

DISABILITY SERVICES ACT 1993 No. 3

NEW SOUTH WALES



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SCHEDULE 1—PRINCIPLES AND APPLICATIONS OF PRINCIPLES

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DISABILITY SERVICES ACT 1993 No. 3

NEW SOUTH WALES



Act No. 3, 1993

An Act relating to the provision of disability services for persons with disabilities. [Assented to 8 April 1993]

The Legislature of New South Wales enacts:**PART 1—PRELIMINARY****Short title**

1. This Act may be cited as the Disability Services Act 1993.

Commencement

2. This Act commences on the date of assent.

Objects

3. The objects of this Act are:
 - (a) to ensure the provision of services necessary to enable persons with disabilities to achieve their maximum potential as members of the community; and
 - (b) to ensure the provision of services that:
 - (i) further the integration of persons with disabilities in the community and complement services available generally to such persons in the community; and
 - (ii) enable persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community; and
 - (iii) are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem; and
 - (c) to ensure that the outcomes achieved by persons with disabilities by the provision of services for them are taken into account in the granting of financial assistance for the provision of such services; and
 - (d) to encourage innovation in the provision of services for persons with disabilities; and
 - (e) to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community, for persons with disabilities; and
 - (f) to ensure that designated services for persons with disabilities are developed and reviewed on a periodic basis through the use of forward plans.

Definitions

4 In this Act:

“approved research or development activity” means any of the following activities:

- (a) research with respect to the provision of services for persons in the target group;
- (b) the investigation of the need for services for persons in the target group;
- (c) the initiation of services for persons in the target group;
- (d) the planning of the provision of designated services for persons in the target group;
- (e) the development of proposals for the provision of services for persons in the target group;
- (f) the development or implementation of training programs for:
 - (i) persons engaged in the provision of designated services; or
 - (ii) the families of, and other persons who provide care for or assistance to, persons in the target group;
- (g) the investigation of outcomes achieved by persons in the target group by the provision of designated services;
- (h) any other activity that is prescribed by the regulations, or that belongs to a class of activities so prescribed, for the purposes of this definition;

“designated service” means a service that is provided or funded by the Minister and that is prescribed by the regulations, or that belongs to a class of services so prescribed, for the purposes of this definition;

“eligible organisation” means any of the following persons or bodies:

- (a) a body corporate;
- (b) a local authority constituted by or under an Act;
- (c) a tertiary institution within the meaning of the Employment, Education and Training Act 1988 of the Commonwealth;
- (d) the Commonwealth Government;
- (e) a Minister or an authority of the State or a person exercising functions on behalf of a Minister or such an authority;
- (f) any society, association or body that is prescribed by the regulations, or that belongs to a class of societies, associations or bodies so prescribed,

for the purposes of this definition;

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“**exercise**” of a function includes, where the function is a duty, the performance of the duty;

“**financial assistance**” or “**funding**” means financial assistance under this Act;

“**function**” includes a power, authority and duty;

“**service**” includes a service consisting of the supply of goods, whether or not accompanied by the provision of other services.

Target group

5. (1) For the purposes of this Act, a person is in the target group if the person has a disability (however arising and whether or not of a chronic episodic nature):

- (a) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment or to a combination of such impairments; and
- (b) that is permanent or is likely to be permanent; and
- (c) that results in:
 - (i) a significantly reduced capacity in one or more major life activities, such as communication, learning, mobility, decision-making or self-care; and
 - (ii) the need for support, whether or not of an ongoing nature.

(2) For the purposes of this Act, the following persons (within the meaning of the Mental Health Act 1990) are in the target group, but only if the services provided for them are not inconsistent with the objects and relevant requirements of that Act:

- (a) a temporary patient, continued treatment patient or forensic patient; or
- (b) a person subject to a community treatment order; or
- (c) a person under detention in a hospital.

(3) For the purposes of this Act, a service is taken to be provided for persons in the target group if and only if it is provided predominantly for persons in the target group.

PART 2—DISABILITY SERVICES

Division 1—General

Minister to ensure that designated services are provided and funded in conformity with Act

6. (1) It is the duty of the Minister in providing and funding designated services to persons in the target group, either directly to those

persons or indirectly through other persons or bodies, to ensure that the services are provided and funded in conformity with the objects of this Act and the principles and applications of principles set out in Schedule 1.

(2) This section does not apply to a designated service that was being provided or funded by the Minister immediately before the commencement of this section until:

- (a) 2 months after the commencement of this section, except as provided by paragraph (b); or
- (b) 2 years after the commencement of this section if, within the 2-month period the Minister determines that a transition plan be prepared under section 7 in relation to the designated service.

(3) This section does not apply to a transferred service until:

- (a) 2 months after the date on which responsibility for the service is transferred to the State in accordance with the Commonwealth agreement, except as provided by paragraph (b); or
- (b) 2 years after the date on which responsibility for the service is so transferred if, within the 2-month period, the Minister determines that a transition plan be prepared under section 7 in relation to the service.

In this subsection:

“Commonwealth agreement” means the agreement entitled “The Commonwealth/State Disability Agreement” entered into on 30 July 1991 between the Commonwealth and the State;

“transferred service” means a designated service that was being provided or funded by the Commonwealth immediately before the commencement of this section, being a service for which responsibility is transferred to the State, in accordance with the Commonwealth agreement, after that commencement.

(4) However, during the relevant 2-year period, it is the duty of the Minister to ensure that the service concerned is provided or funded as closely as possible in conformity with the objects of this Act and the principles and applications of principles set out in Schedule 1.

Transition plans for existing designated services

7. (1) The Minister may determine that a transition plan be prepared under this section in relation to a designated service:

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- (a) that, immediately before the commencement of section 6, was being provided or funded by the Minister to persons in the target group, either directly to those persons or indirectly through other persons or bodies; and
- (b) that, in the Minister's opinion, does not conform in its provision or funding with the objects of this Act and the principles and applications of principles set out in Schedule 1.

(2) The Minister may determine that a transition plan be prepared under this section in relation to a transferred service:

- (a) that, immediately before its transfer, was being provided or funded by the Commonwealth to persons in the target group, either directly to those persons or indirectly through other persons or bodies; and
- (b) that, in the Minister's opinion, does not conform in its provision or funding with the objects of this Act and the principles and applications of principles set out in Schedule 1.

In this subsection:

“Commonwealth agreement” means the agreement entitled “The Commonwealth/State Disability Agreement” entered into on 30 July 1991 between the Commonwealth and the State;

“transferred service” means a designated service that was being provided or funded by the Commonwealth immediately before the commencement of this section, being a service for which responsibility is transferred to the State, in accordance with the Commonwealth agreement, after that commencement.

(3) A transition plan may be prepared by the Minister or, at the direction of the Minister, by a person or body through which a designated service is provided or funded.

(4) A transition plan:

- (a) must provide for the service concerned to be provided or funded as closely as possible in conformity with the objects of this Act and the principles and applications of principles set out in Schedule 1; and
- (b) must indicate the date (being the earliest date practicable) by which the service concerned will be provided or funded in full conformity with those objects, principles and applications of principles.

(5) The Minister may, by order published in the Gazette, adopt a transition plan prepared under this section.

(6) The transition plan takes effect on the date on which the order is so published or on such later date as may be specified in the order.

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(7) A transition plan may be amended by a subsequent plan prepared and adopted in accordance with this section.

(8) Before adopting a transition plan or an amendment to a transition plan, the Minister must be satisfied that:

- (a) the persons to whom the relevant service is being provided; and
- (b) the families and carers of, and the advocates for, those persons, have, as far as practicable, been consulted as to the proposals contained in the plan or amendment.

(9) A transition plan, and any amendment to a transition plan, is to be made available to the public.

(10) The provision or funding of a designated service is taken to comply with the requirements of section 6 if it complies with the requirements of a transition plan.

Minister to facilitate provision of designated services

8. (1) The Minister has the function of facilitating the provision of designated services to persons in the target group.

(2) The function may be exercised in one or more of the following ways:

- (a) by the provision of designated services to persons in the target group, either directly to those persons or indirectly through other persons or bodies; or
- (b) by the provision of financial assistance, either directly to persons in the target group or indirectly through other persons or bodies; or
- (c) by the encouragement of the provision of services to persons in the target group by other persons and bodies.

Plans relating to services of public authorities

9. (1) A public authority is to prepare, and make provision for the implementation of, a plan to encourage the provision of services by that authority in a manner that furthers the principles and applications of principles set out in Schedule 1.

(2) Such a plan must make provision for the furnishing of periodic reports as to the public authority's progress in implementing the plan.

(3) Such a plan is to be prepared as soon as practicable after the commencement of this section but no later than 2 years after that commencement. The plan may be amended from time to time,

(4) Such a plan, and any amendment, is to be made available to the public.

(5) This section applies to all services, whether or not they are provided predominantly for persons in the target group.

(6) This section applies to a public authority that comes into existence after the commencement of this section as if references to the commencement of this section were references to its coming into existence.

(7) In this section, "public authority" means a government department, administrative office or declared authority specified in Schedule 1, 2 or 3 of the Public Sector Management Act 1988, and includes an authority prescribed as a public authority by the regulations.

Division 2—Financial assistance

Financial assistance

10. (1) The Minister may approve the provision of financial assistance:

- (a) to a person in the target group, or to a person providing direct care or support to a person in the target group, for the purpose of enabling the person in the target group to be provided with designated services; or
- (b) to an eligible organisation providing, or proposing to provide, designated services to persons in the target group for the purpose of enabling the eligible organisation to provide those services; or
- (c) to a person or eligible organisation conducting, or proposing to conduct, an approved research or development activity for the purpose of enabling the person or Organisation to conduct that activity.

(2) Approval for the provision of financial assistance may not be given unless the Minister is satisfied on reasonable grounds that providing the assistance would conform with the objects of this Act and the principles and applications of principles set out in Schedule 1.

Terms and conditions on which financial assistance to be approved generally

11. When approving the provision of financial assistance, the Minister must determine:

- (a) the amount of the assistance or the manner in which the amount of the assistance is to be calculated; and
- (b) the time or times at which, and the instalments (if any) in which, the assistance is to be paid; and
- (c) the terms and conditions on which the assistance is to be provided.

Terms and conditions with respect to eligible organisations

12. (1) The terms and conditions on which financial assistance may be provided to an eligible organisation in relation to the provision of designated services must deal with each of the following matters:

- (a) the extent to which the organisation must conform to the principles and applications of principles set out in Schedule 1 in connection with the provision of those services;
- (b) the purposes for which the financial assistance may be applied;
- (c) the amounts to be applied for those purposes;
- (d) the outcomes to be achieved for persons in the target group as a result of the provision to them by the eligible organisation of designated services, and their rights in relation to the provision of designated services or otherwise;
- (e) the performance indicators to be used in measuring the outcomes achieved for persons in the target group as a result of the provision to them by the eligible organisation of designated services.

(2) Without limiting section 11 (c), the terms and conditions on which financial assistance may be provided to an eligible organisation in relation to the provision of designated services may also deal with any one or more of the following matters:

- (a) the agreements to be entered into, between:
 - (i) the eligible organisation; and
 - (ii) persons in the target group to whom it provides designated services, or persons acting on their behalf,in relation to the provision of those services;
- (b) the furnishing of information;
- (c) the provision of certificates with respect to the fulfilment of terms and conditions;
- (d) the repayment of financial assistance;
- (e) the giving of security for the fulfilment of terms and conditions;
- (f) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the State's interest in:
 - (i) land acquired (with or without buildings); and
 - (ii) buildings acquired, erected, altered or extended; and
 - (iii) equipment acquired, altered or installed,as a result of the application of the financial assistance or of the financial assistance and other money.

Terms and conditions with respect to research and development

13. (1) The terms and conditions on which financial assistance may be granted to a person or eligible organisation in relation to the conduct of an approved research or development activity must deal with each of the following matters:

- (a) the extent to which the person or organisation must conform to the principles and applications of principles set out in Schedule 1 in connection with the conduct of that activity;
- (b) the purposes for which the financial assistance may be applied;
- (c) the amounts to be applied for those purposes;
- (d) the outcomes to be achieved for persons in the target group as a result of the carrying out of the activity or the provision to them of services to which the activity relates, or both;
- (e) the performance indicators to be used in measuring the outcomes achieved for persons in the target group as a result of the carrying out of the activity or provision to them of services to which the activity relates, or both.

(2) Without limiting section 11 (c), the terms and conditions on which financial assistance may be provided to a person or eligible organisation in relation to the conduct of an approved research or development activity may also deal with any one or more of the following matters:

- (a) the furnishing of information;
- (b) the provision of certificates with respect to the fulfilment of terms and conditions;
- (c) the repayment of financial assistance;
- (d) the giving of security for the fulfilment of terms and conditions;
- (e) the use and disposal of, and the recovery of amounts that under the terms and conditions are to be taken as representing the State's interest in:
 - (i) land acquired (with or without buildings); and
 - (ii) buildings acquired, erected, altered or extended; and
 - (iii) equipment acquired, altered or installed,as a result of the application of the financial assistance or of the financial assistance and other money; and
- (f) the use, disposal and ownership of anything produced by the research or development activity.

Payment by instalments

14. In the case of financial assistance to be paid in instalments, the instalments are to be paid within 5 years after the assistance is approved.

Review of outcomes of financial assistance for designated services

15. The Minister must ensure that, at intervals of not more than 3 years, a review is conducted:

- (a) of the extent to which each eligible organisation that has received financial assistance for the provision of designated services has complied with the terms and conditions on which the assistance was given; and
- (b) of the extent to which the outcomes required by those terms and conditions have been achieved by persons in the target group.

Termination of financial assistance

16. (1) Subject to subsection (2), future instalments of financial assistance:

- (a) may at any time be suspended by the Minister for a period of not more than 28 days; and
- (b) may at any time be terminated by the Minister.

(2) Before future instalments of approved financial assistance are terminated:

- (a) notice of the proposed termination, and the reasons for the proposed termination, are to be given to the person or eligible organisation receiving the assistance; and
- (b) that person or organisation is to be given a reasonable opportunity to make submissions to the Minister with respect to the proposed termination; and
- (c) the Minister is to take any such submissions into consideration before deciding to terminate the future instalments of financial assistance.

Agreements with respect to terms etc. of financial assistance

17. (1) Financial assistance is not payable unless the person to whom it is to be paid enters into an agreement with the Minister on the same terms and conditions as those on which the provision of the assistance was approved.

(2) The Minister may, with the consent of the other parties, vary the terms and conditions of such an agreement and the agreement is taken to have been varied accordingly.

Agreements arising from transfer of certain land etc.**18. If:**

- (a) either or both of the following apply:
 - (i) financial assistance has been provided to a person or eligible organisation on terms and conditions with respect to the use or disposal of any land, building or equipment;
 - (ii) a person or eligible organisation has entered into an agreement with the Minister under which the person or organisation is required to comply with terms and conditions with respect to the use or disposal of any land, building or equipment; and
- (b) the person or organisation has transferred, or proposes to transfer, the whole or a part of the person's or organisation's interest in the land, building or equipment to another person or eligible organisation,

the Minister may enter into an agreement with the other person or organisation under which the other person or organisation is required to comply (or will, on the transfer being completed, be required to comply) with terms and conditions, whether with respect to the use or disposal of land, building or equipment or otherwise.

Payments to be made from funds appropriated by Parliament

19. (1) Payments of financial assistance are to be made from funds to be appropriated by Parliament for the purpose.

(2) Nothing in this Act requires a payment of financial assistance to be made otherwise than from funds that are available to the Minister for that purpose and, in particular, subsection (1) does not operate so as to appropriate money for the purpose of enabling such a payment to be made.

Division 3—Appeals**Appeals**

20. An appeal may be made to the Community Welfare Appeals Tribunal on any of the following grounds:

- (a) that an approval to the provision of financial assistance should not have been given under section 10 (2) because the provision of the financial assistance will not conform with the objects of this Act and the principles and applications of principles set out in Schedule 1;

- (b) that the terms and conditions on which financial assistance is provided to an eligible organisation in relation to the provision of designated services do not comply with section 12;
- (c) that the terms and conditions on which financial assistance is provided to a person or eligible organisation in relation to the conduct of an approved research or development activity do not comply with section 13;
- (d) that a review has not been conducted in accordance with section 15;
- (e) that future instalments of approved financial assistance have been terminated otherwise than in accordance with section 16.

PART 3—MISCELLANEOUS

Notices etc. to be written in other languages

21. (1) If:

- (a) a person is required, by the terms and conditions on which financial assistance is provided under this Act, to cause a document or other instrument to be served on any other person; and
- (b) it appears to the person that the other person is blind or illiterate or is not literate in the English language,

the person is, in so far as it is reasonably practicable, to cause the information contained in the document or other instrument to be communicated to the other person in a manner that the other person understands, which may include (in the case of a person who is literate in another language) by means of a document or other instrument written in that other language.

(2) Failure to comply with this section is not a contravention of the terms and conditions of financial assistance and does not affect any thing done under any other provision of this Act.

False or misleading information

22 A person must not, in or in connection with an application for financial assistance, make any statement that the person knows to be false or misleading in a material particular.

Maximum penalty: 10 penalty units.

Proceedings for offences

23. Proceedings for an offence against this Act or the regulations are to be dealt with summarily by a Local Court constituted by a Magistrate sitting alone.

Act binds the Crown

24. (1) This Act binds the Crown in right of New South Wales and, in so far as the legislative power of Parliament permits, the Crown in all its other capacities.

(2) Nothing in this Act renders the Crown, whether in right of New South Wales or otherwise, liable to be prosecuted for an offence against this Act or the regulations.

Section 3 and Schedule 1 not to give rise to or affect cause of action

25. (1) Nothing in section 3 or Schedule 1 (nor in any application of those provisions by this Act) gives rise to, or can be taken into account in, any civil cause of action.

(2) In this section, "**civil cause of action**" does not include proceedings on an appeal to the Community Welfare Appeals Tribunal under this Act.

Regulations

26. (1) The Governor may make regulations, not inconsistent with this Act, for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) The regulations may create offences punishable by a penalty not exceeding 10 penalty units.

Repeal of Disability Services and Guardianship (Provision of Services) Regulation 1989

27. The Disability Services and Guardianship (Provision of Services) Regulation 1989 is repealed.

Amendment of other Acts

28. Each Act specified in Schedule 2 is amended as set out in that Schedule.

Review of Act

29. (1) The Minister is to review this Act to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing those objectives.

(2) The review is to be undertaken as soon as possible after the period of 5 years from the date of assent to this Act.

(3) A report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of 5 years.

**SCHEDULE 1—PRINCIPLES AND APPLICATIONS OF
PRINCIPLES**

(Secs. 6, 7, 9, 10, 12, 13)

Principles

1. Persons with disabilities have the same basic human rights as other members of Australian society. They also have the rights needed to ensure that their specific needs are met. Their rights, which apply irrespective of the nature, origin, type or degree of disability, include the following:

- (a) persons with disabilities are individuals who have the inherent right to respect for their human worth and dignity;
- (b) persons with disabilities have the right to live in and be part of the community;
- (c) persons with disabilities have the right to realise their individual capacities for physical, social, emotional and intellectual development;
- (d) persons with disabilities have the same rights as other members of Australian society to services which will support their attaining a reasonable quality of life;
- (e) persons with disabilities have the right to choose their own lifestyle and to have access to information, provided in a manner appropriate to their disability and cultural background, necessary to allow informed choice;
- (f) persons with disabilities have the same right as other members of Australian society to participate in the decisions which affect their lives;
- (g) persons with disabilities receiving services have the same right as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities;
- (h) persons with disabilities have the right to pursue any grievance in relation to services without fear of the services being discontinued or recrimination from service providers;

SCHEDULE 1—PRINCIPLES AND APPLICATIONS OF
PRINCIPLES—*continued*

- (i) persons with disabilities have the right to protection from neglect, abuse and exploitation.

Applications of principles

2. Services and programs of services must apply the principles set out in clause 1. In particular, they must be designed and administered so as to achieve the following:

- (a) to have as their focus the achievement of positive outcomes for persons with disabilities, such as increased independence, employment opportunities and integration into the community;
- (b) to contribute to ensuring that the conditions of the everyday life of persons with disabilities are the same as, or as close as possible to, norms and patterns which are valued in the general community;
- (c) to form part of local co-ordinated service systems and other services generally available to members of the community, wherever possible;
- (d) to meet the individual needs and goals of the persons with disabilities receiving services;
- (e) to meet the needs of persons with disabilities who experience an additional disadvantage as a result of their gender, ethnic origin or Aboriginality;
- (f) to promote recognition of the competence of, and enhance the image of, persons with disabilities;
- (g) to promote the participation of persons with disabilities in the life of the local community through maximum physical and social integration in that community;
- (h) to ensure that no single organisation providing services exercises control over all or most aspects of the life of a person with disabilities;
- (i) to ensure that organisations providing services (whether specifically to persons with disabilities or generally to members of the community) are accountable to persons with disabilities who use

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SCHEDULE 1—PRINCIPLES AND APPLICATIONS OF PRINCIPLES—*continued*

them, the advocates of those persons, the State and the community generally for the provision of information from which the quality of those services can be judged;

- (j) to provide opportunities for persons with disabilities to reach goals and enjoy lifestyles which are valued by the community generally and are appropriate to their chronological age;
- (k) to ensure that persons with disabilities participate in the decisions that affect their lives;
- (l) to ensure that persons with disabilities have access to advocacy support where necessary to ensure adequate participation in decision-making about the services they receive;
- (m) to recognise the importance of preserving the family relationships and the cultural and linguistic environments of persons with disabilities;
- (n) to ensure that appropriate avenues exist for persons with disabilities to raise and have resolved any grievances about services, and to ensure that a person raising any such grievance does not suffer any reprisal;
- (o) to provide persons with disabilities with, and encourage them to make use of, avenues for participating in the planning and operation of services and programs which they receive and to provide opportunities for consultation in relation to the development of major policy and program changes;
- (p) to respect the rights of persons with disabilities to privacy and confidentiality.

SCHEDULE 2—AMENDMENT OF OTHER ACTS

(Sec. 28)

Community Welfare Act 1987 No. 52

- (1) Section 7 (**Assistance funds for community welfare and social development programs**):

After section 7 (3), insert:

(3A) Division 2 of Part 2 of the Disability Services Act 1993 applies to payments out of an assistance fund in the

SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

same way as it applies to financial assistance provided under that Act if the payments are to persons or organisations for whom financial assistance may be provided under that Act.

(2) Section 43 (**Constitution of the Tribunal**):

After, “child care” in section 43 (3) (a), insert “or have an understanding of and a demonstrated commitment to the achievement of positive outcomes for persons with disabilities”.

(3) Section 63 (**Powers of the Tribunal in respect of appeals**):

Omit section 63 (1), insert instead:

(1) In determining an appeal, the Tribunal has, with respect to the matter the subject of the appeal, the functions of the person who made the decision the subject of the appeal.

Disability Services and Guardianship Act 1987 No. 257

(1) Long title:

Omit the long title, insert instead:

An Act with respect to the guardianship of persons who have disabilities; and for other purposes.

(2) Section 1 (**Short title**):

Omit “Disability Services and”.

(3) Part 2 (**Provision of services**):

Omit the Part.

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SCHEDULE 2—AMENDMENT OF OTHER ACTS—*continued*

Home Service Act 1988 No. 6

After section 7, insert:

Certain functions to be exercised in accordance with Disability Services Act 1993

7AA. Division 2 of Part 2 of the Disability Services Act 1993 applies to financial assistance provided under this Act in the same way as it applies to financial assistance provided under that Act if the assistance is to persons or organisations for whom financial assistance may be provided under that Act,

*[Minister's second reading speech made in—
Legislative Assembly on 11 March 1993
Legislative Council on 31 March 1993]*