

**Office of the Public Advocate – Response to the State DisAbility  
Services Plan – Consultation Report.  
26/2/01**

The overall feedback received in the Consultation Report appears to support a strong vision for an inclusive community. Obviously the achievement of such a goal extends beyond the scope of the state disability plan. Services per se cannot cause our society to be more inclusive as this is the responsibility of the whole community. Positive interaction between people with disabilities and the wider community is the most effective way of changing opinions and attitudes towards persons with a disability. However, where services are provided in a way which is flexible, innovative and individually focussed they are more likely to provide opportunities for inclusion to occur.

The Consultation Report has broadly raised many of the issues this office believes should be taken into account in the formulation of the next State DisAbility Plan. However, there are some issues that were either not mentioned or warrant further elaboration.

## **1. Advocacy Services**

Advocacy is a vital method for promoting and safeguarding the rights and autonomy of people with disabilities. It also serves an important role in identifying gaps and deficiencies in the service system. The State DisAbility Plan needs to recognise the central role played by advocacy programs. As a statutory advocacy service of last resort, the Office of the Public Advocate is specifically concerned with situations concerning exploitation, abuse or neglect, although the advocacy needs of people with a disability are obviously much greater than this. However, within the current resources of the Office we are not always able to provide advocacy in relation to these issues. Given the limited range of independent advocacy services, particularly with the cuts to state funding of some advocacy programs under the previous state government there is often no other source of independent advocacy.

OPA strongly supports the need for there to be greater resourcing of a range of community advocacy agencies in order to more effectively meet the advocacy needs of people with a disability. This approach should recognise the following:

- The need for a range of advocacy services from self-advocacy through individual to systemic, to meet the range of differing needs.
- Advocacy needs to be independent and free of any conflict of interest in order to act in the best interests of the person with the disability.
- Advocacy needs to be accessible in terms of the range, (nature and type of disability).
- Advocacy needs to be accessible, taking into account the need for regionally based and culturally sensitive advocacy programs.
- The advocacy provided needs to be accountable to the person with the disability.

The state needs to take a greater responsibility for ensuring that a range of accessible and diverse advocacy programs are available to meet the needs of all Victorians with

a disability. This will be critical if the vision of a Victoria where disability is not a barrier to participation and involvement in the community is to be achieved.

## **2. The need for legislative changes**

OPA supports the suggestion in the Consultation Report that the need for two pieces of legislation - the *Intellectually Disabled Persons' Services Act* 1986 (IDPSA) and the *Disability Services Act* 1991 (DSA) - which deal with the planning, funding and delivery of services for people with a disability in Victoria, be reviewed. It is timely for legislators to turn their mind to the creation of an integrated and consistent Act which retains a focus on individual rights. This could be progressed by the establishment of a key stakeholder working group.

The IDPSA is rights-based legislation, which emphasises the provision of services and facilities to meet the needs of eligible persons. Overall this rights-based emphasis is supported by the OPA and people should be free to choose whether they wish to have assistance or not. However, there is a relatively small number of people who because of the risk they pose to themselves or others need to be provided with assistance which they may not necessarily believe that they need. Indeed the very nature of their disability may affect the level of insight they may have into their actions. This aspect of the legislation needs to be explored in order to protect the rights of this group. It can be contrasted to provisions in the *Mental Health Act* 1986 which, in certain circumstances, are used to provide treatment and services to people who are refusing such treatment. Clearly this necessitates the inclusion of adequate safeguards in any piece of legislation for review of decisions made. Any mechanisms should be transparent, fair and accessible. Whether the IDPSA (or its replacement) should contain some involuntary provisions needs to be explored. In the absence of such provisions, other legal mechanisms are currently being inappropriately used, such as an order for guardianship under the *Guardianship and Administration Act* 1986, to compel people with disabilities to receive treatment or services. In some instances, substitute decision-making may include decisions concerning detention in a secure facility for treatment.

OPA's view is that, in principle, people with disabilities should have access to the same rights and responsibilities as the broader community in relation to laws on housing, transport, health and education. While there may be a policy rationale for distinguishing people with disabilities in some public policy areas (or a specialist approach may be required before moving to a more generic approach), the starting point should be that of equal protection under the law. An example of this approach can be seen in OPA's submissions in the context of the review of the Residential Tenancies legislation. This legislation currently, and in OPA's view inappropriately, excludes persons with disabilities in supported accommodation from the tenancy rights and obligations articulated in the Act.

### **2.1. Accessibility of the service system**

The complex and fragmented nature of the current service system is a major barrier to the system being accessed by people with disabilities, their families and advocates.

Those who are assessed as being eligible are often faced with significant waiting times, just to be assessed, before waiting a further period of time before receiving a case manager or outreach worker. In one region an advocate was told that there was a six-month waiting period for outreach support. Clearly such waiting periods are inconsistent with providing a responsive quality service. This also affects the capacity of the system to be proactive and respond to needs before they reach a crisis point. When the services are unable to respond in a timely way to individual needs this can obviously be quite distressing to the person and may necessitate a more resource intensive involvement at a later stage. There is also a limited range of services available. Some people with disabilities may require a relatively low level of assistance in being able to access mainstream services.

There is a significant group of people with disabilities who are often assessed as being ineligible for assistance from disability services. This can be for a wide range of reasons such as their marginal IQ level, or the nature of their disability, for example Aspergers syndrome.

The voluntary nature of the service can also mean that people with disabilities who may be vulnerable or lack insight into their needs may refuse the service offered. In these instances alternatives are often not available causing the person's needs to go unmet which can leave them open to situations of exploitation, abuse or neglect. Therefore a service which is concerned about responding to need rather than on the basis of a person's disability is more likely to shift the focus from the current dual assessment method whereby their disability is assessed before their needs are.

OPA supports the need to make the service system more accessible, through improving the process for accessing the system, and the way in which the system responds to individual needs. Information about the services available should also be more readily available through central points of contact. Initiatives such as Disability Information Victoria ([www.disabilityinfo.org.au](http://www.disabilityinfo.org.au)) should be further developed and resourced in order to ensure the reliability and comprehensiveness of the information they provide.

### **3. Accommodation Services**

#### **3.1. Congregate Care facilities**

The problems associated with institutional living have been well documented. The need to redevelop the remaining training centres must be a central part of the State Disability Plan if the vision of an inclusive community is to be realised. This will require the commitment of resources and strength of political will if the closure of these remaining institutions is to occur in the immediate future. The ageing nature of this population also means that time is running out for many of them to live in the community.

The Consultation Report refers to the concept of village living. OPA has some concerns about the proposal of village type accommodation mentioned. Depending how this is approached this has the potential to be as isolating and excluding as any institution. It is important to remember that for those people who have chosen to move into a retirement village they have already lived as part of the community.

They usually bring with them their personal networks which ensure that they remain part of the wider community whilst living in this smaller village.

### **3.2. Ageing nature of the Population**

There is widespread recognition and concern that a combination of forces has led to a significant shortfall in the provision of supported accommodation services for people with disabilities, including those with mental illness and brain damage. The causes are complex, but the changing demographics of the population are significant. ABS statistics show that the population is ageing and individuals are living longer, with a corresponding increase in the incidence of dementia in the population.

- It is widely acknowledged that the ageing of parents and family carers of people with disabilities and mental illness will place a growing demand on accommodation needs.
- At the same time, people with disabilities are themselves living longer and reaching the age at which working people retire from work. There is a need to address the accommodation options for the ageing population of people with a disability. They need to be able to access similar aged care accommodation options to the wider community. However, this would need to be accompanied by an education and training program for aged care facilities to help them to meet the needs of people with a disability. Special consideration of alternatives to these options needs to be considered for those people who have been institutionalised for most of their lives. They will need the choice to retire from Adult Day Programs and will need accommodation where they are not expected to be out of the house on working days. Others may require the support which is provided by aged community services to people living in their own homes.

OPA submits that the State Plan must provide the projected demographic changes over at least the next ten years. It must then present a plan for dealing with the changes, including planning accordingly for accommodation for those people currently cared for by ageing parents and for the accommodation and care needs of older people with disabilities

### **3.3. Limited range of accommodation options**

Of equal concern is the lack of choice in the range of accommodation options available to people with disabilities. There is a need to develop a broad range of accommodation options to better meet the needs of all people with a disability. This needs to range from highly resourced and more structured living arrangements for people with higher care needs, to less structured range of options developed around the needs of the individual. There is a wide range of accommodation models already available. One such example is supporting clients in flats, which are in close proximity to each other, and having staff located nearby who can then provide support.

### **3.4. Quality of staff**

The effectiveness of any service in improving the life of the person with the disability is very much dependent upon the quality of staff recruited. If staff are not committed to a vision for clients, reviewing and revising outdated services and building flexible quality services with an individual focus, then there will be limited improvements in the lives of people with a disability. The organisational structures, which support these staff, need to empower direct care workers as well as promoting and rewarding staff initiative. The mention of these workforce issues in the Consultation Report needs to be considered in a broader discussion around what organisational structure/s promote best practice in the provision of quality services.

## **4. Flexibility and responsiveness of the system to individual needs**

As previously mentioned the issue of eligibility for services often result in people with disabilities falling through the gaps in the system. As a consequence their ability to have control over their own lives and to have the same rights and opportunities as the rest of the community can be severely hampered. There is clearly a need for a more flexible approach to funding which can allow the system to be more responsive to individual needs.

### **4.1. Restrictive effect of performance targets for services**

The quantitative nature of the performance targets set by the Department of Human Services for government and non-government agencies have often had the effect of limiting the flexibility of the service provider to try and be more innovative in the way in which they respond to individual needs. A person-centred framework, which focuses on the qualitative elements of the program, has the potential to make the system more responsive to individual needs.

### **4.2. Meeting the needs of people with special needs.**

While the service system is comparatively well developed for people with intellectual disabilities, it is sorely challenged when faced with people with more complex needs.

People with “minority” disabilities, such as brain damage, dual disabilities, or specific syndromes where intellectual disability is not a clear component, have much greater difficulty obtaining case management or appropriate accommodation. In relation to people with brain damage, for example:

- There is hardly any appropriate accommodation available for people with brain damage and even young people are forced to use inappropriate supported residential services which primarily serve older people, many of whom have dementia. Where people with ABI have challenging behaviours and place themselves or others at risk, they are unable to benefit from the support of an established service system, be it DisAbility Services, or the Mental Health system. There is no secure or sufficiently supported accommodation to keep them safe and out of the criminal justice system.

- The limited case management system available to people with brain damage is time-limited and then recipients are charged, in contrast to the case management available to those eligible to receive it through DisAbility Services.
- Young people with acquired brain damage face a bleak future of unstable, inappropriate housing, scarce, short-lived case management and negligible work or meaningful leisure opportunities.

OPA's experience shows that, despite the development of protocols between different programs, problems are more likely to arise where people have dual disabilities, particularly if there is challenging behaviour associated with questionable mental illness/personality disorder. OPA is aware of individuals who demonstrate extremely challenging behaviour, often inflicting self-harm or suicidal tendencies, where mental health services are reluctant to assist. This example is quite a common experience of this Office. Regardless of whether the diagnosis is mental illness, personality disorder or attention seeking behaviour, the individual is clearly troubled and in need of assistance. These individuals present a major challenge to the service system and it is often quite resource intensive and they cannot be accommodated in the usual range of disability services.

Services for people who have a dual disability (particularly intellectual disability and mental illness) are of particular concern to this Office as they consistently fall through the gaps in the system often resulting in them being placed in the criminal justice system. The emergence of services to respond to dual disability and personality disorder in the last couple of years has been an encouraging development. However, the secondary consultation model upon which these services are largely based still means that the mental health service at the local level must in the first instance decide that it is appropriate to become involved. The experience of this Office is that area mental health services are generally very reluctant to become involved in such cases. The development of the State Plan needs to look at the experience of these programs together with others such as the Northern Region Dual Disability Project to develop a model of service delivery that can better meet the complex needs of this group. (The Northern Region Dual Disability Project is currently being evaluated). This needs to go beyond having agreed protocols for how the two services work together and needs to address how both services can be more responsive to the needs of the individual.

Responsibility for case management for individuals with ill-defined disabilities needs to be clearly located.

OPA recommends that the State Plan examines eligibility requirements, opening up the service system so that it can address the needs of people with brain damage, "minority" syndromes and disabilities and dual disabilities, with a view to improving their access to case management, services and accommodation.

#### **4.4. Parents with a disability**

There are significant prejudices regarding the capacity of people with disabilities, particularly mothers, to be effective parents, yet there are few programs aimed at providing an appropriate level of support to parents with a disability. This has the effect of discriminating against some parents with a disability, because they are

denied the right to parent through the child sometimes being removed by protective services. OPA has previously raised several issues in relation to parents with a disability, with both protective and disability services.

- The issues of Education around issues such as contraception, sexuality and preparation for relationships for people with disabilities needs to be addressed in broader health education strategies. Currently the focus tends to be on investigation of notifications and more work needs to occur on preventative measures. Links with Family Planning Victoria and the Office of the Family, including Protective Services, should help to advance this issue.
- There needs to be a greater commitment to the development and provision of family support services, which better meet the ongoing needs of parents with a disability. Some parents may require moderate to high levels of ongoing support in bringing up their children. Mainstream family support agencies also need to consider how they can better meet the needs of parents with a disability.
- There needs to be a greater exploration of alternative models of parenting. The concept of custodial parenting as the only model is unduly restrictive and other models that allow a continuing role for parents with a disability need to be negotiated and promoted.
- DisAbility Services needs to continue to work on strengthening partnerships with Protective services. An important aspect of this partnership needs to be an important educative role with new and existing protective staff.

## **5. Quality Framework/ Monitoring Services/Complaints Mechanism**

OPA strongly supports greater scrutiny of services provided to people with a disability, underpinned both by service accreditation and reporting and independent site visits. The current DHS contract management system whereby the funder (DHS) is at arm's length from the service providers, requires other monitoring mechanisms to ensure service quality. This may be achieved through a variety of mechanisms:

- improved resourcing to existing self advocacy and advocacy services and/or new funds for advocacy in areas such Ballarat and Geelong where no services exists;
- random service auditing, an additional function that could be undertaken by an independent body such as OPA, in addition to the current issue identification program undertaken by the Community Visitors Program;
- the extension of the Community Visitors Program to undertake monitoring of all types of services to people with a disability, could be considered over the life of the State Plan;
- introduction of accreditation processes, underpinned by legislation, requiring auditing/accreditation of disability services that are linked to performance bonuses such as conducted by the Mental Health Division, Department of Human Services; and
- Establishment of a specific standards monitoring agency.

## **5.1. Complaints Mechanisms**

An independent statutory body, the Office of the Public Advocate, currently exists to deal with complaints about services to people with a disability. It is unclear what additional benefits would flow from the establishment of a Disability Services Ombudsman (or similar independent body) to ensure the accessibility, openness and accountability of services. Given OPA's experience and existing infrastructure, a more efficient approach might be to introduce appropriate legislation that would ensure OPA's authority to deal with complaints, and to educate and inform people with a disability, their families and service providers about the role and functions of the Office of the Public Advocate.

OPA would be pleased to discuss any of the issues raised further with you and looks forward to the next stage of the development of the State Disability Plan.