



TasCOSS' response to the  
Directions Paper  
for the  
Review of the Tasmanian *Disability  
Services Act 1992*

May 2010

Authorised by Tom Muller  
Chief Executive Officer  
Tasmanian Council of Social Service  
PO Box 1126  
Sandy Bay Tas 7006  
[tom@tascoss.org.au](mailto:tom@tascoss.org.au)

TasCOSS welcomes the opportunity to comment on the Directions Paper for the Review of the *Tasmanian Disability Services Act 1992*. TasCOSS is the peak body for the community services sector in Tasmania and the principal voice for low income and disadvantaged Tasmanians. Many of TasCOSS' members are providers of disability services. The recognition of the rights of people with disabilities and the provision of services which meet their needs are issues of fundamental concern to our organisation.

We have selected individual issues raised in the Direction Paper that are of particular interest to TasCOSS and its' members. Most of these address specific issues raised in Direction Paper.

### **Purpose of the Act**

It is TasCOSS' view that this review provides the opportunity for a more expansive Act that not only provides the legislative base for disability specific services, but that provides the legislative framework for recognition of the rights of people with disabilities to access the range of community services and to participate fully in community life.

As the Directions Paper acknowledges, the context of service provision for people with disabilities has changed significantly since the Disability Services Act 1992 was drafted. The National Disability Agreement refers to the creation of a service system which provides skills and supports people with disability to participate in social, economic and community activities and to live as independently as possible.

Disability specific services are just part of the range of community services that will be fundamental to enabling people with disabilities to live fulfilled lives. When we legislate in relation to the services that are provided to people with disabilities, we should take an holistic approach, commencing by setting out the rights that people with disabilities have in relation to the range of services and opportunities available to them.

The State Government's Disability Framework for Action 2005-2010 provides a whole of government framework for Tasmanians with a disability. This approach should be reflected in the new Act.

The Act should refer to the access considerations that should be taken into account by town planners. It should set out what Tasmanian young people with a disability should be able to expect in terms of making access to education in their local school a reality (including access to appropriate support and equipment). The Act should set out the obligations of the Department of Health and Human Services in terms of ensuring that there is coordination of service delivery to people with disabilities, especially between government agencies.

In the absence of a charter of rights in Tasmania, there is no instrument which asserts the rights of Tasmanians with a disability beyond the Anti-discrimination Acts (State and Commonwealth). These acts assert rights in a negative fashion insofar as it can be demonstrated that there has been discrimination, but they do not set out what a person can expect in relation to community services or participation in community life.

The *Victorian Disability Act 2006* takes this step beyond just regulation of the disability services sector. The purpose of the Victorian Act is:

*to enact a new legislative scheme for persons with a disability which reaffirms and strengthens their rights and responsibilities and which is based on the recognition that this requires support across the government sector and within the community*

The objectives include to:

- (a) advance the inclusion and participation in the community of persons with a disability;*
- (b) promote a strategic whole of government approach in supporting the needs and aspirations of persons with a disability*

The Act includes a list of rights of people with a disability and provides the terms for the planning framework in relation to disability issues including the Victorian Disability Advisory Council and the State Disability Plan.

This legislation was enacted prior to Australia becoming signatory to the UN Convention on the Rights of Persons with Disabilities and thus its language in terms of rights is perhaps outdated, but still serves as an excellent model for a Tasmanian Disability Act.

With the drafting of the UN Convention on the Rights of Persons with Disabilities we see a renewed focus on rights to accessible public infrastructure, education, full inclusion and participation in community life, participation in decision making processes and of the rights of children with disabilities. These are all rights that should be clearly articulated in a new Act.

### **Funding Options**

#### Question 14

TasCOSS is of the view that the new Act does need to clearly allow for new funding allocation models that may be considered appropriate including direct payments approaches. This is not to indicate that TasCOSS signifies its unqualified support for direct payments approaches, simply that they should be available within the legislation.

### **Service Planning**

#### Questions 15-18

The Act should deal with system planning and planning for individuals.

The Act should set out the process for a state disability plan and the role of that people with disabilities, families, disability specific and non-disability specific service providers will have in this process. The Act should clearly indicate a structure and process for on-going coordination and information sharing between relevant government agencies and requirements for data collection in relation to unmet need.

The Act should make similar provision to the Victorian Act with regard to mandating the role of the person with the disability, family members and other significant people in the planning process.

## **Monitoring Quality & Safety**

Questions 20-21

### *A Disability Services Visitors Scheme*

The Quality and Safety Framework being implemented across Tasmania's Human Services will not be sufficient to obviate the need for an independent inspection scheme. It is an insufficient safeguard for services to be reporting upon themselves and there are too many barriers that impede people with disabilities from accessing formal complaint mechanisms.

A Disability Services Visitors Scheme should be created along the lines of the Victorian model. The role of the Victorian community visitors includes to visit residential services and inquire into:

- the appropriateness and standard of premises for the accommodation of residents
- whether residents have adequate opportunities for inclusion and participation in the community
- whether information is provided to residents as required in the Act
- any case of suspected abuse or neglect of a resident
- the use of restrictive interventions
- any failure to comply with the provisions of the Act
- any complaint made to a community visitor by a resident.

In Tasmania, this role should be specifically extended to include visiting of residential services for children.

## **Complaints**

### Question 24

#### *A Disability and Community Services Commissioner*

TasCOSS have consistently advocated for the creation of a Disability and Community Services Commissioner in the office of the Ombudsman. This need has become more pressing with the devolution of government disability services to the community sector almost complete.

The role of the Commissioner should include the provision of education and training in relation to the prevention and resolution of complaints in relation to disability services and research into mechanisms of resolving complaints relating to disability services.

The commissioner's office should be advised by a board including disability service providers, people with disabilities, representation of young people with disabilities as in the Victorian Act.

## **Substitute decision making**

### Question 25

The new legislation should prohibit funded service providers or persons employed by them from acting as guardians or administrators. Allowing service providers to perform these roles is a conflict of interest and is a situation that is clearly open to abuse.

## **Restrictive Interventions**

Questions 27 – 29

### *A Disability and Community Commissioner for Tasmania*

The role of the voluntary Ethics Committee should be superseded by the creation of an Office of the Disability and Community Commissioner within the Ombudsman's Office. Aversive practices should be prohibited under the new Act, but restrictive interventions should be available subject to strict guidelines and monitoring and advice from a newly created role of the Senior Practitioner. This role should be located in the Commissioner's office and be based on the Victorian model.

### *Create the role of senior practitioner*

The new Act should create the role of senior practitioner within the Disability and Community Services Commissioner's Office. The role of senior practitioner was created under the Victorian Disability Act 2006 to both provide more accountability in relation to restrictive interventions (and in the Victorian case, compulsory treatment) and to provide greater support to disability service providers in the form of increased access to specialist expertise information and advice.

The role of senior practitioner in the Victorian context includes to:

- develop guidelines and standards
- provide education and information
- provide advice to disability service providers to improve practices
- develop links to professional bodies and academic institutions to improve the knowledge and training of workers
- undertake research and provide information to disability service providers
- monitor and evaluate the use of restrictive interventions practices across disability services and make
- recommendations to the Minister and Secretary

*Restraint and seclusion should require a behaviour management plan*

The use of restraint and seclusion in Victoria requires the development of a behaviour management plan defined in section 3 of the Act as *a plan developed for a person with a disability which specifies a range of strategies to be used in managing the person's behaviour including proactive strategies to build on a person's strengths and increase their life skills.*

The behaviour management plan must:

- State the circumstances in which restraint or seclusion can be used
- Explain how the use of restraint or seclusion will be of 'benefit to the person'
- Demonstrate that the use of restraint or seclusion is the option that is the least restrictive of the person as is possible in the circumstances.

The development of such a plan requires consultation with the person with a disability, their guardian (if applicable), and any other disability service provider who is providing a disability service to the person. The plan must be regularly reviewed.

Similar provisions in relation to a requirement for the preparation of behaviour management plans in relation to use of restraint and seclusion should be part of the new Tasmanian Act.

## **Parental Responsibility**

### Question 31

The Tasmanian Commissioner for Children has clearly illustrated the harrowing impacts of the lack of a mechanism for the state of Tasmania to reach an agreement with parents in relation to shared responsibility for children for whom parents require state support. Clearly the current situation which requires a Care and Protection Order is not effective in meeting the needs of families or young people and the Commissioner's proposal that the *Family Law Act 1975* provides an avenue for shared parental responsibility provides hope for a practical solution to the current dilemma.

It is TasCOSS' view that while there are legitimate arguments for legislative provision for shared parenting to fall outside both the *Children, Young Persons and the Families Act* and the *Disability Services Act*, resolution of this pressing issue requires that a decision be made in favour of provision being made in one or both of these Acts. Given that this issue clearly relates to young people with disabilities, disability services and parental responsibility, it is suggested that the appropriate solution is that provision be made in both Acts.

TasCOSS' proposal is that the Disability Services Act become a Disabilities Act as in Victoria, where the scope of the Act extends beyond disability services to the range of activity that people with disabilities are engaged in. Given that the issue raised by the Commissioner are issues experienced by people with disabilities and their families, it would be appropriate that a Disabilities Act provide for the situation where responsibility for care needs to be negotiated.

## References

Council of Australian Governments (COAG) *National Disability Agreement 2009*

*The Disability Act 2006* (Vic)

Victorian Government Department of Human Services, *Disability Act 2006 A guide for disability service providers* 2006

Tasmanian Commissioner for Children *Parens Patriae – Who will take Responsibility? Inquiry into the circumstances of certain children living in disability respite facilities* 2009

Department of Premier and Cabinet – *Tasmanian Government Disability Framework for Action 2005-2010*

Department of Health and Human Services *Operational Framework for Disability Services* 2009

*United Nations Convention on the Rights of Persons with Disabilities* 2006