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# Australia: Intellectually Disabled Person's Services (Amendment) Act 1989

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# Australia: Intellectually Disabled Person's Services (Amendment) Act 1989

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# **Intellectually Disabled Persons' Services (Amendment) Act 1989**

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## **Intellectually Disabled Person's Services (Amendment) Act 1989**

[Assented to 12 September 1989]

The Parliament of Victoria enacts as follows:

### **PART 1-PRELIMINARY**

#### **Purposes**

1. The purposes of this Act are-

(a) to remove the barrier to people 70 years of age and over for appointments to Intellectual Disability Planning Committees, and

(b) to allow funding to municipalities for provision of services to intellectually disabled persons; and

(c) to clarify the powers of a court when sentencing an intellectually disabled offender.

#### **Commencement**

2. (1) This Act (other than section 20) comes into operation on a day or days to be proclaimed.

(2) Section 20 is deemed to have come into operation on 10 December 1985.

### **PART 2-AMENDMENT OF INTELLECTUALLY DISABLED**

#### **PERSONS' SERVICES ACT 1986**

#### **Principal Act**

3. In this Part, the *Intellectually Disabled Persons' Services Act 1986* is called the Principal Act.

#### **Removal of age barrier**

4. In section 13 of the Principal Act

- a. sub-section (6) is repeated; and
- b. in sub-section (7), paragraph (e) is repealed.

## **Services provided by municipalities to intellectually disabled persons**

### **5. The Principal Act is amended as follows:**

- (a) In section 3, in the definition of "Registered non-residential service" after "means a" insert "municipality or a";
- (b) In section 3, in the definition of "Registered residential service" after "means a" insert "municipality or a";
- (c) In section 6 (2) (j), after "support" (where first occurring) insert "municipalities and";
- (d) In section 6(2) (k), after "standards for-" insert "municipalities and";
- (e) In the heading to Division 5 of Part 4, after "by" insert "Municipalities and";
- (f) In section 22 (1), after "funds to" insert "municipalities and";
- (g) In section 22 (3), after "provided to a" insert "municipality or a";
- (h) In section 23, after "organisation" (wherever occurring) insert "or municipality".

### **Repeal of Division 3 of Part 4**

**6.** Division 3 of Part 4 of the Principal Act is repealed.

### **Amendment of section 44**

7. In section 44 (7) (b) of the Principal Act, for "satisfied" substitute "satisfied".

## **PART 3-AMENDMENT OF PENALTIES AND SENTENCES ACT 1985**

### **Principal Act**

8. In this Part, the *Penalties and Sentences Act 1985* is called the Principal Act.

### **Community-based orders**

9. (1) In section 27 of the Principal Act, after the definition of "Director-General" insert

**"Justice plan"** means a statement in respect of a person prepared by the Director-General of Community Services or a person authorised on his or her behalf specifying services which are recommended for the person having regard to the principles, aim and objectives set out in Part 2 of the *Intellectually Disabled Persons' Services Act 1986* and which are designed to reduce the likelihood of the person committing further offences.'

**(2)** After section 29 (2) (g) of the Principal Act insert

"(ga) Where the court receives in respect of the offender

(i) a declaration of eligibility issued under section 8 of the *Intellectually Disabled Persons' Services Act 1986*; and

(ii) a justice plan

that the offender participate in the services specified in the justice plan for a period specified by the court being not longer than the period of the community-based order,".

**(3)** In section 31 of the Principal Act, for "the offender and to the Director-General" substitute

- a. the offender; and
- b. the Director-General; and

(c) if a condition referred to in section 29 (2) (ga) is attached to the order, the Director-General of Community Services-".

**(4)** For section 35 (1) of the Principal Act substitute

"(1) A community-based order may at any time on the application of the offender or of the Director-General or, if the order has attached to it a condition referred to in section 29 (2) (ga), of the Director-General of Community Services be cancelled or varied by the court which made the order where the court is satisfied

(a) that the circumstances of the offender

(i) have changed materially since the offender was sentenced; or

(ii) were wrongly stated or were not accurately presented to the court or the Director-General before sentence; or

(b) that the offender is no longer willing to comply with the order;  
or

(c) in the case of an order that has attached to it a condition referred to in section 29 (2) (ga), that the needs of the offender are not being met by the condition."

### **Insertion of new section 35A**

**10.** After section 35 of the Principal Act insert

#### **Review of justice plan**

**"35A. (1)** The Director-General of Community Services must review a justice plan

(a) not later than 12 months after the making of the community-based order to which it refers, and thereafter at intervals not exceeding 12 months; or

(b) as directed by the court at the time of sentencing

until the expiry of the period specified in accordance with section 29 (2) (ga).

**(2)** An offender or the Director-General may apply to the Director-General of Community Services for a review of the justice plan and, on the application being made, the Director-General of Community Services may review the justice plan.

**(3)** On a review under this section, the Director-General of Community Services may amend a justice plan and, in that case, the offender must participate in accordance with the amended plan as if the amended plan had been specified in the community based order."

#### **Youth attendance orders**

**11. (1)** In section 45 (1) of the Principal Act, after the definition of "Department" insert

**"Justice plan"** means a statement in respect of a person prepared by the Director-General of Community Services or a person authorised on his or her behalf specifying services which are recommended for the person having regard to the principles, aim and objectives set out in Part 2 of the *Intellectually Disabled Persons' Services Act 1986* and which are designed to reduce the likelihood of the person committing further offences.

(2) In section 50 of the Principal Act, after "50." Insert "(1)"

(3) After section 50 of the Principal Act insert



"(2) Where a sentencing court receives in respect of an offender

(a) a declaration of eligibility issued under section 8 of the *Intellectually Disabled Persons' Services Act 1986*; and

(b) a justice plan; and

(c) a pre-sentence report prepared by the Director-General of Corrections or a person authorised on his or her behalf or, if the sentencing court is a children's court, a report referred to in section 25 (1) of the *Children's Court Act 1973*

the court, when making a youth attendance order, may impose upon the offender a requirement that the offender participate in the services specified in the justice plan for a period specified by the court being not longer than the period that the youth attendance order is in force."

### **Amendment of section 53**

12. In section 53 (2) of the Principal Act, after paragraph (b) insert

"; and

(c) if a requirement referred to in section 50 (2) is imposed upon the offender, the Director-General of Community Services".

### **Insertion of new section 53A**

13. After section 53 of the Principal Act insert

#### **Review of justice plan**

"53A. (1) The Director-General of Community Services must review a justice plan

(a) not later than 12 months after the making of the youth attendance order to which it refers; or

(b) as directed by the sentencing court

until the expiry of the period specified in accordance with section 50(2).

(2) An offender may apply to the Director-General of Community Services for a review of the justice plan and, on the application being made, the Director-General of Community Services may review the justice plan.

(3) On a review under this section, the Director-General of Community Services may amend a justice plan and, in that case, the offender must participate in accordance with the amended plan as if the amended plan had been specified in the youth attendance order."

### **Amendment of section 63**

14. (1) In section 63 (2) of the Principal Act, after paragraph (c) insert

"; or

(d) in the case of a youth attendance order that imposes a requirement referred to in section 50 (2)

(i) the needs of the offender are not being met by the requirement; or

(ii) the offender has failed to comply with the requirement."

### **Amendment of section 79**

15. In section 79 of the Principal Act, omit "stipendiary" (wherever occurring).

### **Amendment of section 82**

16. In section 82 of the Principal Act

(a) in sub-section (7), omit "stipendiary"; and

(b) in sub-section (9), for "*Community Welfare Services Act 1970*" substitute "*Corrections Act 1986*".

### **Insertion of new section 82A**

17. After the heading to Part 9 of the Principal Act insert

#### **Definition**

"82A. In this Part

**"Justice plan"** means a statement in respect of a person prepared by the Director-General of Community Services or a person authorised on his or her behalf specifying services which are recommended for the person having regard to the principles, aim and objectives set out in Part 2 of the *Intellectually Disabled Persons' Services Act 1986* and which are designed to reduce the likelihood of the person committing further offences.'.

## **Adjournments without conviction**

**18.** After section 83 (4) of the Principal Act insert

"(4A) Without limiting sub-section (4) (*d*), where a court receives in respect of a person

- a. a declaration of eligibility issued under section 8 of the *Intellectually Disabled Persons' Services Act* 1986; and
- b. a justice plan; and
- c. a pre-sentence report prepared by the Director-General of Corrections or a person authorised on his or her behalf

the court may impose a special condition that the person participate in the services specified in the justice plan for a period specified by the court being not longer than 2 years or the period of the adjournment under this section (whichever is the shorter period).

(4B) If a court imposes a special condition referred to in sub-section (4A), it must cause a copy of the bond to be supplied to the Director-General of Community Services."

## **Insertion of new sections 83A and 83B**

**19.** After section 83 of the Principal Act insert

### **"Review of justice plan**

"83A. (1) The Director-General of Community Services must review a justice plan

(*a*) not later than 12 months after the granting of the adjournment to which it refers, and thereafter at intervals not exceeding 12 months; or

(*b*) as directed by the court at the time of granting the adjournment

until the expiry of the period specified in accordance with section 83 (4A).

(2) A person required to participate in services specified in a justice plan may apply to the Director-General of Community Services for a review of the justice plan and, on the application being made, the Director-General of Community Services may review the justice plan.

(3) On a review under this section, the Director-General of Community Services may amend a justice plan and, in that case, the person who is the subject of the

plan must participate in accordance with the amended plan as if the amended plan had been specified in the bond."

### **Review of special condition**

"83B. (1) Where a court grants an adjournment under section 83 and the bond includes a special condition referred to in section 83 (4A), the person subject to the bond or the Director-General of Community Services may, on notice to the other party, apply to the court for a review of the special condition if it appears that

- a. the person is no longer willing to comply with the special condition; or
- b. the needs of the person are not being met by the special condition; or
- c. the person has failed to comply with the special condition.

(2) Notice of an application under sub-section (1) must be served by

(a) not less than *14* days before the date of hearing of the application, posting a true copy of the application addressed to the other party at the last known place of residence or business of the other party; or

(b) not less than *5* days before the date of hearing of the application

- i. delivering to the other party personally a true copy of the application; or
- ii. leaving a true copy of the application for the other party at the other party's last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

(3) On an application under sub-section (1), the court may confirm, vary or cancel the special condition referred to in section 83 (4A).

(4) If a court cancels a special condition, it may by order under section 85 (1) (a) call upon the person subject to the bond to appear before the court."

### **Amendment of Schedule 4**

20. In Schedule 4 to the Principal Act

(a) in item 4, for "section" substitute "section"; and

(b) in item 12, in the sub-item relating to section 106 (1) (d), insert "section" before---1 *3K (1)*"; and

(c) in item 14, for "*89 (A)*"- substitute "*89A*".

**PART 4-AMENDMENT OF ALCOHOLICS AND DRUG-DEPENDENT**

**PERSONS ACT 1968**

**Principal Act**

**21.** In this Part, the *Alcoholics and Drug-dependent Persons Act 1968* is called the Principal Act.

**Amendment of definitions**

**22.** In section 3 of the Principal Act

(a) in the definition of "Detention centre- for "gaol" (wherever occurring) substitute "prison"; and

(b) after the definition of "Inspector" insert

**"Justice plan"** means a statement in respect of a person prepared by the Director-General of Community Services or a person authorised on his or her behalf specifying services which are recommended for the person having regard to the principles, aim and objectives set out in Part 2 of the *Intellectually Disabled Persons' Services Act 1986* and which are designed to reduce the likelihood of the person committing further offences." '.

**Amendment of section 5**

**23.** In section 5 (2) of the Principal Act

(a) for "gaol or penal establishment within the meaning of the *Community Services Act 1970*" substitute "prison within the meaning of the *Corrections Act 1986*";

(b) for "gaol or penal establishment (as the case may be)" substitute "prison"; and

(c) for "*Community Services Act 1970*" (where secondly occurring) substitute "*Corrections Act 1986*".

**Amendment of section 13**

**24.** After section 13 (1) of the Principal Act insert

"(1 A) If a court is considering the making of an order under subsection (1) that requires a person convicted to undergo treatment in

a treatment centre as an out-patient and the court receives in respect of the person

(a) a declaration of eligibility issued under section 8 of the *Intellectually Disabled Persons' Services Act 1986*; and

(b) a justice plan; and

(c) a pre-sentence report prepared by the Director-General of Corrections or a person authorised on his or her behalf

the court may impose as a special condition of the recognizance that the person participate in the services specified in the justice plan for a period limited by the recognizance or a period limited by the court being not longer than 2 years.

(1 B) If a court imposes a special condition under sub-section (1 A), it must cause a copy of the recognizance to be supplied to the Director-General of Community Services.---

### **Insertion of new sections 13A and 13a**

**25.** After section 13 of the Principal Act insert

#### **Review of justice plan**

" 13A. (1) The Director-General of Community Services must review a justice plan

(a) not later than 12 months after the making of the order under section 13 (1) and thereafter at intervals not exceeding 12 months; or

(b) as directed by the court at the time of making of the order

until the expiry of the period specified in accordance with section 13 (1A).

(2) A person required to participate in services specified in a justice plan may apply to the Director-General of Community Services for a review of the justice plan and, on the application being made, the Director-General of Community Services may review the justice plan.

(3) On a review under this section, the Director-General of Community Services may amend a justice plan and, in that case, the person who is the subject of the plan must participate in accordance with the amended plan as if the amended plan had been specified in the recognizance."

#### **Review of special condition**

"13B. (1) Where a court makes an order under section 13 (1) and the recognizance includes a special condition referred to in section 13 (IA), the person subject to the recognizance or the Director-General of Community Services may, on notice to the other party, apply to the court for a review of the special condition if it appears that

(a) the person is no longer willing to comply with the special condition; or

(b) the needs of the person are not being met by the special condition; or

(c) the person has failed to comply with the special condition.

(2) Notice of an application under sub-section (1) must be served by

(a) not less than 14 days before the date of hearing of the application, posting a true copy of the application addressed to the other party at the last known place of residence or business of the other party; or

(b) not less than 5 days before the date of hearing of the application

(i) delivering to the other party personally a true copy of the application; or

(ii) leaving a true copy of the application for the other party at the other party's last or most usual place of residence or of business with a person who apparently resides or works there and who apparently is not less than 16 years of age.

(3) On an application under sub-section (1), the court may confirm, vary or cancel the special condition referred to in section 13 (1 A).

(4) If a court cancels a special condition, it may issue a summons or warrant under section 13 (3) requiring the person released on the recognizance to attend before the court to be dealt with according to law."

### **Amendment of section 15**

26. In section 15 (1) of the Principal Act, omit "stipendiary".

### **PART 5-AMENDMENT OF CHILDREN'S COURT ACT 1973**

### **Principal Act**

27. In this Part, the *Children's Court Act 1973* is called the Principal Act.

## **Insertion of definition**

28. In section 3 (1) of the Principal Act, after the definition of 'Director of Probation' insert

**"Justice plan"** means a statement in respect of a child prepared by the Director-General of Community Services or a person authorised on his or her behalf specifying services which are recommended for the child having regard to the principles, aim and objectives set out in Part 2 of the *Intellectually Disabled Persons' Services Act 1986* and which are designed to reduce the likelihood of the child committing further offences.'

## **Insertion of new sections 26A, 26B and 26C**

29. After section 26 of the Principal Act insert

### **Special condition for an intellectually disabled child**

*"26A. (1) If a children's court is considering the making of an order under section 26 (1) (b), (c) or (e) and the court receives in respect of the child*

*(a) a declaration of eligibility issued under section 8 of the *Intellectually Disabled Persons' Services Act 1986*; and*

*(b) a justice plan; and*

*(c) a report referred to in section 25 (1)*

*the court may impose as a special condition of the adjournment, probation or recognizance (as the case may be) that the child participate in the services specified in the justice plan for a period specified by the court being not longer than 2 years or the period of the adjournment, probation or recognizance (whichever is the shorter period).*

*(2) If a children's court imposes a special condition referred to in sub-section (1), it must cause a copy of the order of adjournment, probation or recognizance (as the case may be) to be supplied to the Director-General of Community Services."*

### **Review of justice plan**

*"26B. (1) The Director-General of Community Services must review a justice plan*

*(a) not later than 12 months after the granting of the adjournment, probation or recognizance (as the case may be) to which it refers, and thereafter at intervals not exceeding 12 months; or*



*(b)* as directed by the children's court at the time of the making of the order

until the expiry of the period specified in accordance with section 26A (1).

*(2)* A child required to participate in services specified in a justice plan may apply to the Director-General of Community Services for a review of the justice plan and, on the application being made, the Director-General of Community Services may review the justice plan.

*(3)* On a review under this section, the Director-General of Community Services may amend a justice plan and, in that case, the child who is the subject of the plan must participate in accordance with the amended plan as if the amended plan had been specified in the order of adjournment, probation or recognizance (as the case may be)."

### **Review of special condition**

"26c. (1) Where a children's court makes an order in respect of a child under section 26 which includes a special condition referred to in section 26A (1), the child or the Director-General of Community Services may, on notice to the other party, apply to the court or, in the case of an order releasing the child on probation, to the supervising court for a review of the special condition if it appears that

*(a)* the child is no longer willing to comply with the special condition; or

*(b)* the needs of the child are not being met by the special condition; or

*(c)* the child has failed to comply with the special condition.

*(2)* Notice of an application under sub-section (1) must be served by

*(a)* not less than 14 days before the date of hearing of the application, posting a true copy of the application addressed to the other party at the last known place of residence or business of the other party; or

*(b)* not less than 5 days before the date of hearing of the application

*(i)* delivering to the other party personally a true copy of the application; or

*(ii)* leaving a true copy of the application for the other party at the other party's last or most usual place of residence or of

**business with a person who apparently resides or works there and who apparently is not less than 16 years of age.**

**(3) On an application under sub-section (1), the court may confirm, vary or cancel the special condition referred to in section 26A (1).**

**(4) If a court cancels a special condition, it may by notice under section 32 (1), 39 (1) or 42 (1) (as the case may be) direct the child to appear before the court to be dealt with according to law."**