

TASMANIA

DISABILITY INCLUSION BILL 2023

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DISABILITY INCLUSION BILL 2023

(Brought in by the Minister for Disability Services, the Honourable Joanne Lesley Palmer)

A BILL FOR

An Act to advance the human rights of people with disability and the full and effective inclusion of people with disability in the Tasmanian community

Be it enacted by Her Excellency the Governor of Tasmania, by and with the advice and consent of the Legislative Council and House of Assembly, in Parliament assembled, as follows:

PART 1 – PRELIMINARY

1. Short title

This Act may be cited as the *Disability Inclusion Act 2023*.

2. Commencement

This Act commences on a day to be proclaimed.

3. Objects

The objects of this Act are to advance and protect the rights of people with disability and to advance the full and effective inclusion of people with disability, including by –

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- (a) recognising the responsibility of the State and the community to support people with disabilities in exercising their human rights; and
- (b) supporting and furthering –
 - (i) the purpose and principles of the United Nations Convention on the Rights of Persons with Disabilities; and
 - (ii) Australia’s Disability Strategy; and
- (c) establishing a framework for a whole-of-government approach to accountability and transparency in relation to disability inclusion; and
- (d) regulating the use of restrictive practices by disability services providers; and
- (e) establishing the positions of Disability Inclusion Commissioner and Senior Practitioner; and
- (f) establishing the Disability Inclusion Advisory Council; and
- (g) enabling the provision of funding to support the above objects.

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4. Act binds Crown

This Act binds the Crown in right of Tasmania and, so far as the legislative power of Parliament permits, in all its other capacities.

5. Interpretation

In this Act, unless the contrary intention appears –

appointed program officer, for a disability services provider, means a person appointed as an appointed program officer for that provider under section 53;

Australia's Disability Strategy means the document, Australia's Disability Strategy 2021-2031, published by the Commonwealth of Australia (Department of Social Services) in 2021, as amended from time to time;

authorised officer means a person authorised to enter premises under section 62;

behaviour support plan means a plan prepared in consultation with a person with disability that specifies the evidence-informed strategies to be used in supporting the person's behaviour, including proactive strategies to build on the person's strengths and increase their life skills;

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behaviour support practitioner means a person the Senior Practitioner considers suitably qualified to undertake behaviour support assessments and to develop behaviour support plans that may contain the use of restrictive practices;

Commissioner means a person appointed as the Disability Inclusion Commissioner under section 23;

defined entity – see section 6;

disability means any impairment (including a physical, mental, intellectual, cognitive, learning, communication or sensory impairment) or functional limitation (whether or not the impairment or limitation is permanent, temporary, episodic in nature or evident) that, in interaction with a barrier, hinders a person's full and equal participation in society;

disability inclusion action plan, in respect of an entity, means the disability inclusion action plan for that entity prepared under section 12;

Disability Inclusion Advisory Council means the Disability Inclusion Advisory Council established by section 19;

disability service means a service specifically for the support of people with disability, including but not limited to, NDIS supports and services;

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disability services provider – see section 7;

disability support grant means a grant of financial assistance under section 61;

employee, in relation to a disability services provider, means –

- (a) an employee or agent of the provider; or
- (b) a person providing services voluntarily on behalf of the provider;

governing body, in relation to a defined entity, means a board of directors, board of trustees, committee of management, council or other governing authority of the defined entity;

grant recipient means a person or organisation that is receiving a disability support grant;

inclusion principles – see section 8;

independent person – see section 59;

intersectionality means the interconnected nature of protected attributes of a person or group of persons that create overlapping and interdependent systems of disadvantage or discrimination;

protected attribute means an attribute specified in section 16 of the *Anti-Discrimination Act 1998*;

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NDIS means the National Disability Insurance Scheme within the meaning of the NDIS Act;

NDIS Act means the *National Disability Insurance Scheme Act 2013* of the Commonwealth;

NDIS Commissioner means the Commissioner of the NDIS Quality and Safeguards Commission referred to in section 181C of the NDIS Act;

NDIS provider has the same meaning as in the NDIS Act and includes registered NDIS providers, within the meaning of that Act, and NDIS providers that are not registered;

NDIS Quality and Safeguards Commission means the NDIS Quality and Safeguards Commission established by section 181A of the NDIS Act;

NDIS Rules means –

- (a) the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* of the Commonwealth, as in force from time to time, under the NDIS Act; or
- (b) if the rules referred to in paragraph (a) are revoked or replaced by rules made under the NDIS Act dealing with restrictive

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practices, those rules, as in force from time to time;

private grant recipient means a person who is receiving a disability support grant under section 61(3)(e);

progress report means a report prepared by a defined entity under section 14(1);

regulations means the regulations made under this Act;

restrictive practice means –

- (a) a regulated restrictive practice within the meaning of the NDIS Rules; or
- (b) a practice or intervention determined by the Senior Practitioner under section 38 to be a restrictive practice;

Secretary means the Secretary of the Department;

Senior Practitioner means the Senior Practitioner appointed under section 36;

Tasmanian Disability Inclusion Plan means the Tasmanian Disability Inclusion Plan prepared under section 9;

Tribunal means the Tasmanian Civil and Administrative Tribunal established by the *Tasmanian Civil and Administrative Tribunal Act 2020*;

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universal design means the design of a building, facility, product or environment so that it is accessible to all members of the Tasmanian community to the greatest extent possible without the need for adaptation or specialised design.

6. Meaning of *defined entity*

- (1) For the purposes of this Act, an entity is a *defined entity* if that entity is –
 - (a) an Agency, within the meaning of the *State Service Act 2000*; or
 - (b) an agent or instrumentality of the Crown, if that agent or instrumentality administers funding or services to the disability sector; or
 - (c) any other persons or bodies, or class of persons or bodies, prescribed as a defined entity.
- (2) For the purposes of this Act, defined entity does not include a person or body, or class of persons or bodies, prescribed as being excluded from the definition of defined entity.

7. Meaning of *disability services provider*

- (1) For the purposes of this Act, *disability services provider* means a person or organisation that receives funding under the NDIS or this Act to provide a service specifically for the support of people with disability.

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- (2) For the purposes of subsection (1), *disability services provider* includes the following:
- (a) a provider of supports or services under the NDIS;
 - (b) a grant recipient;
 - (c) a person or body, or class of persons or bodies, prescribed as a disability services provider for the purposes of this Act.
- (3) For the purposes of this Act, *disability services provider* does not include the following:
- (a) a person with disability in receipt of a disability support grant for the purpose of obtaining care, support or assistance;
 - (b) a relative or friend of a person with disability who provides disability supports to that person;
 - (c) a person or body, or class of persons or bodies, prescribed as being excluded from the definition of disability services provider.

8. Inclusion principles

- (1) The following principles are to be observed in the operation, administration and enforcement of this Act:
- (a) people with disability have the same right as other members of Australian society to realise their potential for

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- physical, social, emotional and intellectual development;
- (b) people with disability have the right to be supported to participate in, and contribute to, social and economic life to the full extent of their ability;
 - (c) people with disability and their families and carers have the right to certainty that people with disability will receive the care and support that they need over their lifetime;
 - (d) people with disability have the right to be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports;
 - (e) people with disability have the right to be supported to receive necessary supports (including early intervention supports) within the meaning of the *National Disability Insurance Scheme Act 2013* of the Commonwealth;
 - (f) people with disability have the same right as other members of Australian society to be respected for their worth and dignity and to live free from violence, abuse, neglect and exploitation;
 - (g) people with disability have the same right as other members of Australian society to pursue any grievance;

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- (h) people with disability have the same right as other members of Australian society to be able to make their own decisions, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their lives, to the full extent of their capacity;
- (i) people with disability have the right to be supported in all their dealings and communications so that their capacity to exercise choice and control is maximised in a way that is appropriate to their circumstances and cultural needs;
- (j) people with disability who require support in decision making are to be provided with access to the support necessary to enable those persons –
 - (i) to participate in those decisions; and
 - (ii) to express their will and preferences in relation to those decisions; and
 - (iii) to develop their decision-making ability;
- (k) people with disability have the right to receive innovative, high-quality, best-practice, contemporary and effective supports that are person-centred and trauma-informed;

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- (l) people with disability have the right to have their privacy and dignity respected;
- (m) the role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected;
- (n) access to disability advocacy plays an essential role in fostering the full and equal enjoyment of human rights, enabling community participation and the inclusion of people with disability by ensuring that their rights are maintained, promoted and valued;
- (o) the voices of people with disability are central to the development of practical, effective and targeted services and programs;
- (p) the voices of families, friends and carers of people with disability are to be considered in the development of practical, effective and targeted services and programs;
- (q) consultation with people with disability should be designed and delivered in collaboration with people with disability and adaptable to provide for the range of different ways that people with disability may use to participate;
- (r) positive personal and social development of people with disability, including

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children and young people, is to be promoted.

- (2) In addition to any other principles set out in this section, if this Act requires or permits an act or thing to be done by or in relation to a person with disability by another person, the act or thing is to be done, so far as practicable, in accordance with the following principles:
- (a) people with disability have the right to make their own decisions and to access support to enable them to make decisions;
 - (b) people with disability are to be encouraged to engage in the life of the community;
 - (c) people with disability have the right to have their own individual freedom of expression, self-determination and decision-making respected;
 - (d) the cultural or linguistic diversity (including Aboriginality), age, gender, sexual orientation and religious beliefs, of people with disability are to be taken into account;
 - (e) the supportive relationships, friendships and connections, with others, of people with disability are to be recognised;
 - (f) restrictive practices should only be used in very limited and specific circumstances as a last resort and

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utilising the least restrictive practice and for the shortest period of time possible in the circumstances;

(g) restrictive practices should only be used where they are proportionate and justified in order to protect the rights or safety of the person with disability or others.

(3) In addition to any other principles set out in this section, if this Act requires or permits an act or thing to be done by or in relation to a child with disability by another person, the act or thing is to be done, so far as practicable, in accordance with the following principles:

(a) the evolving capacities of the child are to be respected;

(b) the right of the child to preserve the child's identity is to be respected;

(c) the wishes of the child are to be listened to;

(d) the child is to be provided with disability, and age-appropriate, support in decision making;

(e) regard is to be had, and appropriate weight given to, the views of the child;

(f) the best interests of the child are paramount, and full consideration must be given to the need to –

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- (i) protect the child from harm; and
 - (ii) promote the child’s development;
and
 - (iii) strengthen, preserve and promote positive relationships between the child and the child’s parents, family members and other people who are significant in the life of the child.
- (4) Each person or body engaged in the administration, operation or enforcement of this Act must exercise their powers and perform their functions so as to give effect to the principles set out in this section.

PART 2 – DISABILITY INCLUSION PLANNING

Division 1 – Tasmanian Disability Inclusion Plan

9. Requirement for Tasmanian Disability Inclusion Plan

- (1) The Minister must ensure that a Tasmanian Disability Inclusion Plan is prepared –
 - (a) within 12 months of the commencement of this Act; and
 - (b) on a 4-yearly basis thereafter.
- (2) A Tasmanian Disability Inclusion Plan must –
 - (a) set out whole-of-government policies and measures for achieving the objects of this Act and advancing the inclusion principles; and
 - (b) provide for collaboration and coordination among State authorities and other entities in the provision of mainstream supports and services to people with disability.
- (3) In preparing a Tasmanian Disability Inclusion Plan, the Minister –
 - (a) must have regard to the objects of this Act and the inclusion principles; and
 - (b) must consider the varied needs and experiences of people with disability and

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- the strategies that may be required in response to those needs and experiences; and
- (c) must consult with, in accordance with any prescribed requirements –
- (i) the Disability Inclusion Advisory Council; and
 - (ii) the Commissioner; and
 - (iii) people with disability; and
 - (iv) persons or bodies representing the interests of people with disability; and
 - (v) the public; and
- (d) may consult with any other person or body that the Minister thinks appropriate.
- (4) The Minister must cause a copy of a Tasmanian Disability Inclusion Plan to be published –
- (a) on a website operated by, or on behalf of, the Department as soon as reasonably practicable after it is prepared; and
 - (b) in at least one accessible format.
- (5) The Minister is to cause a copy of the Tasmanian Disability Inclusion Plan to be tabled in each House of Parliament within 10 sitting-days of that House after publication of that plan under subsection (4).

10. Amendment of disability inclusion action plan

- (1) The Minister may, at any time –
 - (a) amend the Tasmanian Disability Inclusion Plan; or
 - (b) revoke and substitute the Tasmanian Disability Inclusion Plan.
- (2) Section 9(2), (3), (4) and (5) apply, with any necessary modification, to the amendment or revocation and substitution of a Tasmanian Disability Inclusion Plan in the same way as they apply to the preparation of a Tasmanian Disability Inclusion Plan.

11. Tasmanian Disability Inclusion Plan Progress Report

- (1) The Minister must prepare a Tasmanian Disability Inclusion Plan Progress Report –
 - (a) within 12 months after the preparation of a Tasmanian Disability Inclusion Plan; and
 - (b) on a yearly basis thereafter.
- (2) A Disability Inclusion Plan Progress Report under subsection (1) must include an assessment of progress in the previous 12 months in relation to the implementation of the Tasmanian Disability Inclusion Plan.
- (3) The Minister must cause a copy of a Disability Inclusion Plan Progress Report to be published –

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- (a) on a website operated by, or on behalf of, the Department as soon as reasonably practicable after it is prepared; and
 - (b) in at least one accessible format.
- (4) The Minister is to cause a copy of the Disability Inclusion Plan Progress Report to be tabled in each House of Parliament within 10 sitting-days of that House after publication of the report.

Division 2 – Disability inclusion action plans for defined entities

12. Requirement for disability inclusion action plans

- (1) A defined entity must ensure that a disability inclusion action plan is prepared for that entity –
 - (a) within 6 months after the publication of the initial Tasmanian Disability Inclusion Plan prepared under section 9(1)(a); and
 - (b) on a 4-yearly basis thereafter.
- (2) The purpose of a disability inclusion action plan is to support the implementation of the Tasmanian Disability Inclusion Plan by –
 - (a) promoting inclusion and participation in the community of people with disability; and
 - (b) reducing, removing and preventing barriers to people with disability in accessing universal supports and services; and

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- (c) reducing, removing and preventing barriers to people with disability obtaining and maintaining employment; and
 - (d) realising meaningful change in attitudes and practices that discriminate against people with disability; and
 - (e) coordinating and integrating universal services and supports with services and supports that are funded or provided under the NDIS.
- (3) A disability inclusion action plan for a defined entity must include –
- (a) strategies and measures for the defined entity to promote disability inclusion; and
 - (b) actions to be taken and outcomes to be measured by the defined entity to advance disability inclusion.
- (4) In preparing a disability inclusion action plan, a defined entity must have regard to the following matters:
- (a) the objects of this Act;
 - (b) the inclusion principles;
 - (c) the priorities, outcomes and measures in the current Tasmanian Disability Inclusion Plan;
 - (d) any guidelines issued under section 18;

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- (e) any prescribed matters.
- (5) In preparing a disability inclusion action plan, a defined entity must consult with –
- (a) people with disability; and
 - (b) the Disability Inclusion Advisory Council; and
 - (c) persons or bodies representing the interests of people with disability; and
 - (d) any other persons whom the entity considers relevant.
- (6) Within a reasonable time after preparing a disability inclusion action plan, a defined entity must –
- (a) cause the disability inclusion action plan to be published on a website operated by, or on behalf of, the defined entity in at least one accessible format; and
 - (b) submit a copy of the disability inclusion action plan to the Commissioner.

13. Amendment of disability inclusion action plan

- (1) A defined entity may amend its disability inclusion action plan at any time if it considers that the amendment is necessary.
- (2) Section 12(2), (3), (4) and (5) apply, with any necessary modification, to the amendment of a disability inclusion action plan in the same way

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as they apply to the preparation of a disability inclusion action plan.

- (3) Within a reasonable time after amending a disability inclusion action plan, a defined entity must –
 - (a) cause the amended disability inclusion action plan to be published on a website operated by, or on behalf of, the defined entity in at least one accessible format; and
 - (b) submit a copy of the amended disability inclusion action plan to the Commissioner.

14. Review of disability inclusion action plan

- (1) A defined entity must prepare a progress report on the implementation of the defined entity's disability inclusion action plan –
 - (a) within 12 months after the publication of a disability inclusion action plan under section 12(6)(a); and
 - (b) on a yearly basis thereafter.
- (2) A progress report under subsection (1) must include an assessment of progress in the previous 12 months in relation to the implementation of the disability inclusion action plan.

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- (3) Within a reasonable time after preparing a progress report under subsection (1), a defined entity must –
 - (a) cause the progress report to be published on a website operated by, or on behalf of, the defined entity in at least one accessible format; and
 - (b) submit a copy of the progress report to the Commissioner.

15. Register of disability inclusion action plans

- (1) The Commissioner is to maintain a register of –
 - (a) all disability inclusion action plans submitted to the Commissioner; and
 - (b) all progress reports submitted to the Commissioner.
- (2) The register may be kept in such form, including electronic form, as the Commissioner considers appropriate.

16. Disability Action Evaluation Report

- (1) The Commissioner must submit to the Minister, by 1 November in each year, an annual report evaluating the progress of defined entities in advancing disability inclusion during the previous financial year as set out in –
 - (a) the disability inclusion action plans of defined entities; and

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- (b) the progress reports of defined entities.
- (2) The Commissioner must cause the annual report submitted under subsection (1) to be published on a website operated by, or on behalf of, the Commissioner in at least one accessible format.

Division 3 – Disability consultation

17. Consultation by defined entities

- (1) A defined entity is to consult with people with disability when developing or reviewing any policy of, or program or service provided by, the entity that has a direct and significant impact on the public.
- (2) In consulting with people with disability in relation to a policy, program or service, the defined entity is to consider the following:
 - (a) the effects that the policy, program or service may have on people with disability;
 - (b) how the policy, program or service may be developed or varied in order to –
 - (i) ensure accessibility; and
 - (ii) promote universal design; and
 - (iii) reduce, remove and prevent barriers to disability inclusion; and
 - (iv) promote disability inclusion;

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- (c) any barriers to disability inclusion that may be compounded by intersectionality;
- (d) the inclusion principles.

Division 4 – Guidelines

18. Guidelines

- (1) The Commissioner may issue guidelines for the purpose of assisting defined entities in respect of their obligations under this Act.
- (2) Without limiting the matters in respect of which the Commissioner may issue guidelines under subsection (1), guidelines may include matters relating to the following:
 - (a) complying with the inclusion principles and objects of this Act;
 - (b) the preparation of disability inclusion action plans;
 - (c) the preparation of progress reports;
 - (d) any other matter that the Commissioner considers appropriate.
- (3) In preparing guidelines under this section, the Commissioner must consult with the Disability Inclusion Advisory Council.
- (4) A defined entity must have regard to the guidelines issued under subsection (1).

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- (5) The Commissioner may vary, substitute or revoke guidelines under this section.
- (6) The Commissioner must cause guidelines issued under this section to be published on a website operated by, or on behalf of, the Commissioner.

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**PART 3 – DISABILITY INCLUSION ADVISORY
COUNCIL**

19. Establishment of Disability Inclusion Advisory Council

- (1) The Disability Inclusion Advisory Council is established.
- (2) The Disability Inclusion Advisory Council consists of at least 9 but not more than 11 persons appointed by the Minister on the recommendation of the Commissioner.
- (3) In appointing the members of the Disability Inclusion Advisory Council, the Minister is to ensure that –
 - (a) a majority of the members of the Disability Inclusion Advisory Council are people with disability; and
 - (b) the Disability Inclusion Advisory Council reflects the diversity of backgrounds and experiences of people with disability; and
 - (c) the Disability Inclusion Advisory Council has members with appropriate skills, knowledge and experience in matters relevant to the interests of people with disability.
- (4) Without limiting the persons that may be appointed to the Disability Inclusion Advisory Council, members may include –

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- (a) family members of people with disability; and
 - (b) carers of people with disability; and
 - (c) representatives of disability advocacy organisations or peak bodies.
- (5) The Minister is to appoint a member of the Disability Inclusion Advisory Council who is a person with disability as chairperson.
- (6) The members of the Disability Inclusion Advisory Council are to elect a deputy chairperson from the members of the Disability Inclusion Advisory Council.
- (7) If the office of chairperson is vacant, the deputy chairperson is to act as chairperson during the vacancy and, while so acting, may perform the functions and exercise the powers of the chairperson as fully and effectively as the chairperson.
- (8) Before appointing a person as a member of the Disability Inclusion Advisory Council, the Minister is to call for expressions of interest in the appointment by advertising in at least 3 daily newspapers printed, and circulating, in Tasmania.
- (9) The Minister need not comply with subsection (8) if re-appointing a person to the office of member of the Disability Inclusion Advisory Council for a consecutive term.

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- (10) For the avoidance of doubt, a complaint may not be made under the *Anti-Discrimination Act 1998*, in respect of the appointment of a person under subsection (3)(a) or (5), solely on the ground of disability.
- (11) Schedule 1 has effect in respect of the membership and meetings of the Disability Inclusion Advisory Council.

20. Functions of Disability Inclusion Advisory Council

- (1) The Disability Inclusion Advisory Council has the following functions:
 - (a) to communicate effectively with people with disability, including consultation to inform the development of the Tasmanian Disability Inclusion Plan;
 - (b) to raise awareness of the rights and contributions of people with disability;
 - (c) to promote the role of the Tasmanian community, including the business and community sectors, in furthering the rights of people with disability;
 - (d) to provide advice to the Commissioner and the Minister in respect of –
 - (i) government policy direction, strategic planning and the implementation of initiatives, in relation to people with disability; and

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- (ii) barriers to inclusion and participation in the Tasmanian community of people with disability; and
 - (iii) strategies for the identification, reduction, removal and prevention of those barriers; and
 - (iv) strategies for the reduction, removal and prevention of violence against, and the abuse, neglect and exploitation of, people with disability; and
 - (v) any matter relating to disability, or disability inclusion, referred to the Disability Inclusion Advisory Council by the Commissioner or Minister;
- (e) to provide advice to the Minister regarding the development of the Tasmanian Disability Inclusion Plan and participate in the monitoring and implementation of the plan;
- (f) to provide such information and advice to the Commissioner as the Disability Inclusion Advisory Council considers relevant to the performance of the Commissioner’s functions under this Act or any other Act;
- (g) to provide advice to defined entities regarding the development and

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- implementation of disability inclusion plans;
- (h) to consult and work with other disability inclusion advisory councils or bodies, whether at a national, state or local government level;
- (i) such other functions as are imposed on the Disability Inclusion Advisory Council under this or any other Act.
- (2) For the purpose of performing its functions under this Act, the Disability Inclusion Advisory Council may request that a defined entity provide to the Disability Inclusion Advisory Council, within the period specified in the request, information or advice.
- (3) A defined entity to which a request for information or advice is made under subsection (2) is authorised and required to comply with the request.

21. Powers of Disability Inclusion Advisory Council

The Disability Inclusion Advisory Council has the power to do all things necessary, or convenient, to be done in connection with the performance of the Disability Inclusion Advisory Council's functions, and the exercise of the Disability Inclusion Advisory Council's powers, under this or any other Act.

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22. Annual Report

- (1) The Disability Inclusion Advisory Council must, by 1 October in each year, give the Commissioner a report on the performance of the functions and the exercise of the powers of the Disability Inclusion Advisory Council under this Act during the previous financial year.
- (2) The Commissioner is to include a copy of the report given by the Disability Inclusion Advisory Council under subsection (1) in respect of a financial year in the Commissioner's report under section 29 for that financial year.

PART 4 – DISABILITY INCLUSION COMMISSIONER

Division 1 – General functions

23. Appointment of Commissioner

- (1) The Governor, on the recommendation of the Minister, is to appoint a person as the Disability Inclusion Commissioner.
- (2) A person recommended by the Minister under subsection (1) is to be a person with disability.
- (3) The Minister, before recommending a person for appointment as Commissioner, may consult with the Disability Inclusion Advisory Council in relation to the recommendation.
- (4) For the avoidance of doubt, a complaint may not be made under the *Anti-Discrimination Act 1998*, in respect of the recommendation or appointment of a person under this section, solely on the ground of disability.
- (5) Schedule 2 has effect in respect of the Commissioner and the Commissioner's appointment.

24. Functions of Commissioner

The Commissioner has the following functions:

- (a) to provide advice and assistance to, and advocate systematically for, people with disability;

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- (b) to undertake research into any matter related to the operation and objects of this Act;
- (c) to advise, and make recommendations to, the Minister, at the Commissioner's own initiative or at the request of the Minister, on any matters arising from the performance of the Commissioner's functions;
- (d) to promote, monitor and review the wellbeing of people with disability;
- (e) to provide leadership, foster inclusion, and promote accessibility across government and mainstream services, including monitoring and reporting in relation to the Tasmanian Disability Inclusion Plan;
- (f) to support defined entities to comply with this Act;
- (g) to promote the rights of people with disability, including rights relating to disability inclusion, accessibility, individual autonomy, self-determination, and choice and control;
- (h) to establish and monitor safeguarding mechanisms that address violence against, and the abuse, neglect and exploitation of, people with disability;

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- (i) to raise awareness in relation to, and education about the rights of, people with disability;
- (j) to take action in relation to allegations of violence against, or the abuse, neglect and exploitation of, people with disability, whether on the basis of a report made to the Commissioner or at the Commissioner's own initiative, including by referring matters to appropriate persons or bodies and by conducting investigations;
- (k) to inquire into and report on systemic issues relating to the protection and promotion of the rights of people with disability;
- (l) to consult with the Disability Inclusion Advisory Council on matters relating to violence against, and the abuse, neglect and exploitation of, people with disability;
- (m) any other functions that are conferred or imposed on the Commissioner by or under this or any other Act;
- (n) any other prescribed functions.

25. Powers of Commissioner

- (1) The Commissioner has the power to do all things necessary, or convenient, to be done in connection with the performance of the

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Commissioner’s functions, and the exercise of the Commissioner’s powers, under this or any other Act.

- (2) Without limiting subsection (1), the Commissioner may –
- (a) require information and data for the purposes of –
 - (i) collating, studying, interpreting and maintaining information in relation to the wellbeing of people with disability in the State; and
 - (ii) identifying and monitoring trends in respect of the wellbeing of people with disability in the State; and
 - (b) investigate, and make recommendations in respect of the functions of the Commissioner; and
 - (c) investigate, and make recommendations in respect of, the systems, policies and practices of organisations, government or non-government, that provide services that affect people with disability; and
 - (d) advise and make recommendations, in relation to the rights and wellbeing of people with disability, to the Minister or defined entities; and

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- (e) provide information to other organisations and persons in accordance with this Act or any other Act; and
 - (f) report publicly on the wellbeing of people with disability in the State; and
 - (g) exercise such other powers as are prescribed.
- (3) In performing a function, or exercising a power, under this Act, the Commissioner –
- (a) may regulate any proceedings held under this Act in any manner that the Commissioner considers appropriate; and
 - (b) is not bound by the rules of evidence but may inform themselves, on any matter in any manner, that the Commissioner thinks fit; and
 - (c) is not required to hold a hearing as part of an investigation or review, or as part of the performance of any other function, under this Act; and
 - (d) may investigate, or review, a matter in any manner that the Commissioner considers appropriate; and
 - (e) may hold an investigation, or review, under this Act in public or in private.

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26. Power to require documents or information

- (1) If necessary for the performance of a function, or the exercise of a power, under this or any other Act, the Commissioner may require a person to do any one or more of the following:
 - (a) to provide information in the format, or manner, specified by the Commissioner, including information that contains identifying details of a person with disability if specifically required by the Commissioner;
 - (b) to answer questions whether orally or in writing as specified in the requirement;
 - (c) to produce documents as specified in the requirement.

- (2) A person must comply with a requirement of the Commissioner under subsection (1) unless, to do so, would require the person to provide information, answer questions, or produce documents –
 - (a) in respect of which there is a lawful claim or right of privilege; or
 - (b) that contain information, communicated to a medical professional in confidence, relating to the physical, mental or psychological health of a person; or
 - (c) that may incriminate the person in an offence.

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Penalty: Fine not exceeding 100 penalty units and, in the case of a continuing offence, a further fine not exceeding 10 penalty units for each day during which the offence continues.

- (3) A person complying with a requirement of the Commissioner under this section cannot, by virtue of complying with that requirement –
- (a) be held to have breached any code of professional etiquette or ethics; or
 - (b) be taken to have departed from acceptable standards of professional conduct; or
 - (c) be taken to have contravened any confidentiality requirements of any Act.
- (4) A person must not alter, suppress or destroy any document or thing that the person is required to provide or produce under this section.

Penalty: Fine not exceeding 50 penalty units.

27. Delegation

The Commissioner, in writing, may delegate any of the functions or powers of the Commissioner other than this power of delegation.

28. Staff

- (1) The Commissioner may make arrangement with the Head of a State Service Agency for a State

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Service officer or State Service employee employed in that Agency to be made available to the Commissioner to enable the Commissioner to perform the Commissioner’s functions under this Act or any other Act.

- (2) Subject to and in accordance with the *State Service Act 2000*, a person may be employed for the purpose of enabling the Commissioner to perform the Commissioner’s functions under this Act or any other Act.
- (3) Officers and employees made available under subsection (1), or employed under subsection (2), may serve the Commissioner in any capacity in conjunction with State Service employment.

29. Annual report

- (1) The Commissioner must, by 1 November in each year, give the Minister a report on the performance of the functions and the exercise of the powers of the Commissioner under this Act and any other Act during the previous financial year.
- (2) The Minister, in writing, may direct the Commissioner to report on specified matters in the annual report.
- (3) The Commissioner must cause the annual report to be published on a website operated by, or on behalf of, the Commissioner in at least one accessible format.

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- (4) The Minister is to cause a copy of the annual report to be laid before each House of Parliament within the first 10 sitting-days of that House after the Minister receives the report under subsection (1).

Division 2 – Reports and investigations

30. Investigations

- (1) The Commissioner may, of the Commissioner's own motion or in response to a report, investigate any matter relating to the objects of this Act, including the provision of services to people with disability.
- (2) A report to the Commissioner does not need to be in writing.
- (3) The Commissioner as a result of an investigation may make recommendations to such persons as the Commissioner thinks fit, including but not limited to, disability service providers, defined entities and other persons and organisations that provide services that affect people with disability.

31. Reports may be made to Commissioner if person with disability at risk

- (1) Without limiting section 30, a person may make a report to the Commissioner about the following:
- (a) matters relating to a person with disability if the person has reasonable

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grounds to believe that the person with disability is subject to or at risk of violence, abuse, neglect or exploitation;

- (b) circumstances that the person has reasonable grounds to believe will result in violence against, or the abuse, neglect or exploitation of, a person with disability.
- (2) Without limiting section 30 or subsection (1), a person with disability may make a report to the Commissioner if the person has reasonable grounds to believe that the person is subject to, or at risk of, violence, abuse, neglect or exploitation.
- (3) The Commissioner may, at the Commissioner's own initiative, decide to deal with a matter as a report if the matter relates to a person with disability that the Commissioner has reasonable grounds to believe is subject to, or at risk of, violence, abuse, neglect or exploitation.

32. Investigation of reports

- (1) The Commissioner may do any one or more of the following in respect of a report made to the Commissioner under this Act:
 - (a) conduct an investigation,
 - (b) make a referral to another person or body;
 - (c) decline to take action on the report.

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- (2) The Commissioner may decline to take action on a report under subsection (1) if –
- (a) the Commissioner considers that the report –
 - (i) is frivolous; or
 - (ii) is vexatious; or
 - (iii) is misconceived; or
 - (iv) is lacking in substance; or
 - (v) does not warrant investigation; or
 - (b) the matter to which the report relates has already been determined by a court, board or tribunal and does not raise any matter or issue that was not considered in that determination; or
 - (c) the matter to which the report relates is being considered by a court, board or tribunal; or
 - (d) the report relates to an incident which occurred more than 12 months before the report is made and the Commissioner considers the person who made the report has not shown a good reason for the delay; or
 - (e) the Commissioner considers that the Commissioner does not have the jurisdiction to consider the report under this Act; or

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- (f) the Commissioner considers that the report raises issues which require investigation by another person, court, board or tribunal.
- (3) The Commissioner is to notify the person who made a report to the Commissioner, of the decision made in relation to that report under subsection (1) as soon as practicable after making that decision.

33. Protection of persons making reports

- (1) The identity of a person who makes a report to the Commissioner in good faith, or information from which the identity of that person could be deduced, must not be disclosed by any person or body unless the disclosure is –
 - (a) made with the consent of the person who made the report; or
 - (b) necessary for the purposes of law enforcement; or
 - (c) otherwise permitted under this or any other Act; or
 - (d) necessary for any other purpose prescribed by the regulations.
- (2) If a person, acting in good faith, makes a report to the Commissioner in accordance with this Act, that person is not liable to any civil or criminal action, or any disciplinary action, for making the report.

Division 3 – Investigations

34. Investigations

- (1) The Commissioner may make preliminary inquiries for the purposes of deciding how to deal with a report and may request further information from the person making the report.
- (2) If the Commissioner is of the opinion that a report, or part of a report, constitutes a complaint that may be made to any of the following persons or bodies, the Commissioner must refer the report, or the part of the report, to the person or body:
 - (a) the Anti-Discrimination Commissioner appointed under the *Anti-Discrimination Act 1998*;
 - (b) the Health Complaints Commissioner appointed under the *Health Complaints Act 1995*;
 - (c) the Commissioner for Children and Young People appointed under the *Commissioner for Children and Young People Act 2016*;
 - (d) the NDIS Quality and Safeguards Commission;
 - (e) any other prescribed person or body.
- (3) If the Commissioner is of the opinion that a report, or part of a report, may provide evidence of the commission of a criminal offence, the

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Commissioner must refer the report, or the part of the report, to the Commissioner of Police or the Director of Public Prosecutions.

- (4) The Commissioner may conduct an investigation of a report that the Commissioner has referred to another person or body under subsection (2) or (3), including in consultation with the person or body, if the Commissioner is of the opinion that conducting an investigation may be necessary to protect a person with disability from violence, abuse, neglect or exploitation.
- (5) In order to conduct an investigation into a report of violence, abuse, neglect or exploitation of a person with disability, the Commissioner must obtain the consent of the person, unless the Commissioner is of the opinion that –
 - (a) the person is incapable of giving consent, despite having been provided with the appropriate support for the purposes of making such a decision; or
 - (b) it is not necessary to obtain consent due to the seriousness of the allegation or the risk to the personal safety of the person; or
 - (c) any other circumstances prescribed by the regulations exist.

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PART 5 – DISABILITY SERVICES REGULATIONS

35. Disability service standards

- (1) The regulations are to prescribe standards that are to apply in relation to the provision, by disability service providers, of supports and services for people with disability.
- (2) Regulations for the purposes of subsection (1) may prescribe standards that apply to –
 - (a) all disability service providers; or
 - (b) a particular class of disability service provider.
- (3) The regulations may adopt, either wholly or in part, and either specifically or by reference and with or without modification, any national disability standards, whether the standards are published or issued before or after the commencement of this Act.

PART 6 – SENIOR PRACTITIONER

36. Senior Practitioner to be appointed

- (1) The Secretary is to appoint a State Service employee or State Service officer to be the Senior Practitioner.
- (2) A person may only be appointed to be the Senior Practitioner if, in the opinion of the Secretary, the person has appropriate qualifications and experience to perform the functions and exercise the powers of the Senior Practitioner under this Act.

37. Functions and powers of Senior Practitioner

- (1) The functions of the Senior Practitioner include the following:
 - (a) to authorise the use of restrictive practices by disability services providers;
 - (b) to oversee the use of restrictive practices in accordance with this Act;
 - (c) to report to the Secretary in relation to the authorisation and use of restrictive practices;
 - (d) to ensure, to the greatest extent possible, that –
 - (i) the rights of people who may be subject to restrictive practices are protected; and

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- (ii) disability services providers comply with any applicable guidelines and standards on the use of restrictive practices;
- (e) to develop guidelines and standards, that are in accordance with best practice and the objects of this Act;
- (f) to give directions to disability services providers about the use of restrictive practices;
- (g) to promote the reduction and elimination of the use of restrictive practices by disability services providers to the greatest extent possible;
- (h) to provide education and information in relation to restrictive practices and the use of behaviour management techniques that may obviate or minimise the need for restrictive practices;
- (i) to provide information in relation to the rights of people with disability who may be subject to restrictive practices;
- (j) to give advice to disability services providers, so as to –
 - (i) improve practices in relation to restrictive practices and the use of behaviour management techniques that may obviate or minimise the need for restrictive practices; and

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- (ii) enable the use of restrictive practices to be reduced and, where appropriate, eliminated;
 - (k) to undertake research in relation to restrictive practices and to make recommendations to the Secretary in respect of the need for research in relation to restrictive practices;
 - (l) to monitor and evaluate the use of restrictive practices;
 - (m) such other functions as are imposed on the Senior Practitioner under this or any other Act.
- (2) In addition to any other power that may be exercised by the Senior Practitioner under this Act, the Senior Practitioner has the power to do all things necessary, or convenient, to be done in connection with the performance of the Senior Practitioner’s functions, and the exercise of the Senior Practitioner’s powers, under this or any other Act.

38. Senior Practitioner may determine restrictive practices

- (1) The Senior Practitioner may determine that a practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability is a restrictive practice for the purposes of this Act.

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- (2) The Senior Practitioner is to ensure that notice of the making of a determination under subsection (1) is published on a website operated by, or on behalf of, the Senior Practitioner.
- (3) The Senior Practitioner is to ensure that a list of all practices and interventions determined under subsection (1) to be restrictive practices is displayed on a website operated by, or on behalf of, the Senior Practitioner.

39. Senior practitioner may make guidelines

- (1) The Senior Practitioner may issue written guidelines relating to the performance and exercise of the Senior Practitioner's functions and powers under this Act.
- (2) Without limiting subsection (1), guidelines issued by the Senior Practitioner may be made in relation to the following matters:
 - (a) the authorisation of restrictive practices;
 - (b) the use of restrictive practices;
 - (c) the appointment and functions of appointed program officers;
 - (d) the role of independent persons in assisting and supporting people with disability;
 - (e) the handling of disputes between an independent person and an appointed program officer.

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- (3) In developing guidelines under this section, the Senior Practitioner must consult as appropriate with relevant stakeholders and community members.
- (4) A guideline may apply, adopt or incorporate an instrument, as in force from time to time.
- (5) Guidelines made under this section are not statutory rules for the purposes of the *Rules Publication Act 1953*.

40. Annual report

- (1) The Senior Practitioner must provide to the Secretary, by 1 September in each year, a report consisting of –
 - (a) information on the performance of the functions, and the exercise of the powers, of the Senior Practitioner during the previous financial year; and
 - (b) data relating to the use of restrictive practices during the previous financial year.
- (2) A report provided to the Secretary under subsection (1) must not enable a person with disability to be identified.
- (3) The Secretary must ensure that a copy of the report provided to the Secretary under subsection (1) is available to the public on a website operated by, or on behalf of, the Department –

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- (a) for at least 12 months after it is so provided; and
- (b) in at least one accessible format.

41. Senior Practitioner may delegate functions &c.

- (1) The Senior Practitioner may delegate to a State Service employee or State Service officer a power or function of the Senior Practitioner, other than this power of delegation.
- (2) The Senior Practitioner may only delegate a power or function under subsection (1) to a person who –
 - (a) in the opinion of the Senior Practitioner, has sufficient knowledge and expertise in respect of people with disability; and
 - (b) has appropriate skills and qualifications in respect of the power or function.

42. Staff and contractors

- (1) The Senior Practitioner may make arrangements with the Head of a State Service Agency for a State Service officer or State Service employee employed in that Agency to be made available to the Senior Practitioner to enable the Senior Practitioner to perform the Senior Practitioner's functions under this Act or any other Act.
- (2) Subject to and in accordance with the *State Service Act 2000*, a person with appropriate expertise and experience may be employed for

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the purpose of enabling the Senior Practitioner to perform and exercise the Senior Practitioner’s duties, functions and powers under this Act or any other Act.

- (3) Officers and employees made available under subsection (1), or employed under subsection (2), may serve the Senior Practitioner in any capacity in conjunction with State Service employment.
- (4) Subject to the approval of the Secretary, the Senior Practitioner may enter into agreements or arrangements with a person or body for the purpose of obtaining appropriate expertise to assist the Senior Practitioner in the performance and exercising of the Senior Practitioner’s powers, duties and functions under this Act.

43. Persons to provide assistance to Senior Practitioner &c.

- (1) The Senior Practitioner may require a disability services provider or any employee of the provider to provide the Senior Practitioner with any reasonable assistance that the Senior Practitioner may require to perform a function or exercise a power of the Senior Practitioner under this Act.
- (2) A disability services provider or any employee of the provider –
 - (a) must not fail to provide reasonable assistance when required to do so under subsection (1); and

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- (b) must give full and true answers to the best of the provider's or employee's knowledge to any question asked by the Senior Practitioner in the performance or exercise of a function or power of the Senior Practitioner under this Act.

Penalty: Fine not exceeding 200 penalty units.

PART 7 – REGULATION OF RESTRICTIVE PRACTICES

Division 1 – Authorisation of restrictive practices by Senior Practitioner

44. Application for authorisation to use restrictive practices

- (1) A disability services provider may apply to the Senior Practitioner for authorisation to use, in relation to a person with disability who is receiving disability services from that provider, such types of restrictive practices as are specified in the application.
- (2) An application under subsection (1) made in relation to a person with disability must –
 - (a) be in a form approved by the Senior Practitioner; and
 - (b) be accompanied by a behaviour support plan that is prepared for the person with disability in accordance with section 49.

45. Authorisation to use restrictive practices

- (1) The Senior Practitioner, after receiving an application under section 44(1), may grant, or refuse to grant, written authorisation for the use, in relation to a person with disability, of such types of restrictive practice as are specified in the authorisation.

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- (2) An authorisation granted under subsection (1) may authorise the use, in relation to a person with disability, of a type of restrictive practice –
- (a) by the disability service provider who made the application; or
 - (b) by all disability service providers who provide disability services to the person with disability.
- (3) The Senior Practitioner may only grant an authorisation under subsection (1) for the use of a type of restrictive practice if the Senior Practitioner or the Senior Practitioner’s nominee has consulted with –
- (a) the person with disability in respect of whom the restrictive practice is to be used or a person nominated by that person; and
 - (b) persons, if any, who have expertise in the use of restrictive practices of that type –
- and the Senior Practitioner has taken into account any matters raised in that consultation.
- (4) An authorisation for the use of a type of restrictive practice in relation to a person with disability may only be granted by the Senior Practitioner under subsection (1) if the Senior Practitioner is satisfied that –
- (a) the type of restrictive practice will be used only for the primary purpose of

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- ensuring the safety, health or wellbeing of the person or other persons; and
- (b) the restrictive practice is the type of restrictive practice that is the least restrictive of the person’s freedom of decision and action as is practicable in the circumstances.
- (5) In determining whether to grant an authorisation under this section for the use of a type of restrictive practice in relation to a person with disability, the Senior Practitioner must have regard to –
- (a) the will and preferences of the person with disability; and
- (b) the consequences to the person with disability if a restrictive practice of that type is used in relation to the person; and
- (c) the consequences to the person with disability, or other persons, if a restrictive practice of that type is not used in relation to the person with disability; and
- (d) any alternative method reasonably suitable and able to be used in relation to the person with disability to control the behaviour for which the type of restrictive practice has been proposed; and

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- (e) the nature and degree of any significant risks to the person with disability if the restrictive practice is used; and
- (f) whether, and the extent to which, use of the restrictive practice will promote or reduce the safety, health and wellbeing of the person with disability; and
- (g) the behaviour support plan that has been prepared for the person with disability and submitted under section 44(2)(b).

46. Provisions in respect of authorisations by Senior Practitioner

- (1) An authorisation under section 45 may be granted subject to any conditions or limitations specified in the authorisation.
- (2) Without limiting the generality of subsection (1), an authorisation under section 45 may be granted on the condition that reports, in relation to the use of restrictive practices of the type permitted under the authorisation, are given to the Senior Practitioner, at the times, or in the circumstances, specified in the condition.
- (3) An authorisation granted under section 45 has effect for such period, not exceeding 12 months, as is specified in the authorisation.
- (4) Nothing in this Act is to be taken to prevent the granting of more than one authorisation under section 45 in relation to the same person with disability.

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47. Review, amendment and revocation of authorisation by Senior Practitioner of restrictive practices

- (1) If the Senior Practitioner has granted an authorisation under section 45 in respect of a person with disability, the Senior Practitioner may, at any time, review the authorisation –
 - (a) on the Senior Practitioner’s own motion; or
 - (b) on application by the person with disability; or
 - (c) on application by a disability services provider who provides disability services to the person with disability; or
 - (d) on application by an independent person for the person with disability.

- (2) The Senior Practitioner, after reviewing an authorisation granted under section 45 in respect of a person with disability, may, by notice in writing to –
 - (a) disability services providers who provide disability services to the person with disability; and
 - (b) the person with disability; and
 - (c) an independent person for the person with disability –

amend or revoke the authorisation.

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- (3) The Senior Practitioner may only amend or revoke an authorisation granted by the Senior Practitioner under section 45 in respect of a person with disability if the Senior Practitioner is satisfied that consultation on the Senior Practitioner’s behalf with –
- (a) any disability services providers who provide disability services to the person with disability; and
 - (b) the person with disability; and
 - (c) an independent person for the person with disability –

has occurred and the Senior Practitioner has taken into account matters raised in that consultation.

- (4) A person with disability to whom an authorisation under section 45 relates, or an independent person for the person with disability, may apply to the Tribunal for a review of the authorisation granted by the Senior Practitioner.

Division 2 – Unauthorised restrictive practice prohibited

48. Use of unauthorised restrictive practice prohibited

- (1) A disability services provider must ensure that a type of restrictive practice is not used in relation to a person with disability unless –
- (a) there is in force an authorisation under section 45 or section 50(1)(g) for the use

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of the type of restrictive practice in relation to the person; and

- (b) the restrictive practice is used in accordance with any conditions or limitations specified in the authorisation; and
- (c) the restrictive practice does not contravene a direction, if any, given under section 50(2) or 52(1) in relation to the use of the restrictive practice in relation to the person.

Penalty: Fine not exceeding 200 penalty units.

- (2) It is a defence in proceedings for an offence under subsection (1) if the defendant establishes that –
 - (a) the use of the restrictive practice in relation to the person with disability was required to protect the person with disability, or another person, from serious harm; and
 - (b) the restrictive practice used was the least intrusive type of restrictive practice that would have protected the person with disability, or another person, from serious harm; and
 - (c) the Senior Practitioner was notified by the defendant within 5 business days after the restrictive practice was used.

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- (3) For the purposes of this section, there is a relevant authorisation in relation to a person with disability if there is, in relation to the person, an authorisation by the Chief Forensic Psychiatrist, or the Chief Civil Psychiatrist, under the *Mental Health Act 2013*, or an authorisation under another enactment, which authorises the Chief Forensic Psychiatrist, the Chief Civil Psychiatrist, or another person, to carry out in relation to the person an action that is a restrictive practice.
- (4) A reference in subsection (3) to an authorisation to carry out an action includes an order, direction, permission, requirement, or any other authority, to carry out the action.

Division 3 – Behaviour support plans

49. Behaviour support plan to be prepared

- (1) If a disability services provider providing a disability service to a person with disability proposes to use a restrictive practice in relation to the person, the disability services provider must ensure that a behaviour support plan is prepared for the person with disability by a behaviour support practitioner that –
- (a) states the circumstances in which the proposed type of restrictive practice is to be used for behaviour support; and
 - (b) explains how the use of a restrictive practice will be of benefit to the person; and

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- (c) demonstrates that the use of a restrictive practice is the option which is the least restrictive of the person as is possible in the circumstances; and
 - (d) includes strategies to reduce and eliminate the need for a restrictive practice to be used on the person; and
 - (e) takes into account any –
 - (i) previous behaviour assessments; and
 - (ii) other relevant assessments; and
 - (f) includes the changes to be made to the environment of the person to reduce or eliminate the need for the restrictive practice to be used on the person.
- (2) The disability services provider must ensure that, during the preparation of the behaviour support plan for a person with disability, the following persons are consulted:
- (a) the person with disability;
 - (b) if the person with disability has a guardian, the person's guardian;
 - (c) if any other disability services providers provide disability services to the person with disability, a representative of each disability services provider;
 - (d) an independent person for the person with disability;

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- (e) the appointed program officer for the disability services provider;
- (f) any other person specified by the person for whom the behaviour support plan is being prepared;
- (g) any other person that the disability services provider considers integral to the development of the behaviour support plan.

Division 4 – Special powers of Senior Practitioner

50. Special powers of Senior Practitioner

- (1) The Senior Practitioner has the following powers in relation to a disability services provider:
 - (a) to visit and inspect any place where disability services are being provided by the disability services provider;
 - (b) to see any person in relation to whom a restrictive practice has been, or is being used, by the disability services provider;
 - (c) to investigate, audit and monitor the use of restrictive practices by the disability services provider;
 - (d) to inspect and make copies of, or take extracts from, any document held by the disability services provider relating to any person in relation to whom a restrictive practice has been, or is being used;

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- (e) to see any person involved in the development or implementation of, or authorisation of any restrictive practice, by the disability services provider upon request;
 - (f) to request a disability services provider to provide information about any restrictive practice;
 - (g) to give a written authorisation to the disability services provider for the use of a restrictive practice in relation to a person with disability.
- (2) The Senior Practitioner may, by written order, direct a disability services provider –
- (a) to discontinue or alter as specified in the order, a practice, procedure or treatment observed or used by the provider; or
 - (b) to observe or carry out a practice, procedure or treatment specified in the order; or
 - (c) to provide a practice, procedure or treatment, or a particular practice, procedure or treatment specified in the order, in relation to a person with disability who is specified in the order.
- (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

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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 disability of –
 - (a) any authorisation given under subsection (1)(g) in respect of that person; or
 - (b) any direction given under subsection (2) in respect of that person.
- (5) The Senior Practitioner may notify the NDIS Commissioner of any matter relating to an NDIS provider that has come to the Senior Practitioner’s attention in the course of exercising a power or performing a function or duty under this Act.
- (6) The Senior Practitioner may, by notice in writing, prohibit the use of restrictive practices, or specified types of restrictive practice, in relation to a person with disability, or a class of people with disability, by –
 - (a) a disability services provider; or
 - (b) disability services providers belonging to a specified class of disability services provider.
- (7) Notice of a prohibition referred to in subsection (6) must be –

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- (a) given to each provider who is prohibited from using the restrictive practice specified in the notice; and
 - (b) published on a website operated by, or on behalf of, the Department.
- (8) On the request of the Senior Practitioner, the following persons must provide the Senior Practitioner with any reasonable assistance that the Senior Practitioner requires to exercise or perform a power, duty or function under this Act:
 - (a) a disability services provider;
 - (b) a member of the staff or management of a disability services provider.
- (9) A person referred to in subsection (8) must –
 - (a) reasonably render assistance when required to do so under subsection (8); and
 - (b) give full and true answers to the best of that person’s knowledge to any questions asked by the Senior Practitioner in the exercise or performance or of any power, duty or function under this Act.

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Division 5 – Investigations and directions

51. Senior Practitioner to investigate &c., use of restrictive practices

If the Senior Practitioner believes on reasonable grounds that a type of restrictive practice is being used by a disability services provider, the Senior Practitioner may –

- (a) visit and inspect any premises or place where the restrictive practice is being used; and
- (b) observe and speak to a person who is subject to a restrictive practice being used by the provider; and
- (c) investigate, audit and monitor the use of a restrictive practice by the provider; and
- (d) inspect and make copies of, or take extracts from, any document that –
 - (i) relates to a person who is subject to a restrictive practice being used by the provider; and
 - (ii) may be relevant to determining whether it is necessary to impose a restrictive practice or determining the type of restrictive practice that may be necessary to impose; and
- (e) question a person involved in the development, implementation or

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application of such restrictive practices;
and

- (f) request the provider to provide information relating to a restrictive practice used by the provider.

52. Directions may be issued in relation to restrictive practices

- (1) The Senior Practitioner may, by notice in writing to a disability services provider, direct the provider to do either or both of the following:
 - (a) to discontinue a restrictive practice authorised under section 45 or section 50(1)(g);
 - (b) to observe a practice or procedure, specified in the notice, in the use of a restrictive practice that has been authorised under section 45 or section 50(1)(g).
- (2) The Senior Practitioner may only give a direction under subsection (1) if the Senior Practitioner has considered the matters referred to in section 45(4) and (5).
- (3) A disability services provider to whom a direction under subsection (1) is given must not fail to comply with the direction.

Penalty: Fine not exceeding 200 penalty units.

- (4) If a direction is given under subsection (1) to discontinue a restrictive practice or a practice or

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procedure used in a restrictive practice, the Senior Practitioner must provide assistance in developing alternative strategies for the management of the behaviour of the person in relation to whom the restrictive practice is to be used.

- (5) The Senior Practitioner must as soon as practicable advise in writing a person with disability in relation to whom a restrictive practice is to be used, or a person nominated by the person, of a direction given under subsection (1) in relation to the restrictive practice.

PART 8 – APPOINTED PROGRAM OFFICERS

53. Disability services provider to appoint program officer

- (1) A disability services provider must appoint an appointed program officer if the disability services provider intends to use restrictive practices in relation to a person with disability under Part 7.
- (2) More than one appointed program officer may be appointed by a provider under subsection (1).

54. Approval by Senior Practitioner for appointment of appointed program officer

- (1) A disability services provider who proposes to appoint an appointed program officer must apply to the Senior Practitioner for approval of the proposed appointment.
- (2) An application for approval must include –
 - (a) the name of the proposed appointed program officer; and
 - (b) the qualifications of the proposed appointed program officer; and
 - (c) such other information as the Senior Practitioner requires.
- (3) The Senior Practitioner may approve the appointment of one or more appointed program

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officers subject to any conditions that the Senior Practitioner considers appropriate.

- (4) The Senior Practitioner must keep a register of the name and qualifications of each appointed program officer appointed under this Part.

55. Revocation of approval

The Senior Practitioner may revoke the approval of the appointment of an appointed program officer if the Senior Practitioner considers that it appropriate to do so.

56. Senior Practitioner to notify disability services provider before refusal or revocation

- (1) The Senior Practitioner must not refuse an application under section 54 or revoke approval of the appointment of an appointed program officer under section 55 unless the Senior Practitioner has given a written notice to the disability services provider in accordance with subsection (2) and has considered any submission made by the disability services provider.
- (2) The notice must specify –
 - (a) the proposed decision and the reasons for the proposed decision; and
 - (b) that the disability services provider may make a written submission within 14 days after the notice is given.

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Part 8 – Appointed Program Officers

57. Senior Practitioner may issue directions

- (1) The Senior Practitioner may issue directions to disability services providers in relation to –
 - (a) the minimum qualifications required to be held by persons who are proposed appointed program officers; and
 - (b) training to be completed by appointed program officers; and
 - (c) any other matter in relation to appointed program officers; and
 - (d) any other prescribed matters.
- (2) The Senior Practitioner may direct a disability services provider to appoint an appointed program officer.
- (3) A direction issued by the Senior Practitioner under subsection (1) is to be published on a website operated by, or on behalf of, the Department.

58. Appointed program officer

An appointed program officer for a disability services provider must ensure that any restrictive practice used in relation to a person with disability by that disability services provider under an authorisation under section 45 –

- (a) is used in accordance with –
 - (i) that authorisation; and

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- (ii) any guidelines made by the Senior Practitioner in relation to restrictive practices under section 39; and
 - (iii) the person’s behaviour support plan; and
- (b) is the least restrictive of the person as is possible in the circumstances.

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Part 9 – Independent Persons

PART 9 – INDEPENDENT PERSONS

59. Appointment of independent persons

- (1) If a provision of this Act requires that an independent person provide assistance or support to a person with disability, the appointed program officer for the disability services provider providing disability services to that person is to ensure that such an independent person is available to provide the assistance or support.
- (2) An appointed program officer must notify the Senior Practitioner if a person with disability who requires the assistance or support of an independent person under this Act –
 - (a) does not, in the opinion of the appointed program officer, have a person who is available as an independent person to assist or support the person with disability; or
 - (b) advises the appointed program officer that they do not consider that the person who is providing assistance or support is an independent person.
- (3) If the Senior Practitioner receives a notification under subsection (2), the Senior Practitioner must appoint an appropriate person to act as an independent person for the person with disability.

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- (4) An independent person for a person with disability under this Act must not –
- (a) be a disability services provider for the person; or
 - (b) be an employee or member of the governing body of a disability services provider for the person; or
 - (c) have any interest in a disability services provider for the person; or
 - (d) have any responsibility in relation to the development or review of the person’s behaviour support plan.

60. Independent person to provide explanation in respect of restrictive practices

- (1) If a disability services provider is granted an authorisation under Part 7 to use a restrictive practice in relation to a person with disability, the appointed program officer for the disability services provider must ensure that an independent person explains to the person with disability –
- (a) the proposed use of the restrictive practice in relation to the person; and
 - (b) that the person may apply under section 47 for a review, amendment or revocation of the authorisation to use the restrictive practice in relation to that person; and

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- (c) that the person may apply for a review under Part 12 of a decision of the Senior Practitioner to grant an authorisation for the use of a restrictive practice in relation to that person.
- (2) Subject to subsection (3), if a disability services provider proposes to change a behaviour support plan for a person with disability, an appointed program officer for the disability services provider must ensure that an independent person explains to the person for whom the behaviour support plan was prepared –
 - (a) the details of those changes; and
 - (b) if those changes involve the inclusion of a more restrictive type or use of restrictive practice, any matter related to the inclusion of the restrictive practice.
- (3) Subsection (2) does not apply in respect of proposed changes to a behaviour support plan if –
 - (a) it is not proposed, as a result of the review, that a more restrictive type or use of restrictive practice be included in the behaviour support plan; and
 - (b) the person for whom the behaviour support plan was prepared has had the plan reviewed by the disability services provider or a behaviour support practitioner in the last 12 months; and

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- (c) during that review, an independent person was available in accordance with this section.
- (4) An independent person for a person with disability must notify the Senior Practitioner if the independent person considers that –
 - (a) the person with disability is not able to understand a proposal to use a restrictive practice; or
 - (b) the requirements of this Act or any relevant requirements of the NDIS Act or NDIS Rules are not being complied with.
- (5) An independent person for a person with disability must notify the Senior Practitioner if the independent person considers that this Act, or the requirements of the NDIS Act or NDIS Rules, as the case requires, were not complied with when the behaviour support plan for the person with disability was being prepared or authorised.

PART 10 – FUNDING

61. Grants of financial assistance to promote objects of Act

- (1) The Minister may, on application made to the Minister, grant financial assistance for any purpose consistent with the objects of this Act.
- (2) The Minister must not grant financial assistance under this section unless satisfied that the grant would further the inclusion principles.
- (3) For the purposes of subsection (1), financial assistance may be granted to any of the following persons or bodies:
 - (a) a disability services provider;
 - (b) a disability advocacy organisation or peak body;
 - (c) a defined entity;
 - (d) a person or organisation carrying out research activities;
 - (e) a person with disability or a carer of such a person, for the purpose of obtaining the care, support or assistance that the person with the disability or the carer may need.
- (4) An application for financial assistance under this sections is to be –
 - (a) in a form approved by the Minister; and

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- (b) accompanied by any additional documentation or other information that the Minister may require.
- (5) Financial assistance granted under this section may be subject to such conditions, if any, as the Minister considers appropriate.
- (6) The Minister may, on application made to the Minister or at the Minister's discretion, at any time withdraw or vary financial assistance granted under this section.

PART 11 – AUTHORISED OFFICERS

62. Secretary or Commissioner may authorise entry of premises

- (1) The Secretary or the Commissioner, in writing, may authorise a State Service employee or State Service officer to enter the premises of a disability services provider or the premises of a grant recipient.
- (2) An authorisation under this section may be subject to conditions or limitations specified in the authorisation.

63. Rights of authorised officers to enter premises

- (1) An authorised officer who is authorised under section 62 to enter premises may enter the premises specified in the authorisation.
- (2) An entry of premises under subsection (1) may only be made for the purposes of –
 - (a) determining the extent to which the terms and conditions of a disability support grant are being complied with; or
 - (b) ensuring that people with disability who reside at, or receive disability services on, the premises are receiving the care and support that is necessary or desirable for their health and wellbeing; or

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- (c) ensuring the safety of people with disability who reside at, or receive disability services on, the premises.
- (3) An authorised officer may enter premises under subsection (1) at any time without prior warning to the owner of, or any occupier of, the premises.
- (4) An authorised officer who enters premises under subsection (1) must ensure that, if the authorised officer enters a part of the premises, designated for the private use of a person with disability, while the person is present in the part of the premises, the authorised officer immediately tells the person the purposes for which the authorised officer has entered the premises.
- (5) An authorised officer who enters premises under subsection (1) must, at the request of a person on the premises, show the person proof that the officer is authorised to enter the premises, or leave the premises as soon as practicable after the request is made.
- (6) An authorised officer is not authorised to use force to enter premises under this Act.
- (7) A police officer may, at the request of an authorised officer who would only be able to enter premises for the purposes of this section by using force, use such force as is reasonably necessary to enable the authorised officer to enter the premises.

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64. Additional requirements where private grant recipient's premises entered

- (1) An authorised officer may enter the premises of a private grant recipient only if the officer has made reasonable attempts to give at least 48 hours' prior notice to a person who resides at the premises.
- (2) Despite subsection (1), an authorised officer is not required to make reasonable attempts to give at least 48 hours' prior notice, to a person who resides at the premises of a private grant recipient, if the officer is reasonably of the opinion that it is necessary to enter the premises without notice in order to ascertain –
 - (a) whether a person with disability is receiving the care and support that is necessary or desirable for the person's health and wellbeing; or
 - (b) whether a person with disability is safe.
- (3) An authorised officer may only enter the premises of a private grant recipient before 7 a.m., or after 7 p.m., if it is reasonably necessary to do so in order to ascertain whether –
 - (a) a person with disability is receiving, at the premises, or from a person who resides at the premises, the care and support that is necessary or desirable for the health and wellbeing of the person; or
 - (b) a person with disability is safe.

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- (4) An authorised officer who enters the premises of a private grant recipient must as soon as practicable tell a person on the premises, and any person with disability on the premises, the purpose for which the authorised officer has entered the premises.

65. Rights of authorised officers after entry of premises

- (1) An authorised officer who enters premises under section 63 may take any of the following actions on the premises, in so far as it is necessary to do so for the purposes for which, under section 63, the officer has entered the premises:
- (a) inspect the premises;
 - (b) open any container, filing cabinet, or storage facility, that is on the premises;
 - (c) request a person on the premises to provide documents or records to the officer;
 - (d) inspect any documents or records on the premises;
 - (e) take copies of, or request a person on the premises to make copies of, any documents or records that are on the premises or provided to the officer.
- (2) An authorised officer who enters premises under section 63 may request the following persons to answer questions in relation to the provision of disability services or other goods or services or

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the carrying out of research under a disability support grant:

- (a) any employee of a disability services provider or grant recipient;
 - (b) a private grant recipient;
 - (c) any person with disability, or other person, who is on the premises.
- (3) A person with disability who is requested under subsection (2) to answer questions has the right to –
- (a) request that another person be present when the person with disability answers the questions; and
 - (b) have another person be present, and to be assisted by that other person, when answering the questions.
- (4) If an authorised officer has entered premises under section 63, the disability services provider or grant recipient (other than a person with disability) or any employee of the disability services provider or grant recipient –
- (a) must permit the authorised officer to ask employees of the disability services provider or grant recipient, or any person who is on the premises, questions in relation to –

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- (i) the provision of disability services or other goods or services; or
 - (ii) the carrying out of research; and
 - (b) must not –
 - (i) prohibit a person of whom a question is asked under paragraph (a) from answering the question; or
 - (ii) threaten or punish a person of whom a question is asked under paragraph (a) if the person answers or were to answer such a question; and
 - (c) must permit an authorised officer to speak in private with employees of the provider or grant recipient or any person who is on the premises.
- (5) A disability services provider, grant recipient (other than a person with disability) or any employee of a disability services provider or grant recipient must not impede an authorised officer from performing or exercising the authorised officer’s functions or powers under this Act.
- (6) If a grant recipient or an employee of a grant recipient fails to comply with a requirement of this section, that failure may be taken into account in determining whether or not the grant may be terminated or refused.

PART 12 – REVIEW OF DECISIONS

66. Definitions

In this Part –

reviewable decision means any of the following:

- (a) a decision to approve the appointment of an appointed program officer;
- (b) a decision to refuse to approve the appointment of an appointed program officer;
- (c) a decision to amend or revoke an approval to the appointment of an appointed program officer;
- (d) a decision to appoint a person as an independent person for a person with disability;
- (e) a decision to approve the use of a restrictive practice in relation to a person with disability;
- (f) a decision to impose any condition or limitation on the grant of an authorisation to the use of a restrictive practice in relation to a person with disability;

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- (g) a decision to refuse to approve the use of a restrictive practice in relation to a person with disability;
- (h) a decision to give a direction to discontinue a restrictive practice in relation to a person with disability.

67. Internal review

- (1) The Senior Practitioner must prepare and implement a process for the internal review of reviewable decisions.
- (2) A person aggrieved by a reviewable decision of the Senior Practitioner, or a delegate of the Senior Practitioner, may seek an internal review of that decision by the Senior Practitioner.
- (3) If a person aggrieved by a reviewable decision seeks an internal review under subsection (2), the Senior Practitioner is to undertake and complete the internal review in accordance with the process prepared and implemented under subsection (1).

68. External review

- (1) A person aggrieved by a reviewable decision may apply to the Tribunal for a review of that decision if the person made an application for an internal review in respect of that decision under

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section 67 and the person has been informed of the result of the internal review.

- (2) Unless otherwise accepted by the Tribunal, an application under subsection (1) must be made within 28 days of the person who is making the application being informed of the result of the internal review.
- (3) Subject to any order made by the Tribunal, an application for the review of a reviewable decision does not, of itself, operate to stay or suspend the decision to which the application relates.
- (4) Unless otherwise specified in this Act, the provisions of the *Tasmanian Civil and Administrative Tribunal Act 2020* apply to an application to the Tribunal under this Act.

PART 13 – OFFENCES

69. Offences relating to intimidation

- (1) Without reasonable excuse, a person must not persuade or attempt to persuade by threat or intimidation another person –
- (a) to refrain from making to the Commissioner, the Senior Practitioner or any other person a report or a complaint; or
 - (b) to withdraw a report or a complaint; or
 - (c) to fail to co-operate with the Commissioner, the Senior Practitioner or another person who is performing or exercising a function or power under this Act; or
 - (d) to fail to provide information or a document to the Commissioner, Senior Practitioner or any other person who is performing a function or exercising a power under this Act; or
 - (e) to provide information or a document that is false or misleading in a material particular, or to provide information or a document in a manner that will make the information or document false or misleading in a material particular, to the Commissioner, the Senior Practitioner or any other person performing a function or exercising a power under this Act.

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Part 13 – Offences

Penalty: Fine not exceeding 100 penalty units.

- (2) It is a defence to a prosecution for an offence under subsection (1) that –
- (a) the defendant had another ground for engaging in the conduct alleged; and
 - (b) that ground is a reasonable one.

70. Offences relating to reprisals

- (1) A person must not take, attempt to take or conspire to take a reprisal against another person because, or in the belief that, any person –
- (a) has made or may make a report to the Commissioner, the Senior Practitioner or any other person who performs a function or exercises a power under this Act; or
 - (b) has co-operated, may co-operate or is co-operating with the Commissioner, the Senior Practitioner or any other person who performs a function or exercises a power under this Act; or
 - (c) has provided, may provide or is providing documents or information, by answering questions or otherwise, to the Commissioner, Senior Practitioner or any other person who performs a function or exercises a power under this Act.

Penalty: Fine not exceeding 100 penalty units.

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- (2) Without limiting subsection (1), the following are examples of a reprisal:
- (a) failing to employ a person;
 - (b) dismissing a person from employment;
 - (c) penalising or discriminating against a person in the course of the person's employment.
- (3) It is sufficient for a contravention of subsection (1) if a ground specified in subsection (1) is a significant factor in inducing the person to take, attempt to take or conspire to take a reprisal.
- (4) An attempt to take a reprisal includes an attempt to induce a person to take a reprisal.
- (5) It is a defence to a prosecution for an offence under subsection (1) for the defendant to prove that, despite a ground specified in subsection (1) being a significant factor for engaging in the conduct alleged to constitute the reprisal –
- (a) the defendant had another ground for engaging in that conduct; and
 - (b) that ground is a reasonable one; and
 - (c) the defendant had taken a significant step towards engaging in that conduct before acting on the ground specified in subsection (1).

71. Offences relating to obstruction &c.

Without reasonable excuse, a person must not obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, the Commissioner, the Senior Practitioner or any other person in the performance or exercise of a function or power under this Act.

Penalty: Fine not exceeding 50 penalty units.

72. Offences relating to provision of information &c.

(1) Without reasonable excuse, a person who is required to do so under this Act must not refuse or fail –

- (a) to attend before a person for the purpose of providing information; or
- (b) to be sworn or make an affirmation; or
- (c) to provide information by answering a question or otherwise; or
- (d) to produce a document.

Penalty: Fine not exceeding 50 penalty units.

(2) A person must not –

- (a) provide to the Commissioner, the Senior Practitioner or any other person who is performing or exercising a function or power under this Act information that the

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person knows is false or misleading in a material particular; or

- (b) refuse or fail to include, in information provided to a person who is performing or exercising a function or power under this Act, other information without which the information provided is, to the knowledge of the person, false or misleading in a material particular.

Penalty: Fine not exceeding 50 penalty units.

- (3) A person must not provide to the Commissioner, the Senior Practitioner or any other person performing or exercising a function or power under this Act a document containing information that the person knows is false or misleading in a material particular without –
 - (a) indicating that the document is false or misleading and the manner in which it is false or misleading; and
 - (b) giving correct information if the person has, or can reasonably obtain, the correct information.

Penalty: Fine not exceeding 50 penalty units.

- (4) The Commissioner may apply to the Supreme Court for, and the Supreme Court may make, an order directing a person to provide information by answering questions or otherwise, to produce a document or to attend to answer questions before another person, at such place and within

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such period or on such day and at such time as are specified in the order if –

- (a) that person refuses or fails to comply with a requirement made by the Commissioner under section 26 to provide information by answering questions or otherwise, to produce a document or to attend to answer questions; or
 - (b) that person provides information that is false or misleading in a material particular; or
 - (c) that person refuses or fails to include, in information provided, other information without which the information provided is false or misleading in a material particular.
- (5) A person is not liable to any penalty under the provisions of any other Act because the person, when required to do so under this Act –
- (a) provided information; or
 - (b) produced a document; or
 - (c) answered a question.

PART 14 – MISCELLANEOUS

73. Sharing of information

(1) In this section –

information-sharing entity means –

- (a) a specified person; or
- (b) a State Service officer or State Service employee employed in or for the purposes of the Department or another department, within the meaning of the *Administrative Arrangements Act 1990*; or
- (c) a controlling authority of an approved hospital, approved assessment centre, or secure mental health unit, each within the meaning of the *Mental Health Act 2013*; or
- (d) the person in charge of a disability services provider; or
- (e) the person in charge of an organisation that receives a referral from the Senior Practitioner or a Community-Based Intake Service, within the meaning of the *Children, Young Persons and Their Families Act 1997*; or

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- (f) the Chief Forensic Psychiatrist or the Chief Civil Psychiatrist; or
- (g) the NDIS Quality and Safeguards Commission; or
- (h) the NDIS Commissioner; or
- (i) the National Disability Insurance Agency established as the National Disability Insurance Scheme Launch Transition Agency by section 117 of the *National Disability Insurance Scheme Act 2013* of the Commonwealth; or
- (j) the Health Complaints Commissioner; or
- (k) the Anti-Discrimination Commissioner appointed under the *Anti-Discrimination Act 1998*; or
- (l) the Ombudsman; or
- (m) the Commissioner for Children and Young People; or
- (n) any other person, or organisation, prescribed in the regulations;

specified person means –

- (a) a medical practitioner; or

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- (b) a registered nurse or enrolled nurse; or
- (c) a person registered under the Health Practitioner Regulation National Law (Tasmania) in –
 - (i) the midwifery profession; or
 - (ii) the dental profession as a dentist, dental therapist, dental hygienist or oral health therapist; or
 - (iii) the psychology profession; or
- (d) an appointed program officer; or
- (e) an independent person for a person with disability; or
- (f) a police officer; or
- (g) a probation officer appointed or employed under section 5 of the *Corrections Act 1997*; or
- (h) a principal or a teacher in any educational institution (including a kindergarten); or
- (i) a person who provides child care, or a child care service, for fee or reward; or

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- (j) a person concerned in the management of a child care service licensed under the *Child Care Act 2001*; or
 - (k) any other person who is employed or engaged as an employee for, of or in, or who is a volunteer in –
 - (i) an Agency, within the meaning of the *State Service Act 2000*, that provides health, welfare, education, child care, or residential, services wholly or partly for children; or
 - (ii) an organisation that receives any funding from the Crown for the provision of such services.
- (2) Subject to subsection (3), the Commissioner or the Senior Practitioner may –
- (a) provide information to an information-sharing entity; or
 - (b) require an information-sharing entity to provide information to the Commissioner or the Senior Practitioner.
- (3) The Commissioner or the Senior Practitioner may only provide information in relation to a

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person with disability, or require information in relation to a person with disability to be provided to the Commissioner or the Senior Practitioner, if the Commissioner or the Senior Practitioner is satisfied that –

- (a) the information is necessary –
 - (i) to enable an appropriate assessment of the needs of the person to be ascertained; or
 - (ii) to determine whether any goods or services provided, or to be provided, to the person are appropriate; or
 - (iii) for the safety, welfare or wellbeing of the person or the safety of other persons; and
 - (b) where the person with disability is capable of giving their consent to the provision of the information to another person and the information is not required for the safety of the person or other persons, the person with disability has given that consent.
- (4) An information-sharing entity required to provide information to the Commissioner or the Senior Practitioner under subsection (2) must, within the period specified by the Commissioner or the Senior Practitioner –
- (a) provide the information; or

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- (b) if the information-sharing entity does not have the information, provide the Commissioner or the Senior Practitioner with notice in writing that it cannot provide the information for that reason.

Penalty: Fine not exceeding 5 penalty units.

- (5) An information-sharing entity may do either or both of the following in relation to information in its possession in relation to a person with disability:
 - (a) provide the Commissioner or the Senior Practitioner with the information, whether or not the Commissioner or the Senior Practitioner has required the information to be provided;
 - (b) provide another information-sharing entity with the information if that entity is involved with, or is likely to be involved with, the person or a person who is related to the person.
- (6) An information-sharing entity may only provide under subsection (5) to an information-sharing entity information in relation to a person with disability if –
 - (a) it is satisfied that it is necessary to do so –
 - (i) to enable an appropriate assessment of the needs of the person to be made; or

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- (ii) to determine whether any goods or services provided, or to be provided, to the person are appropriate; or
 - (iii) for the safety, welfare or wellbeing of the person or the safety of other persons; and
 - (b) where the person with disability is capable of giving their consent to the provision of the information to another person and the information is not required for the safety of the person or other persons, the person with disability has given that consent.
- (7) A person providing information under this section –
- (a) cannot, by virtue of providing the information, be held to have breached any code of professional etiquette or ethics, to have departed from any accepted standards of professional conduct or to have contravened any Act; and
 - (b) to the extent that the person has acted in good faith, incurs no civil or criminal liability in respect of providing the information.

74. Confidentiality

- (1) In this section –

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protected information means information about a natural person from which the identity of the natural person is apparent or is reasonably ascertainable.

- (2) A person who exercises or has exercised functions under this Act must not disclose protected information to another person except in a circumstance specified in subsection (3).

Penalty: Fine not exceeding 50 penalty units.

- (3) A person may disclose protected information in one or more of the following circumstances:
- (a) the information is disclosed in the exercise of a function under, or for the purposes of, this Act;
 - (b) the disclosure is for a purpose authorised, or is required, by this Act or any other Act;
 - (c) the disclosure is otherwise required or permitted by law;
 - (d) for the purposes of legal proceedings; or
 - (e) the disclosure is made for or in connection with the reporting or lawful investigation of a crime or unlawful act (whether actual or prospective);
 - (f) the disclosure is with the agreement of the person to whom the information relates;

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- (g) there are reasonable grounds to suspect that there is a risk of significant harm to a person with disability, or to a child or other vulnerable person, and the disclosure is reasonably necessary to prevent that harm;
- (h) the disclosure is in a form that does not identify the person;
- (i) in prescribed circumstances.

75. Protection from liability

- (1) This section applies to the following persons:
 - (a) the Minister;
 - (b) the Secretary;
 - (c) the Commissioner;
 - (d) the Senior Practitioner;
 - (e) an authorised officer;
 - (f) a member of the Disability Inclusion Advisory Council;
 - (g) an appointed program officer;
 - (h) an independent person for a person with disability;
 - (i) any other person, performing a function or exercising a power under this Act.

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- (2) An action does not lie against any person to whom this section applies, or to any person acting under the direction of any person to whom this section applies, in respect of any act done in good faith and in the performance, or purported performance, of a function imposed, or the exercise, or purported exercise, of a power conferred, by or under this Act.

76. Delegation

The Secretary may delegate any of the Secretary's powers or functions under this Act other than this power of delegation.

77. Regulations

- (1) The Governor may make regulations for the purposes of this Act.
- (2) Without limiting the generality of subsection (1), the regulations may –
- (a) prescribe fees and charges for the purposes of this Act; and
 - (b) prescribe standards in accordance with section 35.
- (3) The regulations may –
- (a) provide that a contravention of, or a failure to comply with, any of the regulations is an offence; and

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- (b) in respect of such an offence, provide for the imposition of a fine not exceeding 10 penalty units.
- (4) The regulations may apply, adopt or incorporate all or any of the provisions of a code or guidelines published by any organisation or body for the regulation of any matter to which this Act applies and the provisions may be applied, adopted or incorporated as they currently exist, as amended by the regulations, or as amended from time to time.
- (5) The regulations may –
 - (a) be of limited or general application; and
 - (b) be made so as to apply differently according to matters, limitations or restrictions, whether as to time, circumstance, location or otherwise, specified in the regulations; and
 - (c) authorise any matter to be determined, applied or regulated by any specified person or entity.
- (6) The regulations may –
 - (a) provide for savings and transitional matters that are necessary or expedient as a consequence of the commencement of any provision of this Act; and
 - (b) provide for any of those savings or transitional matters to take effect when this Act commences or on a later day

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specified in the regulations, whether the day so specified is before, on or after the day on which the regulations are made.

78. Review of Act

(1) In this section –

independent review means a review carried out by persons who –

- (a) in the Minister’s opinion, are appropriately qualified for that task; and
 - (b) include one or more persons who are not employees of the State or Commonwealth or of any agency of the State or Commonwealth.
- (2) The Minister is to cause an independent review of the operation of this Act to be carried out as soon as practicable after the third anniversary of the commencement of this Act.
- (3) The persons who carry out the review are to give the Minister a written report on its outcome.
- (4) The Minister is to cause a copy of the report to be tabled in each House of Parliament within 10 sitting-days of that House after the Minister receives the report under subsection (3).

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79. Administration of Act

Until provision is made in relation to this Act by order under section 4 of the *Administrative Arrangements Act 1990* –

- (a) the administration of this Act is assigned to the Minister for Disability Services; and
- (b) the department responsible to that Minister in relation to the administration of this Act is the Department of Premier and Cabinet.

80. Legislation repealed

The legislation specified in Schedule 3 is repealed.

81. Legislation rescinded

The legislation specified in Schedule 4 is rescinded.

**SCHEDULE 1 – PROVISIONS IN RESPECT OF
MEMBERSHIP AND MEETINGS OF DISABILITY
INCLUSION ADVISORY COUNCIL**

Section 19

PART 1 – PRELIMINARY

1. Interpretation of Schedule 1

In this Schedule –

chairperson means the chairperson of the
Disability Inclusion Advisory Council;

deputy chairperson means the deputy
chairperson of the Disability Inclusion
Advisory Council;

member means a member of the Disability
Inclusion Advisory Council.

**PART 2 – MEMBERSHIP OF DISABILITY INCLUSION
ADVISORY COUNCIL**

1. Term of office

- (1) A member is appointed for a period, not exceeding 3 years, specified in the member's instrument of appointment and, if eligible, may be reappointed.
- (2) A member may serve any number of terms but not more than 2 terms, of whatever duration, in succession.

2. Holding other office

The holder of an office who is required under the terms of the holder's employment to devote the whole of the holder's time to the duties of that office is not disqualified from –

- (a) holding that office and also the office of member; or
- (b) accepting any remuneration payable to a member.

3. State Service Act 2000

- (1) The *State Service Act 2000* does not apply in relation to a person in the person's capacity as a member.
- (2) A person may hold the office of member in conjunction with State Service employment.

4. Remuneration and conditions of appointment

- (1) A member is entitled to be paid such remuneration and allowances as the Minister determines.
- (2) A member who is a State Service officer or State Service employee is not entitled to remuneration or allowances under this clause except with the approval of the Minister administering the *State Service Act 2000*.
- (3) A member holds office on such conditions in relation to matters not provided for by this Act

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as are specified in the member's instrument of appointment.

5. Vacation of office

- (1) A member vacates office if the member –
 - (a) dies; or
 - (b) resigns; or
 - (c) is removed from office under subclause (2) or (3).

- (2) The Minister may remove a member from office if –
 - (a) the Minister is of the opinion that the member is unable to perform the functions of office; or
 - (b) the Minister is of the opinion that the member neglected the functions of the office or is negligent in the carrying out of those functions; or
 - (c) the member is absent from 3 consecutive meetings of the Disability Inclusion Advisory Council without the permission of the Disability Inclusion Advisory Council; or
 - (d) the member becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with the member's creditors or makes an assignment of the member's

remuneration or estate for their benefit;
or

- (e) the Minister is of the opinion that any other act or omission of the member has adversely affected the operation of the Disability Inclusion Advisory Council.

6. Filling of vacancies

If the office of a member becomes vacant, the Minister may appoint a person to the vacant office for the remainder of that member's term of office.

7. Validation of proceedings &c.

- (1) An act or proceeding of the Disability Inclusion Advisory Council or of a person acting under the direction of the Disability Inclusion Advisory Council is not invalidated by reason only that at the time when the act or proceeding was done, taken or commenced there was a vacancy in the office of a member.
- (2) All acts or proceedings of the Disability Inclusion Advisory Council or of a person acting under the direction of the Disability Inclusion Advisory Council are, despite any subsequent discovery of a defect in the appointment of a member or that any other person was disqualified from acting as, or capable of being, a member, as valid as if the member had been duly appointed and was qualified to act as, or capable of being, a member, and as if the

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Disability Inclusion Advisory Council had been fully constituted.

8. Presumptions

In any proceedings by or against the Disability Inclusion Advisory Council, unless evidence is given to the contrary, proof is not required of –

- (a) the constitution of the Disability Inclusion Advisory Council; or
- (b) the appointment of any member.

**PART 3 – MEETINGS OF DISABILITY INCLUSION
ADVISORY COUNCIL**

1. Convening of meetings

- (1) The chairperson, after giving each member reasonable notice of a meeting –
 - (a) may convene a meeting at any time; and
 - (b) must convene a meeting when requested to do so by 3 or more other members.
- (2) If the chairperson is absent from duty or otherwise unable to perform the duties of the office, a meeting may be convened, after reasonable notice of the meeting has been given of it, by –
 - (a) 3 or more other members; or

- (b) a person authorised by the Disability Inclusion Advisory Council to do so.
- (3) For the purposes of subclauses (1) and (2), what constitutes reasonable notice is to be determined by the Disability Inclusion Advisory Council.
- (4) The Disability Inclusion Advisory Council must hold no fewer than 4 meetings in each calendar year.

2. Presiding at meetings

- (1) The chairperson or, in the absence of the chairperson, the deputy chairperson shall preside at any meeting of the Disability Inclusion Advisory Council at which the chairperson or, as the case may require, the deputy chairperson is present.
- (2) If the chairperson or deputy chairperson is not present at a meeting of the Disability Inclusion Advisory Council, the members present shall appoint a member to preside at the meeting.

3. Quorum and voting at meetings

- (1) At a meeting of the Disability Inclusion Advisory Council, a quorum is constituted by a majority of the total number of members appointed.
- (2) A meeting of the Disability Inclusion Advisory Council at which a quorum is present is competent to transact any business of the Disability Inclusion Advisory Council.

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- (3) At a meeting of the Disability Inclusion Advisory Council –
- (a) a question is decided by a majority of votes of the members present and voting; and
 - (b) the member presiding has a deliberative vote and, in the event of an equality of votes, also a casting vote.

4. Conduct of meetings

- (1) Subject to this Act, the Disability Inclusion Advisory Council may regulate the calling of, and the conduct of business at, its meetings as it considers appropriate.
- (2) The Disability Inclusion Advisory Council may permit members to participate in a particular meeting or all meetings by –
- (a) telephone; or
 - (b) video conference; or
 - (c) any other means of communication approved by the Council.
- (3) A member who participates in a meeting under a permission granted under subclause (2) is taken to be present at the meeting.
- (4) Without limiting subclause (1), the Disability Inclusion Advisory Council may allow a person to attend a meeting for the purpose of advising or informing it on any matter.

5. Minutes

The Disability Inclusion Advisory Council is to keep minutes of its proceedings and is to distribute the minutes to members of the Disability Inclusion Advisory Council and to the Commissioner.

6. Resolutions without meetings

- (1) If all members sign a document containing a statement that they are in favour of a resolution in the terms set out in the document, a resolution in those terms is taken to have been passed at a meeting of the Disability Inclusion Advisory Council held on the day on which the document is signed or, if the members do not sign it on the same day, on the day on which the last of the members signs the document.
- (2) If a resolution is taken to have been passed under subclause (1), each member is to be –
 - (a) advised immediately of the matter; and
 - (b) given a copy of the terms of the resolution.
- (3) For the purposes of subclause (1), 2 or more separate documents containing a statement in identical terms, each of which is signed by one or more members, is taken to constitute one document.

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7. General procedure

Except as provided by this Act, the Disability Inclusion Advisory Council may regulate its own proceedings.

8. Presumption

In any proceedings by or against the Disability Inclusion Advisory Council, unless evidence is given to the contrary, proof is not required of –

- (a) any resolution of the Disability Inclusion Advisory Council; or
- (b) the presence of a quorum at any meeting of the Disability Inclusion Advisory Council.

**SCHEDULE 2 – TERMS OF APPOINTMENT OF
COMMISSIONER**

Section 23

1. Duration of appointment

- (1) The Commissioner holds office for such term, not exceeding 5 years, as is specified in the instrument of appointment.
- (2) A person who has been appointed to the office of Commissioner may from time to time be reappointed for a single further term, not exceeding 5 years, as may be specified in the instrument of appointment.

2. Terms of appointment

- (1) The Commissioner is entitled to the remuneration and allowances, and holds office subject to the terms and conditions, as specified in the instrument of appointment.
- (2) The *State Service Act 2000* does not apply in relation to the Commissioner.
- (3) A person appointed as the Commissioner may hold that office in conjunction with State Service employment.
- (4) The Commissioner is an employee for the purposes of the *Public Sector Superannuation Reform Act 2016*.

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3. Vacation of office

A person appointed as the Commissioner vacates that office if the person –

- (a) dies; or
- (b) retires; or
- (c) is removed from office under clause 4.

4. Removal from office

(1) The Minister may remove the Commissioner from office if the Commissioner –

- (a) is, without good reason absent from the office of Commissioner for an extended period of time; or
- (b) becomes bankrupt, applies to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounds with creditors or makes an assignment of any remuneration or estate for their benefit; or
- (c) is convicted in Tasmania of any crime or offence punishable by imprisonment for a term of 12 months or longer or elsewhere of any crime or offence which if committed in Tasmania would be punishable by imprisonment for a term of 12 months or longer; or
- (d) is convicted of an offence against this Act.

- (2) The Minister may remove the Commissioner from office if satisfied that the Commissioner –
- (a) is unable to perform the duties of office adequately or competently; or
 - (b) has neglected to perform those duties; or
 - (c) is guilty of misconduct of such a nature that makes the Commissioner unsuitable to hold that office.

5. Acting Commissioner

- (1) In this section –

acting Commissioner means the person appointed to act as the Commissioner under subclause (2).

- (2) The Minister may appoint a person to act as the Commissioner for a term, of not more than 12 months, specified in the instrument of appointment, if –
- (a) there is a vacancy in the office of Commissioner; or
 - (b) the Commissioner is absent from the State or unable to perform the duties of the office.
- (3) A person appointed as acting Commissioner is, for the term of the person's appointment as acting Commissioner, entitled to be paid such remuneration and allowances as the Minister determines.

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- (4) A person appointed as acting Commissioner, while so acting, may perform the functions and exercise the powers of the Commissioner as fully and effectively as the Commissioner.

6. Defect does not invalidate appointment

An appointment of a person as Commissioner is not invalid merely because of a defect or irregularity in relation to that appointment.

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SCHEDULE 3 – LEGISLATION REPEALED

Section 80

Disability Services Act 2011 (No. 27 of 2011)

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SCHEDULE 4 – LEGISLATION RESCINDED

Section 81

Disability Services Regulations 2015 (No. 16 of 2015)