

# **Disabled Persons Community Welfare Amendment Act 1997**

Public Act 1997 No 69  
Date of assent 16 September 1997

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### **Part2A**

#### **Right of persons in residential care to review**

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**An Act to amend the Disabled Persons Community Welfare Act 1975**

**BE IT ENACTED by the Parliament of New Zealand as follows:**

**1 Short Title and commencement**

- (1) This Act may be cited as the Disabled Persons Community Welfare Amendment Act 1997, and is part of the Disabled Persons Community Welfare Act 1975 (“the principal Act”).
- (2) This Act comes into force on the day after the date on which it receives the Royal assent, except for sections 2, 3, and 6.

**2 Interpretation**

- (1) Section 2 of the principal Act is amended by inserting, in their appropriate alphabetical order, the following definitions:

“**Disability services** has the same meaning as in section 2 of the Health and Disability Services Act 1993

“**Purchase agreement**—

“(a) Means an agreement under which a purchaser agrees to provide money to a person in return for the person—

“(i) Providing health services or disability services or both; or

“(ii) Arranging the provision of health services or disability services or both; and

“(b) Includes terms and conditions—

“(i) Of which notice is given under section 51(1) of the Health and Disability Services Act 1993; and

“(ii) That are accepted in accordance with that subsection:

“**Purchaser** has the same meaning as in section 2 of the Health and Disability Services Act 1993

“**Residential care services** has the same meaning as in section 3(1) of the Social Security Act 1964

“**Review officer** means a person appointed under section 25D(1)”.

- (2) This section comes into force 3 months after the date on which this Act receives the Royal assent.

**3 New sections substituted**

- (1) The principal Act is amended by repealing section 3, and substituting the following sections:

**“3 Administration**

This Act is administered as follows:

- “(a) Part 2A is administered in the Ministry of Health;  
“(b) The rest of the Act is administered in the Department of Social Welfare by the Director-General;  
“(c) The Director-General—  
    “(i) Carries out that administration; and  
    “(ii) Exercises all the powers conferred on the Director-General by this Act—  
under the general direction and control of the Minister of Social Welfare.

**“3A Effect on Disabled Persons Employment Promotion Act 1960**

Nothing in this Act restricts—

- “(a) The Disabled Persons Employment Promotion Act 1960; or  
“(b) Any Act providing for the rehabilitation and placement in employment of sick or disabled persons.”
- (2) This section comes into force 3 months after the date on which this Act receives the Royal assent.

**4 Registration**

- (1)
- (2) This subsection amended s 18(3) of the principal Act.  
Subsection (1) was repealed, as from 1 October 2002, by section 57(2)(c) Health and Disability Services (Safety) Act 2001 (2001 No 93). See section 57(1) for limitations on licensing and registration after 30 September 2002. See section 11 of that Act for transitional provisions.

**5 Inspection**

- (1) This subsection substituted s 22(1)(b) of the principal Act, and inserted s 22(1)(c).
- (2) Section 4 of the Disabled Persons Community Welfare Amendment Act 1988 is consequentially repealed.

**6 New Part inserted**

- (1) The principal Act is amended by inserting, after section 25, the following Part:

**“Part2A****“Right of persons in residential care to review****“25A Right of review**

- “(1) This Part applies to a person who—
- “(a) Has an intellectual, physical, psychiatric, or sensory disability; and
  - “(b) Because of that disability, enters residential care of a kind that is purchased by the regional health authority; and
  - “(c) Is not a person to whom section 69F of the Social Security Act 1964 applies.
- Subsection (2) sets out the matters in relation to which the person has a right of review. Subsection (3) sets out the circumstances in which the person does not have a right of review.
- “(2) A person to whom this Part applies has a right to a review of—
- “(a) The adequacy of any disability services needs assessment provided in respect of that person under a purchase agreement with the regional health authority; or
  - “(b) Whether or not the person’s disability services needs, as assessed by a disability services needs assessment provided in respect of that person under a purchase agreement with the regional health authority, are appropriately met by—
    - “(i) The residential care the person entered following the disability services needs assessment; or
    - “(ii) The residential care services purchased for the person following the disability services needs assessment.
- “(3) A person to whom this Part applies has no right to a review if, in relation to the matter sought to be reviewed,—
- “(a) The person has a right of review, or rights of review, provided, or provided for, by the regional health authority—

- “(i) In compliance with an objective notified to it under section 8(1)(c) of the Health and Disability Services Act 1993; or
  - “(ii) Under the terms and conditions of the funding agreement entered into by it under section 21 of that Act; or
  - “(iii) In compliance with a direction given to it under section 25(1) of that Act; and
- “(b) The person has not exhausted that right of review or those rights of review.

**“25B Who may apply for review**

An application for a review may be made by—

- “(a) A person to whom this Part applies; or
- “(b) Any other person, acting on behalf of such a person, who is—
  - “(i) Authorised by the person to make the application, by power of attorney or otherwise; or
  - “(ii) The welfare guardian of the person or the manager of the property of the person appointed under the Protection of Personal and Property Rights Act 1988; or
  - “(iii) A close relative of the person, including, a person who has a relationship in the nature of marriage with the person.

**“25C Procedure and time limits for applying for review**

- “(1) An application for a review must—
  - “(a) Be made to the regional health authority; and
  - “(b) Be in writing; and
  - “(c) Contain an address at which the applicant wishes to receive correspondence relating to the review.
- “(2) An applicant for a review may at any time change the address for correspondence by notifying the authority in writing of the new address.
- “(3) An application for a review must be made within 3 months of the latest of the following dates:
  - “(a) The date on which a copy of the disability services needs assessment is given or sent to the person; or

- “(b) The date on which the person enters residential care; or
  - “(c) The date on which the authority—
    - “(i) Enters into a purchase agreement with a service provider to provide residential care services to the person; or
    - “(ii) Enters into a purchase agreement in renewal of or substitution for a previous purchase agreement, being a renewed or substituted agreement that contains a change in the residential care services to be provided to the person; or
  - “(d) The date on which, if the person has a right of review, or rights of review, of a kind referred to in section 25A(3)(a), the person is notified of the outcome of the last such review available to him or her.
- “(4) The regional health authority may accept an application for a review after the time specified in subsection (3) if—
- “(a) The authority is satisfied that there is good reason for the delay; or
  - “(b) Both the following apply:
    - “(i) One of these events occurred before this section came into force: the disability services needs assessment was obtained; or the entry into residential care took place; or the purchase agreement was entered into; or the person was notified of the outcome of the last review of a kind referred to in section 25A(3)(a) available to him or her; and
    - “(ii) The authority is satisfied that there was no undue delay in applying for the review.

**“25D Regional health authority to appoint disability services review officers**

- “(1) The regional health authority must appoint from time to time a sufficient number of persons to conduct reviews.
- “(2) Every review officer must—
  - “(a) Be suitable, in the opinion of the regional health authority, to conduct reviews; and
  - “(b) Be experienced in relation to the provision of disability services; and

- “(c) Have a recognised qualification relating to the provision of disability services.
- “(3) A review officer may be either—
  - “(a) An employee of the regional health authority; or
  - “(b) A person engaged by the regional health authority to conduct a particular review or reviews generally. The person may carry out other functions for the authority and may be engaged by purchase agreement or otherwise.
- “(4) A review officer must not conduct a review if he or she was connected in any material way with—
  - “(a) Any disability services needs assessment made in relation to the person; or
  - “(b) The entry into residential care of the person; or
  - “(c) Any purchase agreement for residential care services for the person.
- “(5) The regional health authority must supply all the secretarial and administrative services that the review officer needs to carry out his or her functions.

**“25E Conduct of review**

- “(1) A review officer appointed to conduct a review must have regard to—
  - “(a) The application for the review and any written submissions made by or on behalf of the person; and
  - “(b) Any relevant disability services needs assessment in respect of the person; and
  - “(c) Any explanation or submissions made by the regional health authority or any person who assessed the needs of the person.
- “(2) A review officer is not required to hold an oral hearing for the purposes of a review but may do so if he or she thinks fit, and may from time to time adjourn the hearing.
- “(3) A review officer may request any person to attend before him or her to answer any questions or provide any information relevant to the review.
- “(4) A person requested to attend before a review officer—
  - “(a) Is under no compulsion to do so; and

- “(b) Has the same privileges in relation to answering questions put by the review officer or providing information to the review officer as witnesses have in courts of law.

**“25F Outcome of review**

- “(1) A review officer who has conducted a review must, after considering the matter, either—
  - “(a) Make such recommendations as he or she thinks fit to the regional health authority concerning any 1 or more of the following matters:
    - “(i) The disability services needs assessment in respect of the person;
    - “(ii) The residential care of the person;
    - “(iii) The residential care services provided to the person; or
  - “(b) Decide to make no recommendation concerning the subject-matter of the review.
- “(2) A review officer must notify the applicant for the review of—
  - “(a) Any recommendation or decision made by the review officer; and
  - “(b) The reasons for any such recommendation or decision.
- “(3) The regional health authority has a public duty to—
  - “(a) Consider the recommendation and the reasons for it; and
  - “(b) Take such action in respect of it as the regional health authority considers appropriate; and
  - “(c) Notify the applicant for the review of the action it has taken.
- “(4) Every notification under this section to the applicant for the review must—
  - “(a) Be in writing; and
  - “(b) Be—
    - “(i) Delivered personally to the applicant; or
    - “(ii) Left at the last address for correspondence notified to the authority under section 25C(1) or (2); or
    - “(iii) Posted in a letter addressed to the applicant at that address.

- “(5) The regional health authority must include in its annual report a statement setting out, in respect of the year to which the report relates, the following information in relation to reviews:
- “(a) The number and nature of the applications that have been made; and
  - “(b) The number in which recommendations have been made to the regional health authority and a summary of those recommendations; and
  - “(c) The number of recommendations acted upon by the regional health authority and a summary of the actions taken by the authority.”
- (2) This section comes into force 3 months after the date on which this Act receives the Royal assent.