

REPORT 91 SUMMARY (1999) - REVIEW OF THE DISABILITY SERVICES ACT 1993 (NSW)

Contents

1. Introduction
2. Objects, Principles and Applications of Principles
3. Planning
4. Access to Mainstream Services
5. Funding
6. Transition
7. Improving Quality
8. Children and Young People
9. Enforcement
10. Disability Services Regulation

INTRODUCTION

The New South Wales Law Reform Commission was asked to review the *Disability Services Act 1993* (NSW) ("DSA") and the *Disability Services Regulation 1993* (NSW) to look at whether the policy objectives of the DSA are still valid and whether the terms of the DSA are appropriate for securing those objectives. The Commission was also asked to review the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) (CAMA) which complements the DSA.

In September 1993, the Commission published Issues Paper 16 on its review of the DSA and Issues Paper 15 on its review of CAMA. The Commission consulted extensively on the issues raised in these papers. It held several public seminars in Sydney and regional areas, engaged consultants to conduct a series of focus groups with people with disabilities and with children who used or had used substitute care services, and received over 90 oral and written submissions.

OBJECTS, PRINCIPLES AND APPLICATIONS OF PRINCIPLES

The Commission found that the objects, principles and applications of principles generally remain valid, but suggests some minor changes to ensure that the DSA reflects the aspirations of people with a disability. For instance, the Commission recommends that the objects be amended to cater also for people with increasing support needs and that the principles be amended to:

ensure that access to services is determined on a fair and equitable basis;

provide for cultural and linguistic diversity, and gender and sexual orientation; and

recognise the importance of families and carers of people with a disability.

The Commission further recommends that the terminology of the DSA should be updated. For example, terms which imply that people with a disability should adopt some “normal” majority lifestyle in order to become part of the community should be removed and replaced by terms which emphasise choice. The focus should be on “inclusion” in the community, not “integration”.

PLANNING

Good public policy requires that the process by which public money is distributed for public programs should be transparent. The funds should be distributed equitably on the basis of identified criteria. Accordingly, the Commission recommends that the DSA be amended to require the Minister to prepare a four-year plan for the provision of disability services and outline the process the Minister should follow in preparing the plan. This should include such things as:

- identifying appropriate planning areas;
- collecting data on demand, supply and unmet need in these areas;
- consulting with all relevant stakeholders;
- establishing mechanisms for co-operating with mainstream service providers;
- taking into account the needs and views of people of non-English speaking backgrounds and Aborigines and Torres Strait Islanders; and
- identifying priorities for service provision by location and type of service.

ACCESS TO MAINSTREAM SERVICES

The Commission considers that people with a disability should have the same rights as others in the community to use services provided by State and local governments. Section 9 was intended to achieve this. It requires government departments and agencies to prepare a plan showing how they provide services in a way that furthers the principles and applications of principles under the DSA. However, it appears from the Commission’s consultations, that the section 9 process has largely failed to achieve its aims and produce real change. While a number of issues concerning section 9 plans have been addressed by the Disability Policy Framework and Guidelines, published in December 1998, the Commission believes it is necessary to strengthen section 9 in order to make it more effective. First, the Commission recommends that section 9 should apply to all government departments and agencies. Secondly, the quality of section 9 plans should be improved by, for example:

- providing more guidance to agencies about what information should be included in the plan;
- requiring broad consultation;
- including the plan as part of performance agreements of CEOs and SES officers; and
- imposing monitoring and reporting obligations on the agency.

FUNDING

The funding provisions of the DSA attempt to ensure that services provided with financial assistance by the Minister comply with the Act's objects, principles and applications of principles. The funding provisions are broad: they permit the funding of all types of services or organisations, including the direct funding of individuals where this is considered appropriate. This flexibility is positive, allowing for the development of innovative funding models. The major recommendation the Commission makes in relation to funding is that the Minister be empowered to fund only those services which have been certified by a new independent quality assurance body, the Disability Services Quality Assurance Council (DisQAC) (see Chapter 7).

TRANSITION

When the DSA was enacted, existing services were given three years to move towards full conformity with the DSA. Each service was required to prepare a transition plan demonstrating how they planned to meet the requirements of the DSA. Funding was to be made available to assist services implement their plans. For some services which needed to reconfigure existing buildings, substantial funding was needed. This three-year time limit has long since expired. Yet at least 30% of non-government and 86% of DOCS disability services still do not conform fully with the objects, principles and applications of principles. Many transition plans that were developed by the services have remained unfunded and are now likely to be out of date or inappropriate.

It became clear to the Commission that clearer and more streamlined transition provisions were required. Rather than imposing unrealistic time-frames in the DSA for the allocation of transition funding and for reaching conformity, the Commission recommends that the Minister be required to give each service notice of when it will receive transition funding and the final date on which it is expected to reach conformity. The transition process should comprise two stages. A Stage 1 transition service, whose funding is more than 12 months away, should be required to prepare a Stage 1 transition plan which shows how the service is meeting, or intends to meet, certain identified basic criteria. This would replace the current vague requirement to show that a service is conforming "as closely as possible" with the DSA. A Stage 2 service is a service that is scheduled to receive transition funding in, or sooner than, twelve months. It will be required to prepare a Stage 2 transition plan, which is a final and detailed plan outlining how and when full conformity will be achieved. Both Stage 1 and Stage 2 plans will have to be lodged with DisQAC which would assess the plans and if satisfactory, certify them.

IMPROVING QUALITY

There is widespread community dissatisfaction with the Disability Services Standards as a measure of quality. Concerns have also been raised about the effectiveness of self-assessment by services against these Standards, and the need for independent review of service compliance with quality indicators, rather than review by ADD. A major recommendation of this Report is that a new independent body, DisQAC, be established to assess and monitor service quality. One of its functions would be the development of new standards that focus on the outcomes for people with disabilities rather than the methodology used to achieve those outcomes. The new Standards should be developed in consultation with industry and consumer groups, and should reflect the spirit of the objects, principles and applications of principles more accurately than the current Standards.

To ensure that the new quality assurance system is effective, the Commission recommends that the DSA be amended to provide that the Minister may not approve funding to a disability service under the Act unless that service has been certified by DisQAC as meeting the necessary quality standards. This should apply to all services funded under the DSA, including DOCS services and privately-operated services.

CHILDREN AND YOUNG PEOPLE

The Commission recommends that a new Part be included in the DSA specifically for children and young people with a disability. This will help to ensure that service providers and the Government give greater priority and attention to the rights and needs of children receiving disability services and, in particular, those in large residential services. The new Part should include special additional principles and applications of principles for children and young people which reflect the rights contained in the United Nations Convention on the Rights of the Child (CROC). In particular, the DSA should recognise the principle contained in CROC that children have the right to grow up in a family environment. The Commission also recommends that compliance with legislation governing the care and protection of children and young people be a precondition of funding.

ENFORCEMENT

The Commission recommends that greater enforcement action be available to the Minister when a service is in breach of the DSA. For example, the Minister should be able to:

- appoint an administrator for a service;
- stop a service from admitting any more clients;
- name a service in Parliament; and
- conduct more frequent monitoring of a service.

In this chapter, the Commission has also considered the issue of merits review. As a matter of principle, the Commission believes that decisions should be reviewable on their merits if they are made under an enactment, are administrative in nature and are likely to affect the interests of a person. The current appeals provision contained in section 20 will be made redundant if the recommendations concerning the transition provisions and the quality assurance process are implemented. The Commission recommends that, in its place, a new provision be inserted which would allow an application for merits review to be brought in the Administrative Decisions Tribunal in respect of decisions of DisQAC to certify or refuse to certify a service.

DISABILITY SERVICES REGULATION

The Minister has power under the Regulation to exclude services he or she provides or funds from the operation of the DSA. The consequences are that the Minister may provide or fund services that do not comply with the objects, principles and applications of principles in the DSA. Services outside the scope of the DSA are also not subject to the Act's quality assessment process or review procedures. The Commission recommends that the Minister should have the power to exempt a service from the operation of the DSA only if he or she is satisfied that the service or class of services to be exempted is subject to standards comparable with the objects, principles and applications of principles, and an

effective quality assurance process. In order to achieve greater accountability, this power should be transparent and located in the DSA itself, not in the Regulation.