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The Parliament of Victoria enacts as follows:

PART 1—PRELIMINARY

1. Purpose

The purpose of this Act is to reform the law relating to services for intellectually disabled persons.

2. Commencement

This Act comes into operation on a day or days to be proclaimed.

3. Definitions

(1) In this Act—

"authorised deposit-taking institution" has the same meaning as in the Banking Act 1959 of the Commonwealth;

"community visitor" means a community visitor appointed under section 53;
"contracted service provider" means a person with whom the Secretary has entered into a contract under section 22A for the provision of services for intellectually disabled persons;

"Department" means the Department of Human Services;

"designated officer" means a person appointed by a contracted service provider or a registered service to carry out the functions specified in a particular section or sections of this Act, or in this Act generally;

"developmental delay" means a delay in the development of a child which—

(a) is attributable to a mental or physical impairment or a combination of mental and physical impairments; and

(b) is manifested before the child attains the age of 6 years; and

(c) results in substantial functional limitations in one or more of the following areas of major life activity:

(i) Self care;

(ii) Receptive and expressive language;

(iii) Cognitive development;

(iv) Motor development; and
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(d) reflects the child's need for a combination and sequence of special, interdisciplinary, or generic care, treatment or other services which are of extended duration and are individually planned and co-ordinated;

* * * * *

"eligible person" means a person in respect of whom the Secretary has issued a declaration of eligibility under section 8 or 8A;

"executive officer" means the executive officer of the Intellectual Disability Review Panel appointed under section 29;

"forensic resident" means—

(a) a person—

(i) remanded in custody in a residential service; or

(ii) committed to custody in a residential service by a supervision order—

under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997; or

(ab) a person detained in a residential service under section 30(2) or 30A(3) of the Crimes (Mental Impairment
and Unfitness to be Tried) Act 1997; or

(ac) a person deemed to be a forensic resident by section 73E(4) or 73K(8) of the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997; or

(b) a person transferred from a prison to a residential service under section 21A;

"general service plan" means a comprehensive plan prepared for an eligible person which specifies the areas of major life activity in which support is required and the strategies to be implemented to provide that support;

* * * * *

"individual program plan" means a plan prepared by a service provider for an eligible person which specifies activities and methods to achieve goals in areas identified in the general service plan;

"intellectual disability", in relation to a person over the age of 5 years, means the concurrent existence of—

(a) significant sub-average general intellectual functioning; and

(b) significant deficits in adaptive behaviour—

each of which became manifest before the age of 18 years;
"Intellectual Disability Planning Committee" means an Intellectual Disability Planning Committee established under section 13;

"Intellectual Disability Review Panel" means the Intellectual Disability Review Panel established under section 27;

"non-participating residential service" means a contracted service provider or a registered service that is not a participating residential service;

"non-residential program" means a service other than a residential service provided by the Department for eligible persons;

"participating residential service" means a contracted service provider or a registered service that provides residential services and that pays trust money received from, or on behalf of, eligible persons at the service into the Residents' Trust Fund;

"prescribed" means prescribed by the regulations;
"President" means the President of the Intellectual Disability Review Panel appointed under section 27;

"primary carer" means any person who is primarily responsible for providing support or care to a person;

"Public Advocate" means the Public Advocate appointed under section 12 of the Guardianship and Administration Act 1986;

"region" has the same meaning as in the Health Services Act 1988;

"regional plan" means a regional plan prepared under section 14;

"registered medical practitioner" means a registered medical practitioner within the meaning of the Medical Practice Act 1994;

"registered non-residential service" means a municipal council or a non-government organization which provides services other than residential services to eligible persons and is registered under section 23 but on and from the day which is 5 years after the day on which section 23 comes into operation does not include the provision of educational services to children who are of school age within the meaning of section 3(1) of the Education Act 1958;
"registered residential service" means a municipal council or a non-government organization which provides residential services to eligible persons and is registered under section 23;

"registered service" means a municipal council or a non-government organization which is registered under section 23 and provides to eligible persons residential services or non-residential services or both residential services and non-residential services;

"residential program" means residential services provided by the Department which is not a residential institution for eligible persons;

"residential service" means—
(a) a registered residential service, a residential institution or a residential program; or
(b) a residential service provided under this Act by a contracted service provider;

"regulations" means regulations made under this Act;

"residential institution" means any premises proclaimed under section 17;

"Secretary" means the Secretary to the Department;

"security order" means a security order made under section 21;
"security resident" means—

(a) a person in respect of whom there is in force a security order;

"senior officer" means a person appointed by a residential institution, non-residential program or a residential program to carry out the functions specified in this Act;

"State plan" means a State plan prepared under section 15.

(2) If under the Public Administration Act 2004 the name of the Department of Human Services is changed, a reference in the definition of "Department" in sub-section (1) to that Department must, from the date when the name is changed, be treated as a reference to the Department by its new name.
PART 2—OBJECTS, PRINCIPLES, AIM AND OBJECTIVES

4. Objects of Act

The objects of this Act are—

(a) to designate the Minister and the Department as having the responsibility to administer this Act so as to promote the principles and achieve the aim and objectives specified in this Act and to co-ordinate government policies and programs for intellectually disabled persons; and

(b) to establish an Intellectual Disability Review Panel; and

(c) to provide for the appointment and functions of community visitors; and

(d) to ensure that intellectually disabled persons and their families are informed of and make use of the provisions of this Act.

5. Statement of principles

It is the intention of Parliament that in the administration of this Act and the provision, management, development and planning of services for intellectually disabled persons the following principles are to be given effect to—

(a) intellectually disabled persons have the same right as other members of the community to services which support a reasonable quality of life;

(b) every intellectually disabled person has a capacity for physical, social, emotional and intellectual development and a right to individualized educational and developmental opportunities and is entitled
to exercise maximum control over every aspect of his or her life;

(c) the welfare of an intellectually disabled person is the first and paramount consideration;

(d) the needs of intellectually disabled persons are best met when the conditions of their everyday life are the same as, or as close as possible to, norms and patterns which are valued in the general community;

(e) services should promote maximum physical and social integration through the participation of intellectually disabled persons in the life of the community;

(f) services generally available to all members of the community should be adapted to ensure access by intellectually disabled persons and specialized supplementary services should be provided to the extent required to meet individual needs;

(g) services to intellectually disabled persons should be provided in such a manner that an individual need not move out of his or her local community or travel inordinately long distances to receive the services needed;

(h) services to intellectually disabled persons should be sufficiently flexible in structure and organization to meet the varying needs of intellectually disabled persons in developing towards independence and to maximize the choices open to them;

(i) it is in the best interests of intellectually disabled persons and their families that no single organization providing services to intellectually disabled persons exercise
control over all or most aspects of an individual's life;

(j) it is the responsibility of the State of Victoria to plan, fund, ensure the provision of and evaluate services to intellectually disabled persons according to the principles stated herein;

(k) it is in the interests of intellectually disabled persons and their families for non-government organizations providing services to intellectually disabled persons to continue to play a significant role in direct service delivery;

(l) the State of Victoria must ensure that government and non-government organizations providing services to intellectually disabled persons are accountable for the extent to which the rights of intellectually disabled persons are advanced and service quality assured;

(m) intellectually disabled persons have a legitimate and major role to play in planning and evaluating services;

(n) when some restriction on the rights or opportunities of an intellectually disabled person is necessary, the means chosen should be the least restrictive of the available alternatives having regard to all the circumstances;

(o) the families of intellectually disabled persons have an important role to play in supporting, and encouraging the development of, a family member with an intellectual disability.
6. Aim and objectives of the Department

(1) The primary aim of the Department under this Act is to advance the dignity, worth, human rights and full potential of intellectually disabled persons.

(2) In seeking to achieve this aim the Department has the following objectives—

(a) to plan, develop and administer a complete, comprehensive and integrated statewide program for intellectually disabled persons;

(b) to ensure access by intellectually disabled persons to a range of services including—

(i) assessment and early intervention services; and

(ii) educational services; and

(iii) health services; and

(iv) vocational and employment services; and

(v) recreational services; and

(vi) residential services; and

(vii) social welfare and family support services; and

(viii) legal services;

(c) to maintain a comprehensive information system which will facilitate a process of monitoring the current and future needs of intellectually disabled persons;
(d) to develop a written general service plan for every eligible person and review at regular intervals the progress and needs of eligible persons by reference to the general service plan;

(e) to provide a range of high quality services to intellectually disabled persons, their families and their local communities to enable intellectually disabled persons to remain with their families or in their local communities;

(f) to promote the integration of intellectually disabled persons into the community;

(g) to promote the use of general community services by intellectually disabled persons;

(h) to ensure that intellectually disabled persons in institutions have the opportunity to live in community-based accommodation with the benefit of support services;

(i) to promote a high quality of care and developmental programming for intellectually disabled persons whilst they continue to reside in institutions;

(j) to support municipalities and non-government organizations providing services to intellectually disabled persons through the provision of public funds, advice and professional support services;

(k) to set standards for municipalities and non-government organizations, ensure proper accountability for expenditure of public funds and encourage rationalization of their services;
Part 2—Objects, Principles, Aim and Objectives

(l) to promote a high standard of training for persons responsible for providing services to intellectually disabled persons—
   (i) by encouraging tertiary education institutions to develop appropriate training courses and monitoring and evaluating those courses; and
   (ii) by providing appropriate in-service training;

(m) to put into effect policies in relation to services provided by government and non-government organizations which ensure that intellectually disabled persons are able to participate in decisions about the provision of services;

(n) to promote and encourage the development of advocacy services, including citizen advocacy and self advocacy, for intellectually disabled people and give grants of money for this purpose;

(o) to encourage research into the causes, prevention and treatment of intellectual disability and methods for the improvement of the level of functioning of intellectually disabled persons;

(p) to educate and promote the education of members of the public about intellectual disability and the needs and capacities of intellectually disabled persons and give grants of money for this purpose;

(q) to promote actively through education programs and any other means available the worthwhile, positive and enhancing social images of intellectually disabled persons;
(r) to make recommendations and reports to the Minister with respect to matters relating to the provision of services for intellectually disabled persons;

(s) to carry out or arrange for the carrying out of any works or buildings necessary to provide services or facilities to give effect to this Act;

(t) to purchase, rent, lease, sell, renovate and maintain any land or buildings for the purposes of this Act in the name of the Department or any government agency;

(u) to submit recommendations to the Minister concerning amendments to this Act or the regulations; and

(v) subject to the general direction and control of the Minister to administer this Act.
PART 3—ELIGIBILITY, ASSESSMENT AND CASE PLANNING

7. Application to assess eligibility

(1) A person who has attained the age of 16 years who believes that she or he is intellectually disabled or a parent, guardian or primary-carer of a person who has attained the age of 16 years who believes that the person is intellectually disabled may request the Secretary to assess the eligibility of that person for services.

(2) A parent, guardian or primary-carer of a person under the age of 16 years who believes that the person is developmentally disabled or intellectually disabled may request the Secretary to assess the eligibility of that person for services.

(3) The Secretary must ensure that an assessment of the eligibility of a person for services is undertaken within 30 days after receiving the request.

(4) Despite sub-section (3), the Secretary may defer the undertaking of an assessment of the eligibility of a person for services for up to 3 months after receiving the request or discontinue any uncompleted assessment and defer the undertaking of a further assessment for up to 3 months after discontinuing the assessment, as the case requires, if the Secretary believes on reasonable grounds that any assessment completed before then is unlikely to establish reliably whether or not the person is intellectually disabled.1
In an emergency a person is entitled to services before an assessment of the eligibility of the person for those services is undertaken or completed if the Secretary believes that it is likely that the assessment will result in the person being declared to be eligible for services.

8. Assessment of intellectual disability

(1) A person over the age of 5 years is only eligible for services if the Secretary is satisfied that he or she is intellectually disabled.

(2) For the purposes of assessing whether or not a person over the age of 5 years is intellectually disabled—

(a) if a standardised measurement of intelligence is used to assess general intellectual functioning and it—

(i) indicates that the person has an intelligence not higher than 2 standard deviations below the population average, then he or she must be taken to have significant sub-average general intellectual functioning;

(ii) indicates that the person has an intelligence not lower than 2 standard deviations below the population average, then he or she must be taken not to have significant sub-average general intellectual functioning;

(iii) is inconclusive as to whether or not the person has an intelligence higher or lower than 2 standard deviations below the population average, then the Secretary may take into account other indicators of general intellectual functioning in determining whether or not the person has significant sub-
intellectual disability,

(b) if a standardised measurement of adaptive behaviour is used to assess adaptive behaviour and it indicates a score at or below the second percentile of people of the same age and cultural group, then he or she must be taken to have significant deficits in adaptive behaviour.

(3) In applying a standardised measurement of intelligence for the purposes of sub-section (2)(a), the Secretary must consider the test result within the 95% confidence level as determined by the standard error of measurement of the test.

(4) Nothing in sub-section (2) requires the Secretary to use a standardised measurement in the assessment of intellectual disability.

(5) If the Secretary is satisfied that a person is intellectually disabled, he or she must issue a declaration of eligibility for services within 14 days after the completion of the assessment.

(6) If the Secretary is not satisfied that a person is intellectually disabled, he or she must within 14 days after the completion of the assessment—

(a) give to the person who made the request under section 7 a written statement of reasons why he or she is not satisfied that the person is intellectually disabled; and

(b) ensure that arrangements are made to convey those reasons to the person who has been assessed in the language, mode of communication or terms which that person is most likely to understand.

(7) A declaration of eligibility entitles the eligible person to receive services under this Act.
8A. Assessment of developmental delay

(1) Despite section 8(1), a person under the age of 6 years is eligible for services if the Secretary is satisfied that he or she is developmentally delayed.

(2) In assessing whether or not a person under the age of 6 years is developmentally delayed, a flexible combination of assessments reflecting the various criteria specified in the definition of "developmental delay" and the age of the person is to be used.

(3) Nothing in this Act requires the Secretary to use a formal method of assessment of developmental delay.

(4) If the Secretary is satisfied that a person is developmentally delayed, he or she must issue a declaration of eligibility for services within 14 days after the completion of the assessment.

(5) If the Secretary is not satisfied that a person is developmentally delayed, he or she must within 14 days after the completion of the assessment give to the person who made the request under section 7 a written statement of reasons why he or she is not satisfied that the person is developmentally delayed.

(6) A declaration of eligibility entitles the eligible person to receive services under this Act.

9. General service plan

(1) Where a declaration of eligibility is issued, the person who requested the assessment may require the Secretary to prepare a general service plan in respect of the eligible person.

(2) The Secretary must ensure that a general service plan is prepared within a reasonable time of being requested to do so under sub-section (1).
Part 3—Eligibility, Assessment and Case Planning

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(3) If a request has not already been made under subsection (1) and a person is seeking admission to or has been admitted in an emergency to—

(a) a residential institution; or

(b) a registered service; or

(c) a contracted service provider; or

(d) a residential program; or

(e) a non-residential program—

the Secretary must ensure that there is prepared a general service plan in respect of the person within 60 days.

* * * * *

(5) The Secretary must prepare a general service plan in consultation with—

(a) the eligible person; and

(b) the primary carer of that person; and

(c) any other persons the Secretary considers appropriate.

(6) Notwithstanding sub-section (5) if—

(a) the eligible person objects to the primary carer being consulted; and
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(b) the Secretary is satisfied that the eligible person has the capacity to object; and

(c) the primary carer is not the guardian of the eligible person—

the Secretary must not consult with the primary carer.

(7) The Secretary must send a copy of the general service plan to—

(a) the eligible person; and

(b) unless sub-section (6) applies, the primary carer; and

(c) any association or organization which is to provide services under the general service plan.

10. Amendment and review of general service plan

(1) Any person may apply to the Secretary to have a general service plan amended.

(2) The Secretary must consider any application under sub-section (1) and advise the applicant of the Secretary's decision within 21 days of receiving the application.

(3) The Secretary may if there has been a significant change in the circumstances, needs or development of an eligible person and, subject to sub-section (3C), must every five years review a general service plan in consultation with—

(a) the eligible person; and

(b) unless section 9(6) applies, the primary carer of that person; and
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(c) any other persons the Secretary considers appropriate.

(3A) An eligible person who is not receiving services and who does not wish to have the mandatory 5 year review of his or her general service plan conducted may give notice in writing of that fact to the Secretary.

(3B) The guardian of an eligible person who is not receiving services who does not wish to have the mandatory 5 year review of the eligible person's general service plan conducted may give notice in writing of that fact to the Secretary.

(3C) If the Secretary receives a notice under sub-section (3A) or (3B)—

(a) he or she is not required by sub-section (3) to review the general service plan; and

(b) the general service plan ceases to be in force.

(3D) Nothing in sub-sections (3A) to (3C) prevents a request being made to the Secretary by the eligible person or his or her parent, guardian or primary carer for the preparation of a new general service plan in respect of the eligible person in accordance with section 9.

(3E) The Secretary must ensure that a general service plan is prepared within a reasonable time of being requested to do so under sub-section (3D).

(4) If an eligible person continues to reside in a residential institution, the Secretary must every 12 months review the general service plan in consultation with—

(a) the eligible person; and

(b) unless section 9(6) applies, the primary carer of that person; and
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(c) any other persons the Secretary considers appropriate.

(5) In conducting a review of a general service plan the Secretary must assess the effectiveness of the general service plan against the objectives of the general service plan.

(6) The Secretary may make any amendments to the general service plan that the Secretary considers necessary as the result of a review under subsection (3) or (4).

11. Individual program plan

(1) Within 60 days of a person being admitted to a residential institution, residential program or a non-residential program the Secretary must ensure that there is prepared an individual program plan in respect of that person.

(2) Within 60 days of a person being admitted to a registered service or a contracted service provider the designated officer must—

(a) ensure that there is prepared an individual program plan in respect of that person; and

(b) send a copy of the individual program plan to the Secretary.

* * * * *

(4) The Secretary or the designated officer as the case may be must prepare an individual program plan in consultation with—

(a) the eligible person; and
(b) the primary carer of the eligible person; and
(c) any other persons the Secretary or the designated officer considers appropriate.

(5) Notwithstanding sub-section (4) if—
(a) the eligible person objects to the primary carer being consulted; and
(b) the Secretary or the designated officer as the case may be is satisfied that the eligible person has the capacity to object; and
(c) the primary carer is not the guardian of the eligible person—
the Secretary or the designated officer as the case may be must not consult with the primary carer.

(6) The Secretary or the designated officer as the case may be must send a copy of the individual program plan to—
(a) the eligible person; and
(b) unless sub-section (5) applies, the primary carer.

12. Review of individual program plan

(1) The Secretary or the designated officer as the case may be must review an individual program plan as specified in the individual program plan to ensure that it meets the current needs of the eligible person.

(2) The Secretary or the designated officer as the case may be must review an individual program plan in consultation with—
(a) the eligible person; and
(b) unless section 11(5) applies, the primary carer of the eligible person; and
(c) any other persons the Secretary or the designated officer considers appropriate.

(3) The Secretary or the designated officer as the case may be may make any amendments to the individual program plan that the Secretary or the designated officer considers necessary as the result of a review under sub-section (1).

12A. Application of Act to former clients

(1) A person who was a registered client of the Office of Intellectual Disability Services immediately before 1 October 1987 must, for the purposes of this Act, be taken to be—

(a) an eligible person; and
(b) entitled to receive services under this Act after that date; and
(c) entitled, if he or she does receive services after that date—

(i) to have a general service plan prepared in respect of him or her by the Secretary under section 9 before 1 October 1989; and
(ii) to have an individual program plan prepared in respect of him or her by the Secretary under section 11 before 1 October 1989.

(2) If a declaration of eligibility is required in respect of a person for any purpose by or under this or any other Act, a declaration can only be issued in respect of the person if the Secretary is satisfied that the person is intellectually disabled after the completion of an assessment in accordance with section 8, even if he or she is a person referred to in sub-section (1).
12B. Re-assessment of eligibility of person entitled to receive services

(1) If at any time the Secretary believes on reasonable grounds that an assessment of a person over the age of 5 years who is entitled to receive services under this Act (including a person referred to in section 12A(1)) may result in the person not being assessed as intellectually disabled, he or she may direct that the person be re-assessed in accordance with section 8 or, in the case of a person referred to in section 12A(1), assessed if he or she has not previously been assessed in accordance with section 8.

(2) The Secretary may give a direction under subsection (1) on his or her own initiative or at the request of the person entitled to receive services or of his or her parent, guardian or primary-carer.

(3) If after the completion of the re-assessment or assessment the Secretary is not satisfied that the person is intellectually disabled, the Secretary must within 14 days of the re-assessment or assessment being completed—

(a) revoke any declaration of eligibility previously issued; and

(b) ensure that arrangements are made to convey to the person who has been re-assessed or assessed the reasons why that person is no longer eligible for services in the language, mode of communication or terms which that person is most likely to understand.
12C. Re-assessment of eligibility of person not entitled to receive services

A person who has previously been assessed as not being intellectually disabled may be re-assessed in accordance with section 8 if—

(a) that person or his or her parent, guardian or primary-carer requests the Secretary to re-assess that person; and

(b) the Secretary believes on reasonable grounds that because of new facts or circumstances that have arisen since the completion of the previous assessment it is likely that the re-assessment would result in the person being assessed as intellectually disabled.

13. Intellectual Disability Planning Committees

(1) The Minister may appoint an Intellectual Disability Planning Committee for each region.

(2) An Intellectual Disability Planning Committee is to consist of not more than 10 members appointed by the Minister.

(3) In appointing members of an Intellectual Disability Planning Committee the Minister must have regard to—

(a) the need for an Intellectual Disability Planning Committee to be comprised of both males and females; and

(b) the need for an Intellectual Disability Planning Committee to be comprised wherever possible of persons from each of the following categories:

(i) Persons who are engaged in the provision of services to intellectually disabled persons;
(ii) Persons who use services for intellectually disabled persons;

(iii) Persons who are relatives of intellectually disabled persons;

(iv) Persons who are concerned or experienced in the planning of services for intellectually disabled persons; and

(c) the need for an Intellectual Disability Planning Committee to be comprised of persons who reside in the region.

(4) Members of an Intellectual Disability Planning Committee—

(a) hold office for a period of 3 years; and

(b) are eligible for re-appointment at the end of the term of office; and

(c) who are not officers or employees who hold a full-time government office or a full-time office with a statutory corporation are entitled to be paid such travelling and other allowances as are from time to time fixed by the Governor in Council; and

(d) are not in respect of the office of member subject to the Public Administration Act 2004 (other than Part 5 of that Act).

(5) A member of an Intellectual Disability Planning Committee may—

(a) resign from the office of member by writing signed by the member and delivered to the Minister; and
(b) at any time be removed from office by the Minister.

(7) If any member of an Intellectual Disability Planning Committee—

(a) becomes bankrupt; or

(b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

(c) becomes incapable of performing the duties of a member; or

(d) is removed from office or resigns; or

(f) dies—

the office held by that member becomes vacant.

(8) A matter arising for determination by an Intellectual Disability Planning Committee is to be determined by a majority of votes of members of the Intellectual Disability Planning Committee.

(9) Subject to this Act and the regulations, the procedure of an Intellectual Disability Planning Committee is in its discretion.
14. Regional plans

(1) The functions of an Intellectual Disability Planning Committee are to—

(a) prepare at 3 year intervals a plan for the development of services for intellectually disabled persons in the region; and

(b) review that plan annually and where appropriate amend that plan; and

(c) advise the Minister or the Secretary on any matter which the Minister or Secretary refers to the Committee; and

(d) consult widely in the preparation of any plan or advice.

(2) A regional plan must—

(a) identify the needs of eligible persons resident within the region; and

(b) state the extent to which the needs of eligible persons resident within the region are currently being met by—

(i) the Department or any association or organization funded by the Department; and

(ii) any association or organization providing services to the general community; and

(c) identify objectives to be achieved so as to—

(i) improve the quality of services for intellectually disabled persons provided or funded by the Department; and

(ii) promote access by eligible persons to services provided to the general community.
(3) An Intellectual Disability Planning Committee must forward the regional plan to the Secretary.

15. State plan

(1) The Minister must ensure that there is prepared at 3 year intervals a plan for the development of services for intellectually disabled persons in Victoria.

(2) A State plan must—

(a) identify the needs of eligible persons in Victoria; and

(b) state the extent to which the needs of eligible persons are being met and by what type of service provider; and

(c) state policies for the development of services for intellectually disabled persons; and

(d) identify objectives to be achieved in the development of services for intellectually disabled persons.

(3) In preparing a State plan the Minister must—

(a) have regard to regional plans; and

(b) consult with—

(i) relevant Commonwealth, State and local government authorities; and

(ii) associations and organizations representing the interests of intellectually disabled persons and their families; and

(iii) associations and organizations representing or providing services to intellectually disabled persons.
(4) The Minister must ensure that a State plan is reviewed annually and where appropriate is amended.

16. Department to maintain an information system

(1) The Department must maintain an information system for the purpose of enabling—

(a) the preparation of general service plans, individual program plans and plans for the development of services; and

(b) proper case management; and

(c) the efficient provision of services to meet the needs of intellectually disabled persons; and

(d) the Department to achieve its objectives under this Act.

(2) Sub-section (3) applies to—

(a) a person who is or has been appointed to any office under this Act or employed or engaged under this Act;

(b) a person who is or has been employed or engaged by a contracted service provider or a registered service or who otherwise provides or has provided services under this Act;

(c) a person who is or has been a member of staff of the public service.

(3) A person to whom this sub-section applies must not, directly or indirectly, disclose to any person any information relating to an eligible person or a person in respect of whom a request is made under section 7 that is gained by or given to that person in his or her official capacity and that identifies, or is likely to lead to the identification of, the person to whom the information relates.

Penalty: 10 penalty units.
Part 3—Eligibility, Assessment and Case Planning

(4) Sub-section (3) does not prevent the disclosure of information—

(a) to the extent that is reasonably required in connection with the performance of a duty or the exercise of a power or function under this or any other Act;

(b) with the consent of the person to whom the information relates or, if that person is dead, of his or her next-of-kin;

(c) to another person to whom sub-section (3) applies, if the disclosure is reasonably required in connection with the provision by that other person of services under this Act to the person to whom the information relates;

(d) to any person to the extent that is necessary in connection with the provision of care or treatment to the person to whom the information relates if the person to whom the information relates is unable to consent to the disclosure and without the disclosure he or she may, in the opinion of the discloser, suffer detriment;

(e) to a court or tribunal in the course of a proceeding before it;

(f) to the Intellectual Disability Review Panel in the course of a proceeding before it;

(g) to the Public Advocate;

(h) to the Secretary;

(i) to the Minister;

(j) to the Commonwealth Minister for the time being responsible for or administering the Medicare scheme, if the disclosure is made in connection with that scheme;
(k) to a person to whom in the opinion of the Minister it is in the public interest that the disclosure be made.

(5) For the purposes of sub-section (4)(a), "any other Act" does not include the Health Privacy Principles in the Health Records Act 2001 or Part 3 or Part 5 of that Act.

16A. Former clients of Office of Intellectual Disability Services

Despite anything to the contrary in this Part, a person referred to in section 12A(1) who has not received services under this Act for a continuous period of at least two years (whether that period is before or after or partly before and partly after the commencement of section 12 of the Intellectually Disabled Persons' Services (Amendment) Act 1994) is only entitled to receive or again receive services under this Act if a declaration of eligibility is issued in respect of him or her on the completion of an assessment undertaken in accordance with section 8.
PART 4—SERVICES FOR INTELLECTUALLY DISABLED PERSONS

Division 1—Residential Institutions

17. Proclamation of residential institutions

(1) The Governor in Council may on the advice of the Minister by a proclamation published in the Government Gazette proclaim any premises, used to provide residential services for intellectually disabled persons to be a residential institution.

(2) The following are deemed to have been proclaimed under this section to be residential institutions—

(a) any training centre proclaimed under section 24(1)(c) of the Mental Health Act 1959 at the commencement of this section;

(b) the institutions operated by the Department at the commencement of this section and known as St. Gabriel’s, Pleasant Creek, Sandhurst and Colanda.

18. Admission to residential institutions

(1) A person may be admitted to a residential institution if the Secretary is satisfied that the person is an eligible person who requires services which can be provided by admission to a residential institution and that—

(a) admission to a residential institution provides the best possible choice of services for enhancing the person’s independence and self-sufficiency and is least likely to produce regression, loss of skills or other harm to that person; or
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(b) admission to a residential institution is the alternative which in the circumstances is the least restrictive of the person's freedom of decision and action; or

c) unless the person is admitted to a residential institution the person or any person with whom he or she resides will suffer serious physical or emotional harm.

(2) An admission to a residential institution is to be for such period not exceeding 12 months as the Secretary considers appropriate.

(3) Sub-section (2) does not prevent the re-admission of an eligible person to a residential institution as often as is necessary.

(4) Sub-section (2) does not apply to persons who are resident in residential institutions at the commencement of this section.

Division 2—Residential and Non-Residential Programs

19. Proclamation of residential and non-residential programs

The Governor in Council may on the advice of the Minister by a proclamation published in the Government Gazette proclaim any premises operated by the Department and used to provide residential or non-residential services for intellectually disabled persons to be a residential program or a non-residential program.
Division 4—Transfer of eligible persons from a prison

21. Transfer of eligible persons from a prison

(1) The Secretary to the Department of Justice may by a security order transfer a person who—

(a) is lawfully imprisoned or detained in a prison or other place of confinement; and

(b) is an eligible person—

to an appropriate residential institution as a security resident.

(1A) Sub-section (1) does not apply to a person who is detained in a prison under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (whether on remand or under a supervision order made under that Act).

(2) The Secretary to the Department of Justice must not make a security order unless—

(a) the Secretary to the Department of Justice has received a declaration of eligibility and an individual program plan from the Secretary to the Department of Human Services; and

(b) the Secretary to the Department of Justice is satisfied as to the matters specified in sub-section (7); and

(c) the Secretary to the Department of Human Services has agreed to accept the person as a security resident in the residential institution specified in the order.

(3) The Secretary to the Department of Justice may make an interim order to enable the Secretary to the Department of Human Services to assess the eligibility of the person specified in the order.
(4) A person in respect of whom an interim order is made may be conveyed to and detained in an appropriate residential institution for the period not exceeding 28 days specified in the order.

(5) On the application of the Secretary to the Department of Human Services, the Secretary to the Department of Justice may extend the duration of an interim order for a further period not exceeding 28 days.

(6) If the Secretary to the Department of Human Services issues a declaration of eligibility in respect of a person under this section the Secretary must prepare an individual program plan in respect of that person.

(7) The Secretary to the Department of Justice must be satisfied that the making of a security order is in the best interests of the eligible person or the community having regard to—

(a) whether any physical, mental or emotional risk to which the eligible person has been or may be exposed if detained in a prison is significantly greater than the risk to which persons who are not intellectually disabled may be exposed; and

(b) whether the eligible person would be more appropriately placed with a residential institution instead of a prison; and

(c) whether programs are offered by a residential institution which are designed to reduce the likelihood of the eligible person committing further criminal offences; and

(d) any other matters the Secretary to the Department of Justice considers relevant.
(8) Where a person who is on remand is transferred to a residential institution under this section, the Secretary to the Department of Justice must notify the Director of Public Prosecutions of the transfer.

21A. Transfer of persons detained in prison under Crimes (Mental Impairment and Unfitness to be Tried) Act 1997

(1) The Secretary to the Department of Justice may, by order, transfer a person who—

(a) is detained in a prison under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 (whether on remand or under a supervision order made under that Act); and

(b) is an eligible person—

to an appropriate residential service as a forensic resident.

(2) The Secretary to the Department of Justice must not transfer a person under sub-section (1) unless—

(a) the Secretary to the Department of Justice has received a declaration of eligibility and an individual program plan from the Secretary to the Department of Human Services; and

(b) the Secretary to the Department of Justice is satisfied as to the matters specified in sub-section (7); and

(c) the Secretary to the Department of Human Services has agreed to accept the person as a forensic resident in the residential service specified in the transfer order.
(3) The Secretary to the Department of Justice may make an interim order to enable the Secretary to the Department of Human Services to assess the eligibility of the person specified in the order.

(4) A person in respect of whom an interim order is made may be conveyed to and detained in an appropriate residential service for the period, not exceeding 28 days, specified in the order.

(5) On the application of the Secretary to the Department of Human Services, the Secretary to the Department of Justice may extend the duration of an interim order for a further period not exceeding 28 days.

(6) If the Secretary to the Department of Human Services issues a declaration of eligibility in respect of a person under this section, the Secretary must prepare an individual program plan in respect of that person.

(7) The Secretary to the Department of Justice must be satisfied that the making of a transfer order is in the best interests of the eligible person or the community having regard to—

(a) whether any physical, mental or emotional risk to which the eligible person has been or may be exposed if detained in a prison is significantly greater than the risk to which people who are not intellectually disabled may be exposed; and

(b) whether the eligible person would be more appropriately placed with a residential service instead of a prison; and

(c) any other matters the Secretary to the Department of Justice considers relevant.
(8) If a person who is on remand is transferred to a residential service under this section, the Secretary to the Department of Justice must notify the Director of Public Prosecutions of the transfer.

Division 5—Services Provided by Municipalities and Non-Government Organizations

22. Power of Secretary to provide funds

(1) Subject to the approval of the Minister the Secretary may having regard to the Department's primary aim and its objectives under this Act allocate funds to municipal councils and non-government organizations out of money available for the purpose.

(2) The Secretary may allocate funds under sub-section (1) to be used for such purposes and subject to such conditions as the Secretary considers appropriate.

(3) Funds under sub-section (1) must only be provided to a person who has entered into a contract under section 22A or to a municipal council or a non-government organization which has entered into a funding and services agreement under section 24.

22A. Contracts for provision of services

(1) The Secretary may enter into a contract with a person for the provision by that person of services of any type for intellectually disabled persons.

(2) A contract under this section—

(a) remains in force for the period (not exceeding 3 years) specified in it; and
(b) may provide for termination of the contract by the Secretary if the Secretary is of the opinion that—

(i) any performance standards specified in the contract in relation to the provision of the services are not being met by the contracted service provider; or

(ii) the provision of the services is being inefficiently or incompetently managed; or

(iii) the contracted service provider has failed to provide an effective service in accordance with the principles specified in section 23(3); or

(iv) the contracted service provider has breached or failed to comply with any provision in the contract; and

(c) may contain any other provisions that are not inconsistent with this Act.

(3) The provisions of this Act that apply to a contracted service provider apply only with respect to services provided or to be provided by the contracted service provider under a contract under this section and with respect to premises used, or to be used, by the contracted service provider to provide those services and this Act must be construed accordingly.

23. Registration of services

(1) A person may apply to the Secretary in the prescribed form for an association or organization or municipal council which provides services for intellectually disabled persons to be registered as a registered service.
(2) The Secretary may refuse to register an association or organization or municipal council as a registered service if—

(a) the Secretary does not approve the service provided by the association or organization or municipal council; or

(b) the Secretary is not satisfied that the service provided by the association or organization or municipal council is or will be operated in accordance with the principles specified in sub-section (3).

(3) The principles referred to in sub-section (2)(b) are—

(a) that the service is provided in the least restrictive environment; and

(b) that provision is made for persons who are receiving the service to participate in the planning, operation and evaluation of the service; and

(c) that restrictions on and the interference with the rights, dignity and self-respect of persons receiving the service is kept to the minimum necessary in the circumstances; and

(d) that there are adequate mechanisms for the assessment and review of persons receiving the service; and
(e) that services to eligible persons are provided in accordance with general service plans and individual program plans; and

(f) that the service provided is accessible and flexible to meet the individual rights and needs of eligible persons.

* * * * *

(6) If a non-residential service administers a facility which was registered as a day training centre or a private training centre under the Mental Health Act 1959, any school section of the facility has the status of a school section of a day training centre for the purposes of legislation enabling the transfer of school sections to special developmental school status.

24. Funding and services agreements

(1) The Secretary may enter into a funding and services agreement with a registered service.

(2) A funding and services agreement—

(a) remains in force for the period (not exceeding 3 years) specified in it but is subject to annual review as specified in the agreement; and

(b) is binding on the Secretary and the registered service.
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(3) A funding and services agreement may contain such provisions as the Secretary considers appropriate in any particular case.

(4) Without limiting sub-section (3), a funding and services agreement may include provisions relating to any or all of the following matters—

(a) the purpose for which and the conditions subject to which the funds may be used;

(b) the objectives that the registered service should seek to achieve;

(c) the persons for whom and the types of services to be provided;

(d) the facilities and amenities to be provided;

(e) the appointment, dismissal, qualifications and number of staff;

(f) assessment and evaluation procedures and eligibility criteria;

(g) procedures for developing and reviewing individual program plans;

(h) maximum fees and charges that may be fixed for the provision of services;

(i) the form of accounting records to be kept and the information required to be included in financial reports;

(j) records to be kept relating to the provision of services and persons to whom services are provided;

(k) how trust money belonging to eligible persons at the service is to be kept and accounted for;
(l) the termination of the agreement by the Secretary if the Secretary is of the opinion that—

(i) any performance standards specified in the agreement in relation to the provision of the services are not being met by the registered service; or

(ii) the provision of the services is being inefficiently or incompetently managed; or

(iii) the registered service has failed to provide an effective service in accordance with the principles specified in section 23(3); or

(iv) the registered service has breached or failed to comply with any provision in the agreement.

25. Appointment of administrator

(1) Where in the opinion of the Minister a contracted service provider or a registered service—

(a) is inefficiently or incompetently managed; or

(b) has failed to provide an effective service in accordance with the principles specified in section 23(3); or

(c) has breached or failed to comply with any provision in a contract under section 22A or a funding and services agreement (as the case requires)—

the Governor in Council may on the recommendation of the Minister made after complying with sub-section (3), by Order in Council published in the Government Gazette appoint a fit and proper person as administrator to take over the functions under this Act or under a
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contract or agreement under this Act of the
certified service provider or registered service.

(1A) A certified service provider or a registered
service may request the Minister to have a fit and
proper person appointed as administrator to take
over its functions under this Act or under a
contract or agreement under this Act and, in that
event, the Governor in Council may, on the
recommendation of the Minister made after
complying with sub-section (3), by Order
published in the Government Gazette appoint such
a person as administrator to take over those
functions.

(2) An administrator appointed under this section—
(a) is deemed to be the committee of
management or other governing body of the
certified service provider or registered
service which has no functions other than
functions under this Act or under a contract
or agreement under this Act; and

(b) for the purposes of those functions has all the
powers and may exercise any of the duties of
the committee of management or other
governing body or its members; and

(c) is subject to all the duties of the committee
of management or other governing body or
its members.

(3) The Minister cannot make a recommendation
under sub-section (1) unless the Minister—
(a) has given notice in writing to the certified
service provider or registered service
specifying—

(i) the ground on which it is intended to
make a recommendation to appoint an
administrator; and

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(ii) that the contracted service provider or registered service may object in writing within 14 days of service of the notice and may request to be represented at a hearing into the objection; and

(b) has considered any objection made under paragraph (a).

(4) On the day on which an administrator is appointed under this section in respect of a contracted service provider or registered service for the purposes of its functions under this Act or under a contract or agreement under this Act, the members of the committee of management or other governing body cease to hold office.

(5) Where an administrator has been appointed under this section the Governor in Council may at any time if the Governor in Council thinks fit by Order in Council published in the Government Gazette declare that on the day specified in the Order in Council—

(a) the committee of management or other governing body (if its members ceased to hold office) is to be re-established by appointment or election as the case may be; and

(b) the administrator ceases to be the administrator of the contracted service provider or registered service.

(6) Where an administrator appointed under this section recommends that a registered service should be de-registered the Secretary may after complying with sub-section (7) cancel the registration of that service and any funding and services agreement with that service is terminated on the day on which the cancellation takes effect.
(7) The Secretary must not cancel the registration of a registered service unless the Secretary—

(a) has given notice in writing to the registered service specifying—

(i) the ground on which it is intended to cancel the registration; and

(ii) that the registered service may object in writing to the Secretary within 14 days of service of the notice and may request to be represented at a hearing into the objection; and

(b) has considered any objection made under paragraph (a).

(7A) If an administrator appointed under this section recommends that a contract under section 22A with a contracted service provider should be terminated, the Secretary may, after complying with sub-section (7B), terminate that contract with immediate effect.

(7B) The Secretary must not terminate a contract under section 22A on the recommendation of the administrator unless the Secretary—

(a) has given notice in writing to the contracted service provider specifying—

(i) the ground on which it is intended to terminate the contract; and

(ii) that the contracted service provider may object in writing to the Secretary within 14 days after service of the notice and may request to be represented at a hearing into the objection; and
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(b) has considered any objection made under paragraph (a).

(8) Where an administrator is appointed under this section the salary of the administrator and any expenses of the administrator necessarily incurred in the administration are to be paid by the Department.

26. Proclaimed services

(1) Where a person, association or organization which provides residential or non-residential services for use specifically or substantially by intellectually disabled persons is not a contracted service provider or registered under section 23 and the Minister considers that persons using the service are being abused or exploited or that the service is operated so as to substantially breach any of the principles stated in section 5 the Governor in Council may on the recommendation of the Minister proclaim the person, association or organization as a proclaimed service.

(2) The Minister must not make a recommendation under sub-section (1) unless the Minister—

(a) has given notice in writing to the person, association or organization specifying—

(i) the reason why it is intended to make a proclamation under this section; and

(ii) that the person, association or organization may object in writing to the Minister within 14 days of service of the notice and may request to be represented at a hearing into the objection; and

(b) has considered any objection made under paragraph (a).
(3) A proclaimed service must operate subject to such conditions and must comply with any requirements specified in the proclamation.

(4) Where a proclaimed service fails to comply with any condition or requirement specified in the proclamation any person who is concerned or takes part in the management of the proclaimed service is guilty of an offence against this Act.
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Division 1—Establishment, Constitution and Procedure of the Intellectual Disability Review Panel

27. The Intellectual Disability Review Panel

(1) There is established a body to be known as the Intellectual Disability Review Panel.

(2) The Intellectual Disability Review Panel is constituted by—

(a) a President; and

(b) such other members as are necessary from time to time for the proper functioning of the Panel.

(3) Schedule 1 has effect with respect to members of the Intellectual Disability Review Panel.

28. Functions of the Intellectual Disability Review Panel

The functions of the Intellectual Disability Review Panel are—

(a) to review the cases of security residents; and

(b) to review decisions and make recommendations under section 52; and

(c) to advise the Minister or the Secretary on any matter referred to it by the Minister or the Secretary; and

(d) such other functions as are specified in this Act.
29. Staff of the Intellectual Disability Review Panel

(1) An executive officer is to be, and any employees that are necessary for the proper functioning of the Intellectual Disability Review Panel may be, employed under Part 3 of the Public Administration Act 2004.

(2) The executive officer is, subject to the general control and direction of the President, to perform such functions and exercise such powers as are conferred on the executive officer.

30. Procedure of the Intellectual Disability Review Panel

(1) The Intellectual Disability Review Panel—

(a) must, in hearing any matter, act according to equity and good conscience without regard to technicalities or legal forms; and

(b) is bound by the rules of natural justice; and

(c) is not required to conduct any proceedings in a formal manner.

(2) Schedule 2 has effect with respect to the procedure of the Intellectual Disability Review Panel.

(3) The Intellectual Disability Review Panel is not bound by rules or practice as to evidence but may inform itself in relation to any matter in such manner as it thinks fit.
(4) Evidence before the Intellectual Disability Review Panel—

(a) may be given orally or in writing or partly orally and partly in writing; and

(b) may be given—

(i) on oath or affirmation; or

(ii) by declaration instead of an oath where permitted by law.

(5) A member of the Intellectual Disability Review Panel may administer an oath or take an affirmation or declaration for the purposes of this Act.

(6) Evidence given before the Intellectual Disability Review Panel cannot be used in any civil or criminal proceedings or any proceedings under the Public Administration Act 2004 other than proceedings for an offence against this Act or for perjury.

(7) The Intellectual Disability Review Panel may of its own motion or on the application of any party to the proceedings before it direct the executive officer to serve upon any person a summons to appear before the Intellectual Disability Review Panel to give evidence or to produce such documents as are specified in the summons.

(8) The Intellectual Disability Review Panel may make an order for the manner of service, including substituted service, of a summons under subsection (7).

(9) A person who without lawful excuse disobeys a summons of the Intellectual Disability Review Panel is guilty of an offence.

Penalty: 5 penalty units.
31. Appointment of persons to assist the Intellectual Disability Review Panel

The Intellectual Disability Review Panel may appoint an Australian legal practitioner (within the meaning of the Legal Profession Act 2004), an interpreter approved by the Department or any other person with appropriate expertise to assist the Intellectual Disability Review Panel in any proceedings before the Intellectual Disability Review Panel.

32. Appearance at any hearing of the Intellectual Disability Review Panel

(1) At any hearing of the Intellectual Disability Review Panel the person in respect of whom the hearing is conducted must appear before the Intellectual Disability Review Panel in person.

(2) The person in respect of whom the hearing is conducted may also be represented before the Intellectual Disability Review Panel by any person authorized to that effect by the person in respect of whom the hearing is conducted.

(3) At any hearing of the Intellectual Disability Review Panel—

(a) any person (not being a person to whom subsection (1) or (2) applies) who is given notice of the hearing may appear before the Intellectual Disability Review Panel in person and be heard or, where that person is unable to be present at the hearing and the Intellectual Disability Review Panel so allows, may be represented before the Intellectual Disability Review Panel by any person authorized to that effect by the first-mentioned person; and
(b) any other person who wishes to be heard and whom the Intellectual Disability Review Panel agrees to hear may appear before the Intellectual Disability Review Panel in person and be heard.

(4) Where in any proceedings the person in respect of whom the hearing is conducted is not represented before the Intellectual Disability Review Panel, the Intellectual Disability Review Panel may appoint a person to represent that person in those proceedings.

33. Proceedings before the Intellectual Disability Review Panel

(1) All proceedings before the Intellectual Disability Review Panel are to be open to the public unless the Panel otherwise directs under this section.

(2) The Intellectual Disability Review Panel may, on the application of a party to the proceeding or of any other person with a direct interest in the proceeding—

(a) direct that the hearing of the whole or any part of a proceeding be closed to members of the public; or

(b) direct that only persons or classes of persons specified by it may be present during the whole or any part of the hearing of a proceeding.

(3) Any other party or person with a direct interest in the proceeding is entitled to be heard on an application under sub-section (2).

(4) If a direction has been given under this section, the Intellectual Disability Review Panel must cause a copy of it to be posted on a door of, or in another conspicuous place at, the place at which the proceeding is being heard.
(5) A person must not contravene a direction given and posted under this section.

Penalty: 10 penalty units.

34. Reports of proceedings

(1) Unless the Intellectual Disability Review Panel otherwise determines in a particular case a person must not publish or broadcast or cause to be published or broadcast any report of the proceedings of the Intellectual Disability Review Panel.

(2) Where the Intellectual Disability Review Panel considers it would be in the public interest to do so the Intellectual Disability Review Panel may determine that a person may publish or broadcast or cause to be published or broadcast a report of any proceedings of the Intellectual Disability Review Panel provided that—

(a) the report does not contain any particulars calculated to lead to the identification of any person in respect of whom the proceedings have been brought or any other person concerned in the proceedings; and

(b) pictures are not taken of any person in respect of whom proceedings have been brought or any other person concerned in the proceedings.

(3) Any person who contravenes this section is guilty of an offence against this Act and liable to a penalty of not more than 20 penalty units.

35. Secrecy provision

(1) Unless sub-section (2) or section 34 applies, a person who—

(a) is or has at any time been a member of the Intellectual Disability Review Panel; or
(b) is or has been present at any proceedings of the Intellectual Disability Review Panel—

must not, except to the extent necessary to perform any official duties or to perform or exercise any function or power under this Act, either directly or indirectly, make a record of, or divulge or communicate to any person, any information that is or was acquired by the person by reason of being or having been so appointed, engaged, authorized or present or make use of any such information, for any purpose other than the performance of official duties or the performance or exercise of that function or power.

Penalty: 10 penalty units.

(2) Sub-section (1) does not preclude a person from—

(a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or

(b) divulging or communicating to a court in the course of any proceedings referred to in paragraph (a) any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or the exercise of a power referred to in that sub-section; or

(c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.
35A. Annual report of the Intellectual Disability Review Panel

(1) The Intellectual Disability Review Panel must as soon as practicable after the end of each financial year and not later than the following 30 September submit to the Minister a report on its operations during the financial year.

(2) The annual report of operations—
   (a) must be in a form and contain information determined by the Intellectual Disability Review Panel to be appropriate; and
   (b) must contain any other information required by the Minister.

(3) The Minister must cause the annual report to be laid before the Legislative Council and the Legislative Assembly before the expiration of the 7th sitting day of the Legislative Council or the Legislative Assembly, as the case may be, after it is received by the Minister.

(4) If the Intellectual Disability Review Panel fails to submit an annual report to the Minister by 30 September in any year, the Minister must report or cause to be reported that failure and the reasons for it to each House of the Parliament.

Division 2—Provisions Applicable to Security Residents

36. Review of security residents

The Intellectual Disability Review Panel must review the case of a security resident within 12 months of becoming a security resident and thereafter at intervals not exceeding 12 months from the last review until the person is discharged as a security resident.
37. Termination of a security order

(1) A security order—

(a) may be terminated by the Minister at any time on the recommendation of the Secretary or the Intellectual Disability Review Panel; or

(b) in the case of a person serving a sentence of imprisonment terminates upon the expiry of the sentence.

(2) Where a security order is terminated the following provisions apply—

(a) if the security resident has not completed serving a sentence of imprisonment, the person is to be transferred to a prison;

(b) if the security resident has completed a sentence of imprisonment, the person is to be released.

(3) The Secretary to the Department of Justice must notify the Secretary when the sentence of imprisonment of a security resident is to expire.

(4) If a person continues to be an eligible person after a security order in respect of that person is terminated, the Secretary must ensure that a general service plan is prepared for that person within a reasonable time of the termination of the security order.

38. Security conditions

(1) A security resident detained in a residential institution or absent from a residential institution under section 41 or 42 is subject to such security conditions as the Secretary considers necessary.
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(2) A security resident may be transported to and from such places as may be necessary for the administration of this Act in accordance with those security conditions.

(3) A security resident is in the custody of the person in charge of the residential institution until the security order is terminated.

(4) If a security resident dies during detention the person in charge of the residential institution must advise the Secretary to the Department of Justice as to the circumstances in which the death occurred.

39. Request for transfer to prison

(1) A security resident detained in a residential institution under section 21 may at any time request the Secretary or the Intellectual Disability Review Panel to make a recommendation to the Minister that the security resident be transferred to a prison.

(2) Where the Secretary or the Intellectual Disability Review Panel after consulting with the Secretary to the Department of Justice makes a recommendation for the transfer of a security resident to a prison, the Minister may terminate the security order and the person is to be discharged as a security resident upon being placed in the legal custody of the Secretary to the Department of Justice under the Corrections Act 1986.

40. Transfer of security resident to another residential institution

(1) The Secretary may by order direct the transfer of a security resident to another residential institution if the Secretary is satisfied that the transfer will enable that person's individual program plan to be more effectively implemented.
(2) Where a security resident is transferred to another residential institution any documents relevant to the detention and care of the security resident must be forwarded at the same time to that residential institution.

(3) The Secretary must notify the Secretary to the Department of Justice that a security resident has been transferred to another residential institution under sub-section (1).

41. Leave of absence for security resident

(1) The Minister may on the recommendation of the Secretary or the Intellectual Disability Review Panel allow a security resident to be absent from the residential institution in which the security resident is detained—

(a) for the period; and

(b) subject to any conditions—

that the Minister considers appropriate.

(2) The Secretary or the Intellectual Disability Review Panel must not make a recommendation that a security resident be allowed leave of absence unless—

(a) the Secretary or the Intellectual Disability Review Panel is satisfied on the evidence available that the safety of members of the public will not be seriously endangered as a result of the security resident being allowed leave of absence; and

(b) the Secretary to the Department of Justice has been consulted.
(3) The Minister may on the recommendation of the Secretary or the Intellectual Disability Review Panel—

(a) from time to time extend the period of leave of absence; or

(b) revoke the leave of absence and require the security resident to return to the residential institution.

42. Special leave for security resident

(1) A security resident may apply to the Secretary for special leave of absence specifying the special circumstances for which the special leave is required.

(2) The Secretary must grant an application for special leave of absence if the Secretary is satisfied that—

(a) there are special circumstances; and

(b) the safety of members of the public will not be seriously endangered.

(3) The Secretary must consult with the Secretary to the Department of Justice before granting an application under sub-section (2).

(4) Where the Secretary refuses to grant special leave of absence to a security resident, the security resident may apply to the Intellectual Disability Review Panel for a review of the decision.

(5) The Intellectual Disability Review Panel must give notice of an application under sub-section (4) to the Secretary to the Department of Justice.
(6) On an application under sub-section (4) the Intellectual Disability Review Panel may recommend to the Secretary that—

(a) special leave of absence should be allowed; or

(b) special leave of absence should not be allowed.

(7) Special leave of absence—

(a) must not exceed 24 hours; and

(b) may be subject to such conditions as the Secretary may specify.

43. Apprehension of security resident absent without leave

(1) A security resident who is absent from a residential institution without leave of absence or special leave of absence may be apprehended at any time by—

(a) a member of the police force; or

(b) the person in charge of the residential institution or any person authorized by the person in charge of the residential institution—

for the purpose of being returned to the residential institution.

(2) This section does not affect the application of any law enabling the recapture of a person for the purpose of being returned to a prison.
43A. Status of forensic residents

A forensic resident is to be provided with services under this Act.

43B. Security conditions

1. A forensic resident detained in a residential service or absent from a residential service on leave is subject to such security conditions as the Secretary considers necessary.

2. A forensic resident may be transported to and from such places as may be necessary for the administration of this Act in accordance with those security conditions.

43C. Transfer of forensic resident to another residential service

1. The Secretary may by order direct the transfer of a forensic resident to another residential service if the Secretary is satisfied that the transfer will enable that person’s individual program plan to be more effectively implemented.

2. Where a forensic resident is transferred to another residential service any documents relevant to the detention and care of the forensic resident must be forwarded at the same time to that residential service.

43D. Leave of absence for forensic resident

A forensic resident who is subject to a supervision order under the Crimes (Mental Impairment and Unfitness to be Tried) Act 1997 may apply for and be granted leave of absence in accordance with Part 7 of that Act.
43E. Apprehension of forensic resident absent without leave

A forensic resident who is absent from a residential service without leave of absence may be apprehended at any time by—

(a) a member of the police force; or

(b) the person in charge of the residential service or any person authorised by the person in charge of the residential service—

for the purpose of being returned to the residential service.

Division 3—Provisions Applicable to Eligible Persons

44. Restraint, seclusion

(1) For the purposes of this section—

"authorized program officer" means a person authorized for the purposes of this section by the Secretary;

"seclusion" means the sole confinement of an eligible person at any hour of the day or night in a room of which the doors and windows are locked from the outside.

(2) This section applies to eligible persons while attending a residential institution, residential program, registered service, contracted service provider or a non-residential program.
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(3) Mechanical or chemical means of bodily restraint of an eligible person can only be applied—

(a) if that restraint is necessary—

(i) to prevent the person from causing injury to himself or herself or any other person; or

(ii) to prevent the person from persistently destroying property; and

(b) if the use and form of restraint—

(i) is included in the eligible person's individual program plan and has been approved by the authorised program officer; or

(ii) is in the case of an emergency authorised by the person in charge and notified to the authorised program officer without delay; and

(c) for the period of time specified in the approval or authorization under paragraph (b).

(4) An eligible person may be kept in seclusion only—

(a) if it is part of the person's individual program plan or in the case of an emergency—

(i) it is necessary for the protection, safety or well-being of the person or other persons with whom the person would otherwise be in contact; and

(ii) the use of seclusion has been authorized by the person in charge and notified to the authorized program officer without delay; and

(b) for the period of time specified in the plan or the authorization.
(5) Where an eligible person is kept in seclusion the person must—
(a) be supplied with bedding and clothing which is appropriate in the circumstances; and
(b) be provided with food and drink at the appropriate times; and
(c) be provided with adequate toilet arrangements.

(8) Any person who except as provided in this section—
(a) applies a mechanical or chemical means of bodily restraint to an eligible person; or
(b) keeps an eligible person in seclusion—

is guilty of an offence against this Act.

(9) The authorized program officer must at the end of each month prepare and send to the Intellectual Disability Review Panel a report specifying in each case—
(a) the form of mechanical or chemical means of bodily restraint or the period of time during which seclusion was used; and

(b) the reasons why mechanical or chemical means of bodily restraint or seclusion was used; and

(c) the effect on the eligible person's behaviour; and

(d) the name of the person who approved or authorized the use of mechanical or chemical means of bodily restraint or seclusion; and

(e) the name of the person who applied the mechanical or chemical means of bodily restraint or kept the eligible person in seclusion—

during that month.

44A. Fee payable by residents

(1) Without limiting any other power provided by or under this or any other Act, the designated officer of a contracted service provider that provides residential services or of a registered service that provides residential services may require a permanent or temporary resident to pay a reasonable fee (not exceeding the amount determined by the Secretary) in respect of the provision of food and the use of electricity, gas or oil during his or her period of residence.

(2) Without limiting any other power provided by or under this or any other Act, the Secretary may require a permanent or temporary resident in any premises operated by the Department and used to provide residential services to pay a reasonable fee in respect of the provision of food and the use of electricity, gas or oil during his or her period of residence.
(3) Sub-section (2) has no effect during any period when provision with respect to the matter dealt with by that sub-section is made by regulations made under section 78(1)(g).


Division 3A—The Holding of Trust Money on Behalf of Eligible Persons

45. Residents' Trust Fund

(1) The Secretary must keep a fund called the Residents' Trust Fund consisting of money held in trust on behalf of particular eligible persons at residential institutions, residential programs and participating residential services.

(2) The money in the Fund must be held in one or more of the following ways—

(a) in an account or accounts at an authorised deposit-taking institution in the name of the Secretary;

(b) as an investment or investments in accordance with section 50E;

(c) as cash in a secure place at a residential institution, residential program or participating residential service.

(3) The Secretary must ensure that money is only held under sub-section (2)(c) to cover likely withdrawals from the Fund and that the amount held does not exceed the limit specified under sub-section (4).
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(4) The Secretary must publish a notice in the Government Gazette specifying the maximum amount of money that may be held under subsection (2)(c) at each residential institution, residential program and participating residential service.

46. Money to be paid into the Fund by the Secretary

The Secretary must ensure that there is paid into the Residents' Trust Fund as soon as is practicable—

(a) any money that is received by any officer or employee of the Department from, or on behalf of, an eligible person at a residential institution or residential program for the benefit or use of the eligible person; and

(b) all income earned on any money in the Fund.

47. Money to be paid into the Fund by participating services

The designated officer of a participating residential service must ensure that any money that is received by any person working (whether for reward or not) at the service from, or on behalf of, an eligible person at the service for the benefit or use of the eligible person is paid into the Residents' Trust Fund as soon as is practicable after the money is received.

48. Money paid into Fund must be credited to relevant account

The Secretary must ensure that all money paid into the Residents' Trust Fund (other than income earned on money in the Fund) is credited as soon as is practicable to a trust account in the name of the eligible person entitled to the money.
49. Records to be kept by Secretary

(1) The Secretary must ensure that a financial management information system is maintained that records details of, and the purpose of, every transaction that takes place in relation to the Residents' Trust Fund.

(2) The system must show the entitlement at any time of an eligible person to the capital of the Fund.

(3) The Secretary may appoint agents or enter into any contract or arrangement for the provision of any services that the Secretary considers necessary to maintain the financial management information system referred to in sub-section (1).

50. How trust money received at non-participating services to be handled

(1) The designated officer of a non-participating residential service must ensure that any money that is received by any person working (whether for reward or not) at the service from, or on behalf of, an eligible person at the service for the benefit or use of the eligible person is paid into a trust account in the name of the eligible person kept at an authorised deposit-taking institution or other financial institution approved by the Secretary.

(2) The payment must be made as soon as is practicable, and in any event, must be made before the end of the next bank business day after the day on which the money is received.
(3) Despite sub-sections (1) and (2), money that is received at the service need not be paid into a trust account if it is paid to, or on behalf of, the eligible person or persons entitled to it within 7 days after it is received.

50A. Records to be kept by non-participating services

The designated officer of a non-participating residential service must maintain a financial management information system that records details of, and the purpose of, every transaction that takes place in relation to all trust money received at the service from, or on behalf of, an eligible person.

50B. Non-participating services may become participating services and vice-versa

(1) A non-participating residential service may elect to become a participating residential service.

(2) If such an election is made, the designated officer of the service must ensure that the money standing to the credit of each account, together with all income due to that account, is transferred to the Residents' Trust Fund on the date specified by the Secretary.

(3) On that date, the service becomes a participating registered service.

(4) A participating residential service may elect to become a non-participating residential service.

(5) If such an election is made, the Secretary must cause all the money in the Fund standing to the credit of eligible persons at the service, together
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(6) On the date the money in the Fund standing to the credit of the eligible persons at the service is transferred by the Secretary, the service becomes a non-participating residential service.

50C. Joint accounts

(1) If there is a requirement that money be credited to the trust account of the eligible person entitled to the money, that requirement is satisfied if that money is credited to a joint account that is in the names of 2 or more eligible persons.

(2) The Secretary must ensure that money is only credited to, or withdrawn from, a joint account in the Fund to enable the payment of house-keeping expenses (or other joint expenses approved by the Secretary) by, or on behalf of, the eligible persons in whose names the account is kept.

(3) The designated officer of a non-participating residential service must ensure that money is only deposited in, or withdrawn from, a joint account in the names of eligible persons at the service—

(a) to enable the payment of house-keeping expenses or other joint expenses by, or on behalf of, those eligible persons; or

(b) for a purpose set out in section 50D(2)(d) or (e).

50D. Withdrawal of money from the Fund and trust accounts

(1) The Secretary must ensure that money is only withdrawn from the Fund—

(a) to enable it to be paid to the eligible person entitled to that money; or
(b) to enable a person to buy goods or services for the benefit or use of the eligible person entitled to that money; or
(c) to pay the residents' amenities levy of the eligible person entitled to that money; or
(d) to recover money paid into the Fund in error; or
(e) to pay any expenses referred to in section 50F(3)(a).

(2) The designated officer of a non-participating residential service must ensure that money is only withdrawn from the trust account of an eligible person—
(a) to enable it to be paid to the eligible person; or
(b) to enable a person to buy goods or services for the benefit or use of the eligible person; or
(c) to enable it to be invested in accordance with section 50E; or
(d) to recover money paid into the account in error; or
(e) to pay financial institution charges or government duties in relation to the keeping of the account.

(3) A withdrawal may only be made under subsection (1)(b) or (2)(b) if the Secretary or the designated officer (as the case may be) has discussed the withdrawal with the person, and the person does not object to the withdrawal for that purchase.
(4) An eligible person may withdraw any money standing to his or her credit in the Fund or in his or her trust account at any time for any purpose.

50E. Investment of money

(1) The Secretary may invest any money in the Residents' Trust Fund that is not immediately required for use.

(2) The designated officer of a non-participating residential service may invest any money in an eligible person's trust account that is not immediately required for use by the eligible person.

(3) Money invested under this section may be invested in any manner in which money may be invested under the Trustee Act 1958.

(4) If a designated officer invests money under sub-section (2), he or she must ensure that the records of the investment can be viewed on request by the eligible person who is entitled to the money invested.

(5) For the purposes of this Act, any money invested under sub-section (2) is still to be regarded as money standing to the credit of the eligible person in that person's trust account.

50F. How interest etc. from trust money to be dealt with

(1) All income that results from the holding of money in the Residents' Trust Fund and in trust accounts kept by a non-participating residential service and from any investments made under section 50E and that remains after any deductions under subsection (3) have been made is to be credited to the
trust accounts in respect of which the income was earned.

(2) The Secretary or the designated officer of a non-participating residential service (as the case may be) must ensure that the crediting of income (if any) occurs—

(a) at least once a year; and

(b) proportionally in accordance with the amounts standing to the credit of the accounts over the period in respect of which the income was earned.

(3) Before distributing income, the Secretary or the designated officer may deduct from the income—

(a) any expenses necessarily incurred as a result of the keeping of the Fund or the making of any investments; and

(b) any loss incurred on the realisation of an investment.

(4) Any capital gain that is realised on an investment is to be treated for the purposes of this section as if it were income earned in the period in which the gain is realised.

50G. Limit on amount in an eligible person's account

(1) The amount standing to the credit of an eligible person in that person's trust account must not exceed the amount prescribed from time to time for the purposes of this section.

(2) If the Secretary or the designated officer considers that an amount to be credited to an eligible person's account will result in the amount standing to the credit of the eligible person exceeding the amount prescribed under sub-section (1), the Secretary or the designated officer must advise the eligible person, or arrange for the eligible person or the eligible person's representative to be
advised, to invest the money in an appropriate manner.

50H. Trust money must be paid when people leave institution, program or service

(1) When a person ceases to reside at any residential institution, residential program or participating residential service, the Secretary must pay all money standing to the credit of the person in the Resident's Trust Fund to the person or the person's representative.

(2) When a person ceases to reside at a non-participating residential service, the designated officer of the service must pay all money standing to the credit of the person in any trust account kept in respect of the person by the service to the person or the person's representative.

(3) The Secretary or designated officer must also pay any income the person is entitled to under section 50F to the person or the person's representative as soon as the amount is known.

(4) In the case of a joint account, the Secretary or the designated officer must pay the person or the person's representative a pro rata share of the money and income standing to the credit of the account.

50I. Secretary may require designated officer to fulfil Secretary's obligations

(1) In the case of a participating residential service, the Secretary may require the designated officer of the service to fulfil all or any part of the Secretary's obligations with respect to the service under this Division (other than the obligation imposed by section 45(4)).
(2) The Secretary must put the requirement in writing and give it to the designated officer.

(3) The designated officer must comply with any such requirement and is responsible for fulfilling any obligation to which the requirement relates.

(4) If the Secretary makes a requirement, the Secretary is no longer responsible for ensuring that the relevant obligation is fulfilled except in regard to matters related to the obligation that are beyond the designated officer's control.

50J. Residents' amenities levy

(1) Each eligible person at a residential institution must pay in to the Residents' Amenities Fund of that institution a residents' amenities levy in respect of each year.

(2) The amount of the levy at each residential institution is to be set each year by the Minister by notice published in the Government Gazette.

(3) The Minister may set a different amount for each residential institution.

(4) The Minister may only set an amount in respect of a residential institution after he or she has considered the views of the committee established at that residential institution under section 50K.

(5) If an eligible person is only at a residential institution for a part of a year, he or she is only liable to pay the levy pro rata in respect of the period for which he or she is at the institution.

50K. Amenities Consultative Committee

The Secretary is to appoint a committee at each residential institution consisting of eligible persons, the relatives of eligible persons and members of the institution's staff.
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50L. Residents' Amenities Funds

1. The Secretary must keep a fund called the Residents' Amenities Fund for each residential institution.

2. The Secretary must ensure that there is paid into the Fund kept in respect of an institution—
   (a) all residents' amenities levies paid by eligible persons at the institution; and
   (b) all money received by any officer or employee of the Department for the purpose of providing goods or services or other amenities for the benefit or use of eligible persons generally at that institution; and
   (c) all income earned on money in the Fund.

3. The Secretary must ensure that all money in the Fund is kept in an account or accounts at an authorised deposit-taking institution and that it is deposited in such an account as soon as is practicable after it is received.

50M. How the Residents' Amenities Fund is to be spent

1. The Secretary may withdraw money from a Residents' Amenities Fund.

2. The Secretary may only withdraw money from a Fund at a residential institution for the purposes of—
   (a) providing goods or services or other amenities for the benefit or use of eligible persons generally at that institution; and
   (b) recovering money paid into the Fund in error; and
(c) paying any expenses necessarily incurred in relation to the keeping of any account in which the money of the Fund is kept or the making of any investment under section 50O; and

(d) repaying any overpayment made by an eligible person leaving that institution.

(3) The Secretary must, after consulting with the committee established under section 50K, prepare an annual plan for the expenditure of the money in the Fund at each institution.

(4) In withdrawing money from the Fund, the Secretary must have regard to the annual plan.

50N. Records to be kept in respect of Residents' Amenities Funds

The Secretary must maintain a financial management information system in respect of each Residents' Amenities Fund that records details of, and the purpose of, every transaction that takes place in relation to the Fund.

50O. Investment of money in Residents' Amenities Funds

(1) The Secretary may invest any money in a Residents' Amenities Fund that is not immediately required for use in any manner in which money may be invested under the Trustee Act 1958.

(2) For the purposes of section 50L(2)(c), any capital gain made as the result of an investment under this section is to be treated as if it were income.
50P. Money in Funds may be mixed

(1) Money in a Residents' Amenities Fund may be held in the same account or investment as money in the Residents' Trust Fund.

(2) Any income from any such jointly held money must be divided between the relevant Funds in accordance with the proportion of that money that came from each Fund.

50Q. Sale of goods on closure of institution

(1) If the proclamation of a residential institution under section 17 is revoked, the Secretary must sell all goods that have been bought with money from the institution's Residents' Amenities Fund or any predecessor of that Fund.

(2) This does not apply to goods that, in the opinion of the Secretary, it is not possible to sell, and goods that have become fixtures.

50R. Distribution of Fund on closure of institution

(1) If the proclamation of a residential institution under section 17 is revoked, the Secretary must distribute the money in the institution's Residents' Amenities Fund together with the proceeds of any sale held as a result of section 50Q to each of the following people in equal shares—

(a) any eligible person who paid the residents' amenities levy in either of the 2 years immediately before the date the revocation of the proclamation took effect; and

(b) any eligible person who, in the opinion of the Minister, should receive a share of the money in the interests of fairness.
(2) The Secretary must do this within 6 months of the date the revocation of the proclamation took effect.

Division 4—Review of Decisions

51. Reviewable decisions

In this Division, "reviewable decision" means any of the following—

(a) a decision under section 8 or 8A as to whether or not a person is intellectually disabled or developmentally delayed, as the case requires;
(b) a decision as to the content of a general service plan under section 9;
(c) a decision relating to the amendment or review of a general service plan under section 10;
(ca) a decision under section 12B by the Secretary as to whether or not a person is intellectually disabled;
(d) a decision as to whether or not to admit a person to a residential institution under section 18;
(e) a decision relating to the detention or care of a security resident;
(f) a decision to use restraint or seclusion under section 44.

52. Application to review decision

(1) Any person who is aggrieved by a reviewable decision may within 30 days after the making of that decision—
(a) apply to the Secretary for a review of the decision; or
(b) apply to the Intellectual Disability Review Panel for a review of the decision.

(1A) If an application is made under sub-section (1)(a), the Secretary must ensure that the review of the decision is completed and the applicant notified of the outcome within 14 days after the receipt of the application.

(1B) An applicant under sub-section (1)(a) who, having been notified of the outcome of the review under sub-section (1A), is still aggrieved may within 14 days after being so notified apply to the Intellectual Disability Review Panel for a review of the decision.

(1C) Nothing in this section requires a person to apply under sub-section (1)(a) before making application to the Intellectual Disability Review Panel.

(1D) The executive officer must within 7 days after an application for review is made to the Intellectual Disability Review Panel (whether under sub-section (1)(b) or (1B)) cause notice of the making of the application to be given to the Secretary.

(2) The executive officer must at least 14 days before the day on which the review is to be held cause notice of the hearing to be given to—
(a) the person in respect of whom the decision was made; and
(b) the applicant; and
(c) the primary carer of the person in respect of whom the decision was made; and
(d) the Secretary; and
(e) any other person that the Intellectual Disability Review Panel directs be given notice.

(3) A notice under sub-section (2) must contain information with respect to—

(a) the time and place of the hearing; and

(b) the nature of the proceedings; and

(c) in the case of a notice given under subsection (2)(a) or (2)(b), the entitlement of that person to representation before the Intellectual Disability Review Panel.

(4) Upon hearing a review the Intellectual Disability Review Panel may make any recommendation it considers appropriate to the Secretary.

(5) The Secretary may accept or reject a recommendation of the Intellectual Disability Review Panel.

(6) Where the Secretary rejects a recommendation of the Intellectual Disability Review Panel the Secretary must forthwith give a statement in writing of reasons for rejecting the recommendation to—

(a) the Intellectual Disability Review Panel; and

(b) the persons given notice under sub-section (2); and

(c) the Minister.

(7) Upon receiving a statement under sub-section (6) the Intellectual Disability Review Panel may make a submission to the Minister.

(8) The Minister may take such action as the Minister considers appropriate on a submission under subsection (7).
Division 5—Community Visitors

53. Community visitors

(1) The Governor in Council may on the recommendation of the Public Advocate appoint community visitors for each region.

(2) Schedule 3 has effect with respect to community visitors.

54. Functions of a community visitor

(1) The functions of a community visitor are to visit any residential institution, residential program, contracted service provider that provides residential services or registered service that provides residential services in the region for which the community visitor is appointed and to inquire into—

(a) the appropriateness and standard of facilities for the accommodation, physical well-being and welfare of residents; and

(b) the adequacy of opportunities and facilities for the recreation, occupation, education and training of residents; and

(c) whether services are being provided in accordance with the principles specified in section 5; and

(d) the use of restraint and seclusion; and

(e) whether or not individual program plans are being complied with; and

(f) any failure to comply with the provisions of this Act; and
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(g) any complaint made to a community visitor by a resident.

(2) In addition to the functions set out in subsection (1) the functions of a community visitor include any functions conferred on community visitors under any other Act.

55. Certain persons deemed to be community visitors

(1) Any person who is appointed by the Minister or the Department for the purpose of any investigation in connection with the administration of this Act or the Disability Services Act 1991 is by virtue of that office or appointment deemed to be a community visitor for every region and has and may exercise all the powers conferred on a community visitor by this Act or the Disability Services Act 1991.

(2) Sub-section (1) does not require a person deemed to be a community visitor to perform any of the functions or duties of a community visitor.

56. Visiting of a residential institution

(1) A community visitor or a panel of community visitors may visit a residential institution, residential program, contracted service provider that provides residential services or registered service that provides residential services with or without any previous notice at such times and for such periods as the community visitor or panel thinks fit.

(2) Each residential institution must be visited at least once every month by a panel of community visitors for the region in which the residential institution is located.

(3) The Minister may direct a community visitor or a panel of community visitors to visit a residential institution, residential program, contracted service provider that provides residential services or
registered service that provides residential services at such times as the Minister directs.

57. Powers of inspection

(1) A community visitor is entitled when visiting a residential institution, residential program, contracted service provider or registered service to—

(a) inspect any part of the premises; and

(b) see any resident; and

(c) make enquiries relating to the admission and care of residents; and

(d) inspect any document relating to any resident and any records required to be kept by or under this Act.

(2) Where a community visitor wishes to perform or exercise or is performing or exercising any power, duty or function under this Act, the designated officer or senior officer and any member of the staff or management of the residential institution, residential program, contracted service provider or registered service must provide the community visitor with such reasonable assistance as the community visitor requires to perform or exercise that power, duty or function effectively.

(3) Any designated officer, senior officer or member of the staff or management of a residential institution, residential program, contracted service provider or registered service who—

(a) unreasonably refuses or neglects to render assistance when required to do so under subsection (2); or

(b) does not give full and true answers to the best of that person's knowledge to any questions asked by a community visitor in
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the performance or exercise of any power, duty or function under this Act; or

(c) assaults, obstructs, hinders, threatens, intimidates or attempts to obstruct or intimidate a community visitor visiting a residential institution, residential program, contracted service provider or registered service—

is guilty of an offence against this Act and liable to a penalty of not more than 25 penalty units.

58. Request to see a panel of community visitors

(1) Any resident in a residential institution, residential program, contracted service provider that provides residential services or registered service that provides residential services or any person on behalf of the resident may request the designated officer or senior officer to arrange for the resident to be seen by a community visitor.

(2) The designated officer or senior officer must within 7 days of receiving a request under sub-section (1) advise one of the community visitors for the region that a request has been made.

Penalty: 2 penalty units.

(3) After seeing a resident requesting to be seen, the community visitor may submit a report to the Secretary containing such recommendations as he or she considers appropriate.

59. Record of visits

The designated officer or senior officer must keep a record in the prescribed form of visits by community visitors.

Penalty: 2 penalty units.
60. Reports by community visitors

(1) The community visitors for a region must at least twice a year submit a report on visits made since the last report to the Public Advocate.

(2) The Minister may require a panel of community visitors to report to the Minister on any matter specified by the Minister at the time and in the manner directed by the Minister.

(3) A community visitor, panel of community visitors or the community visitors for a region may at any time submit a report to the Minister where the community visitor or community visitors consider that any matter should be considered personally by the Minister.

61. Community Visitors Board

(1) There is established a Board to be known as the Community Visitors Board.

(2) The Community Visitors Board consists of—

(a) the Public Advocate; and

(b) two community visitors elected in accordance with the regulations by community visitors.

(3) The functions of the Community Visitors Board are—

(a) to represent community visitors; and

(b) to prepare and circulate publications explaining the role of community visitors; and

(c) to supervise the training of community visitors; and

(d) to prepare an annual report.
62. Annual report of community visitors

(1) The Community Visitors Board must as soon as practicable after the end of each financial year and not later than the following 30 September submit to the Minister a report on the activities of community visitors during the financial year.

(2) The Minister must cause the annual report of the community visitors to be laid before the Legislative Council and the Legislative Assembly before the expiration of the fourteenth sitting day of the Legislative Council or the Legislative Assembly as the case may be after the annual report has been received by the Minister.

62A. Secrecy provision

(1) Unless sub-section (2) applies, a person who is or has been, at any time, a community visitor must not, either directly or indirectly—

(a) make a record of; or

(b) divulge or communicate to any person; or

(c) make use of—any information, that is or was acquired by the person because the person is or was appointed as a community visitor, for any purpose, except to the extent necessary for the person—

(d) to perform any official duties; or

(e) to perform or exercise any function or power under this Act.

Penalty: 50 penalty units.

(2) Sub-section (1) does not prevent a person from—

(a) producing a document to a court in the course of criminal proceedings or in the course of any proceedings under this Act; or
(b) divulging or communicating to a court, in the course of any proceedings referred to in paragraph (a), any matter or thing coming under the notice of the person in the performance of official duties or in the performance of a function or in the exercise of a power referred to in sub-section (1); or  

(c) producing a document or divulging or communicating information that is required or permitted by any Act to be produced, divulged or communicated, as the case may be, if, where the document or information relates to the personal affairs of another person, that other person has given consent in writing.

Division 6—Information on Rights

63. Statement of rights

(1) Every person must upon admission to a residential institution, residential program, contracted service provider that provides residential services or registered service that provides residential services be given a printed statement advising the person as to legal rights and other entitlements under this Act.

(2) A copy of the statement under sub-section (1) must be sent or given to the primary carer.

(3) The statement under sub-section (1) may be printed in different languages so that wherever possible a person can be given a copy of the statement printed in a language with which the person is familiar.

(4) Where a person appears to be incapable of reading and understanding the statement under sub-section (1) arrangements must be made to convey the information to the person in the language,
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64. Information to be provided

There must be kept at a place readily accessible to all persons resident in a residential institution, residential program, contracted service provider that provides residential services or registered service that provides residential services—

(a) copies of this Act and the Guardianship and Administration Act 1986 and any publications prepared by the Department for the purpose of explaining the provisions of the Acts;

(b) copies of the statement under section 63(1); and

(c) the address to which a person may write to and the business telephone number of the following:

   (i) The Intellectual Disability Review Panel;

   (ii) The Public Advocate;

   (iii) The Secretary;

   (iv) The community visitors;

   (v) Victoria Legal Aid;

   (vi) The Ombudsman.
PART 6—GENERAL

Division 1—Administration

65. Power of delegation

The Secretary may by instrument of delegation delegate to any officer or employee of the Department any power, duty or function of the Secretary other than this power of delegation.

66. Appointment of medical practitioners

(1) There are to be appointed or employed by the Department as officers or employees of the Department as many registered medical practitioners as are necessary for the purposes of this Act.

67. Provision of staff services

(1) The Secretary may having regard to the objectives and functions of the Department under this Act, make available to an association or organization providing residential or non-residential services the services of any person or class of persons employed in the Department under the Public Administration Act 2004.
(2) A person or class of persons whose services are made available under sub-section (1) to an association or organization remains subject to the Public Administration Act 2004 but may be subject to the direction and control of the association or organization for the purposes of duty in the assigned role to the extent and subject to any conditions determined and agreed to by the Secretary which cannot be less favourable than under the Public Administration Act 2004.

68. Special powers of Secretary

(1) The Secretary may at any time the Secretary thinks fit visit any contracted service provider, registered service or proclaimed service.

(2) The Secretary is entitled when visiting any contracted service provider, registered service or proclaimed service to—

(a) inspect any part of the premises; and

(b) see any person who is receiving services; and

(c) make inquiries relating to the admission and care of residents; and

(d) inspect any document relating to any person who is receiving services and any records required to be kept by or under this Act.

(3) The Secretary may by an order in writing directed to the person in charge of any contracted service provider, registered service or proclaimed service direct that the person specified in the order be allowed to see a person receiving services specified in the order subject to compliance with such conditions as may be specified in the order.
(4) Where the Secretary wishes to perform or exercise or is performing or exercising any power, duty or function under this Act, the person in charge and every member of the staff or management of any contracted service provider, registered service or proclaimed service must provide the Secretary with such reasonable assistance as the Secretary requires to perform or exercise that power, duty or function effectively.

(5) Any person in charge or member of the staff or management of any contracted service provider, registered service or proclaimed service who—

(a) unreasonably refuses or neglects to render assistance when required to do so under subsection (4); or

(b) does not give full and true answers to the best of that person's knowledge to any questions asked by the Secretary in the performance or exercise of any power, duty or function under this Act; or

(c) assaults, obstructs, hinders, threatens, intimidates or attempts to obstruct or intimidate the Secretary while visiting the premises—

is guilty of an offence against this Act and liable to a penalty of not more than 25 penalty units.

(6) Where the Secretary visits any contracted service provider, registered service or proclaimed service the visit must 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

69. Immunity from suit

No civil or criminal proceedings lies against any person for anything done in good faith and with reasonable care in reliance on any authority or document apparently given or made in accordance with the requirements of this Act.

70. Special payments

Where the Department with the approval of the Minister is satisfied that it is desirable for an eligible person to be provided with services specified in a general service plan the Department may make such payments as it considers appropriate to enable the provision of those services.

71. Specific purpose grants

The Department may with the approval of the Minister and having regard to its aim and objectives under this Act make a specific purpose grant to a municipal council or a non-government organization out of money available for the purpose.

72. Contempt of Intellectual Disability Review Panel

A person must not—

(a) insult a member of the Intellectual Disability Review Panel in or in relation to the exercise of the powers or functions as a member; or

(b) repeatedly interrupt the proceedings of the Intellectual Disability Review Panel; or

(c) create a disturbance or take part in creating or continuing a disturbance in or near a place where the Intellectual Disability Review Panel is sitting; or
(d) do any other act or thing that would, if the Intellectual Disability Review Panel were a Court of Record constitute a contempt of that Court.

Penalty: 10 penalty units.

73. Giving of notice

(1) The notice required to be given to the person specified in section 52(2)(a) must be given personally to the person in accordance with this section.

(2) The contents of any notice referred to in sub-section (1) must be explained by the person serving the notice to the maximum extent possible to the person in the language, mode of communication and terms which that person is most likely to understand.

(3) An explanation given under sub-section (2) must where possible be given both orally and in writing.

(4) Where a notice is required to be given to a person other than a person to which sub-section (1) applies the notice may be given to that person by sending the notice by pre-paid post to that person at the person's usual or last known place of residence or business.

(5) Unless the contrary is proved a notice by pre-paid post is deemed to have been given to that person at the time at which the notice would be delivered in the ordinary course of post.

(6) Where except for this sub-section notice would be required to be given to a person in more than one capacity it is sufficient compliance with this Act if notice is given to that person in one of those capacities.
74. **Hearing not to be invalidated by failure to give notice**

A hearing or recommendation of the Intellectual Disability Review Panel is not invalidated or affected by reason only of a failure to give notice to a person other than the person specified in section 52(2)(a).

75. **Judicial notice**

All courts and persons acting judicially must take judicial notice of the signature of any person who is or has been the Secretary, President or executive officer or a member of the Intellectual Disability Review Panel and of the fact that that person is or was the Secretary, President, executive officer or a member as the case may be.

76. **General penalty**

A person who contravenes any provision of this Act is guilty of an offence against this Act and liable if no penalty is expressly provided to a penalty of not more than 20 penalty units.

77. **Offences by bodies corporate**

(1) Where a person charged with an offence against this Act is a body corporate, any person who is concerned or takes part in the management of that body corporate may be charged with a like offence.

(2) Where a body corporate is convicted of an offence against this Act a person charged under this section with the like offence may also be convicted of that offence and is liable to the penalty for that offence unless that person proves that the act or omission constituting the offence took place without that person's knowledge or consent.
77A. Protection against breach of trust

(1) A cause of action does not lie in respect of any breach of trust or fiduciary duty by reason of any failure to pay to, or credit to the account of, a resident in a relevant institution any money earned on the investment of money held in trust by that relevant institution for that resident.

(2) This section only applies to breaches that occurred before the commencement of section 4 of the Intellectually Disabled Persons' Services (Trust Money) Act 1992.

(3) In sub-section (1), "relevant institution" means—
(a) any training centre proclaimed under section 24(1)(c) of the Mental Health Act 1959; and
(b) the following institutions operated by the Department on 24 November 1987—
(i) St. Gabriel's;
(ii) Pleasant Creek;
(iii) Sandhurst;
(iv) Colanda.

Division 3—Regulations

78. Regulations

(1) The Governor in Council may make regulations for or with respect to—
(a) prescribing forms to be used for the purposes of this Act; and
(b) prescribing fees for the purposes of this Act; and
(c) the form and content of general service plans, individual program plans, regional plans and state plans; and

(d) procedures of Intellectual Disability Planning Committees; and

(e) the information to be provided and recorded under section 16; and

(f) the procedure to be followed by the Intellectual Disability Review Panel; and

(g) prescribing scales of fees or charges if any for the accommodation or care of or for services rendered to any eligible person who is a resident in a residential institution or a residential program which take into account the level of income of the person, the financial needs of the person's family and the financial costs of the person's return to the community; and

(h) the design, construction, equipping, furnishing, maintenance, administration and staffing of and the provision of facilities and services by residential institutions and residential programs; and

(i) matters relating to the rights and privileges of eligible persons in residential institutions and residential programs including the visiting of eligible persons; and

(j) prescribing the keeping and form of any records, registers or other documents as may be necessary for the administration of this Act; and

(k) any matter or thing authorized or required to be prescribed or necessary to be prescribed for carrying this Act into effect.
(2) Regulations made under this Act—

(a) may be of general or of specially limited application; and

(b) may differ according to differences in time, place or circumstance; and

(c) may leave any matter or thing to be from time to time determined, applied, dispensed with or regulated by any government department, municipal council or public authority or any officer thereof; and

(d) may confer powers or impose duties in connection with the regulations on any government department, municipal council or public authority; and

(e) may apply, adopt or incorporate, with or without modification, the provisions of any Act or of any regulations made under any Act as in force at a particular time; and

(f) may apply, adopt or incorporate with or without modification, any matter contained in any document, code, standard, rule, specification or method formulated, issued, prescribed or published by any authority or body as formulated, issued, prescribed or published at the time the regulation is made or at any time before the regulation is made; and

(g) may impose a penalty not exceeding 10 penalty units for any contravention of the regulations.
PART 7—TRANSITIONAL


The substitution of the definition of "region" by section 8 of the Community Visitors Legislation (Miscellaneous Amendments) Act 2001 does not affect anything done under this Act before the commencement of that section for the purposes of a region.
Intellectually Disabled Persons' Services Act 1986
Act No. 53/1986

SCHEDULES

SCHEDULE 1

PROVISIONS WITH RESPECT TO MEMBERS OF THE INTELLECTUAL DISABILITY REVIEW PANEL

1. The President

The President—

(a) is to be appointed by the Governor in Council; and

(b) holds office for a period of five years; and

(c) is eligible for re-appointment at the end of the term of office; and

(d) is entitled to be paid—

(i) such remuneration as is from time to time fixed by the Governor in Council; and

(ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and

(e) is not in respect of the office of President subject to the Public Administration Act 2004 (other than Part 5 of that Act).

2. Ordinary members

(1) Each member of the Intellectual Disability Review Panel other than the President—

(a) is to be appointed by the Governor in Council on the nomination of the Minister; and

(b) holds office for a period of three years; and
(c) is eligible for re-appointment at the end of the term of office; and

(d) is entitled to be paid—

(i) such remuneration as is from time to time fixed by the Governor in Council; and

(ii) such travelling and other allowances as are from time to time fixed by the Governor in Council; and

(e) is not in respect of the office of member subject to the Public Administration Act 2004 (other than Part 5 of that Act).

(2) In nominating persons for appointment to the Intellectual Disability Review Panel, the Minister must have regard to—

(a) the functions of the Intellectual Disability Review Panel; and

(b) the need for the Intellectual Disability Review Panel to be comprised of both males and females so qualified by knowledge and experience that the Intellectual Disability Review Panel is capable of performing its functions; and

(c) the need for the Intellectual Disability Review Panel to be comprised of persons who reside in each region.

(3) In the case only of the first appointment of the members of the Intellectual Disability Review Panel—

(a) as nearly as possible to half the number of members so appointed are to hold office for a term of two years from their respective appointments; and

(b) the remainder of the members first appointed are to hold office for a term of three years from their respective appointments—

but thereafter all appointments are to be for a term of three years.
3. Acting members

(1) Where a member is unable, whether on account of illness or otherwise, to perform the duties of office, the Governor in Council may appoint a suitable person to act as that member during the period of inability.

(2) Where a person has been appointed to act as a member during the period of inability of a member and that member ceases to hold office without having resumed the performance of the duties of office, the period of appointment of the person so appointed is deemed to continue until the appointment is terminated by the Governor in Council or until the expiration of the period of twelve months after the date on which the member ceases to hold office, whichever first occurs.

(3) A person appointed to act as a member while so acting—

(a) has all the powers and may perform all the duties of the member for whom that person is acting; and

(b) is entitled to be paid—

(i) such remuneration as is from time to time fixed by the Governor in Council; and

(ii) such travelling and other allowances as are from time to time fixed by the Governor in Council.

(4) Where a person has been appointed to act as a member and the appointment to act as such expires (whether by reason of the effluxion of time or of the fact that the member for whom that person is acting has resumed the performance of the duties of the office or the relevant vacancy has been filled) at a time when the acting member is engaged in the hearing of any matter by the Intellectual Disability Review Panel, the period of appointment of that person is deemed to continue until that matter has been finally determined by the Intellectual Disability Review Panel.

4. Removal of President from office

The Governor in Council may suspend or remove the President from office.
5. General provisions as to members

(1) The Governor in Council may in the instrument of appointment of a person as a member specify terms and conditions of appointment.

(2) The Governor in Council may, on the recommendation of the Minister made after consultation with the President remove or suspend any member other than the President from office.

(3) A member may resign from the office of member by writing signed by the member and delivered to the Governor in Council.

(5) If any member—

(a) becomes bankrupt; or

(b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

(c) becomes incapable of performing the duties of a member; or

(d) is removed from office or resigns; or

(f) dies—

the office held by that member becomes vacant.

(6) If the appointment of any member expires at a time when that member is engaged in the hearing of any matter by the Intellectual Disability Review Panel, the period of appointment of that person is deemed to continue until that matter has been finally determined by the Intellectual Disability Review Panel.
SCHEDULE 2

PROVISIONS WITH RESPECT TO THE PROCEDURES OF THE INTELLECTUAL DISABILITY REVIEW PANEL

1. Panel to sit in divisions

(1) The functions, powers and duties conferred or imposed upon the Intellectual Disability Review Panel may be exercised by a division of the Intellectual Disability Review Panel for each region.

(2) A division consists of three members selected by the President, of whom—

(a) one member must be a psychologist; and

(b) one member must be an officer or employee of the Department; and

(c) one member must be a person appointed to the Intellectual Disability Review Panel to represent the views and opinions of members of the community.

(3) In selecting the members of a division the President must ensure that—

(a) the division consists of both males and females; and

(b) not more than one person subject to the Public Administration Act 2004 is appointed to a division; and

(c) a person other than a person subject to the Public Administration Act 2004 is appointed the chairperson of the division.

(4) The President may act as a member of any division.
2. Procedure of divisions

(1) A matter arising for determination by a division is to be determined by a majority of votes of the members of the division.

(2) An act or recommendation of a division is not invalidated by reason only of a defect or irregularity in the appointment of a member or in the selection of that person as a member of a division or, in the case of a person appointed to act as a member under clause 3 of Schedule 1 on the ground that the occasion for so acting had not arisen or had ceased.

(3) Subject to this Act and the regulations, the procedure of a division is in its discretion.

3. Directions as to arrangement of business and procedure

The President after consultation with the other members of the Intellectual Disability Review Panel may give directions as to—

(a) the arrangement of the business of the Intellectual Disability Review Panel; and

(b) the procedure of the Intellectual Disability Review Panel.

4. Sittings of Panel

The Intellectual Disability Review Panel must sit—

(a) at such times; and

(b) at such places—

as the President determines.
SCHEDULE 3

PROVISIONS WITH RESPECT TO COMMUNITY VISITORS

1. Community visitors

   (1) Each community visitor—

      (a) holds office for a period of three years; and

      (b) is eligible for re-appointment at the end of the term of office; and

      (c) is entitled to be paid such fees and travelling and other allowances as are from time to time fixed by the Governor in Council; and

      (d) is not in respect of the office of community visitor subject to the provisions of the Public Administration Act 2004.

   (2) A person can not be appointed as a community visitor if that person—

      (a) holds any appointment or employment with the Department; or

      (b) has any direct interest in any contract with the Department.

   (3) In nominating persons for appointment as community visitors the Public Advocate must as far as practicable nominate an equal number of males and females.

   (4) Any three community visitors for a region constitutes a panel of community visitors for that region.
Intellectually Disabled Persons' Services Act 1986
Act No. 53/1986

2. General provisions as to community visitors

(1) The Governor in Council may, in the instrument of appointment of a person as a community visitor specify terms and conditions of appointment.

(2) The Governor in Council may on the recommendation of the Public Advocate remove a community visitor from office.

(3) A person may resign from the office of community visitor by writing signed by that person and delivered to the Governor in Council.

(5) If a community visitor—

(a) becomes bankrupt; or

(b) is convicted of an indictable offence or of an offence which, if committed in Victoria, would be an indictable offence; or

(c) becomes incapable of performing the duties of the office of community visitor; or

(d) is removed from office or resigns from office; or

(e) dies—

the office of that community visitor becomes vacant.

* * * * *

Sch. 3 cl. 2(4) repealed by No. 49/1988 s. 198(a).

Sch. 3 cl. 2(5)(e) repealed by No. 49/1988 s. 198(b).

Sch. 4 amended by No. 57/1989 s. 3(Sch. item 103), repealed by No. 68/1992 s. 114(Sch. 7 item 1.11).
ENDNOTES

1. General Information

Minister's second reading speech—

Legislative Assembly: 28 November 1985
Legislative Council: 8 April 1986

The long title for the Bill for this Act was "A Bill to provide for the care, treatment and protection of intellectually disabled persons, to define the role of the Minister and Department of Community Services with respect to intellectually disabled persons and the provision of services, to establish an Intellectual Disability Review Panel and for other purposes.".

The Intellectually Disabled Persons' Services Act 1986 was assented to on 27 May 1986 and came into operation as follows:

2. Table of Amendments

This Version incorporates amendments made to the **Intellectually Disabled Persons' Services Act 1986** by Acts and subordinate instruments.

<table>
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<tr>
<th>Act Title</th>
<th>Assent Date</th>
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<tr>
<td><strong>Intellectually Disabled Persons' Services (Amendment) Act 1987, No. 74/1987</strong></td>
<td>24.11.87</td>
<td>24.11.87: Special Gazette (No. 50) 24.11.87 p. 1</td>
<td>All of Act in operation</td>
</tr>
<tr>
<td><strong>Health Services Act 1988, No. 49/1988</strong></td>
<td>24.5.88</td>
<td>S. 196 on 1.10.86: s. 2(2); ss 194, 195, 197, 198 on 1.7.88: Government Gazette 29.6.88 p. 1896</td>
<td>This information relates only to the provision/s amending the <strong>Intellectually Disabled Persons' Services Act 1986</strong></td>
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<td><strong>Intellectually Disabled Persons' Services (Amendment) Act 1989, No. 60/1989</strong></td>
<td>12.9.89</td>
<td>S. 20 on 10.12.85: s. 2(2); rest of Act on 1.11.89: Government Gazette 1.11.89 p. 2799</td>
<td>All of Act in operation</td>
</tr>
<tr>
<td><strong>Public Sector Management Act 1992, No. 68/1992</strong></td>
<td>19.11.92</td>
<td>S. 114(Sch. 7 item 1) on 24.11.92: Special Gazette (No. 62) 24.11.92 p. 1</td>
<td>This information relates only to the provision/s amending the <strong>Intellectually Disabled Persons' Services Act 1986</strong></td>
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<td><strong>Employee Relations Act 1992, No. 83/1992</strong></td>
<td>24.11.92</td>
<td>S. 184(Sch. 6 item 10) on 1.3.93: Special Gazette (No. 63) 27.11.92 p. 1</td>
<td>This information relates only to the provision/s amending the <strong>Intellectually Disabled Persons' Services Act 1986</strong></td>
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#### Act No. 53/1986

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<tr>
<td>Health and Community Services (Further Amendment) Act 1993, No. 124/1993</td>
<td>7.12.93</td>
<td>All of Act (except Pt 3 (ss 4–8)) on 7.12.93; Pt 3 on 18.12.94: Government Gazette 15.12.94 p. 3308</td>
<td>All of Act in operation</td>
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<tr>
<td>Medical Practice Act 1994, No. 23/1994</td>
<td>17.5.94</td>
<td>Ss 1, 2 on 17.5.94; s. 2(1); rest of Act on 1.7.94: Government Gazette 23.6.94 p. 1672</td>
<td>All of Act in operation</td>
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<tr>
<td>Financial Management (Consequential Amendments) Act 1994, No. 31/1994</td>
<td>31.5.94</td>
<td>Ss 1, 2 on 31.5.94; s. 3, Sch. 1 (except item 60) on 7.7.94: Government Gazette 7.7.94 p. 1878—see Interpretation of Legislation Act 1984; s. 4, Sch. 2 on 1.1.95: Government Gazette 28.7.94 p. 2055; Sch. 1 item 60 was never proclaimed, repealed by No. 75/1994</td>
<td>All of Act in operation</td>
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<tr>
<td>Intellectually Disabled Persons' Services (Amendment) Act 1994, No. 76/1994</td>
<td>22.11.94</td>
<td>Ss 1, 2 on 22.11.94; s. 2(1); s. 9 on 1.10.87: s. 2(2); ss 3–8, 10–18 on 1.6.95: s. 2(4)</td>
<td>All of Act in operation</td>
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<td>Legal Aid Commission (Amendment) Act 1995, No. 48/1995</td>
<td>14.6.95</td>
<td>S. 11(5) on 14.12.95: s. 2(3)</td>
<td>This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986</td>
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<td>Trustee and Trustee Companies (Amendment) Act 1995, No. 104/1995</td>
<td>5.12.95</td>
<td>1.1.96: s. 2</td>
<td>All of Act in operation</td>
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### Intellectually Disabled Persons' Services Act 1986
**Act No. 53/1986**

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<tr>
<td>Corrections (Amendment) Act 1996, No. 45/1996</td>
<td>26.11.96</td>
<td>S. 18(Sch. 2 items 8.1–8.7) on 6.2.97: Government Gazette 6.2.97 p. 257</td>
<td>This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986</td>
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<tr>
<td>Commonwealth Powers (Industrial Relations) Act 1996, No. 59/1996</td>
<td>12.12.96</td>
<td>S. 10(Sch. 2 item 10) on 1.1.97: Special Gazette (No. 146) 23.12.96 p. 15</td>
<td>This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986</td>
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<td>Crimes (Mental Impairment and Unfitness to be Tried) Act 1997, No. 65/1997</td>
<td>18.11.97</td>
<td>Ss.83–85 on 18.4.98: s. 2(3)</td>
<td>This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986</td>
</tr>
<tr>
<td>Disability Services and Other Acts (Amendment) Act 1997, No. 72/1997</td>
<td>25.11.97</td>
<td>Ss 20–23 on 25.11.97: s. 2(1)</td>
<td>This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986</td>
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<tr>
<td>Public Sector Reform (Miscellaneous Amendments) Act 1998, No. 46/1998 (as amended by No. 12/1999)</td>
<td>26.5.98</td>
<td>S. 7(Sch. 1) on 1.7.98: s. 2(2)</td>
<td>This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986</td>
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<tr>
<td>Tribunals and Licensing Authorities (Miscellaneous Amendments) Act 1998, No. 52/1998</td>
<td>2.6.98</td>
<td>S. 311(Sch. 1 item 44) on 1.7.98: Government Gazette 18.6.98 p. 1512</td>
<td>This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986</td>
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<tr>
<td>Public Sector Reform (Further Amendments) Act 1999, No. 12/1999</td>
<td>11.5.99</td>
<td>S. 4(Sch. 2 item 8) on 11.5.99: s. 2(1)</td>
<td>This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986</td>
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Endnotes
**Intellectually Disabled Persons' Services Act 1986**  
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### Endnotes

**Disability Services (Amendment) Act 2000, No. 19/2000**
- **Assent Date:** 16.5.00
- **Commencement Date:** Ss 8–10 on 1.7.01: s. 2(3)
- **Current State:** This information relates only to the provision/s amending the *Intellectually Disabled Persons' Services Act 1986*

**Health Records Act 2001, No. 2/2001**
- **Assent Date:** 10.4.01
- **Commencement Date:** S. 109 on 1.3.02: Government Gazette 28.2.02 p. 318
- **Current State:** This information relates only to the provision/s amending the *Intellectually Disabled Persons' Services Act 1986*

- **Assent Date:** 8.5.01
- **Commencement Date:** S. 3(Sch. item 37) on 1.6.01: s. 2(2)
- **Current State:** This information relates only to the provision/s amending the *Intellectually Disabled Persons' Services Act 1986*

**Corrections (Custody) Act 2001, No. 45/2001**
- **Assent Date:** 27.6.01
- **Commencement Date:** S. 42 on 1.3.02: s. 2(2)
- **Current State:** This information relates only to the provision/s amending the *Intellectually Disabled Persons' Services Act 1986*

**Community Visitors Legislation (Miscellaneous Amendments) Act 2001, No. 51/2001**
- **Assent Date:** 25.9.01
- **Commencement Date:** Ss 8–11 on 1.2.02: s. 2(2)
- **Current State:** This information relates only to the provision/s amending the *Intellectually Disabled Persons' Services Act 1986*

**Forensic Health Legislation (Amendment) Act 2002, No. 7/2002**
- **Assent Date:** 9.4.02
- **Commencement Date:** S. 35 on 1.7.02: s. 2(3)
- **Current State:** This information relates only to the provision/s amending the *Intellectually Disabled Persons' Services Act 1986*

- **Assent Date:** 21.12.04
- **Commencement Date:** S. 117(1)(Sch. 3 item 104) on 5.4.05: Government Gazette 31.3.05 p. 602
- **Current State:** This information relates only to the provision/s amending the *Intellectually Disabled Persons' Services Act 1986*
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Legal Profession (Consequential Amendments) Act 2005, No. 18/2005

Assent Date: 24.5.05
Commencement Date: S. 18(Sch. 1 item 52) on 12.12.05: Government Gazette 1.12.05 p. 2781
Current State: This information relates only to the provision/s amending the Intellectually Disabled Persons' Services Act 1986
3. Explanatory Details

1 S. 7(4): Section 18(1) of the *Intellectually Disabled Persons' Services (Amendment) Act 1994*, No. 76/1994 reads as follows:

**18. Transitional provisions**

(1) The amendment of the Principal Act made by section 6(2) applies to requests for assessment received before as well as after the commencement of that section.

2 S. 7(5): See note 1.

3 S. 8: Section 18(2) of the *Intellectually Disabled Persons' Services (Amendment) Act 1994*, No. 76/1994 reads as follows:

**18. Transitional provisions**

(2) The amendment of the Principal Act made by section 7 applies only with respect to assessments commenced after the commencement of that section, irrespective of when the request for assessment was received.

4 S. 8A: See note 3.

5 S. 23: Section 20 of the *Health and Community Services (Further Amendment) Act 1993*, No. 124/1993 reads as follows:

**20. Transitional provision**

The *Intellectually Disabled Persons' Services Act 1986* as amended by this Part applies to any municipality or non-government organisation registered under section 23 before the commencement of this Part as a residential service or a non-residential service as if it were registered under that section as a registered service.
Intellectually Disabled Persons' Services Act 1986
Act No. 53/1986

6 S. 33: Section 18(3) of the Intellectually Disabled Persons' Services (Amendment) Act 1994, No. 76/1994 reads as follows:

18. Transitional provisions

(3) The amendment of the Principal Act made by section 14 applies only with respect to hearings begun before the Intellectual Disability Review Panel after the commencement of that section.

7 Pt 5 Div. 3A (ss 45–50R): Sections 5–8 of the Intellectually Disabled Persons' Services (Trust Money) Act 1992, No. 62/1992 read as follows:

5. Transitional provision—transfer of money from old system to new system

(1) The Secretary to the Department of Health and Community Services must ensure that—

(a) all money standing to the credit of any eligible person in the Residents' Trust Account at each residential institution; and

(b) any trust money standing to the credit of any eligible person at a residential program—at the end of the day before this Act comes into operation is transferred to the Residents' Trust Fund and credited to that eligible person at the start of the day this Act comes into operation.

(2) On the day this Act comes into operation, the Secretary must ensure that all money standing to the credit of the Resident Amenities Account in respect of a residential institution at the start of that day is transferred to that institution's Residents' Amenities Fund.

(3) Sub-section (2) does not apply to any former residential institution.
6. Transitional provision concerning the Act in its previous form

(1) The Secretary to the Department of Health and Community Services must fulfil the obligations placed on each senior officer under sections 48(4) and (5) of the *Intellectually Disabled Persons' Services Act 1986* as in force immediately before the commencement of this Act in respect of the period starting on the day after the last transfer under section 48(4) and ending on the day before the commencement of this Act.

(2) Any surplus money in the Interest Account after this has been done is deemed to have been in the institution's Residents' Amenities Account on the date this Act came into operation.

(3) Despite section 48(5), all interest payable to an eligible person must be paid—

(a) into the Residents' Trust Fund and must be credited to that eligible person; or

(b) if the proclamation of a residential institution has been revoked, must be paid to that person.

7. Transitional provision for closures within 2 years

If the proclamation of a residential institution as such an institution is revoked within 2 years after the commencement of this Act, in addition to the people referred to in paragraphs (a) and (b) of section 50R(1) of the *Intellectually Disabled Persons' Services Act 1986*, the Secretary to the Department of Health and Community Services must also give an equal share of the money and proceeds referred to in that section to any eligible person who was a resident at the institution at any time within the 2 years immediately before the revocation of the proclamation took effect.
8. Provision for closures within the last 3 years

(1) This section applies to any former residential institution under the Intellectually Disabled Persons' Services Act 1986 that had its proclamation as a residential institution revoked in the 3 years before the commencement of this Act.

(2) The Secretary to the Department of Health and Community Services must within 6 months of the commencement of this Act—

(a) sell all goods that have been bought with money from the institution's Residents' Amenities Account (other than goods, that in the opinion of the Secretary, it is not possible to sell, and goods that have become fixtures); and

(b) give an equal share of the proceeds from such sales and the money in the Residents' Amenities Account to—

(i) any eligible person who was a resident at the institution at any time in the 2 years immediately before the revocation of the proclamation took effect; and

(ii) any eligible person who, in the opinion of the Minister, should receive a share of the money in the interests of fairness.

8 S. 52(1): Section 18(4) of the Intellectually Disabled Persons' Services (Amendment) Act 1994, No. 76/1994 reads as follows:

18. Transitional provisions

(4) The amendment of the Principal Act made by section 17 applies to reviewable decisions made before as well as after the commencement of that section.

9 S. 52(1A): See note 8.
10 S. 52(1B): See note 8.
12 S. 52(1D): See note 8.
13 S. 66(2): The proposed amendment to section 66(2) by section 184(Sch. 6 item 10) of the Employees Relations Act 1992, No. 83/1992 is not included in this publication because section 66(2) had been repealed before the proposed amendment came into operation.