

# TASMANIA

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## DISABILITY SERVICES AMENDMENT BILL 2019

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# **DISABILITY SERVICES AMENDMENT BILL 2019**

This Public Bill originated in the House of Assembly, and, having this day passed, is now ready for presentation to the Legislative Council for its concurrence.

SHANE DONNELLY, *Clerk of the House*  
29 May 2019

*(Brought in by the Minister for Disability Services and  
Community Development, the Honourable Jacqueline Anne  
Petrusma)*

## **A BILL FOR**

### **An Act to amend the *Disability Services Act 2011***

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:

#### **1. Short title**

This Act may be cited as the *Disability Services Amendment Act 2019*.

#### **2. Commencement**

This Act commences on the day on which this Act receives the Royal Assent.

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**3. Principal Act**

In this Act, the *Disability Services Act 2011*\* is referred to as the Principal Act.

**4. Section 5 substituted**

Section 5 of the Principal Act is repealed and the following section is substituted:

**5. Principles**

- (1) The following are the general principles that are to guide actions under this Act:
  - (a) people with disability have the same right as other members of Australian society to realise their potential for physical, social, emotional and intellectual development;
  - (b) people with disability should be supported to participate in, and contribute to, social and economic life to the extent of their ability;
  - (c) people with disability and their families and carers should have certainty that people with disability will receive the care and support they need over their lifetime;

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- (d) people with disability should 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 should be supported to receive reasonable and 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 abuse, neglect and exploitation;
- (g) people with disability have the same right as other members of Australian society to pursue any grievance;
- (h) people with disability have the same right as other members of Australian society to be able to determine their own best interests, including the right to exercise choice and control, and to engage as equal partners in decisions that will affect their

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lives, to the full extent of their capacity;

- (i) people with disability should 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 should have their privacy and dignity respected;
- (k) the role of families, carers and other significant persons in the lives of people with disability is to be acknowledged and respected;
- (l) the role of advocacy in representing the interests of people with disability is to be acknowledged and respected, recognising that advocacy supports people with disability by –
  - (i) promoting their independence and social and economic participation; and
  - (ii) promoting choice and control in the pursuit of their goals and the

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planning and delivery of  
their supports; and

- (iii) maximising independent lifestyles of people with disability and their full inclusion in the community;
  - (m) innovation, quality, continuous improvement, contemporary best-practice and effectiveness in the provision of supports to people with disability are to be promoted;
  - (n) positive personal and social development of people with disability, including children and young people, is to be promoted.
- (2) 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 both the general principles set out above and the following principles:
- (a) people with disability should be involved in decision-making processes that affect them, and where possible make decisions for themselves;

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- (b) people with disability should be encouraged to engage in the life of the community;
- (c) the judgements and decisions that people with disability would have made for themselves should be taken into account;
- (d) the cultural and linguistic circumstances, and the gender, of people with disability should be taken into account;
- (e) the supportive relationships, friendships and connections, with others, of people with disability should be recognised;
- (f) if the person with disability is a child – the best interests of the child are paramount, and full consideration should be given to the need to –
  - (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



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significant in the life of  
the child.

- (3) It is the duty of a person who may do a thing on behalf of a child to ascertain the wishes of the child concerned and to act in the best interests of the child.
- (4) It is the duty of a person who may do a thing on behalf of a child to provide disability, and age-appropriate, assistance in decision making by the child personally and to have regard to, and give appropriate weight to, the views of the child.
- (5) A person does not breach the duty imposed by subsection (3) or (4) by doing a thing if, when the thing is done, the person reasonably believes that –
  - (a) he or she has ascertained the wishes of the child in relation to the thing; and
  - (b) the doing of the thing is in the best interests of the child.
- (6) A person does not breach the duty imposed by subsection (3) or (4) by refraining from doing a thing if, at the relevant time, the person reasonably believes that –
  - (a) he or she has ascertained the wishes of the child in relation to the thing; and

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- (b) not doing the thing is in the best interests of the child.

**5. Section 7 amended (Strategic plan)**

Section 7(10) of the Principal Act is amended by omitting “or purchase”.

**6. Section 8 amended (Operational plans)**

Section 8(7) of the Principal Act is amended by omitting “or purchase”.

**7. Section 28 amended (Rights of authorised officers after entry of premises)**

Section 28(3) of the Principal Act is amended by omitting “is entitled” and substituting “has the right”.

**8. Section 36 amended (Use of unauthorised restrictive intervention prohibited)**

Section 36(3) of the Principal Act is amended as follows:

- (a) by omitting “under the *Mental Health Act 1996*” and substituting “, or the Chief Civil Psychiatrist, under the *Mental Health Act 2013*”;
- (b) by inserting in paragraph (a) “or the Chief Civil Psychiatrist” after “by the Chief Forensic Psychiatrist”;

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- (c) by inserting in paragraph (a) “or the Chief Civil Psychiatrist” after “of the Chief Forensic Psychiatrist”;
- (d) by inserting in paragraph (b) “the Chief Civil Psychiatrist,” after “Psychiatrist,”.

**9. Section 41A inserted**

After section 41 of the Principal Act, the following section is inserted in Division 3:

**41A. Provisional grant of approval to carry out restrictive intervention**

- (1) After receiving an application under section 41 and before holding a hearing under section 42, the Guardianship and Administration Board may, subject to subsection (2), grant provisional approval to carry out a restrictive intervention of a type referred to in section 42.
- (2) The Guardianship and Administration Board must not grant provisional approval to carry out a restrictive intervention of a type referred to in section 42 unless the Board has received from the Senior Practitioner a favourable assessment in respect of the following matters:
  - (a) the best interests of the person with disability;

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- (b) the consequences to the person with disability if restrictive intervention of that type is carried out in relation to the person;
  - (c) the consequences to the person with disability, or other persons, if restrictive intervention of that type is not carried out in relation to the person with disability;
  - (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 intervention has been proposed;
  - (e) the nature and degree of any significant risks to the person with disability if the restrictive intervention is carried out;
  - (f) whether, and the extent to which, carrying out the restrictive intervention will promote or reduce the safety, health and wellbeing of the person with disability.
- (3) A provisional approval remains in effect for a period of up to 90 days.

**10. Section 50 amended (Sharing of information)**

The definition of *information-sharing entity* in section 50(1) of the Principal Act is amended as follows:

- (a) by inserting in paragraph (d) “approved” after “hospital,”;
- (b) by omitting from paragraph (d) “*Mental Health Act 1996*” and substituting “*Mental Health Act 2013*”;
- (c) by inserting in paragraph (h) “or the Chief Civil Psychiatrist” after “Psychiatrist”;
- (d) by inserting the following paragraphs after paragraph (h):
  - (ha) the NDIS Quality and Safeguards Commission established by section 181A of the *National Disability Insurance Scheme Act 2013* of the Commonwealth; or
  - (hb) 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

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**11. Repeal of Act**

This Act is repealed on the first anniversary of the day on which it commenced.