and standards may include clinical guidelines and standards.
- (d) audit and evaluate the use of other restrictive interventions; and
  - (e) give written directions to disability service providers—
    - (i) prohibiting the use of a specified other restrictive intervention; or
    - (ii) regulating the use of a specified other restrictive intervention; and
  - (f) undertake research and provide advice to disability service providers in relation to the use of other restrictive interventions.

## Part 9—Miscellaneous

### 8—Redesignation of section 8

Section 8—redesignate the section as section 90

### 9—Redesignation of section 9

Section 9—redesignate the section as section 91

### 10—Redesignation of section 10

Section 10—redesignate the section as section 92

### 11—Deletion of section 11

Section 11—delete the section