

Disability Services (Criminal History) Amendment Bill 2009

Clause and Explanatory Notes

Introduction

The proposed amendments seek to ensure the wellbeing of people with disabilities placed in the care of an employed carer.

The current legislation does not preclude the employment of someone with a violent criminal history from being a carer for a person with a disability. A person with a disability is in a position of vulnerability and must be able to trust their wellbeing to an employed carer. A violent criminal history under this Bill would preclude employment or necessitate consideration by the chief executive. A history including convictions would disqualify a person from employment as a carer, while a history of violent charges without conviction (for example repeated charges of domestic violence) would be assessed by the chief executive. A right to request review of a decision made by the chief executive is included.

The Bill introduces a system of Carer Prohibition Notices, which would be issued to people seeking employment as carers for people with disabilities whose criminal histories are deemed violent.

Short Title of the Bill

The short title of the Bill is the *Disability Services (Criminal History) Amendment Bill 2009*.

Objective of the Bill

The objective of the Bill is to provide protection for people with disabilities, ensuring they are not placed in the care of an employed carer with a violent criminal history.

Reasons for the Bill

- To provide protection for people with disabilities
- To ensure a consistent and efficient system for services providing care for people with disabilities to check the criminal histories of prospective care-providing employees

Fundamental Legislative Principles

The Bill considers a person's criminal history, including charges that did not result in convictions. However, the aim of the Bill is to protect the fundamental rights of people with disabilities, and to ensure their safety when in the care of an employed carer.

Cost to Government

It is not envisaged there will be a significant cost associated with the implementation of this Bill. There will be operational costs in the undertaking of criminal histories.

Clause 1 - The short title of the Bill as it may be referred to *Disability Services (Criminal History) Amendment Bill 2009*

Clause 2 - This clause advises that the Act amends the *Disability Services Act 2006*.

Clause 3 - This clause amends section 123, Register of persons engaged by funded non-government entities, and inserts a carer prohibition notice as an inclusion on the register.

Clause 4 – This clause inserts a new part, 10AA, Carers with violent criminal histories.

Under this clause, a carer is defined as a person engaged by a service provider to care for another person who needs ongoing support because of a disability.

A violent criminal history is defined as a criminal history including a conviction or a charge against a person that is for a violent offence committed or alleged to have been committed within a 7 year period. The 7 year period is 7 year period ending on the day the criminal history is considered by the chief executive.

Section 123AB is inserted stating a service provider must not engage or continue to engage a carer if the service provider is aware of a current carer prohibition notice, if they have not made a request for screening of the person, or if the provider is aware the person has withdrawn his or her consent for screening.

Section 123AC concerns the person with a violent criminal history, and prohibits their application for, commencement or continuance in engagement as a carer.

Section 123AD inserts a section for the chief executive to issue carer prohibition notices. If the chief executive is satisfied the person has a violent criminal history, the chief executive must issue a carer prohibition notice. However, this does not apply if there are no convictions for violent offences or if the chief executive is satisfied it is an exceptional case in which the interests of people with disabilities would not be harmed by the person's engagement as a carer. Under this section, only convictions are the automatic trigger for a notice issue.

Section 123A allows for review of a decision as to whether or not there is an exceptional case as mentioned in section 123AD (3) (b).

Section 123AF defines the period of a carer prohibition notice as being current for 7 years from the date of the most recent violent offence committed or alleged to have been committed.

Section 123AG applies the section to non-funded service providers.

Section 123AH allows for non-funded service providers to ask the chief executive to obtain police information about the person for the purpose of determining whether to issue a carer prohibition notice. The provisions apply as if the service provider were a funded non-government service.

Section 123AI places an obligation of disclosure on people engaged as carers by non-funded service providers.

Section 123AJ allows the register to include persons for whom a request is made for a non-funded service.

Clause 5 - includes references for the definitions included in the Bill.