

Intellectually Disabled Persons' Services Bill (No 2)

EXPLANATORY MEMORANDUM

Outline

This Bill, together with the companion Mental Health Bill, breaks the nexus between mental illness and intellectual disability which has existed in Victorian legislation for many years.

The Bill recognizes that intellectually disabled people have the same rights and needs as other citizens.

It expresses clear principles on which the delivery of support services to the intellectually disabled are to be based, seeks to assist and encourage intellectually disabled people to achieve their maximum potential, and aims at promoting and fostering greater participation and involvement of intellectually disabled people in the life of the community.

The Bill has its origins in the Report of the Committee on a Legislative Framework for Services to Intellectually Disabled Persons and adopts the substance of the legislative proposals recommended by that Committee.

Among other things, the Bill vests in the Director-General of Community Services various powers, duties and functions in relation to the provision of services to intellectually disabled persons in accordance with the principles specified in the Act.

The powers, duties and functions of the Director-General may be delegated to any officer or employee of the Department of Community Services.

The Bill establishes mechanisms for determining eligibility for services under the legislation.

A person who is eligible for services is entitled to have a general service plan prepared by the Director-General, but a general service plan must be prepared in respect of a person seeking admission or who has been admitted to a residential institution, registered residential or registered non-residential service or a residential program or a non-residential program.

The Director-General must ensure that individual program plans are also prepared with respect to persons admitted to a residential institution, residential program or non-residential program, or in the case of persons admitted to a registered residential or non-residential service, by the designated officer of that service, as the case may be.

General service and individual program plans are to be prepared for all existing clients within 24 months of the commencement of the Act.

Applications for a review of decisions as to eligibility for services, the content of general service plans, admission to a residential institution, or the detention or care of a security resident, or a decision to use restraint, seclusion or aversive therapy, may be addressed to the Intellectual Disability Review Panel to be established by the Bill.

The Panel will also be required to review the case of each security resident at least once each year until that person is finally discharged as a security resident.

Provision is made in the Bill for the appointment of community visitors in each region.

Community visitors will have broad powers of inspection. These will include the ability to inquire into the facilities available at residential institutions, residential programs and registered residential services, as well as opportunities for recreation and training, and whether services are being provided in accordance with the principles of the Act.

A highlight of the Bill is its commitment to the co-operative development of services through the voluntary sector.

In particular, the Bill will vest in the Director-General a capacity to enter into funding and service agreements with associations and organizations registered as a residential or non-residential service.

While some general guidelines are laid down as to the nature of the matters which may be the subject of funding and service agreements, the relevant provisions are worded in such a way as to permit the maximum flexibility in their application so that specific funding and service agreements can be drawn up in accordance with individual circumstances and requirements.

The Bill will also authorize the payment of specific purpose grants by the Department to municipal councils and to non-government organizations.

The legislation places a great deal of emphasis on the identification of policy objectives for the provision of services to the intellectually disabled.

Under the Bill, it will be the responsibility of the Minister to prepare a plan every three years for the development of such services, and to review that plan every year.

Provision is made for input by Commonwealth, State and local government authorities, associations and organizations representing the interests of intellectually disabled people and their families, and by bodies providing services to the intellectually disabled.

The Bill also provides for the establishment of regional Intellectual Disability Planning Committees.

Such committees will have the role of preparing, and regularly updating, plans for the development of services to intellectually disabled people on a regional basis.

The Bill provides for the custody and care of intellectually disabled persons who are required to be admitted or detained as security residents, either as a consequence of a court order, or by transfer from the prison system.

As in the Mental Health Bill, every person admitted to a residential institution or registered residential service will be entitled to a printed statement setting out his or her legal rights and entitlements under the Act.

Various other provisions in the Bill also mirror complementary provisions incorporated in the new Mental Health legislation.

These relate to such matters as the management of funds on behalf of eligible persons and lay down rules governing the use of restraint and seclusion and aversive therapy.

Clause Notes

PART 1—PRELIMINARY

Clause 1 sets out the purpose of the Bill.

Clause 2 is the commencement provision.

Clause 3 defines various terms used in the Bill.

PART 2—OBJECTS, PRINCIPLES, AIM AND OBJECTIVES

Clause 4 sets out the objects of the legislation.

Clause 5 expresses the intention of the Parliament as to the principles which are to be applied both in the administration of the Act, and in the provision, management and planning of services for intellectually disabled persons. The fundamental aim of the clause

is to acknowledge that people who have an intellectual disability are entitled to the same respect, rights, and opportunities for a reasonable quality of life as enjoyed by any other member of the community.

Clause 6 defines the primary aim of the Department of Community Services under the Act as being to advance the dignity, worth, human rights and full potential of intellectually disabled persons, and describes the objectives of the Department in seeking to achieve that aim.

PART 3—ELIGIBILITY, ASSESSMENT AND CASE PLANNING

Clause 7 enables any person who has attained the age of 16, and who believes that he or she is intellectually disabled, or a parent or guardian of such person, to request the Director-General to assess the eligibility of that person for services. A request for assessment may also be made by the parent, guardian or any person who has care and custody of a person under 16, where it is believed that the person is developmentally delayed or intellectually disabled.

Clause 8 describes the method of assessment and requires the Director-General to either issue a declaration of eligibility or to give a written statement of the reasons why the person is not eligible for services, within 14 days of an assessment.

Clause 9 requires the Director-General to prepare a general service plan if requested in respect of an eligible person or within 60 days of the admission of a person to a residential institution, registered residential service, a registered non-residential service, a residential program or a non-residential program. Existing registered clients are entitled to such a plan within 24 months of the commencement of the Act.

Clause 10 makes provision for the amendment and review of general service plans.

Clause 11 requires that an individual program plan be prepared by the Director-General within 60 days of the admission of a person to a residential institution, residential program or non-residential program, or by the designated officer in respect of a person admitted to a registered residential or registered non-residential service. Existing registered clients are entitled to such a plan within 24 months of the commencement of the Act.

Clause 12 provides for reviews of individual program plans.

Clause 13 enables the Minister to establish an Intellectual Disability Planning Committee for each region, and contains the various machinery provisions relating to the appointment of members to such Committees.

Clause 14 requires Intellectual Disability Planning Committees to prepare at 3 year intervals a plan for the development of services to intellectually disabled persons in the region, and identifies the matters to be dealt with in such plans.

Clause 15 requires the Minister, at 3 year intervals, to prepare a plan for the development of services for intellectually disabled persons in Victoria, and provides for an annual review of such a plan.

Clause 16 requires an information system to be maintained for various purposes and contains appropriate provisions relating to the confidentiality of information gained under the Act.

PART 4—SERVICES FOR INTELLECTUALLY DISABLED PERSONS

Division 1—Residential Institutions

Clause 17 empowers the Governor in Council to proclaim any premises used to provide residential services for intellectually disabled persons to be a residential institution and deems existing training centres and certain institutions to have been so proclaimed.

Clause 18 sets out the criteria for admission to a residential institution.

Division 2—Residential and Non-Residential Programs

Clause 19 empowers the Governor in Council on the advice of the Minister to proclaim any premises operated by the State and used to provide residential or non-residential services for intellectually disabled persons to be a residential program or a non-residential program.

Division 3—Power of Court on Criminal Trial

Clause 20 permits a court, where a person has been found guilty of a criminal offence, and the court has received a declaration of eligibility and an individual program plan from the Director-General to discharge the person on condition that the person receives the services specified in the individual program plan.

Division 4—Transfer of eligible persons from a Prison

Clause 21 provides for the transfer to an appropriate residential institution by the Minister administering the Office of Corrections of persons lawfully imprisoned or detained in a prison and who are eligible persons as security residents.

Division 5—Services provided by Non-Government Organizations

Clause 22 authorizes the Director-General to allocate funds to non-government organizations which have entered into a funding and services agreement with the Director-General.

Clause 23 enables a person to apply to the Director-General for the registration of an association or organization which provides services for intellectually disabled persons as a residential or non-residential service.

Clause 24 vests in the Director-General an ability to enter into a funding and services agreement with a registered residential service, or a registered non-residential service, and indicates the various matters which may be the subject of such an agreement.

Clause 25 empowers the Governor in Council, on the recommendation of the Minister, to appoint an administrator where a registered residential service or registered non-residential service is inefficiently or incompetently managed, has failed to provide an effective service, or has breached or failed to comply with a provision of a funding and services agreement.

Clause 26 enables the Governor in Council where the Minister considers that persons using the service are being abused or exploited or that the service breaches the principles in section 5 to proclaim a person, association or organization which provides residential or non-residential services for use specifically or substantially by intellectually disabled persons and which is not registered to be a proclaimed service, and requires a proclaimed service to operate subject to such conditions, and comply with any requirement specified in the proclamation.

PART 5—PROTECTION OF RIGHTS OF INTELLECTUALLY DISABLED PERSONS

Division 1—Establishment, Constitution and Procedure of the Intellectual Disability Review Panel

Clause 27 constitutes an Intellectual Disability Review Panel and provides that the provisions of Schedule 1 have effect with respect to members of the Panel.

Clause 28 defines the functions of the Panel.

Clause 29 provides for the appointment of an executive officer and such other officers and employees as are necessary for the proper functioning of the Panel.

Clause 30 deals with proceedings of the Panel and, among other things, provides that the provisions of Schedule 2 have effect with respect to its procedures.

Clause 31 enables the Panel to appoint a duly qualified legal practitioner, approved interpreter, or any other person with appropriate expertise, to assist it in any proceedings.

Clause 32 requires the person in respect of whom a hearing is conducted to appear before the Panel, and deals with representation on behalf of such person and persons who have been given notice of the hearing, or who wish to be heard.

Clause 33 requires that proceedings before the Panel be closed to the public unless the Panel is satisfied that it would be in the best interests of the intellectually disabled person or in the public interest that proceedings be open.

Clause 34 prohibits the publication or broadcasting of any report of proceedings before the Panel, unless the Panel otherwise determines.

Clause 35 protects the confidentiality of any information acquired by a member of the Panel or any person who has been present at any proceedings.

Clause 36 requires the Intellectual Disability Panel to review the case of a security resident within 12 months of becoming a security resident, and thence at least at 12 monthly intervals.

Clause 37 sets out the circumstances under which a security order is, or can be, terminated, and the provisions which apply to a person subject to a security order as a consequence of such termination.

Clause 38 deals with the detention, transport and custody of a security resident. It also requires notification of any death of a security resident to be given to the Director-General of Corrections.

Clause 39 enables a security resident to request the Director-General or the Intellectual Disability Review Panel to recommend that he or she be transferred to a prison, and empowers the Minister as a result of such recommendation to terminate the security order following the placing of the person in the custody of officers of the Office of Corrections.

Clause 40 permits the transfer of a security resident between security units in certain specified circumstances.

Clause 41 empowers the Minister, on the recommendation of the Director-General or the Panel, to allow a security resident leave of absence. Neither the Director-General or Panel may recommend leave of absence unless, on the available evidence, the safety of the public will not be seriously endangered, and the Director-General of Corrections has been consulted.

Clause 42 enables the Director-General to grant special leave of absence for up to 24 hours where there are special circumstances, the safety to the public will not be seriously endangered, and the Director-General of Corrections has been consulted. Applications for a review of a refusal to grant special leave of absence may be made to the Intellectual Disability Review Panel.

Clause 43 provides for the apprehension of a security resident who is absent without leave for the purpose of return to the residential institution.

Division 3—Provisions Applicable to Eligible Persons

Clause 44 sets out the circumstances under which it is lawful to apply mechanical or chemical means of restraint, to keep an eligible person in seclusion or to use aversive therapy. Details of the use of restraint, seclusion or aversive therapy must be submitted on a monthly basis to the Intellectual Disability Review Panel.

Clause 45 provides for the opening of bank accounts at registered residential services, residential programs and residential institutions.

Clause 46 provides for the payment into a Residents Trust Account of any money received from, and to be held on behalf of an eligible person, or from any person to be held for the benefit, use or enjoyment of a specified eligible person.

Clause 47 enables any money in a Residents Trust Account not immediately required for the use of eligible persons to be invested.

Clause 48 requires any income, or capital gain from any investment of funds from a Residents Trust Account to be paid into an Interest Account and provides for the disbursement of funds from that account into individual patient's accounts at the prescribed rate.

Clause 49 requires money received for the purpose of providing goods and services or other amenities for patients, and any surplus from an Interest Account, to be credited to a Patients Amenities Account. The clause goes on to enable funds from the Amenities Account to be used for providing goods and services and amenities for the benefit, use or enjoyment of eligible persons generally. The clause also provides for the establishment of a standing committee for each residential institution, consisting of eligible persons, relatives and members of staff which must be consulted before money is expended from the Amenities Account.

Clause 50 enables a ceiling to be fixed on the amounts of money which may be held on behalf of an individual person. Where the amount will exceed the prescribed limit the eligible person, or his or her representative, is to be advised to invest the money in an appropriate manner.

Division 4—Review of Decisions

Clause 51 defines the term “reviewable decision”.

Clause 52 entitles any person aggrieved by a reviewable decision to apply to the Intellectual Disability Review Panel for a review. Notice of such review is to be given to certain specified people. As a result of a review, the Panel may make any recommendation it considers appropriate to the Director-General. Where the Director-General rejects a recommendation, a statement of the reasons for such rejection must be given to the Panel, to the persons who were given notice of the hearing and to the Minister.

Division 5—Community Visitors

Clause 53 empowers the Governor-in-Council, on the recommendation of the Public Advocate, to appoint community visitors for each region, and provides that Schedule 3 has effect with respect to community visitors.

Clause 54 describes the functions of community visitors.

Clause 55 deems any person appointed by the Minister or the Department for the purpose of any investigation in connection with the administration of the Act, to be an official visitor.

Clause 56 deals with visits of residential institutions, residential programs and registered residential services by community visitors, and requires each residential institution to be visited at least once each month.

Clause 57 vests in a community visitor an entitlement to inspect any part of the premises, to see any resident, to make various enquiries and to inspect documents, and requires members of staff to provide such assistance as is required.

Clause 58 provides that any resident or person on behalf of a resident in a residential institution, residential program or registered residential service may request that arrangements be made for the resident to be seen by a panel of community visitors. After seeing the resident, the panel may report to the Director-General making such recommendations as it considers appropriate.

Clause 59 requires the designated officer or senior officer to maintain a record of visits by community visitors.

Clause 60 obliges the community visitors for a region to report twice yearly to the Public Advocate. The clause goes on to enable the Minister to require a panel to report to the Minister on any specified matter. A community visitor, panel or the community visitors for a region may also submit a report to the Minister at any time when a community visitor, panel or community visitors for a region believe or believes the matter should be considered personally by the Minister.

Clause 61 constitutes a Community Visitors Board, consisting of the Public Advocate and two community visitors elected by the community visitors, and sets out the functions of the Board.

Clause 62 requires the Board to prepare an annual report on the activities of community visitors, and provides for the tabling of the report in both Houses of Parliament.

Division 6—Information on Rights

Clause 63 requires every person admitted to a residential institution, residential program or registered residential service to be given a statement setting out the person's legal rights and entitlements under the Act. A copy of the statement must also be provided to the primary carer.

Clause 64 requires that copies of the Act, the Guardianship and Administration Board Act, publications prepared by the Department explaining the Acts and copies of the statement to be given to residents and the addresses and telephone numbers of the Intellectual Disability Review Panel, the Public Advocate, the Director-General, the community visitors and the Legal Aid Commission be kept at a place readily accessible to residents.

PART 6—GENERAL

Division 1—Administration

Clause 65 empowers the Director-General to delegate any of his or her powers, duties or functions to an officer or employee of the Department.

Clause 66 requires the appointment or employment by the Department of as many medical practitioners as are necessary for the purposes of the Act and deals with the conditions of such employment. The clause provides that Schedule 4 has effect with respect to medical practitioners appointed or employed for the purposes of the Act.

Clause 67 empowers the Director-General to visit a registered residential service, registered non-residential service or proclaimed service at any time. The Director-General may inspect the premises, see any person receiving services, make enquiries relating to the admission and care of residents, and inspect documents and records. The Director-General

may also order that the person in charge of any such service allow the person specified in the order to see a specified person receiving services. The clause requires that any visit to a service be conducted in a manner which causes the least interference with the privacy, peace and quiet and routine of persons receiving services.

Division 2—Miscellaneous

Clause 68 indemnifies from civil or criminal proceedings any person who does anything in good faith and with reasonable care in reliance on any document apparently given or made in accordance with the requirements of the Act.

Clause 69 authorizes the Department to make payments towards the cost of providing services to an eligible person under a general service plan.

Clause 70 empowers the Department to make specific purpose grants to municipal councils and to non-government organizations.

Clause 71 renders it an offence to insult members of the Intellectual Disability Review Panel, repeatedly interrupt its proceedings, create a disturbance, or do any act or thing that would constitute a contempt of court.

Clause 72 contains various machinery provisions relating to the service of notices under the Act.

Clause 73 makes clear that a hearing or recommendation of the Intellectual Disability Panel is not invalidated or affected by reason only of a failure to give notice to a person other than the person in respect of whom a reviewable decision has been made.

Clause 74 provides for judicial notice of the signatures of the Director-General, President, executive officer or member of the Intellectual Disability Review Panel.

Clause 75 is the general penalty provision and fixes a maximum penalty of 20 penalty units where no other penalty is provided.

Clause 76 deals with liability when the person charged with an offence is a body corporate.

Division 3—Regulations

Clause 77 contains the various heads of power to make regulations under the Act.