

# Disability Act 2006 and Regulations 2007

## (Areas referring to Financial Matters)

### Disability Act 2006

#### Parts of Part 5

#### **70. Residential charge must be reduced if service items are reduced**

- (1) If a disability service provider reduces the service items provided in the services component included in a residential charge, the disability service provider must reduce the residential charge by—
  - (a) the amount agreed between the disability service provider and the resident; or
  - (b) if agreement cannot be reached, an amount determined by VCAT on an application by the disability service provider or the resident.
- (2) In determining an amount under sub-section (1)(b), VCAT must have regard to—
  - (a) what other residents in the community residential unit are being charged for those service items;
  - (b) guidelines issued by the Secretary for the purposes of section 65.
- (3) If VCAT determines an amount under sub-section (1)(b), it may also order that—
  - (a) the reduction in the residential charge is to take effect from the time the disability service provider reduced the service items provided to the resident;
  - (b) the disability service provider is to refund to the resident any excess residential charge paid by the resident from the time the disability service provider reduced the service items provided to the resident until the date of the order.
- (4) In this section, a reduction in the service items provided in the services component included in a residential charge includes—
  - (a) a reduction of a service item by reducing the level or range of services provided in that item;
  - (b) a termination in the provision of a service item.

#### **71. Disputes relating to notice of increase in residential charge**

- (1) If a resident has a dispute in respect of a notice of increase in the residential charge, the resident may apply to VCAT for a review of the decision of the disability service provider to issue the notice of increase in the residential charge.
- (2) An application to VCAT under sub-section (1) must be made within 28 days of the issue of the notice of increase under section 66.

#### **72. What can VCAT order on an application under section 71?**

- (1) On an application made under section 71, VCAT may—
  - (a) make an order declaring that the proposed residential charge is excessive;

- (b) make an order directing that for the period specified in the order the residential charge cannot exceed the amount specified in the order;
  - (c) make orders under paragraphs (a) and (b);
  - (d) dismiss the application.
- (2) For the purposes of sub-section (1), VCAT must have regard to—
- (a) the amount paid by other residents in the same premises for the rent component and the service items provided in the services component included in the proposed residential charge;
  - (b) the amount payable by residents of similar community residential units in similar locations for similar premises and service items provided in the services component;
  - (c) the state of repair and general condition of the premises and the room;
  - (d) the number of increases in the preceding 24 months, the amount of each increase and the timing of those increases;
  - (e) any changes in the condition of the room or the service items provided in the services component since the resident commenced residency;
  - (f) any variation in the cost of providing the service items provided in the services component;
  - (g) any improvements made to the room that should not result in an increase because they were made by or on behalf of the resident;
  - (h) guidelines issued by the Secretary for the purposes of section 65.
- (3) For the purposes of sub-section (1)(a), a residential charge is not to be considered to be excessive if it does not exceed the relevant prescribed amount. **(see Reg. 5.)**
- (4) An order cannot be made under sub-section (1)(b) which specifies an amount that is less than the amount which the resident was being charged before notice of the proposed increase was given.
- (5) For the purposes of sub-section (3), the regulations may—
- (a) prescribe relevant amounts as a percentage of any specified pension payable under Commonwealth law; and
  - (b) specify different relevant amounts which may be charged for the rent component and for service items provided in the services component that can be included in a residential charge.

### **73. Payment of increased amount pending VCAT decision**

- (1) Pending the decision of VCAT under section 72, the resident must pay, from the time the proposed increase is to apply whichever is the lesser of—
- (a) the increased residential charge specified in the notice of increase under section 66; or
  - (b) 110% of the residential charge payable immediately before the notice of increase under section 66 was given.
- (2) If VCAT makes an order under section 72, VCAT may also make an order—
- (a) requiring that any excess residential charge paid by the resident from the time that the increase took effect until the date of the order be refunded; and

- (b) specifying the procedure for the refund to the resident.

## **Division 2—Provisions Relating to the Management of Money**

### **90. Management of money**

- (1) Except in accordance with this Division, a disability service provider, or a person employed by a disability service provider, must not act as a financial administrator for a person with a disability provided with disability services by that disability service provider.

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Penalty: 60 penalty units.

- (2) Sub-section (1) does not apply if the disability service provider is the Secretary providing a service in the performance of a function or the exercise of a power in accordance with another Act.

### **91. Residents' Trust Fund**

- (1) The Residents' Trust Fund established under section 45 of the **Intellectually Disabled Persons' Services Act 1986** is continued under this Act.
- (2) The Secretary must maintain the Residents' Trust Fund for money held in trust on behalf of a resident in a residential service.
- (3) The money in the Residents' Trust 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 94;
  - (c) as cash in a secure place at a residential service.
- (4) The Secretary must ensure that money is only held under sub-section (3)(c) to cover likely withdrawals from the Residents' Trust Fund and that the amount held does not exceed the limit specified by the Secretary.

### **92. Money to be paid into the Residents' Trust 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, a person with a disability residing at a residential service for the benefit or use of the person with a disability; and
- (b) all income earned on any money in the Residents' Trust Fund.

### **93. Management of money of a resident**

- (1) A disability service provider providing residential services may manage or control an amount of money of a resident, being not greater than the prescribed amount, if the disability service provider has written consent to do so from the resident or the resident's guardian or the resident's administrator.
- (2) If at any time the amount of the money of a resident held by a disability service provider under sub-section (1) exceeds the prescribed amount and the money of the resident is not to be used within the next 14 days, the money must be **(see Reg. 6)** —

- (a) held on trust on behalf of the resident; and

(b) deposited in a trust account until it is dealt with on behalf of the resident. 60 penalty units.

(3) If a disability service provider providing residential services manages or controls the money of a resident, the disability service provider must—

(a) keep a copy of the consent for that management or control;

(b) keep the money of the resident in a secure place;

(c) maintain an accurate and up to date financial management system which provides a record of—

(i) the money of the resident;

(ii) the receipt and expenditure by the disability service provider of the money of the resident;

(iii) any investment of the money of the resident;

(d) ensure that records kept under paragraph (c) individually itemise each transaction made on behalf of the resident.

Penalty:60 penalty units.

(4) A disability service provider who manages or controls the money of a resident must provide a statement at the end of each month to the resident or the resident's guardian or the resident's administrator specifying—

(a) the current balance held on behalf of the resident;

(b) any income received and expenditure incurred on behalf of the resident since the previous statement;

(c) the current status of any liabilities incurred on behalf of the resident.

Penalty:60 penalty units.

(5) The disability service provider must, upon request, give access to the resident's financial records held by the disability service provider to the resident or the resident's guardian or the resident's administrator.

Penalty:60 penalty units.

(6) The disability service provider or a person employed by the disability service provider must not accept appointment as a resident's guardian or resident's administrator in respect of any resident of the residential service.

Penalty:60 penalty units.

(7) In this section, "**money of a resident**" does not include money—

(a) payable to the disability service provider in relation to services provided by the disability service provider; or

(b) paid by the Secretary to a person to purchase disability services to be provided to the resident.

#### 94. Investment of money

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

- (2) A disability service provider, other than the Secretary, may invest any money held on behalf of a resident that is not immediately required for use by the resident.
- (3) Money invested under this section may be invested in any manner in which money may be invested under the **Trustee Act 1958**.

**95. Limit on amount held**

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- (1) The amount standing to the credit of a resident in that person's trust account must not exceed the amount prescribed for the purposes of this section (**see Reg.7.**)
- (2) If the Secretary or the disability service provider considers that an amount to be credited to a person's trust account will result in the amount standing to the credit of the person exceeding the amount prescribed under sub-section (1), the Secretary or the disability service provider must advise the person, or arrange for the person or the person's representative to be advised, to invest the money in an appropriate manner.

**96. Trust money must be paid when person leaves**

- (1) When a person ceases to reside at a residential service, the Secretary must pay all money standing to the credit of the person in the Residents' Trust Fund to the person or the person's representative.
- (2) When a person ceases to reside at a residential service, the disability service provider must pay all money standing to the credit of the person in any trust account kept in respect of the person by the disability service provider to the person or the person's representative.

## **Disability Regulations 2007**

### **PART 2—FINANCIAL MATTERS**

#### **5 Relevant prescribed amount for residential charge**

For the purposes of section 72(3) of the Act, the prescribed amount, in relation to a proposed residential charge, is an amount equal to the sum of 75% of the Commonwealth disability support pension and 100% of the Commonwealth rent assistance received by the person to whom the proposed residential charge relates.

#### **6 Management of money of a resident**

For the purposes of section 93(2) of the Act, the prescribed amount is \$250.

#### **7 Limit on amount held**

For the purposes of section 95(1) of the Act, the prescribed amount is \$5000.