

Human Services (Complex Needs) Act 2009
No. 16 of 2009

TABLE OF PROVISIONS

<i>Section</i>	<i>Page</i>
PART 1—PRELIMINARY	1
1 Purpose	1
2 Commencement	2
3 Definitions	2
4 Guiding principles	3
PART 2—ELIGIBILITY AND CARE PLANS	4
Division 1—General	4
5 Consultation with expert advisers	4
6 Delegation	4
Division 2—Determination of eligibility	4
7 Who is an eligible person?	4
8 Secretary to determine eligibility of person	5
9 Notice to be given to persons before determination is made	5
10 Secretary to notify person of determination of eligibility	7
Division 3—Care plans	7
11 Contract for assessment of eligible persons and development of care plans	7
12 Development and approval of care plan	8
13 What does development of a care plan involve?	8
14 Seeking and disclosing information for purposes of developing a care plan	9
15 Copy of care plan and notice to be given to eligible persons	10
16 Care plan co-ordinator	11
17 Service providers may share personal and health information to give effect to care plan	12
18 Variation and termination of care plan	12
PART 3—GENERAL	14
19 Refusal by person to participate	14
20 Form of notifications	14
21 Notices also to be given to parents and guardians	15

<i>Section</i>	<i>Page</i>
22 Support for eligible person	15
23 Confidentiality provision	15
24 Relationship of this Act to certain other laws	17
PART 4—REPEAL AND TRANSITIONAL PROVISIONS	18
25 Repeal	18
26 Transitional provisions	18
ENDNOTES	19
INDEX	20



Victoria

Human Services (Complex Needs) Act 2009[†]

No. 16 of 2009

[Assented to 12 May 2009]

The Parliament of Victoria enacts:

PART 1—PRELIMINARY

1 Purpose

The purpose of this Act is to facilitate the delivery of welfare services, health services, mental health services, disability services, drug and alcohol treatment services and housing and support services to certain persons with multiple and complex needs by providing for the assessment of such persons and the development and implementation of appropriate care plans.

2 Commencement

- (1) Subject to subsection (2), this Act comes into operation on a day to be proclaimed.
- (2) If this Act does not come into operation before 31 May 2009, it comes into operation on that day.

3 Definitions

In this Act—

care plan means a care plan approved under section 12;

care plan co-ordinator means a person appointed under section 16;

Department means the Department of Human Services;

eligible person means a person referred to in section 7;

health information has the same meaning as in the **Health Records Act 2001**;

Mental Health Review Board means the Mental Health Review Board established by the **Mental Health Act 1986**;

offender services means services provided by—

- (a) providers of correctional services within the meaning of the **Corrections Act 1986**; or
- (b) the police force in relation to persons suspected of, or charged with, criminal offences; or
- (c) courts and tribunals in relation to persons charged with, or found guilty or convicted of, criminal offences;

personal information has the same meaning as in the **Information Privacy Act 2000**;

Public Advocate has the same meaning as in the **Guardianship and Administration Act 1986**;

Secretary means the person who is for the time being the Department Head (within the meaning of the **Public Administration Act 2004**) of the Department.

4 Guiding principles

It is the intention of Parliament that the following principles be given effect to with respect to the determination of eligibility under this Act of a person with multiple and complex needs and the development and implementation of a care plan that relates to such a person—

- (a) the wellbeing, health, safety and stable housing of the person are of paramount consideration in developing a care plan for the person under this Act;
- (b) the development of a care plan is to be based on a comprehensive assessment of the person's needs;
- (c) the provision of welfare services, health services, mental health services, disability services, drug and alcohol treatment services and housing and support services to the person is best achieved when those services are co-ordinated and when service providers may share relevant personal information or health information about the person;
- (d) welfare services, health services, mental health services, disability services, drug and alcohol treatment services and housing and support services provided in accordance with a care plan are to be delivered by the relevant service providers in a co-ordinated manner.

PART 2—ELIGIBILITY AND CARE PLANS

Division 1—General

5 Consultation with expert advisers

The Secretary may consult with expert advisers for the purpose of—

- (a) determining the eligibility of a person; or
- (b) developing and monitoring a care plan that relates to an eligible person.

6 Delegation

The Secretary may by instrument delegate to a person or class of persons employed in the administration of this Act any power or function of the Secretary under this Act except this power of delegation.

Division 2—Determination of eligibility

7 Who is an eligible person?

An eligible person is a person who—

- (a) has attained 16 years of age; and
- (b) appears to satisfy 2 or more of the following criteria—
 - (i) has a mental disorder within the meaning of the **Mental Health Act 1986**;
 - (ii) has an acquired brain injury;
 - (iii) has an intellectual impairment;
 - (iv) is an alcoholic or drug-dependent person within the meaning of the **Alcoholics and Drug-dependent Persons Act 1968**; and

-
- (c) has exhibited violent or dangerous behaviour that caused serious harm to himself or herself or some other person or is exhibiting behaviour which is reasonably likely to place himself or herself or some other person at risk of serious harm; and
 - (d) is in need of intensive supervision and support and would derive benefit from receiving co-ordinated services in accordance with a care plan that may include welfare services, health services, mental health services, disability services, drug and alcohol treatment services or housing and support services.

8 Secretary to determine eligibility of person

- (1) Subject to subsection (2), the Secretary may make a determination that a person—
 - (a) is an eligible person; or
 - (b) is not an eligible person.
- (2) The Secretary must not determine that a person is an eligible person if the person refuses to be considered for eligibility before the Secretary makes a determination under subsection (1).

9 Notice to be given to persons before determination is made

Before the Secretary determines whether a person is an eligible person, the Secretary must notify the person in writing—

- (a) that the Secretary will consider whether the person appears to be an eligible person under section 7, unless the person refuses to be considered for eligibility; and

- (b) that if, following consideration of the person, the Secretary determines that the person is an eligible person, the Secretary will develop, or cause a service provider to develop, a care plan that relates to the person, unless the person refuses to be the subject of a care plan; and
- (c) that the Secretary may seek to obtain from any person or organisation personal information or health information about the person for the purpose of considering whether the person is an eligible person or developing a care plan that relates to the person; and
- (d) that a service provider referred to in paragraph (b) may seek to obtain from any person or organisation personal information or health information about the person for the purpose of developing a care plan that relates to the person; and
- (e) that a service provider identified in a care plan that relates to the person may disclose personal information or health information about the person to another service provider identified in the care plan if the first-mentioned service provider is satisfied that the disclosure—
 - (i) is in the best interests of the person; and
 - (ii) would assist the second-mentioned service provider in giving effect to the care plan; and

-
- (f) that the Secretary may disclose personal information or health information about the person to a service provider identified in a care plan that relates to the person if the Secretary is satisfied that the disclosure—
 - (i) is in the best interests of the person; and
 - (ii) would assist the service provider in giving effect to the care plan; and
 - (g) of how to contact the Secretary; and
 - (h) that the person may at any time—
 - (i) refuse to be considered for eligibility; or
 - (ii) refuse to be the subject of a care plan.

10 Secretary to notify person of determination of eligibility

The Secretary must notify in writing a person whose eligibility has been considered under this Division whether or not the Secretary has determined that the person is an eligible person.

Division 3—Care plans

11 Contract for assessment of eligible persons and development of care plans

The Secretary may enter into a contract with a person or organisation—

- (a) to assess an eligible person to develop a care plan that relates to him or her or to arrange for an eligible person to be so assessed;
 - (b) to develop a care plan that relates to an eligible person or arrange that such a care plan be developed.
-

12 Development and approval of care plan

- (1) Subject to section 19(1), if the Secretary determines that a person is an eligible person, the Secretary must cause a care plan to be developed that relates to the person.
- (2) The Secretary may engage a service provider to develop a care plan that relates to an eligible person.
- (3) A care plan—
 - (a) may specify the care, treatment, support and housing recommended for the person taking into account his or her best interests; and
 - (b) must specify a duration for the plan of not more than 12 months, subject to section 18.
- (4) The Secretary may approve a care plan with or without modification.

13 What does development of a care plan involve?

During the course of developing a care plan that relates to an eligible person, the Secretary, or if the person is referred to a service provider engaged by the Secretary, the service provider, must ensure that—

- (a) the person is consulted in person and, if the Secretary or the service provider believes it appropriate and the person agrees, the person's family and carers are consulted; and
 - (b) the persons and organisations who are currently providing welfare services, health services, mental health services, disability services, drug and alcohol treatment services, offender services or housing and support services to the person are consulted; and
 - (c) a comprehensive assessment of the person's needs is carried out; and
-

-
- (d) relevant personal information or health information in relation to the person is obtained and considered.

14 Seeking and disclosing information for purposes of developing a care plan

- (1) The Secretary and, if the eligible person is referred to a service provider engaged by the Secretary, the service provider, may seek to obtain personal information or health information about the person from any person or organisation for the purposes of developing a care plan that relates to the person.
- (2) The following are authorised to disclose personal information or health information about an eligible person in relation to whom a care plan is being developed to the Secretary or a service provider in accordance with a request under subsection (1)—
- (a) the Secretary, in the case of a service provider requesting information in accordance with subsection (1);
 - (b) the Public Advocate;
 - (c) the Mental Health Review Board;
 - (d) any person or organisation that provides or has provided welfare services, health services, mental health services, disability services, drug and alcohol treatment services, offender services, emergency services or housing and support services to the eligible person.

15 Copy of care plan and notice to be given to eligible persons

Within 14 days after approving a care plan that relates to an eligible person, the Secretary must—

- (a) give a copy of the care plan to the person; and
- (b) give a copy of the whole or any part of the care plan to a service provider identified in the care plan if the Secretary is satisfied that this—
 - (i) is in the best interests of the person; and
 - (ii) would assist the service provider in giving effect to the care plan; and
- (c) notify the person in writing—
 - (i) that the Secretary has approved a care plan that relates to the person; and
 - (ii) that the Secretary and the care plan co-ordinator and service providers identified in the care plan may share and use personal information or health information about the person if this—
 - (A) is in the best interests of the person; and
 - (B) would assist service providers in giving effect to the care plan; and
 - (iii) of how to contact the Secretary; and
 - (iv) that the person may at any time—
 - (A) refuse to be the subject of the care plan;
 - (B) request the Secretary to vary or terminate the care plan.

16 Care plan co-ordinator

- (1) If the Secretary approves a care plan that relates to an eligible person, the Secretary must appoint a care plan co-ordinator in relation to that care plan.
- (2) A care plan co-ordinator must—
 - (a) monitor the implementation of the care plan and the progress of the person to whom it relates; and
 - (b) co-ordinate the services provided to the person to whom the care plan relates in accordance with the care plan; and
 - (c) when requested by the Secretary, provide a report to the Secretary on the progress of the person to whom the care plan relates.
- (3) The Secretary may seek to obtain personal information or health information about an eligible person to whom a care plan relates from the care plan co-ordinator and any person or organisation providing services to the eligible person in accordance with the care plan for the purposes of—
 - (a) considering any report given to the Secretary under subsection (2)(c);
 - (b) monitoring the implementation of the care plan.
- (4) A care plan co-ordinator may seek to obtain personal or health information from the Secretary or any service provider identified in the care plan for the purposes of his or her functions under subsection (2).
- (5) The following are authorised to disclose personal or health information about the person in accordance with a request under subsection (4)—

-
- (a) the Secretary;
 - (b) a service provider referred to in subsection (4).

17 Service providers may share personal and health information to give effect to care plan

- (1) A service provider identified in a care plan is authorised to disclose personal information or health information about the eligible person to whom the plan relates to another service provider identified in the care plan if the first-mentioned service provider is satisfied that the disclosure of the information—
 - (a) is in the best interests of the person to whom the information relates; and
 - (b) would assist the second-mentioned service provider in giving effect to the care plan.
- (2) A service provider identified in a care plan is authorised to use personal information or health information about the person to whom the care plan relates that is obtained from another service provider identified in the care plan if the use of the information—
 - (a) is in the best interests of the person to whom the information relates; and
 - (b) would assist the first-mentioned service provider in giving effect to the care plan.

18 Variation and termination of care plan

- (1) The Secretary may vary or terminate a care plan if the Secretary is of the opinion that it is appropriate to do so.
 - (2) Subject to subsection (3), the duration of a care plan may be extended.
 - (3) The total duration of a care plan may not exceed 36 months.
-

Human Services (Complex Needs) Act 2009
No. 16 of 2009

Part 2—Eligibility and Care Plans

s. 18

-
- (4) If a care plan is terminated, the Secretary must so notify in writing—
- (a) the person to whom the care plan relates; and
 - (b) any service provider under the care plan.
-

PART 3—GENERAL

19 Refusal by person to participate

- (1) A person may at any time in writing or orally—
 - (a) refuse to be considered for eligibility by the Secretary; or
 - (b) refuse to be the subject of a care plan.
- (2) A refusal to be considered for eligibility must be made to the Secretary.
- (3) A refusal to be the subject of a care plan must be made to—
 - (a) the Secretary; or
 - (b) the relevant care plan co-ordinator.
- (4) The person or organisation to whom a purported refusal is made must determine whether, in their professional judgment, it constitutes a refusal for the purposes of this Act.

20 Form of notifications

- (1) In notifying a person under section 9, 10 or 15(c), the Secretary must endeavour to ensure that—
 - (a) the written notification is to the greatest extent possible in a form that will make it comprehensible to the person; and
 - (b) an explanation of its content is given orally to the person on behalf of the Secretary.
 - (2) If a person appears to be incapable of reading and understanding information provided under this Act, the Secretary must use reasonable endeavours to convey the information to the person in the language, mode of communication or terms which the person is most likely to understand.
-

21 Notices also to be given to parents and guardians

A care plan or any notice required to be given to a person under section 9, 10 or 15 must also be given—

- (a) in the case of a person under 18 years of age who has a parent or guardian, to the parent or guardian; and
- (b) in the case of a person who has attained 18 years of age and in respect of whom a guardian has been appointed under the **Guardianship and Administration Act 1986**, to the guardian.

22 Support for eligible person

Nothing in this Act prevents an eligible person, a person whose eligibility is being considered by the Secretary or a person to whom a care plan relates from receiving support and advice from, or being accompanied to a meeting by, a friend, relative or other person in connection with any matter arising under this Act.

23 Confidentiality provision

- (1) In this section, *relevant person* means—
 - (a) the Secretary; or
 - (b) a person who is or has been engaged or employed on behalf of the Secretary; or
 - (c) a person who is or has been involved in the management of, engaged or employed at or worked for or at—
 - (i) a service provider to whom a person has been referred for the development of a care plan; or
 - (ii) a service provider identified in a care plan; or

(d) a person who is or has been, or a person who is or has been involved in the management of, engaged or employed at or worked for or at, a person or organisation referred to in section 14(2)(d).

(2) A relevant person must not (except to the extent necessary to carry out functions under this Act or any other Act or regulations made under any other Act) disclose to any other person, whether directly or indirectly, any personal information or health information acquired by reason of being a relevant person if a person will or may be identified from that information and that person—

- (a) is or has been an eligible person; or
- (b) is a person whose eligibility is being considered by the Secretary; or
- (c) is a person to whom a care plan relates; or
- (d) is a member of any such person's family.

Penalty: 60 penalty units.

(3) Subsection (2) does not apply to the disclosure of personal information or health information—

- (a) to a court or tribunal in the course of criminal legal proceedings; or
 - (b) pursuant to an order of a court or tribunal made under another Act or law; or
 - (c) with the consent of the Minister and in accordance with the conditions specified by the Minister, if the Minister is of the opinion that it is in the public interest that the information be so disclosed; or
 - (d) that is expressly authorised, permitted or required by this Act or another Act or regulations made under any other Act.
-

24 Relationship of this Act to certain other laws

Nothing in this Act affects the operation of the **Information Privacy Act 2000** or the **Health Records Act 2001** or any obligation imposed by or under those Acts on a person or organisation.

PART 4—REPEAL AND TRANSITIONAL PROVISIONS

25 Repeal

See:
Act No.
68/2003.
Reprint No. 10
as at
18 October
2007.
LawToday:
www.
legislation.
vic.gov.au

- (1) The **Human Services (Complex Needs) Act 2003** is repealed.
- (2) On the repeal of the **Human Services (Complex Needs) Act 2003**, the Multiple and Complex Needs Panel established by that Act is abolished and despite anything to the contrary in their instruments of appointment, appointed members and any alternate Chairperson cease to hold office.

26 Transitional provisions

- (1) Despite the repeal of the **Human Services (Complex Needs) Act 2003**, a person must be assessed under this Act for the purpose of developing a care plan if immediately before that repeal—
 - (a) the Multiple and Complex Needs Panel established by that Act believed the person to be an eligible person and had nominated the person for assessment under section 18(1) of that Act; and
 - (b) no assessment in relation to the person was made under that Act.
 - (2) Despite the repeal of the **Human Services (Complex Needs) Act 2003**, a care plan that was—
 - (a) accepted under that Act by the Multiple and Complex Needs Panel established by that Act; and
 - (b) in force immediately before that repeal—is deemed to be a care plan approved by the Secretary under section 12 of this Act.
-

ENDNOTES

† *Minister's second reading speech—*

Legislative Assembly: 12 March 2009

Legislative Council: 2 April 2009

The long title for the Bill for this Act was "A Bill for an Act to facilitate the delivery of welfare services, health services, mental health services, disability services, drug and alcohol services and housing and support services to certain persons with multiple and complex needs and for other purposes."

INDEX

<i>Subject</i>	<i>Section</i>
Act	
commencement	2
purpose	1
relationship with certain other laws	24
repeal	25
transitional provisions	26
Assessments	
carrying out of	13
contracts with persons or organisations	11
Care plans	
approval	12
care plan co-ordinators	3, 16
definition	3
development, monitoring	5, 11–13
duration and extension	18
guiding principles	4
moral support for subjects of	22
notices regarding	15, 20, 21
personal and health information on subjects of	14–17, 23
refusal to be subject of	9, 19
termination, variation	18
Definitions	3, 23
Eligible persons	
criteria for eligibility	7
definition	3
determination of eligibility by Secretary	5, 8–10
moral support for	22
notices regarding	15, 20, 21
refusal to be considered	8, 19
<i>See also</i> Care plans	
Health information	
definition	3
obtaining, disclosure, consideration, use of	9, 13–17, 23
Mental Health Review Board	3, 14
Multiple and Complex Needs Panel	25, 26
Offences	23
Offender services (def.)	3
Personal information	
definition	3
obtaining, disclosure, consideration, use of	9, 13–17, 23
Public Advocate	3, 14
Secretary	3, 6
<i>See also</i> Care plans; Eligible persons	
Service providers	
personal and health information obtained, disclosed	13–17, 23
<i>See also</i> Care plans	
