

EXPOSURE DRAFT

Minister for Disability, Children and Young People

(Prepared by Parliamentary Counsel's Office)

Disability Services Regulation 2014

Subordinate Law SL2014-

The Australian Capital Territory Executive makes the following regulation under the *Disability Services Act 1991*.

Dated 2014.

Minister

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1 Name of regulation

This regulation is the *Disability Services Regulation 2014*.

2 Commencement

This regulation commences on the commencement of the *Disability Services (Disability Service Providers) Amendment Act 2014*, section 3.

Note The naming and commencement provisions automatically commence on the notification day (see [Legislation Act](#), s 75 (1)).

3 Dictionary

The dictionary at the end of this regulation is part of this regulation.

Note 1 The dictionary at the end of this regulation defines certain terms used in this regulation.

Note 2 A definition in the dictionary applies to the entire regulation unless the definition, or another provision of the regulation, provides otherwise or the contrary intention otherwise appears (see [Legislation Act](#), s 155 and s 156 (1)).

4 Notes

A note included in this regulation is explanatory and is not part of this regulation.

Note See the [Legislation Act](#), s 127 (1), (4) and (5) for the legal status of notes.

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5 Offences against regulation—application of Criminal Code etc

Other legislation applies in relation to offences against this regulation.

Note 1 Criminal Code

The [Criminal Code](#), ch 2 applies to all offences against this regulation (see Code, pt 2.1).

The chapter sets out the general principles of criminal responsibility (including burdens of proof and general defences), and defines terms used for offences to which the Code applies (eg *conduct*, *intention*, *recklessness* and *strict liability*).

Note 2 Penalty units

The [Legislation Act](#), s 133 deals with the meaning of offence penalties that are expressed in penalty units.

6 Provider must comply with standards

A specialist disability service provider must comply with a standard that applies to the provider.

Maximum penalty: 10 penalty units.

7 Requirement to provide information

- (1) The director-general may, by written notice given to a specialist disability service provider, require the provider to give the director-general information the director-general reasonably needs—
 - (a) to monitor the quality of services provided by the provider to a person with disability; or
 - (b) to investigate any alleged failure to comply with a standard that applies to the provider.

- (2) The information required under subsection (1) may include information about the provider's arrangements with other entities in relation to the provision of specialist disability services.
- (3) The notice must state the time within which the information must be given to the director-general.
- (4) The time stated must be reasonable in the circumstances.
- (5) A specialist disability service provider must comply with a requirement made of the provider under this section.

Maximum penalty (subsection (5)): 10 penalty units.

Note The [Legislation Act](#), s 170 and s 171 deal with the application of the privilege against self-incrimination and client legal privilege.

8 Notice about noncompliance with standards

- (1) The director-general may give a specialist disability service provider a notice under this section if the director-general has reasonable grounds for believing that the provider is not complying with a standard.
- (2) The notice must be in writing and must—
 - (a) state the standard the director-general considers the provider is not complying with; and
 - (b) state the particular matters the director-general considers the provider needs to address; and
 - (c) invite the provider to discuss those matters with the director-general; and
 - (d) state the time within which the provider must respond to the notice.
- (3) The time stated must be reasonable in the circumstances.

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- (4) The provider responds to the notice if—
 - (a) the provider responds in writing to the director-general in relation to the matters identified in the notice; or
 - (b) the provider takes action to address the matters identified in the notice and tells the director-general in writing of that action.

9 Direction to comply with standards

- (1) This section applies if—
 - (a) the director-general has given a specialist disability service provider a notice under section 8; and
 - (b) the provider—
 - (i) has not responded to the notice; or
 - (ii) has responded to the notice but the director-general believes on reasonable grounds that the provider is still failing to comply with a standard.
- (2) The director-general may give the provider a direction, in writing—
 - (a) to stop the conduct that is in breach of the standard; or
 - (b) to provide the specialist disability service in accordance with the standard; or
 - (c) to take action to rectify any consequence of the noncompliance with the standard.
- (3) The direction must state the particular matters the director-general considers the provider needs to address to remedy the breach or comply with the standard.
- (4) The direction must state the time within which the provider must comply with the direction.

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- (5) The time stated must be reasonable in the circumstances.
- (6) A specialist disability service provider must comply with a direction given to the provider under this section.

Maximum penalty (subsection (6)): 10 penalty units.

10 Critical incident reporting

- (1) This section applies to a specialist disability service provider if—
 - (a) the provider is providing a specialist disability service to a person with disability; and
 - (b) the provider has reasonable grounds to believe there is a serious risk to the life, health or safety of that person.

Example—serious risk

circumstances requiring action by the provider to ensure the person with disability's health and safety

Note An example is part of the regulation, is not exhaustive and may extend, but does not limit, the meaning of the provision in which it appears (see [Legislation Act](#), s 126 and s 132).

- (2) The provider must notify the director-general of the circumstances of the risk.

Note A person must comply with this requirement as soon as possible after the serious risk to life, health or safety arises (see [Legislation Act](#), s 151B).

11 Ongoing disclosure obligation

A specialist disability service provider must notify the director-general in writing of any of the following matters if they could have an adverse effect on the provider's ability to comply with the standards:

- (a) an investigation of the provider;

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- (b) an arbitration, litigation or other adjudicative proceeding involving the provider.

12 Director-general may share information

The director-general may disclose information that is given to the director-general under this regulation if—

- (a) the information is disclosed to a territory authority or an agency of the Commonwealth or a state that has functions in relation to people with disabilities (the *other agency*); and
- (b) the information relates to the health, safety or wellbeing of a person with disability; and
- (c) the information is relevant to the functions of the other agency in relation to people with disabilities.

Note The *Health Records (Privacy and Access) Act 1997* and the *Information Privacy Act 2014* set out circumstances in which personal information about a person may be disclosed.

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Dictionary

(see s 3)

Note 1 The [Legislation Act](#) contains definitions and other provisions relevant to this regulation.

Note 2 For example, the [Legislation Act](#), dict, pt 1, defines the following terms:

- director-general (see s 163)
- may (see s 146)
- must (see s 146)
- territory authority.

Note 3 Terms used in this regulation have the same meaning that they have in the [Disability Services Act 1991](#) (see [Legislation Act](#), s 148). For example, the following terms are defined in the [Disability Services Act 1991](#), dict:

- specialist disability service (see s 4 (1))
- specialist disability service provider (see s 5 (1)).

standard means a standard approved by the Minister under the Act, section 5A.

Endnotes

1 Notification

Notified under the [Legislation Act](#) on 2014.

2 Republications of amended laws

For the latest republication of amended laws, see www.legislation.act.gov.au.

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