

NORTHERN TERRITORY OF AUSTRALIA

DISABILITY SERVICES AMENDMENT ACT 2012

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Act No. 11 of 2012

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# NORTHERN TERRITORY OF AUSTRALIA

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Act No. 11 of 2012

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An Act to amend the *Disability Services Act*, and for related purposes

[Assented to 27 April 2012]  
[Second reading 16 February 2012]

The Legislative Assembly of the Northern Territory enacts as follows:

## Part 1 Preliminary matters

### 1 Short title

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

### 2 Commencement

This Act commences on the day fixed by the Administrator by *Gazette* notice.

## Part 2 Amendment of Disability Services Act

### 3 Act amended

This Part amends the *Disability Services Act*.

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**4 Long title amended**

Long title

*repeal, insert*

**An Act about providing services for people with a disability,  
and for related purposes**

**5 Section 2 amended**

(1) Section 2(1)

*omit*

, unless the contrary intention appears

(2) Section 2(1)

*insert (in alphabetical order)*

***appropriate place*** means a place mentioned in section 43ZA(1)(a)(ii) of the Criminal Code.

*Note*

*A secure care facility may be an appropriate place.*

***approved form*** means a form approved under section 73.

***authorised employee***, see section 26(1).

***behaviour support plan***, see section 36(1).

***business day*** means a day that is not a Saturday, Sunday or public holiday.

***CEO*** means the Chief Executive Officer.

***chemical restraint***, see section 34.

***community visitor***, means a person holding office under an appointment under section 50(2), and includes the principal community visitor and an interim community visitor.

***community visitors panel*** means the community visitors panel established under section 60.

***complaint*** means a complaint made under Part 5.

***complex cognitive impairment***, see section 6A of the *Mental Health and Related Services Act*.

***criteria for involuntary treatment and care***, see section 5.

***guardian***, see section 3(1) of the *Adult Guardianship Act*.

***interim community visitor***, see section 51(1).

***interim treatment order*** means a treatment order made under section 13.

***manager***, of a residential facility, means the person responsible for the day-to-day management of the facility.

***original decision***, for Part 3, Division 4, see section 21(1).

***physical restraint***, see section 33.

***primary carer***, see section 7.

***principal community visitor***, means the person holding office under an appointment under section 50(1).

***resident***, of a residential facility, means:

- (a) for a secure care facility – an adult with a disability who is living in and receiving treatment and care in the facility under:
  - (i) a treatment order; or
  - (ii) a supervision order; or
- (b) for an appropriate place other than a secure care facility – an adult with a disability who is living in and receiving treatment and care in the place under a supervision order; or
- (c) for another residential facility – a person with a disability who is living in and receiving treatment and care in the facility.

***residential facility*** means:

- (a) a secure care facility; or
- (b) an appropriate place other than a secure care facility; or
- (c) other premises operated by the Agency to provide services for the treatment and care of people with a disability.

***restraint***, see section 33.

***restricting access***, see section 35.

***restrictive intervention***, see section 33.

***review panel*** means the review panel established under section 69.

***seclusion***, see section 33.

***secure care facility*** means premises declared under section 72 to be a secure care facility.

***supervision order***, see section 43A of the Criminal Code.

***therapeutic benefit*** means a therapeutic benefit by way of personal development, including:

- (a) building on strengths and life skills; and
- (b) opportunities for quality of life and participation and inclusion in the community.

***treatment and care principles***, see section 2A.

***treatment order*** means an order in force under Part 3, and includes an interim treatment order.

***treatment plan***, see section 6.

## **6 Sections 2A and 2B inserted**

After section 2

*insert*

### **2A Principles for treatment and care**

The following principles (the ***treatment and care principles***) apply to the treatment and care of a person with a disability:

- (a) the treatment and care must be reviewed regularly;
- (b) if a restriction on the rights or opportunities of the person is necessary, the option chosen should be the option that is the least restrictive as is possible in the circumstances;
- (c) for a person for whom a treatment order is in force – the treatment and care of the person must cease if the person no longer obtains therapeutic benefit from it.

**2B Application of Criminal Code**

Part IIAA of the Criminal Code applies to an offence against this Act.

*Note for section 2B*

*Part IIAA of the Criminal Code states the general principles of criminal responsibility, establishes general defences, and deals with burden of proof. It also defines, or elaborates on, certain concepts commonly used in the creation of offences.*

**7 Section 5 replaced**

Section 5

*repeal, insert*

**Part 3 Treatment and care of people with a disability****Division 1 Basic concepts****5 Meaning of *criteria for involuntary treatment and care***

A person fulfils the *criteria for involuntary treatment and care* if:

- (a) the person is an adult; and
- (b) the person has a disability; and
- (c) the person has a complex cognitive impairment; and
- (d) the person is engaging in repetitive conduct of high risk behaviour likely to cause harm to himself or herself or to someone else; and
- (e) unless the person receives treatment and care in a secure care facility, the person:
  - (i) is likely to cause serious harm to himself or herself or to someone else; or
  - (ii) will represent a substantial risk to the general community; or
  - (iii) is likely to suffer serious mental or physical deterioration; and
- (f) the person has the capacity to benefit from goal-oriented therapeutic services in a secure care facility; and



- (g) the person can participate in treatment and care in a secure care facility; and
- (h) there is no less restrictive way of ensuring the person receives the treatment and care.

## **6**      **Meaning of *treatment plan***

- (1) A ***treatment plan*** for a person with a disability is a document prepared by the CEO stating the services proposed to be provided for the person's treatment and care on being admitted to a secure care facility.
- (2) Without limiting subsection (1), the treatment plan for a person with a disability must:
  - (a) state the treatment and care that will be provided to the person while a resident of the secure care facility; and
  - (b) state the expected therapeutic benefit to the person of the treatment and care; and
  - (c) state a proposed process for the person's transition to living in the community without a treatment order or to lower levels of supervision; and
  - (d) include a proposed behaviour support plan.

### *Note for section 6*

*If the person is receiving treatment and care under a treatment management plan under Part 6, Division 4 of the Mental Health and Related Services Act, it is expected the treatment plan will cover matters dealt with in the treatment management plan.*

## **7**      **Meaning of *primary carer***

- (1) A ***primary carer*** for a person is:
  - (a) someone providing care and support to the person because of his or her sense of responsibility as a relative of, or someone close to, the person; or
  - (b) if the person does not have anyone providing care and support as mentioned in paragraph (a) – someone most closely involved in the treatment or care of, or support to, the person.

- (2) In this section:

*relative*, of a person, includes anyone related to the person through a relationship that arises through common ancestry, adoption, marriage, de facto relationship or any customary law or tradition (including Aboriginal customary law or tradition).

## **Division 2      Application process and related provisions for treatment orders**

### **8            Application for order**

- (1) The CEO may apply to the Local Court for an order under this Division for a person if the CEO is satisfied the person fulfils the criteria for involuntary treatment and care.
- (2) However, an application cannot be made for a person for whom a supervision order is in force.
- (3) An application must be accompanied by:
- (a) the proposed treatment plan for the person; or
  - (b) if an order is in force for the person under Part 6, Division 4 of the *Mental Health and Related Services Act* – a copy of the order and treatment management plan under that Act for the person.

*Note for subsection (3)(b)*

*The person may be receiving treatment and care under an order for the person's admission as an involuntary patient on the grounds of complex cognitive impairment under Part 6, Division 4 of the Mental Health and Related Services Act.*

### **9            Notice of application**

- (1) Within one business day after making the application, the CEO must give written notice of it to the following persons:
- (a) the person for whom the order is sought;
  - (b) if the person has a guardian – the guardian;
  - (c) if the person has a primary carer other than the Agency – the primary carer;
  - (d) a lawyer acting or prepared to act for the person;

- (e) if an order is in force for the person under Part 6, Division 4 of the *Mental Health and Related Services Act* – an authorised psychiatric practitioner.
- (2) However, the CEO need not give notice to a primary carer of the person if the CEO:
- (a) is satisfied it is not in the person's best interests to do so; and
  - (b) states the reasons for not doing so in the application.

## **10 Parties to proceedings**

The following are parties to the proceeding for the hearing of the application:

- (a) the person to whom the application relates;
- (b) if the person has a guardian – the guardian;
- (c) a primary carer of the person who is given notice of the application;
- (d) the CEO.

## **11 Hearing in absence of person**

- (1) The Local Court may hear the application in the absence of the person to whom the application relates if satisfied:
- (a) the person's appearance at the hearing may be detrimental to the person's health or wellbeing; or
  - (b) the person is unable to attend at the hearing because of exceptional circumstances.
- (2) However, this section does not limit the Local Court's power to exclude anyone else from the hearing.

## **12 Deciding application**

- (1) If, on hearing the application, the Local Court decides the person fulfils the criteria for involuntary treatment and care, the Court may make a treatment order for the person.
- (2) However, the Local Court may make a treatment order for the person only if satisfied:
- (a) the services to be provided to the person in accordance with the treatment plan accompanying the application will be of therapeutic benefit to the person; and

- (b) it is necessary to admit the person to a secure care facility to enable delivery of services under the treatment plan and prevent substantial risk of harm to the person or someone else; and
  - (c) a secure care facility is available for the person's admission, treatment and care.
- (3) Otherwise, the Local Court must dismiss the application.

### **13 Interim treatment order**

- (1) If the Local Court adjourns the proceeding for the hearing of the application, it may make an interim treatment order for the person.
- (2) The Local Court may make the interim treatment order even though the person is not present at the hearing.
- (3) However, the Local Court may make the interim treatment order only if it reasonably believes, on the evidence before it when adjourning the proceeding, the person fulfils the criteria for involuntary treatment and care.
- (4) The interim treatment order is in force until the earlier of the following:
- (a) it is revoked by the Local Court;
  - (b) on the making of a treatment order for the person.

### **14 Effect of order**

- (1) A treatment order for a person authorises:
- (a) the person to be admitted to, and held in, the secure care facility stated in the order for the purpose of receiving services provided for the support of people with a disability; and
  - (b) a police officer to apprehend and take the person to the secure care facility stated in the order.
- (2) In addition, if the person is an involuntary patient under an order for the person's admission and detention as an involuntary patient on the grounds of complex cognitive impairment under Part 6, Division 4 of the *Mental Health and Related Services Act*, the order and treatment management plan under that Act for the person are revoked on the making of the treatment order.

- (3) However, if the person is later admitted to an approved treatment facility under Part 6 of the *Mental Health and Related Services Act*, the treatment order is suspended while the person is detained in the facility under that Act.
- (4) Also, if a supervision order is later made for the person, the treatment order is revoked.
- (5) For subsection (1)(b), the police officer may:
  - (a) use reasonable force and assistance; and
  - (b) enter any place, including any dwelling, where the officer reasonably believes the person may be found.
- (6) When apprehending the person, the police officer must tell the person that a treatment order has been made authorising the person's admission to the secure care facility.

## **15 Conditions of order**

- (1) A treatment order for a person is subject to the condition that the CEO must give the Local Court a report on the progress of the person's treatment and care under the treatment plan at least once in each 6 months the order is in force.
- (2) The treatment order is subject to the other conditions the Local Court considers appropriate and states in the order.

## **16 Duration of order**

- (1) The treatment order for the person is in force for the period (not less than 6 months and not more than 2 years) the Local Court decides.
- (2) In deciding the period the Local Court must consider the evidence before it, including reports from health practitioners and others the Court considers appropriate.
- (3) In this section:

*health practitioner* means a person registered under the Health Practitioner Regulation National Law to practise a health profession (other than as a student).

## **17 Local Court may initiate review of order**

- (1) On receipt of a report on the person's treatment and care under the treatment plan, the Local Court may fix a date, time and place for a review of the treatment order for the person.

- (2) The Local Court must give written notice of the date, time and place fixed to the following:
  - (a) the person;
  - (b) if the person has a guardian – the guardian;
  - (c) if the person has a primary carer other than the Agency – the primary carer.
  - (d) the CEO.
- (3) However, section 11 applies to the review as if it were an application for a treatment order for the person.
- (4) In conducting the review, the Local Court may consider any matter relating to the making of the treatment order.
- (5) The Local Court may make any of the following orders:
  - (a) an order revoking the treatment order;
  - (b) an order varying the conditions of the order;
  - (c) a new treatment order;
  - (d) another order it considers appropriate.

## **18 Resident to be released when order ceases**

The manager of a residential facility must, as soon as practicable after the treatment order for a resident of the facility ceases to be in force, ensure the resident is released from the facility.

## **Division 3 Variation, revocation and renewal of treatment orders**

### **19 Application for variation or revocation**

- (1) The CEO, or another person who was a party to the proceeding for the hearing of an application for a treatment order (a *third party*), may apply to the Local Court for the order to be:
  - (a) varied; or
  - (b) revoked; or
  - (c) revoked and replaced by a new treatment order.

- (2) However, a third party may make the application only with the leave of the Local Court.
- (3) Division 2 applies (with the necessary changes) to the application as if it were an application for a treatment order.

## **20 Application for renewal**

- (1) An application for the renewal of a treatment order must be made to the Local Court at least 30 days before the order ceases to be in force.
- (2) Division 2 applies (with the necessary changes) to the application as if it were an application for a treatment order.

## **Division 4 Appeals**

### **21 Appeal to Supreme Court**

- (1) A party to a Local Court proceeding may appeal to the Supreme Court against an order or decision of the Local Court under this Part (the *original decision*).
- (2) The appellant must do so by filing a notice of appeal with the Registrar of the Supreme Court within 28 days after the original decision is made.
- (3) The notice must state:
  - (a) the grounds for the appeal; and
  - (b) the facts on which the appeal is based.
- (4) The appellant must serve a copy of the notice on each of the other parties to the proceedings.

### **22 Stay of decision**

- (1) The Supreme Court may stay the original decision to secure the effectiveness of the appeal.
- (2) A stay:
  - (a) may be given on any conditions stated by the Supreme Court; and
  - (b) operates for the period stated by the Court; and
  - (c) may be revoked or amended by the Court.

- (3) However, the period of the stay must not extend beyond the time when the Supreme Court decides the appeal.

### **23 Hearing appeal**

An appeal must be conducted as a new hearing and is not limited by the evidence before the Supreme Court when the order was made.

### **24 Right of appearance and representation**

- (1) At the hearing of the appeal, the person for whom a treatment order was made or sought may:
- (a) represent himself or herself; or
  - (b) be represented by a lawyer or another person.
- (2) The Supreme Court may:
- (a) appoint a lawyer to represent the person if the person is not represented; and
  - (b) order the Territory to pay all or part of the reasonable costs and disbursements of the lawyer for representing the person at the appeal.
- (3) The Supreme Court may hear the appeal in the absence of the person or the person's representative if all of the following apply:
- (a) reasonable notice of the hearing was given to the person or representative;
  - (b) the person or representative had a reasonable opportunity to attend the hearing;
  - (c) the person or representative refuses to attend the hearing.
- (4) The Court may hear the appeal in the absence of the person if:
- (a) in the opinion of the Court, there are exceptional circumstances that make the attendance of the person inappropriate; and
  - (b) the person's representative is given notice of the hearing and has a reasonable opportunity to attend the hearing.
- (5) The Supreme Court must notify the person of its decision as soon as practicable if the hearing is conducted in the absence of the person or his or her representative.



**25 Power of Supreme Court**

The Supreme Court may:

- (a) confirm the original decision; or
- (b) vary the original decision; or
- (c) set aside the original decision; or
- (d) set aside the original decision and replace it with a new order or decision.

**Division 5 Miscellaneous matters****26 Searching resident of secure care facility**

- (1) The CEO may authorise a public sector employee of the Agency at a residential facility (the *authorised employee*) to search a resident of the facility (including anything found on or with the resident).
- (2) The authorised employee may search a resident only if the employee reasonably believes it is necessary to do so to prevent the resident from harming himself or herself or others.
- (2) The authorised employee must:
  - (a) be someone who is of the same gender as the resident; and
  - (b) conduct the search in the presence of an adult who:
    - (i) is of the same gender as the resident; and
    - (ii) is nominated by the resident or, if the resident fails to do so, by the authorised employee.
- (3) The adult nominated by the authorised employee must not be a police officer.
- (4) The authorised employee may use reasonable force and assistance in acting under this section.
- (5) However, this section does not authorise a search that involves the removal of the resident's clothing or an examination of the resident's body cavities.

**27 Seizure of things found to prevent harm**

- (1) The authorised employee may seize anything found on or with the resident in the conduct of the search if the officer reasonably believes it is necessary to do so to prevent the resident from harming himself or herself or others.
- (2) The authorised employee may do so by using reasonable force and assistance.
- (3) If the authorised employee seizes any of the following things, the employee must, as soon as practicable after seizing it, give it to a police officer:
  - (a) a firearm as defined in section 3 of the *Firearms Act*,
  - (b) a controlled weapon, offensive weapon or prohibited weapon as defined in section 3 of the *Weapons Control Act*,
  - (c) a dangerous drug as defined in section 3 of the *Misuse of Drugs Act*.
- (4) The authorised employee may destroy or otherwise dispose of anything seized under this section to prevent the person from harming himself or herself or others.

**28 Records and reports**

An authorised employee must, as soon as practicable after exercising a power under section 26 or 27:

- (a) make a record of the exercise of the power in the approved form; and
- (b) place the record on the resident's file.

**29 Approval of absence**

- (1) The manager of a secure care facility may give approval to a resident of the facility under a treatment order or supervision order to be absent from the facility for any period:
  - (a) for the purpose of receiving medical care, educational training or participating in arrangements of a social, recreational or vocational nature in accordance with the resident's treatment plan; or

- (b) for a purpose approved by the manager if the resident is escorted by:
  - (i) a member of the staff of the facility; or
  - (ii) a person authorised by the manager.
- (2) The resident's absence from the secure care facility is subject to any of the following conditions:
  - (a) the resident is escorted by:
    - (i) a member of the staff of the facility; or
    - (ii) a person authorised by the manager;
  - (b) other conditions decided by the manager of the facility.
- (3) However, the manager may give the approval only if it is not inconsistent with the resident's treatment order or supervision order.

### **30 Person absent without approval**

- (1) This section applies if a resident of a secure care facility under a treatment order or supervision order:
  - (a) is absent from the facility other than in accordance with the resident's treatment plan; or
  - (b) is absent from the facility without approval given under section 29; or
  - (c) has been given approval to be absent under that section and any of the following occurs:
    - (i) the resident fails to return to the facility before the end of the leave;
    - (ii) the resident fails to comply with a condition of the leave.
- (2) The manager of the facility must, as soon as practicable, report the resident's absence to a police officer.
- (3) The report must include sufficient information about the resident's history to enable the manager and police officer to make a joint informed assessment of the risk posed by the resident and the person's vulnerability.

- (4) The manager of the facility must also ensure the following are notified of the resident's absence:
  - (a) if the resident has a guardian – the guardian;
  - (b) if the person has a primary carer other than the Agency – the primary carer.
  - (c) another person the manager considers should be aware of the resident's absence.
- (5) As soon as practicable after the resident is found, the manager of the facility must ensure anyone notified under subsection (4) is notified that the resident has been found.
- (6) The manager of the facility must ensure:
  - (a) a record is made in the approved form about the resident's absence; and
  - (b) the record is placed on the resident's file.

### **31 Apprehension of missing resident**

- (1) This section applies if the manager of a secure care facility reports the absence of a resident of the facility under a treatment order.
- (2) A police officer may, at the request of the manager of the secure care facility:
  - (a) apprehend the person; and
  - (b) take the resident to the facility.
- (3) However, the manager of the secure care facility may make the request only if the manager is satisfied there is no other way of apprehending and taking the person to the facility.
- (4) For subsection (2), the police officer may:
  - (a) use reasonable force and assistance; and
  - (b) enter any place, including any dwelling, where the officer reasonably believes the resident may be found.

### **32 Transfer of resident to another secure care facility**

- (1) The CEO may transfer a resident in a secure care facility to another secure care facility if satisfied the transfer will enable the more effective provision of disability or other services to meet the resident's needs.

- (2) However, the CEO must consult with the manager of the other secure care facility before directing the transfer.
- (3) On the transfer of the resident, the secure care facility to which the resident is transferred is taken to be the secure care facility stated in the resident's treatment order.

## Part 4            **Behaviour support plans and restrictive interventions**

### Division 1        **Basic concepts**

#### 33            **Definitions**

In this Part:

*behaviour support plan*, see section 36(1).

*chemical restraint*, see section 34.

*physical restraint*, of a resident of a residential facility, means the use by a person of any part of the person's body to restrict the free movement of the resident for the purpose of controlling the resident's behaviour.

*restraint* means chemical or physical restraint.

*restricting access*, see section 35.

*restrictive intervention*, for a resident of a residential facility, means any intervention used to restrict the resident's rights or freedom of movement at the facility, and includes:

- (a) chemical restraint; and
- (b) physical restraint; and
- (c) seclusion; and
- (d) restricting access.

*seclusion*, of a resident of a residential facility, means the sole confinement of the resident at any time of the day or night in a room or area at the facility from which free exit is prevented.

**34 Meaning of *chemical restraint***

- (1) The *chemical restraint* of a resident of a residential facility is the use of medication prescribed by a medical practitioner, including a fixed daily dose and pro re nata medication, for the purpose of controlling the resident's behaviour.
- (2) However, using medication prescribed by a medical practitioner for the treatment, or to enable the treatment, of a mental illness or a physical illness or physical condition is not chemical restraint.
- (3) In this section:

*mental illness*, see section 6 of the *Mental Health and Related Services Act*.

**35 Meaning of *restricting access***

*Restricting access* is the restriction of access by a resident of a residential facility to a thing at the facility for the purpose of:

- (a) controlling the resident's behaviour; or
- (b) preventing the resident using the thing to cause harm to himself or herself or others.

*Example for paragraph (b)*

*Locking a drawer in which knives are kept to prevent a resident from using the knives to cause harm.*

**Division 2 Behaviour support plans****36 Preparation of behaviour support plan**

- (1) Before a person with a disability becomes a resident of a secure care facility, the CEO must prepare a document (a *behaviour support plan*) for the person stating a range of strategies to be used in managing the person's behaviour.
- (2) The behaviour support plan must include proactive strategies to build on the person's strengths and increase the person's life skills.
- (3) In preparing the behaviour support plan, the CEO must consult with:
  - (a) the person; and
  - (b) providers of services to the person; and

- (c) the following persons:
  - (i) if the person has a guardian – the guardian;
  - (ii) if the person has a primary carer other than the Agency – the primary carer;
  - (iii) others who are integral to the development or implementation of the plan for the person.
- (4) On preparation of the behaviour support plan, the CEO must give notice of its preparation, and a copy of it, to:
  - (a) the person with a disability; and
  - (b) each of the other persons consulted in its preparation.
- (5) In addition, if the behaviour support plan includes the use of a restrictive intervention on the person, the notice must state:
  - (a) the form of the restrictive intervention; and
  - (b) the recipients have a right to apply to the review panel for a review of the decision for the inclusion.
- (6) Also, on the person becoming a resident of a residential facility, the CEO must give a copy of the behaviour support plan to the manager of the facility.

### **37 Use of restrictive intervention included in behaviour support plan**

- (1) This section applies if the CEO:
  - (a) is satisfied the matters mentioned in section 41(2) apply to a person with a disability; and
  - (b) proposes to include the use of a form of restrictive intervention on the person.
- (2) The behaviour support plan for the person must:
  - (a) state the circumstances in which the proposed form of restrictive intervention is to be used for behaviour management; and
  - (b) explain how the use of the restrictive intervention will be of benefit to the person; and

- (c) show the use of the restrictive intervention is the option that is the least restrictive of the person as is possible in the circumstances.

### **38 Behaviour support plan required for residents**

The manager of a residential facility must ensure a behaviour support plan is in force for each resident of the facility.

### **39 Review of behaviour support plan – CEO**

- (1) A behaviour support plan for a person with a disability must be reviewed by the CEO at least once in each 12 months.
- (2) In addition, the person with a disability or a person consulted in its preparation may request the CEO to review the behaviour support plan at any time.
- (3) In reviewing the behaviour support plan, the CEO must consult with:
  - (a) the person; and
  - (b) providers of services to the person; and
  - (c) the following persons:
    - (i) if the person has a guardian – the guardian;
    - (ii) if the person has a primary carer other than the Agency – the primary carer;
    - (iii) others who are integral to the development or implementation of the plan for the person.

### **40 Review of behaviour support plan – review panel**

- (1) A resident of a residential facility or someone else consulted on the preparation of the behaviour support plan for the resident may apply to the review panel for the review of the inclusion of the use of a restrictive intervention in the plan.
- (2) The review panel must:
  - (a) confirm the decision to include the use of the restrictive intervention in the resident's behaviour support plan and dismiss the application; or
  - (b) direct the CEO to prepare a new behaviour support plan for the resident in accordance with the order; or



- (c) direct the use of the restrictive intervention be removed from the behaviour support plan for the resident.
- (3) In making its decision, the review panel must have regard to the treatment and care principles.

### **Division 3      Use of restrictive interventions**

#### **41      Offence to use restrictive intervention**

- (1) A person must not use a restrictive intervention on a resident of a residential facility.

Maximum penalty:      40 penalty units.

- (2) Subsection (1) does not apply if:
  - (a) the use is necessary:
    - (i) to prevent the resident from causing physical harm to himself or herself or others; or
    - (ii) to prevent the resident from destroying property if to do so could involve the risk of harm to himself or herself or others; and
  - (b) the use and form of the restrictive intervention is the option that is the least restrictive of the resident as is possible in the circumstances; and
  - (c) the use and form of the restrictive intervention is in accordance with the resident's behaviour support plan; and
  - (d) for the use of seclusion:
    - (i) the resident is supplied with bedding and clothing appropriate in the circumstances; and
    - (ii) the resident has access to adequate heating or cooling as is appropriate in the circumstances; and
    - (iii) the resident is provided with food and drink at the appropriate times; and
    - (iv) the resident is provided with adequate toilet arrangements; and
    - (v) the resident is able to communicate with staff at the residential facility; and

- (vi) the seclusion is not longer than a continuous period of 3 hours; and
  - (vii) the resident be visited and observed at intervals no longer than 15 minutes; and
  - (viii) a record of the use is made under section 43.
- (3) In addition, subsection (1) does not apply if restraint is applied to the resident, or the resident is kept in seclusion, in accordance with section 42.

## **42 Emergency use of restraint or seclusion**

- (1) This section applies if:
- (a) a resident of a residential facility does not have a behaviour support plan providing for the use of restraint or seclusion; and
  - (b) a provider of services to the resident is satisfied the use of restraint or seclusion is necessary because there is an imminent risk of the resident causing serious physical harm to himself or herself or others.
- (2) The provider of services may use restraint or seclusion on the resident if:
- (a) the use and form of restraint or seclusion is the least restrictive for the resident as is possible in the circumstances; and
  - (b) the provider immediately gives notice in the approved form to the CEO of the use of restraint or seclusion.

## **Division 4 Records and reports**

### **43 Record to be kept of use of restrictive intervention**

A provider of services who uses a restrictive intervention on a resident of a residential facility must, as soon as practicable after the use:

- (a) make a record of the use in the approved form; and
- (b) place the record on the resident's file.

**44 Manager of residential facility to keep records of use of restrictive intervention**

The manager of a residential facility must ensure:

- (a) a record is made in the approved form of each incident involving the use of force in using a restrictive intervention; and
- (b) the record is placed on the resident's file.

**Part 5 Complaints****45 Complaint procedures to be established**

- (1) The manager of a residential facility must establish procedures that are accessible and fair to deal with complaints relating to residents of the facility.
- (2) The procedures must aim:
  - (a) to investigate and, wherever possible, resolve complaints by a process within the residential facility; and
  - (b) to promote improvements in the quality of the policies, procedures and services of the facility.
- (3) The manager of a residential facility must ensure written information of the established complaints procedures is accessible to each of the following:
  - (a) a resident of the facility;
  - (b) if the person has a guardian – the guardian.

**46 Making complaint**

- (1) Each of the following persons may make a complaint to the manager of a residential facility about a matter mentioned in subsection (2):
  - (a) a resident of the facility;
  - (b) if a resident of the facility has a guardian – the guardian;
  - (c) if the resident has a primary carer other than the Agency – the primary carer;
  - (d) someone else who has a genuine interest in the treatment and care of a resident of the facility.

- (2) Without limiting subsection (1), a complaint may be made about:
- (a) the failure to recognise any right of a resident under this Act;  
or
  - (b) the administration of this Act that relates directly to the provision of services under the treatment plan for a resident.

#### **47 Acknowledgment of complaint**

As soon as reasonably practicable after a complaint is made, the manager of the residential facility must ensure the complainant is given a written acknowledgment.

#### **48 Investigation of complaint**

The manager of the residential facility must ensure:

- (a) the complaint is investigated in accordance with the established complaints procedures; and
- (b) the complainant is:
  - (i) kept informed of the progress of the investigation at regular intervals; and
  - (ii) informed of the action taken on completion of the investigation.

#### **49 Records and reports about complaints**

- (1) The manager of a residential facility must ensure a full and accurate record of the nature of each complaint, and any investigation and other action taken in relation to it, is made in a register kept for the purpose.
- (2) The manager of a residential facility must ensure the register is made available to a community visitor for inspection when requested by the community visitor.
- (3) The manager of a residential facility must give the CEO and principal community visitor, at least once in each 6 months, a report containing details of:
  - (a) the pattern of complaints made during the period of the report;  
and
  - (b) any changes made to prevent a recurrence of the activities that led to the complaints.

## Part 6            Community visitors program

### Division 1        Administration

#### Subdivision 1    Principal community visitor and community visitors

##### 50            Appointment

- (1) The Minister must appoint a person to be the principal community visitor.
- (2) The Minister may appoint a person to be a community visitor.
- (3) A person must not be appointed to be a community visitor if:
  - (a) the person does not have appropriate qualifications; or
  - (b) the person is employed by, or has a direct interest in any contract with, the Agency.
- (4) An appointee holds office for 3 years and is eligible to be reappointed.
- (5) To avoid doubt, this section does not prevent an appointee concurrently holding office as the principal community visitor or a community visitor under the *Mental Health and Related Services Act*.

##### 51            Interim community visitor

- (1) The principal community visitor may appoint a person to be a community visitor (an *interim community visitor*) for the period (of not more than 60 days) stated in the instrument of appointment.
- (2) A person must not be appointed to be an interim community visitor unless the person is qualified for appointment to be a community visitor.
- (3) The appointment of an interim community visitor ceases at the earliest of the following:
  - (a) when the period of appointment ends;
  - (b) when the appointment is terminated;
  - (c) when the person resigns office;
  - (d) when the Minister appoints the person to be a community visitor.

- (4) The Minister may terminate the appointment before the period of appointment ends.

## **52 Resignation and termination of appointment**

- (1) A community visitor may resign office by written notice given to the Minister.
- (2) The Minister may, by written notice given to a community visitor, terminate the community visitor's appointment:
- (a) on the ground of misbehaviour; or
  - (b) on the ground the community visitor becomes physically or mentally incapable of satisfactorily performing the functions of office.
- (3) In addition, the appointment is terminated if:
- (a) the community visitor:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with creditors or makes an assignment of the community visitor's remuneration for their benefit; or
  - (b) the community visitor is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
  - (c) the community visitor is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

## **53 Functions and powers**

A community visitor has the functions and powers conferred by this Act.

## **Subdivision 2 Powers and functions of community visitors**

### **54 Functions of principal community visitor**

The functions of the principal community visitor are as follows:

- (a) to establish standards, principles and protocols for community visitors to exercise their powers and perform their functions;
- (b) to oversee the preparation and circulation of publications to residents of residential facilities, providers of services and the public generally explaining the role of community visitors and how they may be contacted;
- (c) to ensure community visitors exercise their powers and perform their functions in accordance with the established principles, standards and protocols;
- (d) to ensure the inspection by a community visitor of:
  - (i) a secure care facility at least once each month; or
  - (ii) an appropriate place at least once each 3 months.

### **55 Inquiry functions**

- (1) A community visitor may inquire into and make recommendations relating to:
  - (a) the adequacy of information relating to:
    - (i) the rights of residents receiving treatment and care at residential facilities; and
    - (ii) the complaint procedures under Part 5; and
  - (b) the accessibility and effectiveness of the complaint procedures; and
  - (c) the failure of persons employed in residential facilities to comply with this Act; and
  - (d) the use of restrictive interventions; and
  - (e) any matter the community visitor considers appropriate having regard to the treatment and care principles; and
  - (f) any matter as directed to the principal community visitor by the Minister.

- (2) A community visitor must refer to the principal community visitor any matter the community visitor considers should be investigated by a community visitors panel.

## **56 Complaint functions**

A community visitor must:

- (a) be accessible to residents of residential facilities to hear and facilitate the resolution of complaints they may have; and
- (b) help the residents make complaints, apply for reviews or file notices of appeal under this Act.

## **57 Visiting and inspections of residential facilities**

- (1) When visiting a residential facility, a community visitor must inspect documents made under this Act about the use of restrictive interventions on residents of the facility.
- (2) A community visitor may at any reasonable time (without notice) exercise the following powers:
  - (a) enter a residential facility;
  - (b) visit and communicate with residents of a residential facility;
  - (c) inspect a residential facility and any documents relating to residents of the facility made or kept for this Act.
- (3) When directed by the Minister, the principal community visitor must arrange for a community visitor to inspect a residential facility at the times stated by the Minister.

## **58 Requests to be contacted by community visitors**

- (1) The manager of a residential facility must ensure a resident of the facility and the interested persons for the resident are given oral or written information about the role of the community visitors program under this Part, including the following:
  - (a) the resident's right to be visited by a community visitor;
  - (b) the right of the resident and the interested persons for the resident to contact a community visitor;
  - (c) how to contact a community visitor.



- (2) For subsection (1), the interested persons for the resident are the following:
  - (a) if the resident has a guardian – the guardian;
  - (b) if the resident has a primary carer of the resident other than the Agency – the primary carer;
  - (c) another person the manager considers should be aware of the resident's rights.
- (3) A resident of a residential facility may ask to be contacted by a community visitor.
- (4) The manager of a residential facility must send the request to the principal community visitor as soon as practicable and, in any event, not later than 24 hours after it is made.
- (5) The principal community visitor must ensure a community visitor contacts, or attempts to contact, the resident before the end of the next business day after the principal community visitor receives the request.
- (6) In this section:

*contact* includes contact by telephone or email.

## **59 Reports by community visitors**

- (1) A community visitor who visits a residential facility must give a report of his or her visit, including any findings and recommendations, to the principal community visitor.
- (2) The principal community visitor must give the manager of the residential facility a copy of the report.
- (3) The principal community visitor may report to the CEO if he or she reasonably believes the manager of a residential facility has not taken adequate or reasonable action to implement a recommendation made by a community visitor in a report under this section.
- (4) If the principal community visitor considers a matter mentioned in the report falls within the functions conferred by a law of the Territory, the Commonwealth, a State or another Territory on a person, tribunal or other entity, the principal community visitor may refer the matter to the person, tribunal or entity.

**Subdivision 3 Community visitors panel****60 Establishment**

The community visitors panel is established.

**61 Appointment of members**

- (1) The Minister must appoint the following persons to be members of the community visitors panel:
  - (a) a lawyer;
  - (b) a medical practitioner;
  - (c) another person who represents the interest of people with a disability.
- (2) A person must not be appointed to be a member of the community visitors panel if the person is employed by, or has a direct interest in any contract with, the Agency.
- (3) The community visitors panel must, as far as practicable, include persons of both sexes and of diverse ethnic backgrounds (including Aboriginal and Torres Strait Islander backgrounds).
- (4) The Minister must appoint one member of the community visitors panel to be the chairperson of the panel.
- (5) A member of a community visitors panel holds office for 3 years and is eligible for reappointment.

**62 Resignation and termination of appointment of members**

- (1) A member of the community visitor panel may resign office by written notice given to the Minister.
- (2) The Minister may, by written notice given to a member of the community visitor panel, terminate the member's appointment:
  - (a) on the ground of misbehaviour; or
  - (b) on the ground the member becomes physically or mentally incapable of satisfactorily performing the functions of office.
- (3) In addition, the appointment is terminated if:
  - (a) the member:
    - (i) becomes bankrupt; or

- (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
  - (iii) compounds with creditors or makes an assignment of the member's remuneration for their benefit; or
- (b) the community visitor is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
- (c) the community visitor is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

### **63 Functions of community visitors panel**

- (1) The members of a community visitors panel must, as a group, visit each secure care facility at least once in each 6 months.
- (2) When visiting the secure care facility, the members of the community visitors panel must enquire into:
  - (a) the extent to which residents of the facility receive treatment and care in conditions that provide the least restrictive and least intrusive environment enabling the treatment and care to be effectively given; and
  - (b) the adequacy of information provided by the manager of the facility about the complaints procedures and other rights under this Act; and
  - (c) the accessibility and effectiveness of internal complaints procedures of the facility; and
  - (d) any failure of persons employed at the facility to comply with this Act; and
  - (e) any other matter the panel consider appropriate having regard to the treatment and care principles; and
  - (f) any other matter referred to it by the Minister or principal community visitor.
- (3) The members of a community visitors panel may, when visiting a secure care facility:
  - (a) inspect any part of the facility; and
  - (b) visit a resident of the facility; and

- (c) inquire into the admission, treatment and care of residents; and
- (d) inspect records or other documents relating to residents; and
- (e) inspect other records or registers made under this Act.

#### **64 Reports by community visitors panel**

- (1) The chairperson of the community visitors panel must give the principal community visitor a report of the panel's visit to a secure care facility as soon as practicable after the visit.
- (2) The report must be in writing and contain details of the following:
  - (a) the actions and inquiries undertaken by the panel;
  - (b) the results of attempts by the panel to resolve particular matters;
  - (c) those matters not resolved by the panel;
  - (d) those matters that require further attention by the panel;
  - (e) the results of inquiries from previous visits made by the panel;
  - (f) any recommendations of the panel arising out of the visit.
- (3) The principal community visitor must give a copy of the report to the manager of the secure care facility.
- (4) The Minister may require the principal community visitor to arrange for a community visitors panel to report to the Minister, through the principal community visitor, on a matter and at the times and in the way directed by the Minister.

### **Division 2 Miscellaneous matters**

#### **65 Assistance to be provided**

- (1) The manager and each employee of a residential facility must give reasonable assistance and cooperation to the following persons in the exercise of their powers and performance of their functions under this Act:
  - (a) a community visitor;
  - (b) a member of the community visitors panel;
  - (c) a member of the review panel.

- (2) For subsection (1), reasonable assistance and cooperation to be given to a person includes answering questions and responding to enquiries.

## **66 Annual report**

- (1) Within 3 months after the end of each financial year, the principal community visitor must give the Minister a report on the activities of community visitors and community visitors panels in the year.
- (2) The Minister must table a copy of the report in the Legislative Assembly within 6 sitting days after receiving it.

## **67 Protection from liability**

- (1) A person is not civilly or criminally liable for an act done or omitted to be done by the person in good faith in the exercise of a power or performance of a function as any of the following:
- (a) the CEO;
  - (b) a community visitor;
  - (c) a member of the community visitors panel;
  - (d) a member of the review panel.
- (2) In addition, a person is not civilly or criminally liable for an act done, or omitted to be done, by the person in good faith and exercising due diligence in the course of delivering treatment or other services to a resident of a residential facility for this Act.
- (3) Subsections (1) and (2) do not affect any liability the Territory would, apart from that subsection, have for the act or omission.
- (4) In this section:

*exercise*, of a power, includes the purported exercise of the power.

*performance*, of a function, includes the purported performance of the function.

## **68 Confidentiality of information**

- (1) A person commits an offence if the person:
- (a) obtains information in the course of performing functions connected with the administration or enforcement of this Act; and

- (b) engages in conduct that results in the disclosure of the information to someone else.

Maximum penalty: 40 penalty units.

- (2) Subsection (1) does not apply if the person engages in the conduct in exercising a power or performing a function under this Act.
- (3) In addition, subsection (1) does not apply if the information is disclosed:
- (a) with the consent of the person to whom the information relates; or
  - (b) to a health service provider for providing a health service to a person; or
  - (c) to a health profession body; or
  - (d) to a court or tribunal for a legal proceeding arising out of the operation of this Act; or
  - (e) to a law enforcement agency for a criminal investigation; or
  - (f) to a police officer if:
    - (i) the person to whom the information relates is in a situation requiring immediate restrictive intervention; and
    - (ii) the person:
      - (A) is likely to cause serious harm to himself or herself or to someone else; or
      - (B) represents a substantial danger to members of the public; and
    - (iii) the information is relevant to the safe resolution of the situation.

- (4) In this section:

***health profession body*** means:

- (a) a National Health Practitioner Board established under the Health Practitioner Regulation National Law; or
- (b) a State or Territory Board established under that Law by a Board mentioned in paragraph (a); or

- (c) the Australian Health Practitioner Regulation Agency established under that Law.

*health service provider*, see section 5 of the Health Practitioner Regulation National Law.

*law enforcement agency*, see section 4 of the *Information Act*.

## **Part 7            Other matters of administration**

### **Division 1        Review panel**

#### **69            Establishment**

The review panel is established for this Act.

#### **70            Membership**

- (1) The review panel consists of the following persons appointed by the Minister:
- (a) a lawyer;
  - (b) a person with a special interest or expertise in people with a disability, including a provider of services to persons having a complex cognitive impairment;
  - (c) a person representing the interests of the community.
- (2) A person must not be appointed to be a member of the community visitors panel if the person is:
- (a) a community visitor; or
  - (b) a person employed by, or has a direct interest in any contract with, the Agency.
- (3) The Minister must appoint one of the members of the review panel to be member the chairperson of the review panel.
- (4) A member of the review panel holds office for 3 years and is eligible for reappointment.

#### **71            Resignation and termination**

- (1) A member of the review panel may resign by written notice given to the Minister.

- (2) The Minister may, by written notice given to a member of the review panel, terminate the member's appointment:
  - (a) on the ground of misbehaviour; or
  - (b) on the ground the member becomes physically or mentally incapable of satisfactorily performing the functions of office.
- (3) In addition, the appointment is terminated if:
  - (a) the member:
    - (i) becomes bankrupt; or
    - (ii) applies to take the benefit of a law for the relief of bankrupt or insolvent debtors; or
    - (iii) compounds with creditors or makes an assignment of the member's remuneration for their benefit; or
  - (b) the member is found guilty by a court in the Territory of an offence punishable by imprisonment for 12 months or more; or
  - (c) the member is found guilty by a court outside the Territory of an offence which, if committed against a law of the Territory, would be an offence punishable by imprisonment for 12 months or more.

## **Division 2      Other matters**

### **72      Secure care facilities**

The Minister may, by *Gazette* notice, declare premises that are operated by the Agency to provide services for the treatment and care of people with a disability to be a secure care facility.

### **73      Approved forms**

The CEO may approve forms for this Act.

### **74      Delegations**

- (1) The Minister may delegate any of the Minister's powers under this Act to the CEO or a public sector employee in the Agency.
- (2) The CEO may delegate any of the CEO's powers under this Act to a public sector employee in the Agency.



**Part 8                    Miscellaneous matters****75                    Acquisition on just terms**

If the operation of this Act would, apart from this section, result in an acquisition of property from a person otherwise than on just terms:

- (a) the person is entitled to receive from the Territory the compensation necessary to ensure the acquisition is on just terms; and
- (b) a court of competent jurisdiction may decide the amount of compensation or make the orders it considers necessary to ensure the acquisition is on just terms.

**76                    Regulations**

- (1) The Administrator may make regulations under this Act.
- (2) The regulations may provide for any of the following:
  - (a) applying, adopting or incorporating (with or without changes) the whole or part of a document as in force or existing at a particular time or from time to time;
  - (b) an offence against a regulation to be an offence of strict or absolute liability but not with a penalty exceeding 100 penalty units.

**8                    Act further amended**

The Schedule has effect.

**Part 3                    Amendment of Mental Health and Related Services Act****9                    Act amended**

This Part amends the *Mental Health and Related Services Act*.

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**10 Section 8AA inserted**

After section 8

*insert*

**8AA Relationship with *Disability Services Act***

- (1) A person with a disability for whom a treatment order under the *Disability Services Act* is in force may be admitted as an involuntary patient.

*Note for subsection (1)*

*If a person with a disability for whom a treatment order under the Disability Services Act is in force is admitted as an involuntary patient, the treatment order for the person is suspended while the person is detained in an approved treatment facility – see section 14(3) of that Act.*

- (2) A treatment order under the *Disability Services Act* may be made for a person under an order for the person's involuntary admission on the grounds of complex cognitive impairment under Part 6, Division 4.

*Note for subsection (2)*

*The order under this Act for the person is revoked on the making of the treatment order under the Disability Services Act – see section 14(2) of that Act.*

**Part 4 Amendment of Criminal Code****11 Act amended**

This Part amends the Criminal Code.

**12 Section 43ZA amended**

Section 43ZA(3)

*omit, insert*

- (3) Unless the court receives a certificate from the CEO (Health) mentioned in subsection (4), the court must not make a supervision order:
- (a) committing the accused person to custody in an appropriate place; or
  - (b) providing for the accused person to receive treatment or other services in, at or from an appropriate place.

- (4) The certificate of the CEO (Health) must state:
- (a) facilities or services are available in the appropriate place for the custody, care or treatment of the accused person; and
  - (b) if the appropriate place is a secure care facility - the accused person fulfils the criteria for involuntary treatment and care under the *Disability Services Act*.

### **13 Section 43ZI amended**

#### Section 43ZI(5)

*omit, insert*

- (4A) In addition, the CEO (Health) is entitled to appear at a hearing of an application for an order varying or revoking the supervision order, or of a review of the supervision order, for a person who is in custody in an appropriate place mentioned in section 43ZA(1)(a)(ii), including, for example, a resident of a secure care facility under the *Disability Services Act*.
- (5) Also, the court may give leave to a person who it considers has a proper interest in the matter the subject of a hearing mentioned in subsection (1) to appear before the court at the hearing.

**Schedule Disability Services Act further amended**

section 8

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| Provision   | Amendment   |                                   |
|---|-------------|-----------------------------------|
|   | <i>omit</i> | <i>insert</i>                     |
| Before section 1                                      |             | <b>Part 1 Preliminary matters</b> |
| Before section 3                                      |             | <b>Part 2 Funding</b>             |
| sections 3(2) and (3) and 4(1) and (2) and Schedule 1 | shall       | must                              |

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