

CLAUSE NOTES

Disability Inclusion and Safeguarding Bill 2024.

- A BILL FOR** An Act to advance and safeguard the human rights of people with disability and to advance the full and effective inclusion of people with disability in the Tasmanian community
- PART 1** **PRELIMINARY**
- Clause 1** **Short Title**
This Act may be cited as the *Disability Inclusion and Safeguarding Act 2024*.
- Clause 2** **Commencement**
Provides for the Act to commence on Royal Assent.
- Clause 3** **Objects of Act**
This clause provides that the objects of the Act are to advance and safeguard the rights of people with disability and to advance the full and effective inclusion of people with disability, including by:
- (a) recognising the responsibility of the State and the community to support people with disabilities in exercising their human rights; and
 - (b) supporting and effecting:
 - (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;
 - (g) providing for a community visitor scheme; and
 - (g) enabling the provision of funding to support the above objects.

Clause 4 Act Binds Crown

Requires the Crown to comply in the same way as everybody else in the community.

Clause 5 Interpretation

Inserts definitions for the purposes of the Act.

Of Note:

The definition of disability in relation to a person, includes long-term physical, mental, cognitive, intellectual or sensory impairments which in interaction with various barriers may hinder the person's full and effective participation in society on an equal basis with others. This is aligned with the definition of Persons with Disability in the UNCRPD and ADS.

Other terms defined include:

- *accessible format*
- *appointed program officer*
- *Australia's Disability Strategy*
- *authorised officer*
- *behaviour support plan*
- *behaviour support practitioner*
- *Commissioner*
- *community visitor scheme*
- *defined entity*
- *disability inclusion*
- *disability inclusion action plan*
- *Disability Inclusion Advisory Council*
- *disability service*
- *disability services provider*
- *disability support grant*
- *employee*
- *exempt information*
- *governing body*
- *grant recipient*
- *human rights*
- *independent person*
- *intersectionality*
- *NDIS*
- *NDIS Act*
- *NDIS Commissioner*
- *NDIS provider*
- *NDIS Quality and Safeguards Commission*
- *NDIS Rules*
- *person-centred*

- personal attribute
- principles
- *private grant recipient*
- *progress report*
- *regulations*
- *restrictive practice*
- *Secretary*
- *Senior Practitioner*
- *Tasmanian Disability Inclusion Plan*
- *trauma-informed approach*
- *Tribunal*
- *United Nations Convention on the Rights of Persons with Disabilities*
- *universal design*
- *universal service*

Clause 6 **Meaning of defined entity**

For the purposes of this Act a defined entity includes any State Government Agency, Government Business Enterprise, State Owned Business or Not-for-profit Government Business.

This includes entities operating under: the State Service Act (2000); Government Business Enterprises Act (1995); Statutory Authorities Act (1962); and TasTAFE (Skills and Training Business) Act (2021).

An entity is also an agent or instrumentality of the Crown, if that agent or instrumentality administers funding or services to the disability sector.

This also allows for other persons or bodies, or class of persons or bodies to be either prescribed as a defined entity or excluded from the definition of defined entity. This would occur by regulation at a later stage.

Clause 7 **Meaning of disability services provider**

This clause defines the meaning of a disability services provider.

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.

A disability services provider includes:

- (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.

A disability service 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.

Clause 8 Principles

This clause sets out principles that are to be observed in the operation, administration and enforcement of this Act. To observe is to comply with.

The principles are intended to reflect the human rights of people with disability as expressed in the United Nation Convention on the Rights of Persons with Disabilities and Australia's Disability Strategy.

The Tasmanian Disability Inclusion Plan and Disability Inclusion Action Plans developed by Defined Entities must set out whole-of-government policies and measures for achieving the objects of this Act and advancing the principles.

PART 2 DISABILITY INCLUSION PLANNING

Division 1 Tasmanian Disability Inclusion Plan

Clause 9 Requirement for Tasmanian Disability Inclusion Plan

This clause set out that the Minister (for Disability Services) must ensure that a Tasmanian Disability Inclusion Plan is prepared within 12 months of commencement of the Act and on a 4 yearly basis thereafter.

The Plan set out whole of government policies and measure for achieving the objects of the Act and the advancement of the principles of the Act.

The Plan must also provide for collaboration and coordination among State authorities and other entities in the provision of mainstream supports and services to people with disability.

In preparing the Plan, the Minister must have regard to the objects and principles of the Act, must consider the varied needs and experiences of people with disability and the strategies that may be required in response to those needs and experiences.

In preparing the Plan the minister must consult with the Disability Inclusion Advisory Council, The Disability Inclusion Commissioner, people with disability, persons or bodies representing the interests of people with disability, the public and others that the Minister thinks appropriate.

The Minister must cause that a copy of the Plan is published and that a copy is tabled in each House of Parliament.

Clause 10 Amendment of Tasmanian Disability Inclusion Plan

This clause provides for The Minister to amend, revoke and substitute the Tasmanian Disability Inclusion Plan. It also set out that the provisions in Clause 9 should be observed in the same way if the Plan is amended, revoked or substituted.

Clause 11 Tasmanian Disability Inclusion Plan Progress Report

This clause provides for The Minister to prepare a Tasmanian Disability Inclusion Plan Progress Report within 12 months after the preparation of the Plan and on a yearly basis thereafter.

The Progress Report must include an assessment of progress in the previous 12 months in relation to implementation.

The Minister must cause the Progress Report to be published and for it to be tabled in each House of Parliament.

Division 2 Disability Inclusion Plans for Defined Entities

Clause 12 Requirement for disability inclusion action plans

This sets out that a defined entity must ensure that a disability inclusion action plan is prepared for that entity within 6 months after the publication of the initial Tasmanian Disability Inclusion Plan prepared under clause 9 on a 4-yearly basis thereafter.

The Action Plan is to support the implementation of the Tasmanian Disability Inclusion Plan by promoting inclusion and participation in the community of people with disability; reducing, removing and preventing barriers to people with disability in accessing universal supports and services; reducing, removing and preventing barriers to people with disability obtaining and maintaining employment; realising meaningful change in attitudes and practices that discriminate against people with disability; and coordinating and integrating universal services and supports with services and supports that are funded or provided under the NDIS.

An action plan must include: strategies and measures for the defined entity to promote disability inclusion; and actions to be taken and outcomes to be measured by the defined entity to advance disability inclusion.

In preparing the Action Plan, a defined entity must have regard to the objects and principles of the Act, the priorities and measures in the current Tasmanian Disability Inclusion Plan; any guidelines issues with regard to preparation of the plan and other prescribed matters.

In preparing a action plan, a defined entity must consult with people with disability; the Disability Inclusion Advisory Council; people with disability; persons or bodies representing the interests of people with disability and any other persons whom the entity considers relevant.

Within a reasonable time after preparing a disability inclusion action plan, a defined entity must publish the plan in accessible formats and submit a copy of the action plan to the Commissioner.

Clause 13 Amendment of disability inclusion action plan

This clause provides for a Defined Entity to amend, revoke and substitute the Disability Inclusion Action Plan. It also set out that the provisions in Clause 12 should be observed in the same way if the Plan is amended, revoked or substituted.

Clause 14 Review of disability inclusion action plan

This clause provides for a Defined Entity to prepare a Progress Report within 12 months after the preparation of the Plan and on a yearly basis thereafter.

The Progress Report must include an assessment of progress in the previous 12 months in relation to implementation.

The Defined Entity must cause the Progress Report to be published and a copy of the Progress Report submitted to the Disability Commissioner.

Clause 15 Register of disability inclusion action plans

This clause provides for the Disability Commissioner to maintain a register of the Disability Inclusion Action Plans and Progress Plans of Defined Entities.

Clause 16 Disability Action Evaluation Report

This clause provides for the Disability Commissioner to submit to the Minister for Disability Services on 1 November of each year a report evaluating the progress of defined entities in advancing disability inclusion during the previous financial year as set out in the disability inclusion action plans of defined entities; and the progress reports of defined entities. This clause also provides for the evaluation report to be published on a website operated by the Disability Commissioner in accessible formats.

Division 3 Disability Consultation

Clause 17 Consultation by defined entities

This clause establishes a requirement for defined entities to consult with people with disability when they are developing or reviewing any policy, program or service provided by the entity that has a direct and significant impact on the public. The consultation is to consider:

- the effects on people with disability
- how it may be developed or varied in order to ensure accessibility; promote universal design; reduce, remove and prevent barriers to disability inclusion; and promote disability inclusion
- any barriers to disability inclusion that may be compounded by intersectionality
- the principles of the Act in relation to the matter under consultation.

Division 4

Compliance notices

Clause 18

Compliance notices

The Commissioner may issue a compliance notice to a defined entity, after taking reasonable steps to resolve the matter informally, if the Commissioner reasonably believes that the entity, without reasonable excuse, has failed to comply with this Act by not doing one or more of the following as required by this Act:

- submitting a disability inclusion action plan to the Commissioner
- publishing a copy of a disability inclusion action plan
- submitting a progress report on the implementation of a disability inclusion action plan to the Commissioner
- publishing a copy of a progress report on the implementation of a disability inclusion action plan
- making reasonable and material progress in implementing a disability inclusion action plan.

A defined entity must comply with a compliance notice issued by the Commissioner in relation to the above requirements or to take any other action reasonably required to comply with this Act.

Clause 19

Form and content of compliance notices

This clause describes the form and content that compliance notice issued to a defined entity must take, including to state:

- each requirement of this Act with which the Commissioner believes that the entity has failed to comply; and
- the basis for the Commissioner's belief that the entity has failed to comply with that requirement; and
- the action that the entity must take to comply with that requirement; and
- the date by which the entity must take that action; and

- the further action that the Commissioner may take if the entity does not comply with the notice; and
- that the entity may disagree with the notice within 14 days after receiving the notice.

The date specified in the compliance notice must be for a requirement to prepare a Disability Action Plan, not less than 60 days after the notice is issued; or in any other case, not less than 14 days after the notice is issued.

The Commissioner, by further written notice, may extend the date specified in a compliance notice by a period of up to 24 months.

Clause 20 Defined entity may disagree with compliance notice

If a defined entity disagrees with a compliance notice, the entity may give a written response to the Commissioner, within 14 days after receiving the notice, setting out the entity's reasons for disagreeing with the notice.

The Commissioner must consider the response and, by written notice, may withdraw the compliance notice; or vary the compliance notice; or affirm the compliance notice. If the Commissioner varies or affirms a compliance notice, the Commissioner's written notice must specify the date by which the defined entity must take the action required to comply.

A defined entity must comply with a compliance notice as varied or affirmed.

Clause 21 Commissioner may take action following non-compliance

This clause describes actions the Commissioner may take if a defined entity does not comply with a compliance notice by the date specified in the notice. This includes:

- accept a written undertaking by which the entity commits to take certain action to comply with this Act
- recommend that the Minister take any action that the Commissioner considers appropriate to ensure the entity's compliance with this Act
- publish on the Commissioner's website the name of the entity and the requirement of this Act with which the entity has failed to comply.

Clause 22 Enforceable undertakings

This section applies if the Commissioner accepts a written undertaking by which a defined entity commits to take certain action to comply with this Act.

The defined entity may withdraw or vary the undertaking with the Commissioner's consent.

While the undertaking is in effect and the defined entity is complying with the undertaking, the Commissioner must not take any further action in relation to this undertaking; or issue any further compliance notices in respect of the subject matter of the undertaking.

PART 3 DISABILITY INCLUSION ADVISORY COUNCIL

Clause 23 Establishment of Disability Inclusion Advisory Council

This clause provides for the establishment of a Disability Inclusion Advisory Council. It establishes that the council is to be made up of between 9 and 11 people who are appointed by the Minister based on the recommendations of the Commissioner.

The Minister is to ensure that the majority of members of the Council are people with disability.

Members of the council are to have appropriate skills, knowledge and experience and represent the diversity of backgrounds and experiences of people with disability. The Council may include members who are family members or carers of people with disability or who are representatives of disability advocacy organisations, disability peak bodies and disability representative organisations.

The chairperson of the Council is appointed by the Minister and is to be a person with disability. Members of the Council will elect the deputy Chairperson.

The clause establishes that the Minister is to publicly invite, by diverse and accessible means, expressions of interest in membership of the Council.

Schedule 1 sets out provisions in relation to membership and meetings of the Council.

Clause 24 Functions of Disability Inclusion Advisory Council

This clause sets out the functions of the Disability Inclusion Advisory Council. These functions include:

- communication with people with disability to inform the development of the Tasmanian Disability Inclusion Plan
- raising awareness about the rights and contributions of people with disability
- promoting the role of the Tasmanian community, including the business and community sectors, in furthering the rights of people with disability
- providing advice to the Commissioner and the Minister with regard to:
 - government policy directions, strategic planning and implementation of initiatives

- barriers to inclusion and participation in the Tasmanian community and strategies for the identification, reduction, removal, and prevention of those barriers
- strategies for the reduction, removal and prevention of violence against, and the abuse, neglect and exploitation of, people with disability
- other matters referred to the Council by the Commissioner or Minister
- providing advice to the Minister regarding the development of the Tasmanian Disability Inclusion Plan and to participate in the monitoring and implementation of the plan
- providing information and advice to the Commissioner as the Council considers relevant to the performance of the Commissioners functions
- providing advice to defined entities regarding the development and implementation of disability inclusion action plans
- to consult and work with other disability inclusion advisory councils or bodies, whether at a national, state or local government level.

This Clause also makes provision for the Council to request that a defined entity provide the Council with information and advice and sets out that a defined entity who receives such a request is authorised and required to comply with the request.

Clause 25 Powers of Disability Inclusion Advisory Council

This clause provides powers for the Disability Inclusion Advisory Council to do all things necessary or convenient in connection with the performance of the Councils functions.

Clause 26 Annual Report

This clause sets out a requirement for the Disability Inclusion Advisory Council to provide a report by 1 October in each year on the performance of the Council in the previous financial year.

The Disability Commissioner is to include a copy of the Councils Annual Report as part of the Disability Commissioners Annual Report (see clause 33).

PART 4 DISABILITY COMMISSIONER

Division 1 General Functions

Clause 27 Appointment of Commissioner

This clause provides for the establishment of the Disability Commissioner. The role is appointed by the Governor on the recommendation of the Minister. This establishes the role as independent of Government.

The person recommended is to be a person with disability.

The Minister may consult with the Disability Inclusion Advisory council in relation to the recommendation.

Schedule 2 provides additional guidance in relation to appointment of the Commissioner.

Clause 28 Functions of Commissioner

This clause establishes the functions of the Disability Commissioner.

These functions are to:

- (a) to provide advice and assistance to, and advocate systemically for, people with disability;
- (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 universal 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 support the capacity-building of people with disability to participate in activities for the purposes of this Act;
- (i) to establish and monitor safeguarding mechanisms that address violence against, and the abuse, neglect and exploitation of, people with disability;
- (j) to raise awareness in relation to, and education about the rights of, people with disability;
- (k) to take action, where appropriate, 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;

(l) to inquire into and report on systemic issues relating to the protection and promotion of the rights of people with disability;

(m) to consult with the Disability Inclusion Advisory Council, people with disability, and disability representative organisations on matters relating to the objects of the Act;

(n) any other functions that are conferred or imposed on the Commissioner by or under this or any other Act;

(o) any other prescribed functions.

This clause also establishes that in performing these functions the Commissioner is to consult with people with disability.

Clause 29

Powers of Commissioner

This clause establishes powers for the Disability Commissioner in relation to the Commissioner's functions and the exercise of these powers under this Act or any other Act.

These powers include:

- requirements to provide de-identified information and data
- investigate and make recommendations in respect of the functions of the Commissioner
- investigate and make recommendations in respect of the systems, policies and practices of organisations, government and non-government that provide services that affect people with disability
- advise and make recommendations in relation to the rights and wellbeing of people with disability to the Minister or defined entities
- to provide information to other organisations and person in accordance with the Act or any other Act
- report publicly on the wellbeing of people with disability and
- the exercise of other powers that may be prescribed.

This clause also establishes that in exercising a power the Commissioner:

- may regulate any proceedings in any manner that the Commissioner considers appropriate
- is not bound by the rules of evidence but may inform itself, on any matter in any manner, that the Commissioner thinks fit
- 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
- may investigate, or review, a matter in any manner that the Commissioner considers appropriate

- may hold an investigation, or review, under this Act in public or in private.

Information held by the Commissioner is not subject to the *Right to Information Act 2009* unless the information relates to the administration of a public authority within the meaning of the Act.

Clause 30 Guidelines relating to obligation of defined entities

This clause establishes that the Commissioner may issue guidelines to assist defined entities to meet their obligations under this Act. Guidelines may include, but are not limited, to:

- complying with the principles and objects of this Act
- the preparation of disability inclusion action plans
- the preparation of progress reports.

In preparing guidelines under this section the Commissioner must consult with the Disability Inclusion Advisory Council.

This clause establishes that a defined entity must have regard to the guidelines issued by the Commissioner.

The Commissioner may vary, substitute or revoke guidelines.

The Commissioner must ensure that any Guidelines issued under this section are published on a website operated by, or on behalf of the Commissioner.

Clause 31 Delegation by Commissioner

This clause provides for the Commissioner to delegate, in writing, their functions and powers, other than the power to delegate.

Clause 32 Staff

This clause provides for the Commissioner to make arrangements for a State Service officer or employee to be made available to enable the Commissioner to perform the Commissioners functions. Such an arrangement would be subject to an in accordance with the State Service Act 2000 and the officer or employee may serve the Commissioner in any capacity in conjunction with State Service employment.

Clause 33 Annual Report

This clause sets a requirement for the Disability Commissioner, by 1 November in each year, provide the Minister with a report on the performance of the function and exercise of powers of the Commissioner in the previous financial year. The Minister may direct the Commissioner to report on a specific matter in the annual report.

The annual report must be published on a website operated by the Commissioner in accessible formats. The Minister must cause 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.

Division 2 Investigations

Clause 34 Interpretation of Division

This clause provides the meaning of a report in relation to this Division as, a report made to the Commissioner under section 36 of the Act or a matter the Commissioner decides to deal with as a report under that section.

Clause 35 Initiation of investigation

This clause provides for the Commissioner, of the Commissioner's own motion, or in response to a report, investigate any matter relating to the objects of Act including, but not limited to, the provision of services to people with disability.

Clause 36 Making of reports

This clause provides that any person may make a report to the Commissioner concerning a matter relating to the objects.

A report to the Commissioner does not need to be in writing.

Upon receipt of a report the Commissioner may make preliminary inquiries to the purpose of deciding how to deal with a report and may request further information from the person making the report.

Further to reports of matters relating to the objects of the Act, a person may make a report about the following:

- matters relating to a person with disability if the person has reasonable grounds to believe that the person with disability is subject to or at risk of violence, abuse, neglect or exploitation
- 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.

A person with disability may make a report if they believe that they are subject to or at risk of violence, abuse, neglect or exploitation.

The Commissioner may, at their own initiative, decide to deal with a matter as a report if the Commissioner believes that the person with disability is subject to, or at risk of, violence, abuse, neglect or exploitation.

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:

- the person is incapable of giving consent, despite having been provided with appropriate support for the purposes of making such a decision
- 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
- any other circumstances prescribed by the regulations.

Clause 37

Investigation of reports

This clause establishes what the Commissioner may do in responding to a report. These actions are to conduct an investigation, make a referral to another person or body or decline to take action.

The Commissioner may decline to take action if:

- they consider that the report is frivolous, vexatious, misconceived, lacking in substance or does not warrant investigation
- they consider that the matter is currently or has already been dealt with by a court, board or tribunal and the report does not raise any new matter or issue or issue
- the report relates to an incident that occurred more than 12 months before the report is made and the reporter does not show a good reason for the delay in reporting
- they consider that the Commissioner does not have the jurisdiction to consider the report
- they consider that the report raises issues which require investigation by another person, court, board or tribunal.

This clause also establishes that the Commissioner is to notify the person who made the report of the decision made in relation to that report as soon as practicable after making that decision.

Clause 38

Referral of report or investigation

This clause allows for the Commissioner to refer a complaint or matter that is the subject of a report or investigation to the relevant person or body including:

- the Anti-Discrimination Commissioner (Tas)
- the Health Complaints Commissioner (Tas)
- the Commissioner for Children and Young People (Tas)
- the Independent Regulator (Children and Young People (Tas))
- the NDIS Quality and Safeguards Commission
- the Australian Health Practitioner Regulation Agency
- any other prescribed person or body.

The Commissioner may conduct an investigation of a matter that they have referred to another person or body if they are of the opinion that conducting an investigation may be necessary to protect a person with disability from violence, abuse, neglect or exploitation.

If the Commissioner is of the opinion that a report or investigation may provide evidence of a criminal offence, the Commissioner must refer the report or investigation, or part of the report or investigation, to the Commissioner of Police or the Director of Public Prosecutions.

The Commissioner must refuse to conduct an investigation, if the matter that is the subject of the investigation is the subject of, or would prejudice, any criminal proceedings or criminal investigations.

Clause 39 Information for the purposes of an investigation

This clause provides for the Commissioner to require a person or body corporate to provide information in writing, by answering questions and / or documentation relevant to an investigation within a specified time or place.

Where a document is produced in accordance with a requirement under this section, the Commissioner may take possession of, make copies of, or take extracts from, the document.

Clause 40 Protection of persons making reports

This clause provides for the identity of a person who makes a report to the Commissioner must not be disclosed by any person or body unless the disclosure is:

- made with the consent of the person who made the report; or
- necessary for the purposes of law enforcement; or
- otherwise permitted under this or any other Act; or
- necessary for any other purpose prescribed by the regulations.

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.

Clause 41 Procedure on completion of investigation

The Commissioner, as a result of an investigation, may take further action or may make recommendations to such persons as the Commissioner thinks fit, including, but not limited to, disability services providers, defined entities and other persons and organisations that provide services that affect people with disability.

PART 5 DISABILITY SERVICES REGULATIONS

Clause 42 **Disability Services Standards**

This clause provides for regulations to prescribe standards that are to apply in relation to the provision, by all disability services providers or a particular class of disability services providers, of supports and services for people with disability.

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**

Clause 43 **Senior Practitioner to be appointed**

This clause provides for the Secretary to appoint a State Service employee or State Service officer with appropriate qualifications and experience to perform the functions and exercise the powers of the Senior Practitioner under this Act to be the Senior Practitioner.

Clause 44 **Functions and powers of Senior Practitioner**

This clause provides for the functions of the Senior Practitioner including:

- to authorise and oversee the use of restrictive practices by disability services providers in accordance with this Act;
- to report to the Secretary in relation to the authorisation and use of restrictive practices;
- to promote the reduction and elimination of the use of restrictive practices by disability services providers to the greatest extent possible.
- to ensure, to the greatest extent possible, that the rights of people who may be subject to restrictive practices are protected; and disability services providers comply with any applicable guidelines and standards on the use of restrictive practices;
- to develop guidelines and standards, that are in accordance with best practice and the objects of this Act
- to give directions to disability services providers about the use of restrictive practices;
- 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;
- to provide information in relation to the rights of people with disability who may be subject to restrictive practices;
- to give advice to disability services providers, so as to –

- 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
- enable the use of restrictive practices to be reduced and, where appropriate, eliminated;
- 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;
- to monitor and evaluate the use of restrictive practices;
- such other functions as are imposed on the Senior Practitioner under this or any other Act.

The Senior Practitioner has the power to do all things necessary, or convenient, to be done to perform the functions and the exercise their powers, under this or any other Act.

Clause 45 Senior Practitioner may determine restrictive practices

This clause provides for the Senior Practitioner to 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.

Notice of the making of a determination along with a list of all practices and interventions determined to be restrictive practices are to be published on a website operated by, or on behalf of, the Senior Practitioner.

Clause 46 Senior Practitioner may issue guidelines

This clause provides for the Senior Practitioner to issue written guidelines relating to the performance and exercise of the Senior Practitioner's functions and powers under this Act.

Guidelines may include but not limited to:

- the authorisation of restrictive practices;
- the use of restrictive practices;
- the appointment and functions of appointed program officers;
- the appointment and role of independent persons in assisting and supporting people with disability
- the handling of disputes between an independent person and an appointed program officer.

In developing guidelines under this section, the Senior Practitioner must consult as appropriate with relevant stakeholders and community members.

A guideline may apply, adopt or incorporate an instrument, as in force from time to time.

Clause 47 **Annual report**

This clause provides for the Senior Practitioner to provide a report to the Secretary, by 1 September in each year. A report is to include:

- information on the performance of the functions, and the exercise of the powers, of the Senior Practitioner during the previous financial year; and
- data relating to the use of restrictive practices during the previous financial year; and
- observations on systematic issues in relation to restrictive practices.

A report provided to the Secretary must not enable a person with disability to be identified.

The Secretary must ensure that a copy of the report provided to the Secretary is available to the public on a website operated by, or on behalf of, the Department for at least 12 months after it is so provided; and in accessible formats.

Clause 48 **Delegation by Senior practitioner**

This clause provides for the Senior Practitioner to delegate to a State Service employee or State Service officer a power or function of the Senior Practitioner, other than this power of delegation.

The Senior Practitioner may only delegate a power or function to a person who in the opinion of the Senior Practitioner, has sufficient knowledge and expertise in respect of people with disability; and has appropriate skills and qualifications in respect of the power or function.

Clause 49 **Staff and contractors**

This clause provides for the Senior Practitioner to 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.

Subject to and in accordance with the State Service Act 2000, a person with appropriate expertise and experience may be employed for 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.

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 exercise of the Senior Practitioner's powers, duties and functions under this Act.

Clause 50 Persons to provide assistance to Senior Practitioner

This clause provides for the Senior Practitioner to require a disability services provider or a member of the staff or management of a disability services 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

A disability services provider or a member of the staff or management of a disability services provider must render assistance when reasonably required to do so and give full and true answers to the best of the provider's or a member of staff or management'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.

PART 7 REGULATION OF RESTRICTIVE PRACTICES

Division 1 Authorisation of restrictive practices by Senior Practitioner

Clause 51 Application for authorisation to use restrictive practices

This clause provides for a disability services provider to apply to the Senior Practitioner for authorisation to use a restrictive practice.

The application must be in a form specified by the Senior Practitioner.

The application must also be accompanied by a Behaviour Support Plan that has been prepared for the person with disability in accordance with clause 57 of the Act.

Clause 52 Authorisation to use restrictive practices

This clause provides for the Senior Practitioner, after receiving an application to use restrictive practices, to grant or refuse to grant written authorisation for the use, in relation to a person with disability, restrictive practices that are specified in the authorisation.

The authorisation may authorise the use of a restrictive practice by the service provider who made the application or by all disability service providers who provide services to the person with disability.

The Senior Practitioner may only grant an authorisation if the Senior Practitioner, or the Senior Practitioner's nominee, has consulted with the person with disability to whom the restrictive practice is to be used or a person nominated by that person; and they have consulted with any 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.

An authorisation may only be granted if the Senior Practitioner is satisfied that the type of restrictive practice will be used only for the primary purpose of ensuring the safety, health or wellbeing of the person or other persons; and the type of restrictive practice is the least restrictive of the person's freedom of decision and action as is practicable in the circumstances.

In determining whether to grant an authorisation the Senior Practitioner must have regard to:

- the will and preferences of the person with disability; and
- the consequences to the person with disability, if a restrictive practice of that type is used; and
- the consequences to the person with disability, or other persons, if a restrictive practice of that type is not used; and
- any alternative method reasonably suitable and able to be used which responds to the behaviour of concern for which the restrictive practice has been proposed; and
- the nature and degree of any significant risks to the person with disability; and
- 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
- the behaviour support plan that has been prepared for the person with disability and submitted with the application for authorisation.

Clause 53 Provision in respect of authorisations by Senior Practitioner

This clause provides for the granting of authorisations by the Senior Practitioner with specified conditions or limitations.

An authorisation under this clause may be granted on the condition that reports, in relation to the use of restrictive practices are provided at the times and in the circumstances specified in the condition.

An authorisation under this clause has effect for a period of time, not exceeding 12 months, as specified in the authorisation.

More than one authorisation may be made under this clause in relation to the same person.

The conditions or limitations which may be set are variable and may be unique to an individual. For this reason they are not listed in the Bill. For example: a the Senior Practitioner may specify a condition that an implementing provider must have made an application for registration with the NDIS before implementing a practice.

Clause 54 **Review, amendment and revocation of authorisation for the use of restrictive practices**

This clause relates to circumstances where an authorisation has been granted with conditions or limitations, and makes provision for the Senior Practitioner to review the authorisation:

- on the Senior Practitioners own motion
- on application by the person with disability
- on application by a disability service provider
- on application by an independent person for the person with disability.

After undertaking this review the Senior Practitioner may issue a notice in writing to the person with disability, a disability service provider or an independent person to amend or revoke the authorisation.

The Senior Practitioner may only amend or revoke an authorisation under this clause if they are satisfied that consultation with the person with disability, disability services provider or the independent person has occurred and an issue raised in that consultation have been taken into account.

Division 2 **Use of unauthorised restrictive practices**

Clause 55 **Use of prohibited practice**

This clause defines a prohibited practice as being a practice or intervention that:

- has the effect of restricting the rights or freedom of movement of a person with disability and has not been authorised by the Senior Practitioner; or
- places a person with disability at high risk of harm and is associated with adverse and catastrophic outcomes including, but not limited to, specific forms of physical restraint, coercive and punitive approaches.

This clause states that a disability services provider must not use a prohibited practice in relation to a person with disability.

This clause establishes a penalty of 200 penalty units.

Clause 56 **Use of unauthorised restrictive practice not permitted**

This clause establishes that a disability services provider must ensure that a restrictive practice is not used in relation to a person with disability unless there is an authorisation for the use of the type of restrictive practice; that the practice is used in accordance with any conditions or limitations specified in the authorisation and that the practice does not contravene a direction made in relation to the use of the restrictive

practice. There is a penalty of a fine not exceeding 200 penalty points if this clause is not adhered to.

This clause also establishes that it is a defence in proceedings for an offence if it established that:

- the use of the practice was required to protect the person with disability or another person from serious harm; and
- the practice used was the least intrusive type of practices that would have protected the person with disability or another person from serious harm; and
- the Senior Practitioner was notified by the defendant within 5 business days after the restrictive practice was used.

Division 3 Behaviour support plans

Clause 57 Behaviour support plan to be prepared

This clause establishes that if a disability services provider that is providing a disability service to a person with disability proposes to use a restrictive practice, the disability services provider must ensure that a behaviour support plan is prepared for the person by a behaviour support practitioner.

The plan must—

- state the circumstances in which the restrictive practice is to be used for behaviour support; and
- explain how the use of a restrictive practice will be of benefit to the person; and
- demonstrate\ 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
- includes strategies to reduce and eliminate the need for a restrictive practice to be used on the person; and
- take into account any previous behaviour assessments; and other relevant assessments; and
- include 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.

Division 4 Investigations and directions

Clause 58 Senior Practitioner to investigate use of restrictive practices

This clause sets out the powers of the Senior Practitioner in relation to a disability services provider. These powers allow the Senior Practitioner:

- to visit and inspect any place where disability services are being provided by the disability services provider;
- to see any person in relation to whom a restrictive practice has been, or is being, used by the disability services provider;
- to investigate, audit and monitor the use of restrictive practices by the disability services provider;
- 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;
- to see, upon request, any person involved in the development, implementation, or authorisation of any restrictive practice by the disability services provider;
- to request a disability services provider to provide information about any restrictive practice carried out by the provider;
- to give a written authorisation to the disability services provider for the use of a restrictive practice in relation to a person with disability.

The Senior Practitioner must as soon as possible after an authorisation or direction is given provide notice in writing of the event to the person with disability affected by that event or a person nominated by the person with disability. This notice must be given in a format which best supports the understanding of the person with disability.

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.

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 disability services provider; or disability services providers belonging to a specified class of disability services providers.

Notice of a prohibition referred to above must be given to each provider who is prohibited from using the restrictive practice specified in the notice; and published on a website operated by, or on behalf of, the Department.

Clause 59

Directions may be issued in relation to restrictive practices

Subsection 1 of this clause establishes that the Senior Practitioner may, by notice in writing to a disability services provider, direct the provider to do any of the following:

- discontinue a restrictive practice authorised under section 52 or section 58(1)(g);

- to discontinue or alter as specified in the notice, a practice or procedure observed or used by the provider;
- to follow a practice or procedure, specified in the notice, in the use of a restrictive practice that has been authorised under section 52 or section 58(1)(g).

The Senior Practitioner may only give a direction under subsection (1) if the Senior Practitioner has considered the matters referred to in section 52 (4) and (5).

A disability services provider to whom a direction under subsection (1) is given must comply with the direction. The penalty for no compliance is 200 penalty points.

If a direction is given under subsection (1) to discontinue a restrictive practice or a practice or procedure used in a restrictive practice, the Senior Practitioner may provide assistance to identify alternative strategies or less restrictive practices for use in the management of the behaviour of the person in relation to whom the restrictive practice is to be discontinued.

After giving a direction under subsection (1) the Senior Practitioner must, give notice in writing of that direction to the person with disability affected by that event or a person nominated by that person.

PART 8 APPOINTED PROGRAM OFFICERS

Division 1 Role of appointed program officer

Clause 60 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 is under an authorisation by the Senior Practitioner and is used in accordance with that authorisation, any guidelines issued by the Senior Practitioner in relation to restrictive practices, the person's behaviour support plan; and is the least restrictive of the person as is possible in the circumstances.

An appointed program officer must carry out the appointed program officer's functions in accordance with any guidelines issued by the Senior Practitioner.

Division 2 Appointment and approval of appointed program officer

Clause 61 Disability service provider to appoint program officer

This clause provides that a disability services provider must appoint an appointed program officer or officers if the disability services provider

intends to use restrictive practices in relation to a person with disability under Part 7.

Clause 62 Approval by Senior Practitioner for appointment of appointed program officer

This clause provides for a disability services provider who proposes to appoint an appointed program officer must apply to the Senior Practitioner for approval of the proposed appointment.

An application for approval must include:

- the name of the proposed appointed program officer; and
- the qualifications of the proposed appointed program officer; and
- such other information as the Senior Practitioner requires.

The Senior Practitioner may approve, or refuse to approve, the appointment of one or more appointed program officers. An approval may be subject to such conditions or limitations as the Senior Practitioner considers appropriate.

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

Clause 63 Revocation or amendment of approval

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

Clause 64 Senior Practitioner to notify disability services provider before refusal or revocation

This clause provides for the Senior Practitioner to give written notice with the decision to revoke or amend the approval of the appointment of an appointed program officer to the disability services provider specifying the proposed decision and the reasons for the proposed decision; and that the disability services provider may make a written submission within 14 days after the notice is given.

Clause 65 Senior Practitioner may issue directions

This clause provides the Senior Practitioner may issue directions to disability services providers in relation to:

- the minimum qualifications required to be held by persons who are proposed appointed program officers; and
- training to be completed by appointed program officers; and
- any other matter in relation to appointed program officers; and

- any other prescribed matters.

The Senior Practitioner may direct a disability services provider to appoint an appointed program officer if the provider does not have an appointed program officer.

PART 9 INDEPENDENT PERSONS

Clause 66 Appointment of independent persons

This clause provides for the appointment of an independent person to provide assistance to a person with disability if required under a provision of this Act. The clause describes who is suitable and unsuitable to be appointed as an independent person for a person with disability if that person.

The appointed program officer for the disability services provider that is providing disability services to that person is to identify, whilst taking into account the will and preference of the person with disability, a person who is suitable to be appointed as an independent person for the person with disability (such as a family member or friend); and submit the proposed appointment to the Senior Practitioner for approval.

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 does not, in the opinion of the appointed program officer, have a person who is suitable to be appointed as an independent person for the person with disability; or the person with disability advises the appointed program officer that they do not consider that the person who is appointed as an independent person for that person is suitable to be so appointed.

If a suitable independent person is unable to be identified, the Senior Practitioner must appoint as an independent person for the person with disability such person who, in the opinion of the Senior Practitioner, is suitable to be so appointed.

Clause 67 Independent person to provide explanation in respect of restrictive practices

This clause provides for, if a restrictive practice is in use, that the appointed program officer for the disability services provider must ensure that an independent person explains to the person with disability:

- the proposed use of the restrictive practice; and
- that the person may apply for a review, amendment or revocation of the authorisation to use the restrictive practice.

If a disability services provider proposes to change a behaviour support plan in respect of a restrictive practice 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:

- the details of those changes; and
- 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.

The requirement to explain the details of changes does not apply if:

- it is not proposed that a more restrictive type or use of restrictive practice be included in the behaviour support plan; and
- the person for whom the plan was prepared has had the plan reviewed by the disability services provider or a behaviour support practitioner in the last 12 months; and
- during that review an independent person was available in accordance with this section.

An independent person for a person with disability must notify the Senior Practitioner if the independent person considers that the person with disability is not able to understand a proposal to use a restrictive practice; or the requirements of this Act or any relevant requirements of the NDIS Act or NDIS Rules are not being complied with.

PART 10

COMMUNITY VISITOR SCHEME

Clause 68

Community visitor scheme

This clause provides that regulations may establish a scheme for community visitors. The regulation may include:

- the selection, appointment and removal of community visitors;
- conferring functions and powers on community visitors;
- providing for the delegation of the functions and powers of community visitors;
- requiring reports to be provided to the Minister on the operation of the community visitor scheme during a specified period, and requiring such reports to be laid before Parliament.

PART 11

FUNDING

Clause 69

Grants of financial assistance to promote objects of the Act.

This clause provides that the Minister may grant financial assistance for any purpose consistent with the objects of this Act if the Minister is satisfied that the grant would further the principles in the Act.

Financial assistance may be subject to conditions and granted to any of the following persons or bodies:

- 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;
- a disability advocacy organisation or peak body or disability representative organisation;
- a person or organisation carrying out research activities;
- a disability services provider.

PART 12 AUTHORISED OFFICERS

Clause 70 Secretary or Commissioner may authorise entry of premises

This clause provides for the Secretary or the Commissioner, to authorise a State Service employee or State Service officer to enter the premises of a disability services provider, the premises of a grant recipient or any premises where there are reasonable grounds for believing that a person with disability is subject to, or at risk of, serious abuse, neglect or exploitation.

Clause 71 Rights of authorised officers to enter premises

This clause provides for the conditions under which an authorised officer may enter premises. Authorised officers may only enter for the purpose of 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 that they are safe. They can do so without warning, must tell the person the purpose for which they have entered the premises and cannot use force to enter but may request a police officer to do so as reasonably necessary.

Clause 72 Additional requirements where private grant recipient's premises entered

This clause provides for entry to a private grant recipient's premises if the officer has made reasonable attempts to give at least 48 hours' prior notice to a person who resides at the premises, unless the officer is reasonably of the opinion that it is necessary to enter the premises without notice in order to ascertain whether a person with disability is receiving the care and support that is necessary or desirable for the person's health and wellbeing; or whether a person with disability is safe.

An authorised officer may only enter the premises of a private grant recipient before 7 am or after 7 pm unless it is reasonably necessary to do so in order to ascertain whether a person with disability is safe and whether 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.

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.

Clause 73 Rights of authorised officers after entry of premises

This clause provides for the actions an authorised officer may take on the premises including:

- inspect the premises
- open any container, filing cabinet, or storage facility, that is on the premises
- request a person on the premises to provide documents or records to the officer
- inspect any documents or records on the premises
- 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.

An authorised officer who enters premises may request any employee of a disability services provider or grant recipient; a private grant recipient; or any person with disability, or other person, who is on the premises to answer questions in relation to the provision of disability services or other goods or services or the carrying out of research under a disability support grant.

PART 13 REVIEW OF DECISIONS

Clause 74 Definitions

This clause defines decisions that are reviewable under the Act.

Clause 75 Internal review

This clause provides for an internal review of decisions.

The Senior Practitioner must prepare and implement a process for the internal review of reviewable decisions.

A person aggrieved by a reviewable decision of the Senior Practitioner, or by a delegate of the Senior Practitioner, may apply in writing for an internal review of that decision by the Senior Practitioner or delegate.

The Senior Practitioner then is to undertake and complete the internal review in accordance with the process prepared and implemented and in undertaking the internal review, is to:

- observe the rules of natural justice; and

- ensure that any delegate of the Senior Practitioner who is engaged in the review process was not involved in the making of the decision under review.

An application for the internal review of a reviewable decision does not, of itself, affect the operation of the decision or prevent the taking of action to implement the decision.

The Senior Practitioner is to notify the person who applied for the internal review of a reviewable decision of the result of that review as soon as practicable after the review has occurred.

Clause 76

External review

This clause provides for an external review of decisions.

If the Senior Practitioner, or a person acting as the delegate of the Senior Practitioner, makes a reviewable decision, and an internal review of that decision has been completed, a person aggrieved by the outcome of the internal review may apply to the Tribunal for a review of the reviewable decision.

Unless otherwise accepted by the Tribunal, an application is to be made in writing; and within 28 days of the person who is making the application being informed of the result of the internal review.

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.

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 14

OFFENCES

Clause 77

Offences relating to intimidation

This clause describes offences relating to intimidation.

Without reasonable excuse, a person must not persuade or attempt to persuade by threat or intimidation another person:

- to refrain from making to the Commissioner, the Senior Practitioner or any other person a report or a complaint; or
- to withdraw a report or a complaint; or
- to fail to cooperate with the Commissioner, the Senior Practitioner or any other person who is performing or exercising a function or power under this Act; or

- 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
- 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.

Penalty: Fine not exceeding 100 penalty units.

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

Clause 78

Offences relating to reprisals

This clause describes offenses relating to reprisals.

Subsection 1 establishes that 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:

- 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
- has cooperated, may cooperate or is cooperating with the Commissioner, the Senior Practitioner or any other person who performs a function or exercises a power under this Act; or
- 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.

The following are examples of a reprisal: failing to employ a person; dismissing a person from employment; penalising or discriminating against a person in the course of the person's employment.

Penalty: Fine not exceeding 100 penalty units.

A reprisal would include where a ground listed above is a significant factor in inducing the person to take, attempt to take or conspire to take a reprisal.

An attempt to take a reprisal includes an attempt to induce a person to take a reprisal.

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:

- the defendant had another ground for engaging in that conduct; and
- that ground is a reasonable one; and
- the defendant had taken a significant step towards engaging in that conduct before acting on the ground specified in subsection 1.

Clause 79 **Offences relating to obstruction, &c**

This clause describes an offence in relation to obstruction.

A person must not obstruct, hinder, resist or improperly influence, or attempt to obstruct, hinder, resist or improperly influence, a person who is performing a function, or exercising a power, under this Act.

Penalty: Fine not exceeding 50 penalty units.

Clause 80 **Offences relating to provision of information, &c**

This clause describes offences relating to provision of information.

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

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

Penalty: Fine not exceeding 50 penalty units.

A person must not –

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

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:

- indicating that the document is false or misleading and the manner in which it is false or misleading; and

- giving correct information if the person has, or can reasonably obtain, the correct information.

Penalty: Fine not exceeding 50 penalty units.

It is a reasonable excuse to refuse or fail to provide information by answering a question or otherwise or to produce the whole or part of a document if to do so would disclose or provide exempt information.

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:

- provided information that is not exempt information; or
- produced a document that does not contain exempt information; or
- answered a question if the answer does not disclose exempt information.

Clause 81 Proceedings for offences

This clause provides for proceedings for offences.

Unless otherwise specified, proceedings for an offence are to be dealt with summarily; must be instituted within 3 years after the day on which the offence is alleged to have been committed, and may be instituted by any one of the following persons:

- the Secretary;
- the Commissioner;
- the Senior Practitioner;
- a prescribed person or class of persons.

A court of competent jurisdiction may permit proceedings to be instituted outside of the 3 year period.

PART 15 MISCELLANEOUS

Clause 82 Sharing of information

This clause enables the Commissioner or Senior Practitioner to provide information to or require information from 'information-sharing entities' or 'specified persons' – which are listed in this clause.

The information must be deemed necessary:

- to enable an appropriate assessment of the needs of the person to be ascertained; or
- to determine whether any goods or services provided, or to be provided, to the person are appropriate; or
- for the safety, welfare or wellbeing of the person or the safety of other persons;

and, if the Commissioner or the Senior Practitioner is satisfied that 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.

This clause also provides for an information entity to provide information (as outlined above) to the Commissioner or Senior Practitioner and / or 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.

Clause 83 Confidentiality

This clause provides for the non-disclosure of protected information to another person except in specified circumstances.

Clause 84 Protection from liability

This clause provides for persons performing a function or exercising a power under this Act.

Clause 85 Protection of employees or contractors who assist Commissioner or Senior Practitioner

This clause provides for the protection of employees and contractors who assist the Commissioner or Senior Practitioner in relation to a report or investigation relating to the abuse, neglect or exploitation of a person with disability.

Clause 86 Delegation by Secretary

This clause provides for the Secretary to delegate any of the Secretary's powers or functions under this Act.

Clause 87 Regulations

Provides that Regulations may be made for the purposes of the Act.

Clause 88 Review of Act

This clause provides for an independent review of the Act three years after the Act commenced. The review is to be in the form of a written report which is to be tabled in each House of Parliament.

Clause 89 Administration of the Act

This clause provides for the administration of the Act under section 4 of the *Administrative Arrangements Act 1990* and that it be assigned to the

Minister for Disability Services and the department responsible to that Minister.

Clause 90 Legislation repealed

This clause provides for the repealing of legislation listed in Schedule 3 upon commencement of this Act.

Clause 91 Legislation rescinded

This clause provides for the rescinding of the regulations listed in Schedule 4 upon the commencement of this Act.

**SCHEDULE 1 MEMBERSHIP AND MEETINGS OF DISABILITY INCLUSION
ADVISORY COUNCIL**

This Schedule sets out the length of terms of office, conditions of appointment including remuneration, and vacation of office. It describes the requirements for convening, presiding over, quorum and voting, conduct and record of meetings.

SCHEDULE 2 TERMS OF APPOINTMENT OF COMMISSIONER

This Schedule sets out the duration, terms of appointment, and vacation or removal from office of the Disability Commissioner. There is also a provision for an Acting Commissioner in the event of a vacancy or absence of the Commissioner.

SCHEDULE 3 LEGISLATION REPEALED

This Schedule repeals the *Disability Services Act 2011* (No. 27 of 2011).

SCHEDULE 4 LEGISLATION RESCINDED

This Schedule rescinds the *Disability Services Regulations 2015* (No. 16 of 2015).