

Legislation Review
Disability Services Division (Level 19)
Department of Human Services
Reply Paid No 4057
MELBOURNE VIC 8060

23 Dec 05

Comment on Disability Bill 2005 Exposure Draft

The Office of the Public Advocate appreciates the opportunity to comment on the Exposure draft of the proposed Disability Bill. I am pleased that in our meeting of the 20 Dec 05 we were able to raise some matters of interpretation and intent for clarification. I refer to the documentation that was provided for your information and the additional documentation subsequently provided that related to Community Visitors. I understand that you have accepted the need to review most of the provisions that we drew to your attention.

The purpose of this submission is to provide additional comment and suggestions. I note that many of the past submissions of the Office of the Public Advocate have been incorporated into the Bill. The stated purpose of the bill (in summary) is to *enact a new legislative scheme for persons with a disability which reaffirms and strengthens their rights and responsibilities which requires support across the government sector and within the community*. While I believe that the Bill could have gone further in meeting that goal, I do acknowledge a number of features that strengthen rights

The major concerns with some elements of the Bill are being taken up separately with the Minister. These concerns relate to:

1. The narrow definition of disability.
2. The separate treatment of planning for people with intellectual disability.
3. Part 8 Compulsory Treatment. – Limitation to people with an intellectual disability.

A copy of the letter raising these issues is attached for your information.

Please contact Mark Feigan on 9603 9434 if you wish to clarify any of the points raised here or to further discuss potential changes arising from our earlier discussions.

Yours sincerely

Julian Gardner
Public Advocate

cc: Matthew Read, Solicitor, Legal Services, Department of Human Services

OPA Commentary on the Disability Bill Exposure Draft

PART 2—OBJECTIVES AND PRINCIPLES

s4(2) In construing the objectives specified in subsection (1) and in administering this Act, due regard must be had to the limited resources available to provide disability services.

The inclusion of this subsection is not supported and it should be removed from the Act:

- The provision is redundant.
- No other Victorian legislation uses the term “limited resources”.
- It is generally understood that Government has a duty to be fiscally responsible and provide services according to need and within resource constraint.
- The provision could foster a perception that the provision of disability services will always be a low priority for Government.

s5. Principles

The principle of non-discrimination should be incorporated in the Bill.

PART 4—DISABILITY SERVICES

Division 1—General Provisions

37. State Disability Plan

s37(4) provides the features of the State Disability Plan.

A new sub clause that provides for the monitoring of progress on the achievement of those objectives and priorities through the setting of key performance indicators should be added.

38. Disability Action Plans

s38(1) provides that public sector bodies prepare a disability action plan for specified purposes.

Further purposes corresponding with provisions of the *Disability Discrimination Act* (1992) (Cwlth) should be specified. These would require public sector bodies to devise Action Plan related policies and programs and:

- Communicate these;
- Set goals and targets against which the success of the plan may be assessed;
- Evaluate their plan and related policies and programs; and
- Appoint persons to implement these provisions.

The requirement for disability action plans should apply to all public sector bodies without exception to be consistent with the purposes of the Act.

These plans should not be limited by the definition of disability used in this legislation, but should use the definition of disability in the *Disability Discrimination Act* (1992) (Cwlth).

s38(3) provides that public sector bodies report on the implementation of the Disability Action Plan in their annual report.

Public sector bodies should also be required to provide an annual report on the implementation of their Disability Action Plan to the prescribed body (Office of Disability).

s46. Register of disability service providers

Information about the service should also be included in the register [s38(1)]:

- The sites of service delivery facilities (physical location) or the address from which outreach support is provided
- The type(s) of disability support provided at the site.

Part 5 – RESIDENTIAL SERVICES

Division 1 – General Provisions

s 57 Residential Statement

An amendment is suggested to 57(1)(b) so that a copy of the residential statement must be provided to the: “resident’s guardian, or the resident’s administrator or another person nominated by the resident.”

Another example of a condition should be used in s57(2)(e). Compliance with a behaviour management plan should not be a condition for the provision of residential services. If a resident has a behaviour management plan it is because of concern about particular behaviours. One would expect the resident, from time to time, to exhibit such behaviours which may lead to the operation of some aspects of the behaviour management plan.

The residential statement of s57(6)&(7) should:

- Include the duties of the disability service provider, such as those set out in section 58;
- Set out the procedure for making a complaint about a residential matter to the Disability Services Commissioner or about a residential charge to VCAT;
- Where the residential service is a CRU, the right to apply to VCAT about tenure issues should be provided; and
- Contact details for advocacy and tenancy advice services.

Division 2 – Community Residential Units

s74. Notice of temporary relocation

It is not apparent in the legislation in what forum a resident would challenge a Notice of Temporary Relocation. A challenge to a Notice to Vacate is made to VCAT, but no provision is made in relation to the Notice of Temporary Relocation. It would appear that a resident would only be able to make a complaint to the Disability Services Commissioner (DSC).

Should the DSC include in a notice of decision that a complaint is justified, they may include remedial action that the DSC thinks ought to be taken, and this could include restoration of the resident to their home. However, the DSC cannot order compliance with this remedial action.

Access to the DSC process is not equivalent to exercising tenancy rights under the *Residential Tenancies Act 1997* where the resident could take the matter to VCAT for resolution and obtain an order for compliance.

There is also concern about the very broad grounds of s74(1)(d) of “necessary for the resident’s safety or well-being”. This will leave it open to require the victims of bullying to leave the accommodation rather than the perpetrator.

The responsibility for challenging behaviour falls upon the resident [s74(11)&(12)]. It is important that, in the development or review of the behaviour management plan, the resident is provided with support to ensure fair treatment of the resident. Independent advocacy provides a safeguard when the behaviour of the service provider is also at issue.

s74(4) The disability service provider must notify the Secretary of the details of a notice of temporary relocation or notice to vacate within 24 hours of the notice being given.

This should be amended so that the Public Advocate is also notified.

Part 8 –COMPULSORY TREATMENT.

s176 makes it an offence for a disability service provider to use “supervised treatment” unless there is an approval by the Secretary in place.

The Bill should provide a definition of the term “supervised treatment”.

s176(4). VCAT must be satisfied that the person has previously exhibited “a pattern of violent or dangerous behaviour”.

This provision should be reviewed to ensure that treatment can be considered where:

- there is a pattern of violent or dangerous behaviour; or
- a pattern of escalating behaviour leading to a serious instance of violent or dangerous behaviour and where it is reasonable to believe that further episodes of violent or dangerous behaviour are likely.