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**Government Policy and Services
to Support and Include People
with Disabilities**

by

Lenny Roth

Briefing Paper No 1/07

ISSN 1325-5142
ISBN 978 0 7313 1816 2

February 2007

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Government Policy and Services to Support and Include People with Disabilities

by

Lenny Roth

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EXECUTIVE SUMMARY

People with a disability in NSW

A national survey on disability in 2003 found that there were 1,190,500 people in NSW with a reported disability, which equated to almost 18 per cent of the NSW population. This included 366,000 people who had a severe or profound limitation in one of the core activities of self-care, mobility and communication. Of those people who had a severe or profound limitation in one of the core activities, over fifty per cent (184,900) were under the age of 65 and 17 per cent (60,600) were under the age of 25.

Major developments in disability policy since 1981

Since the International Year of Disabled Persons in 1981, the Federal and NSW Governments have shown much greater concern for the welfare, rights and inclusion of people with disabilities and have initiated major policy developments including:

- Deinstitutionalisation
- Installation of a disability service system based on rights and outcomes
- Shift towards employment in the open labour market
- The enactment of anti-discrimination laws
- Policies and measures to facilitate access to mainstream government services
- Rationalisation of Federal/State responsibilities for disability services.

Federal/State responsibilities for specialist disability support

The Federal Government provides specialist income support to people with disabilities. The Federal and State Governments share responsibility for the funding and provision of specialist disability services, as outlined in the Commonwealth, State/Territory Disability Agreement (CSTDA). Under the CSTDA, the Federal Government is responsible for employment services and State Governments are responsible for accommodation services, respite care services, and community access and support services. In 2004/05, total CSTDA funding was \$3.6 billion, of which the State/Territory Governments contributed 73 per cent and the Federal Government contributed 27 per cent. Under the Home and Community Care (HACC) Agreement, the Federal and State Governments also share responsibility for funding a range of home and community care services. Despite the two agreements, problems arising from Federal/State responsibilities remain.

Regulation of disability support services

The *Disability Services Act 1986* (Cth) regulates Federal Government funding of States and eligible organisations in relation to the provision of disability employment services and other eligible services. It also regulates Federal Government provision of rehabilitation programs. The *Disability Services Act 1993* (NSW), which was modelled on the Federal Act, regulates NSW Government provision of disability services and funding of eligible organisations to provide disability services. Under the NSW Act funding is conditional on services complying with the objects of the Act and the principles and applications set out in

the Act. The NSW Department of Ageing, Disability and Home Care (DADHC) has adopted 10 Disability Services Standards to assist service providers to meet these objects, principles and applications of principles. DADHC monitors services through annual reporting requirements and on-site assessments of services. The *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) confers on the NSW Ombudsman general functions in relation to monitoring and review of disability services and it allows complaints regarding disability services to be made to the Ombudsman. Official Visitors appointed under the Act can also inspect disability accommodation services.

Federal Government disability support

The Federal Government provides disability income support and it provides, and funds organisations to provide, disability employment services.

Income support: The main form of Federal Government specialist income support for people with disabilities is the Disability Support Pension (DSP). It has been paid to people aged between 16 and 64 who, because of illness, injury or disability have been unable to work, or to be retrained to work, at least 30 hours per week in open employment within 2 years. As a result of the controversial welfare-to-work changes, which came into effect on 1 July 2006, the 30-hour per week threshold has been lowered to 15 hours per week.

Employment support: The Federal Government funds and provides open employment services, which assist people with a disability to obtain employment in the open labour market. These services include the Disability Employment Network and Vocational Rehabilitation Services. The Federal Government also provides financial incentives for employment in the open labour market, including the wage subsidy scheme, the supported wage system and the workplace modifications scheme. In addition to measures directed at employment in the open labour market, the Federal Government funds a network of Business Services outlets that provide supported employment services.

NSW Government disability support services

The NSW Government provides, and funds organisations to provide, accommodation services, respite care services and community access and support services.

Accommodation: In-home accommodation support for people with a disability is mainly provided under the HACC program, and the Attendant Care Program. Historically, out-of-home accommodation support was provided in large residential centres. However, since the early 1980s there has been a movement towards housing people with disabilities in community-based group homes. In 1998, the NSW Government announced that it would close all large residential centres by 2010. This process commenced in 2000 and since then 11 large residential centres have closed. In 2005/06, over 3,000 people were living in group homes and over 1,700 were living in large and small residential centres and hostels.

Respite: Respite programs provide planned short term and time limited breaks for families and other unpaid carers of children with a developmental delay and adults with an intellectual disability in order to support the primary care-giving relationship. In 2005/06, over 5,000 people with disabilities received CSTDA funded respite care.

Community access and support: Community access and support encompass a range of programs aimed at supporting families as they raise a child or young person with a disability; and, for adults, at bridging the gap between school and vocational choices, promoting independence and community connection. These services include early childhood education services, community support teams (which provide a range of support services including therapy and case management), behaviour intervention services, local support coordinators, day programs, and post school programs. In 2004/05, over 41,000 people received community access and support services.

In May 2006, the NSW Government launched its new 10-year disability strategy, *Stronger Together*, which involves an investment of over \$1.3 billion in the first five years. This includes over \$80 million towards strengthening families, over \$1 billion on promoting community inclusion and over \$240 million on improving the system's capacity and accountability. The strategy aims to create fair and more transparent access, help people remain in their own homes, link services to need, provide more options for people living in specialist support services and create a sustainable support system.

Unmet demand for disability support services

A number of reports have outlined significant unmet demand for disability services nationally. In NSW, reports and articles have documented unmet demand for HACC services, accommodation services, respite care services, and for aids and equipment.

Young people with disabilities in nursing homes

The number of young people with disabilities living in residential aged care services has grown over the last decade and in recent years this issue has become a matter of substantial public concern. There are an estimated 1,350 people with disabilities under the age of 60 living in nursing homes in NSW. At the Council of Australian Governments meeting on 10 February 2006, the Federal and State Governments agreed on a five-year program, commencing in July 2006, to start to reduce the number of young people living in nursing homes: initially targeted at people under the age of 50. In NSW, the plan is expected to assist up to 300 people with disabilities over the next five years.

Disability discrimination laws

Both NSW and Federal anti-discrimination laws make it unlawful to discriminate against a person on the ground of disability in a number of areas of public life. The NSW laws make discrimination unlawful in relation to employment, public education, provision of goods and services, accommodation and registered clubs. The laws implicitly recognise that the failure to make adjustments to accommodate the needs of people with disabilities may constitute discrimination. However, the laws do not require persons or organisations to make adjustments that would cause them 'unjustifiable hardship'. Federal laws have allowed for the making of Disability Standards to provide more certain benchmarks for accessibility and equality than is provided for in the Act. Progress in formulating such standards has been slow and, to date, standards have only been made in relation to accessible public transport (2002) and education (2005).

Policy to promote access to mainstream services

Federal policy: In 1994, the Federal Government launched the Commonwealth Disability Strategy, which provided a 10 year framework for Federal government organisations to identify and remove barriers in program development and delivery; and to develop plans and actions to ensure planning and service provision takes into account the needs of people with disabilities. Following a mid-term evaluation in 1999 a significantly revised strategy was launched in October 2000. A subsequent review of the strategy in 2006 found that it had resulted in “a range of positive outcomes over the past five years” but “people with disabilities had not universally or uniformly enjoyed these benefits in all areas or from all areas of government”. The report proposed future directions in a number of areas.

NSW policy: Section 9 of the *Disability Services Act 1993* (NSW) requires all NSW Government departments and other public authorities to prepare, and provide for the implementation of, an Action Plan to encourage the provision of services by that authority in a manner that furthers the principles and applications of principles in the Act. Government agencies are required to work within the NSW Disability Policy Framework (1998) when developing their Action Plans. The policy framework also contains reporting requirements, including a requirement for NSW government service providers to submit an Action Plan to DADHC every three years; and to include in each annual report a summary of progress against performance measures detailed in the Action Plan.

Convention on Rights of Persons with Disabilities

On 13 December 2006, the United Nations adopted the Convention on the Rights of Persons with Disabilities. The Convention will be open for signature and ratification by States as of 30 March 2007. The Convention restates and elaborates on a number of rights contained in existing human rights treaties. Civil and political rights outlined in the Convention include the rights to be free from discrimination, equal recognition before the law, freedom to choose one’s own residence, and respect for privacy. Economic, social and cultural rights include the rights to education, work, just and favourable conditions of work, the highest attainable standard of health, and an adequate standard of living. The Convention requires all States that ratify the Convention to adopt all appropriate legislative, administrative and other measures to implement the Convention rights. It also requires these States to submit periodic reports to a UN Committee that will monitor the implementation of the Convention. If, as expected, the Australia Government ratifies the Convention it will have an obligation under international law to implement the Convention. However, ratification will not, of itself, confer any new rights under domestic law.

1. INTRODUCTION

Outline of this paper

This paper presents an overview of Federal and NSW government policy and services to support and include people with disabilities. It outlines specialist disability support and it also looks at disability discrimination laws and general policies that aim to promote access to mainstream government services. In relation to specialist disability support, this paper outlines Federal and State responsibilities, the regulatory framework, and the main forms of specialist disability support provided by the Federal and State governments; it also discusses the perennial issue of unmet demand for disability services and the related problem of young people living in nursing homes. The final section of this paper examines the recently adopted United Nations Convention on the Rights of Persons with Disabilities, which may impact on disability policy in Australia in the future.

Limitations on scope of paper

This paper does not cover:

- Guardianship legislation
- Policy and services targeted at people who have a mental illness
- Specialist advocacy services, print disability services, or information services.
- Policy in relation to specific areas such as education, housing and transport.
- Policies targeted at carers of people with disabilities
- Injury compensation schemes.

People with a disability in NSW

A national survey on disability in 2003¹ found that there were 1,190,500 people in NSW with a reported disability, which equated to almost 18 per cent of the NSW population.² Disability was defined as “any limitation, restriction or impairment, which has lasted, or is likely to last, for at least six months and restricts everyday activities”.

Most people with a reported disability in NSW (921,200) were limited in the core activities of self-care, mobility or communication. In terms of degrees of limitation, the survey found that 366,000 people had a severe or profound limitation in these core activities, 191,400 people had a moderate limitation and 362,900 people had a mild limitation.³

¹ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2003*, Category 4430.0, Canberra, 2004.

² Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings – State Tables for New South Wales, 2003*, Category 4430.0, Canberra, 2004.

³ The ABS defines these four categories as follows (at p72): **Mild** – “The person needs no help and has no difficulty with any of the core activity tasks but uses aids or equipment...cannot easily walk 200 metres... cannot easily bend down to pick up an object from the floor...” **Moderate** – “The person needs no help but has difficulty with a core-

The majority (62 per cent) of people with a reported disability in NSW were under the age of 65 and a significant proportion (15 per cent) was under the age of 25. Of those with a severe or profound limitation in one of the core activities, over 50 per cent (184,900) were under the age of 65 and 17 per cent (60,600) were under the age of 25.

The survey did not provide figures in relation to the different types of disability for people with a disability in NSW but nationally it found that 84 per cent of people with a disability had a physical condition (disease, injury etc) as their main health condition while 16 per cent had a mental or behavioural disorder as their main health condition.⁴

Life outcomes for people with a disability in Australia

The 2003 national survey also reported on a number of life outcomes for people with a disability living in households in Australia compared to people that did not have a disability. Outcomes in relation to education, employment and income are noted below:

- *Education:* One in four (24 per cent) people aged 15-64 with a profound or severe core-activity limitation had completed Year 12, compared to one in two (49 per cent) of those without a disability. In addition, 14 per cent of people with a profound or severe core activity limitation had completed a diploma or higher qualification, compared to 28 per cent of those without a disability.⁵
- *Employment:* People aged 15-64 with a disability had a much lower level of involvement in the paid workforce: a participation rate of 53 per cent compared with 81 per cent for people without disability. Participation rates for people with severe and profound core activity limitations were even lower (36 per cent and 15 per cent). In addition, the unemployment rate for people with a disability was 8.6 per cent compared to 5 per cent for those without a disability.⁶
- *Income:* The median gross personal income of people aged 15-64 years with a disability was just over half of the income for those without a disability (\$255 per week compared to \$501 per week). Median personal income was even lower for those with severe and profound core activity limitations (\$212 per week and \$200 per week). The survey also found that one in four (24 per cent) people aged 15-64 years with a disability were in the lowest 20 per cent bracket of gross household incomes, compared with one in 10 of those without a disability.⁷

activity task”; **Severe** – “The person sometimes needs help with a core activity task, or has difficulty understanding or being understood by family or friends, or can communicate more easily using sign language or other non-spoken forms of communication”. **Profound** – “The person is unable to do, or always needs help with, a core activity task”.

⁴ ABS 2003 Survey, note 1, p6, 29.

⁵ ABS 2003 Survey, note 1, p5.

⁶ ABS 2003 Survey, note 1, p5, 22

⁷ ABS 2003 Survey, note 1, p3 and Table 7.

In a recent publication entitled *Disability in Australia: Exposing a Social Apartheid*, Goggin and Newell outline the situation of people with disabilities as follows:

Compared with the rest of the Australian population, as Australians with disabilities, we are more likely to live in poverty. We are more likely to be physically, emotionally and sexually abused...We are more likely to experience difficulty obtaining education and employment, and more likely to experience difficulty in acquiring affordable accommodation...We are less likely to own our own homes...We are less likely to get married and have children...Women with disabilities face particular disadvantage and marginalisation...⁸

Theoretical perspectives on disability

Medical perspective of disability

For most of the twentieth century disability was primarily understood in terms of a medical or personal tragedy perspective. This perspective sees disability:

...as a problem of the person, directly caused by disease, trauma or other health conditions, which requires medical care provided in the form of individual treatment by professionals. Management of the disability is aimed at cure or the individual's adjustment and behaviour change.⁹

The medical perspective "is closely associated with the welfare model that believes society should simply look after people with disabilities as opposed to empowering them to lead independent lives".¹⁰ According to Fiona Given, this perspective "continues to dominate disability practice in Australia and other parts of the Western World".¹¹

Social perspective of disability

Since the 1970s, disability activists and academics have advocated a new way of understanding disability, known as the social model. Drake writes:

During the 1970s, a number of people formed the Union of Physically Impaired Against Segregation (UPIAS) and developed their own vocabulary directly to challenge the medical model of disability. UPIAS defined *impairment* as 'lacking part or all of a limb, or having a defective limb, organism or mechanism of the

⁸ Goggin G and Newell C, *Disability in Australia: Exposing a Social Apartheid*, UNSW Press, Sydney, 2005, p19.

⁹ World Health Organisation, *International Classification of Functioning, Disability and Health*, 2001, p20. Accessed at: <http://www.who.int/classifications/icf/en/>

¹⁰ Given F, 'Moving towards the social model of disability', Presentation at the 2005 Commonwealth Law Conference, London, 2005, p1.

¹¹ Given F, note 10, p1.

body'. However, *disability* was the disadvantage or restriction of activity caused by a contemporary social organisation that took no or little account of people who had physical impairments and thus excluded them from the mainstream of social activities. Here, then, the emphasis rested on the impact of society: its values and norms; the way in which it was organised; its architecture; its laws and institutions.¹²

In other words, the social model is based on the premise that “disablement lies in the construction of society, not in the physical condition of the individual”.¹³ To illustrate the social model, Vic Finkelstein has given the example of an imaginary society where:

...a thousand or so people, all of whom are wheelchair users, settle in a village and organise a social system to suit themselves, with its own design and building codes. At some stage a few able-bodied people come to live in the village, but they do not fit in. They are constantly knocking their heads on door lintels and require constant medical intervention and control. Special aids have to be designed for the so-called able-bodied, now the disabled members of the village. They are given free helmets to protect their heads, and they have difficulty obtaining work because of their deviation from the norm: as a result they become objects of charity.¹⁴

According to the social model, the focus should not be on trying to cure and rehabilitate people with impairments but on removing disabling barriers in society.

Since the 1970s, the social perspective has underpinned the disability movement in Australia, the United Kingdom, the United States and elsewhere. This has led to governments in these countries placing more focus on removing barriers in society: for example, by enacting laws that prohibit discrimination on the ground of disability.

Interaction perspective of disability

Tom Shakespeare, a British academic in disability studies, has recently offered a critique of the social model – more particularly, of the strong social model adopted by the disability movement in the UK – and he has proposed an alternative perspective of disability:

While the UK disability movement has endorsed the social model perspective, academic dissenting voices have been raised from both within...and outside...the disability studies community. These criticisms have centred on the failure of the social model to recognise the role of impairment, as well as the inability of the social model to encompass the range of different impairment/disability experiences. The approach to disability which I propose to adopt suggests that disability is

¹² Drake R, *Understanding Disability Policies*, Palgrave Macmillan, London and New York, 1999, p13.

¹³ Brisenden, quoted in Drake R, note 12, p1.

¹⁴ Goggin G and Newell C, *Disability in Australia: Exposing a Social Apartheid*, University of New South Wales Press Ltd, Sydney, 2005, p28.

always an interaction between individual and structural factors...The experience of a disabled person results from the relationship between factors intrinsic to the individual, and extrinsic factors arising from the wider context in which she finds herself. Among the intrinsic factors are issues such as: the nature and severity of her impairment, her own attitudes to it, her personal qualities and abilities, and her personality. Among the contextual factors are: the attitudes and reactions of others, the extent to which the environment is enabling or disabling, and wider cultural, social and economic issues relevant to disability in that society.¹⁵

Shakespeare accepts that “social barriers and oppression play a part in generating disability for many disabled people in many contexts” but he does not accept that “disability should be defined as either social barriers or oppression”.¹⁶

Shakespeare’s interaction perspective of disability accords with the revised version of the World Health Organisation’s *International Classification of Functioning, Disability and Health*, which was endorsed for international use in 2001:

A person’s functioning and disability is conceived as a dynamic interaction between health conditions (diseases, disorders, injuries, traumas, etc) and contextual factors...Contextual factors include both personal and environmental factors...Environmental factors interact with all the components of functioning and disability. The basic construct of the environmental factors component is the facilitating or hindering features of the physical, social and attitudinal world.¹⁷

¹⁵ Shakespeare T, *Disability Rights and Wrongs*, Routledge, London and New York, 2006, p55-56. See also at p58.

¹⁶ Shakespeare T, note 15, p58.

¹⁷ World Health Organisation, *International Classification of Functioning, Disability and Health*, 2001, p8. Accessed at: <http://www.who.int/classifications/icf/en/>

2. MAJOR DEVELOPMENTS IN DISABILITY POLICY SINCE 1981

Since the International Year of Disabled Persons in 1981, which had the theme of “full participation and equality”, the Federal and NSW Governments have shown a much greater concern for the welfare, rights and inclusion of people with disabilities and they have initiated a number of major policy developments. In brief¹⁸, these include:

- *De-institutionalisation*: Following the 1983 Richmond report in NSW¹⁹ and the 1985 federal ‘New Directions’ Report²⁰, there has been a shift from the care of people with disabilities in residential institutions to care in the community – meaning either care in the family home or care in small group homes provided or funded by government. The process has been slow and there are still a large number of people with disabilities in NSW in residential institutions but the NSW Government has committed to closing all large residential centres by 2010.
- *Service system based on rights and outcomes*: In response to the 1985 ‘New Directions’ Report, the Federal Government introduced the *Disability Services Act 1986* (Cth), which created a new focus for the funding and provision of disability services – one based on human rights and the achievement of positive outcomes for people with disabilities. NSW introduced similar laws in 1993. Disability services provided or funded by the Federal and NSW Governments must comply with legislative objects and principles. The objects include promoting the integration of persons with disabilities in the community, and enabling them to achieve positive outcomes, such as increased independence and employment outcomes.
- *Shift towards employment in open labour market*: One consequence of the new approach to disability services which emerged in the mid 1980s was a shift towards assisting people with disabilities to obtain employment in the open labour market rather than provision of work in sheltered workshops.
- *Anti-discrimination laws*: The NSW and Federal Governments have enacted anti-discrimination laws (the NSW laws were enacted in the early 1980s and the Federal laws were enacted in 1992) that give people with disabilities legal rights to be free from discrimination in areas such as employment, education, and the provision of services. The laws require public and private employers, educational authorities and

¹⁸ For a detailed historical account of Federal disability policy up to 1995, see Lindsay M, ‘Can Good Intentions Ensure Good Outcomes? Commonwealth Disability Policy 1983-1995’, Parliamentary Research Service, Parliament of Australia, *Background Paper* No. 6 1995-1996, April 1996. For an account of NSW and Federal disability policy from 1975 to 2000, see Clear M ‘Promises Forestalled’ in Clear M, *Promises Promises: Disability and Terms of Inclusion*, Federation Press, Sydney, 2000, Chapters 6 and 7.

¹⁹ Richmond D, *Inquiry into Mental Health Services for Psychiatrically Ill and Developmentally Disabled*, Sydney, NSW Department of Health, 1983.

²⁰ Australian Government, *New Directions: Report of the Handicapped Programs Review*, Australian Government Publishing Service, Canberra, 1985.

service providers to make adjustments to accommodate people with disabilities except if this would cause them ‘unjustifiable hardship’.

- *Improving access to mainstream government services:* Federal and State Governments have introduced policies and measures to facilitate access to mainstream government services for people with disabilities. General policies include the Commonwealth Disability Strategy (1994) and the NSW Disability Policy Framework (1998). Following the 1996 McRae report in NSW, steps have been taken to integrate children with disabilities in regular government schools.
- *Change to departmental responsibility for disability services in NSW:* In accordance with a recommendation in the 1983 Richmond report, in 1989, the NSW Government transferred responsibility for developmental disability services from the Department of Health to the Department of Family and Community Services. In 1995, the NSW Government established the Department of Ageing and Disability, now known as the Department of Ageing, Disability and Home Care.
- *Rationalisation of Federal/State responsibilities for disability services:* In 1991, the Federal and State Governments signed the Commonwealth/State Disability Agreement, which rationalised responsibilities for specialist disability support services. The Federal Government was left with responsibility for employment support services and the State Governments were left with responsibility for other support services including accommodation and community access services. The agreement also outlined arrangements for funding of services.
- *Consultation with people with disabilities:* Governments established bodies that are mainly comprised of people with disabilities to advise on disability policy. In 1983, the Federal Government set up the Disability Advisory Council of Australia (now known as the National Advisory Council on Disability and Carer Issues); and in 1987, the NSW Government created the Disability Council of NSW.

Many of these developments are discussed further in following sections of this paper.

3. FEDERAL/STATE RESPONSIBILITIES

Overview

The Federal Government is responsible for providing *specialist income support* to people with disabilities as well as to carers of people with a disability. The Federal and State Governments both have responsibilities for the funding and provision of *specialist disability services*. Federal and State responsibilities for specialist disability services are primarily outlined in the Commonwealth State/Territory Disability Agreement, which is discussed below. The Federal and State Governments also jointly fund the Home and Community Care (HACC) program, which is also discussed below.

The Commonwealth-State/Territory Disability Agreement

The Commonwealth-State/Territory Disability Agreement (CSTDA) outlines the responsibilities of the Federal, State/Territory Governments in relation to the planning, provision and funding of specialist disability services. The current CSTDA is the third CSTDA and it operates from 1 July 2002 to 30 June 2007. The first CSTDA operated from 1991 to 1996 and the second operated from 1997 to 2001.²¹ The current CSTDA is summarised below. Note that the Senate Community Affairs Committee is inquiring into the funding and operation of the CSTDA. Its report is due by 8 February 2007.

Responsibilities for planning and provision

The Federal Government is responsible for the planning, policy setting and management of specialist disability *employment services*. The State/Territory Governments are responsible for the planning, policy setting and management of *accommodation services, community access services, community support services and respite care services*. Both levels of Government share responsibility for the planning, policy setting and management of *advocacy services, print disability services and information services*. Both levels of government also share responsibility for *research and development*.²²

Funding arrangements for disability services

The CSTDA also sets out the funding arrangements between the Federal and State Governments.²³ In 2004/05, total CSTDA funding was \$3.611 billion.²⁴ The State and

²¹ For background on the CSTDA, see Lindsay M, note 18 p44ff; and Hancock L, 'Australian Intergovernmental Relations and Disability Policy', in Cameron D and Valentine F, *Disability and Federalism: Comparing Different Approaches to Full Participation*, McGill-Queens University Press, Montreal, Kingston and London, 2001, p45.

²² CSTDA, clauses 6(2), (3)(5) and 10.

²³ CSTDA, clause 8.

²⁴ National Disability Administrators, *Commonwealth State Territory Disability Agreement Annual Public Report 2004-05*, Commonwealth, States and Territories, August 2006, p68.

Territory Governments contributed \$2.636 billion (73 per cent), while the Federal Government contributed \$975 million (27 per cent). The Federal Government's contribution included \$565 million in transfer payments to the States and Territories to assist in the provision of services administered by those jurisdictions, and \$410 million on the provision of disability employment and other services. Over half of total CSTDA expenditure was directed towards accommodation support services. According to the NSW Government, in 2006-07, total funding under the CSTDA for services in NSW will be \$1.286 billion, of which the NSW Government is contributing 84 per cent (\$1.086 billion) and the Federal Government is contributing 16 per cent (\$201 million).²⁵ It appears that these figures for NSW do not include Federal funding of employment services.

Quality standards for disability services

All services funded under the CSTDA must, as a minimum, meet the National Standards for Disability Services.²⁶ Each jurisdiction is responsible for ensuring that services are provided in accordance with the Standards and for improving services.²⁷

National framework for disability services

The CSTDA outlines a national framework for services for people with disabilities, which, for the current CSTDA, is comprised of five policy priority areas:

- (i) Strengthening access to generic services;
- (ii) Strengthening across government linkages;
- (iii) Strengthening individuals, families and carers;
- (iv) Improving long-term strategies to respond to and manage demand for specialist disability services;
- (v) Improving accountability, performance reporting and quality.²⁸

Disability Ministers from all jurisdictions set the strategic priority issues within these five areas. Disability Ministers have identified 14 priority issues for action. These include:

- Access to health care, transport and housing
- Access to services for people with disabilities who are ageing
- Younger people in nursing homes
- Employment/day options interface
- Advocacy and information services
- Language services – Auslan interpreters service
- Responding to demand
- Workplace requirements and capacity

²⁵ NSW Treasury, *Budget Paper No.3 2006/07: Budget Estimates*, 2006, p5-11.

²⁶ CSTDA, Part 9. Disability Services Standards are discussed in Section 4 of this paper.

²⁷ CSTDA, clause 6(5).

²⁸ CSTDA, Part 4.

- Maintaining informal carers
- Children and young people with disabilities
- Indigenous Australians with disabilities.²⁹

Bilateral disability agreements

The CSTDA provides for the making of Bilateral Disability Agreements, including for the purpose of providing for “action between the Commonwealth and individual States/Territories on strategic disability issues within the broad national framework”.³⁰ In 2004, the Federal and NSW Governments made a bilateral agreement. This agreement refers to action to be taken in relation to priority areas (iii) and (iv) above and it refers to two other priority areas for action, namely intersections between the ageing and disability support systems (including younger people with a disability living in nursing homes) and employment, transitions and alternatives to work for people with a disability.

Accountability and transparency requirements

To promote accountability and transparency, the CSTDA requires all jurisdictions to make available audited expenditure figures and to report against the Performance Reporting Framework outlined in the CSTDA. The Framework includes:

- A CSTDA National Minimum Data Set;
- Annual reporting between governments on funding spent and progress and achievements in implementing strategies to address national policy priorities;
- Publication of an Annual Public Report about progress and achievements in implementing national policy priorities.³¹

Oversight of CSTDA by National Disability Administrators

The National Disability Administrators (NDA), which comprises the heads of Federal, State and Territory Government disability agencies, are responsible for overseeing the management and implementation of CSTDA, including developing and implementing national projects to further the strategic priority issues.³² The NDA reports annually to Disability Ministers on progress and outcomes under the CSTDA.³³

²⁹ CSTDA Annual Public Report for 2004/05, note 24, p10.

³⁰ CSTDA, Recital B.

³¹ As to the National Minimum Data Set, see Australian Institute of Health and Welfare, *Disability Support Services 2004/05 – National data on services provided under the Commonwealth State/Territory Disability Agreement*, Canberra, August 2006. As to annual reports, see CSTDA Annual Public Report for 2004/05, note 24.

³² See CSTDA Annual Public Report for 2004/05, note 24, p10. See also CSTDA, clause 6(6).

³³ See CSTDA Annual Public Report for 2004/05, note 24.

Home and Community Care (HACC) Agreement

The Home and Community Care (HACC) Program was established under the *Home and Community Care Act 1985* (Cth) as a joint Federal and State initiative. It provides a range of basic maintenance and support services for frail aged people, people with a disability and their carers to enable them to continue living at home or in the community. Services include domestic assistance, personal care, respite, nursing care and transport.

Under the HACC Agreement, the Federal Government contributes 60 per cent of the funds for the HACC program and the States/Territories contribute 40 per cent. Each financial year, the Ministers representing the Federal and State Governments approve the HACC Annual Plan, specifying the planned service outputs and funding allocations.³⁴ Budgeted expenditure for the NSW HACC program in 2006/07 is \$475 million.³⁵ After allowing for cost indexation, this represents an increase of \$16.8 million over funding for 2005/06.³⁶

The Public Accounts Committee recently completed an inquiry into the HACC program, including examining joint arrangements at the Federal and State level for funding and administration.³⁷ The Committee's report contains 40 recommendations including "a range of measures to streamline funding approvals and improve program efficiency".³⁸

Problems with Federal-State responsibilities

Overlapping Federal and State government responsibilities have long been recognised as having disadvantages including duplication, inefficiency, poor coordination, cost shifting, buck passing and lack of political accountability.³⁹ The CSTDAs and the HACC program have attempted to address this in relation to disability services but problems remain.

A 2002 Legislative Council Committee report on disability services in NSW referred to apparent cost shifting by the Federal Government in relation to employment services, cost shifting in both directions in relation to the aged care and disability service systems, and Federal-State disputes about additional funding for accommodation services.⁴⁰

³⁴ Australian Government Department of Health and Ageing, NSW Department of Ageing, Disability and Home Care, *New South Wales HACC Program Annual Plan 2006-07*, p6.

³⁵ New South Wales HACC Program Annual Plan 2006-07, note 34, p12.

³⁶ New South Wales HACC Program Annual Plan 2006-07, note 34, p12.

³⁷ Legislative Assembly, Public Accounts Committee, *Inquiry into the Home and Community Care Program*, NSW Parliament, Report No.20/53 (No. 163), January 2007.

³⁸ Legislative Assembly Public Accounts Committee, 'Public Accounts Committee Recommends Improvements to HACC Program', *News Release*, 12/1/07.

³⁹ See Economic Planning Advisory Council, *Towards a more cooperative Federalism?*, Discussion Paper 90/04, Australian Government Publishing Service, July 1990; and National Commission of Audit, *Report to the Commonwealth Government*, June 1996.

⁴⁰ NSW Parliament, Legislative Council Standing Committee on Social issues, *Making it Happen: Final Report on Disability Services*, Report 28, November 2002, p109-111.

In June 2005, the former NSW Opposition Leader, John Brogden, commented:

The Council of Social Service of NSW estimates that up to 2,000 younger adults with disabilities are languishing inappropriately in nursing homes in NSW because of the State Government trying to shift the cost of care to the Commonwealth.

People in need of home care and 'meals on wheels' services are missing out on services because of unnecessary duplication between states and the Commonwealth. In NSW \$60 million allocated for home care services over the last five years remains unspent, because not a single cent of this money can be used until every annual grant to each provider or community group has been examined and approved by both state and federal bureaucrats.

Turf wars between state and federal programs are depriving many young people with disabilities of the opportunity to work...after they leave school. Hundreds of young people who long to be productive are being locked out of work and tertiary study because they are falling victim to either cuts by state governments to post school training programs or caps by the Commonwealth on supported employment. Instead of working, these people are forced into less stimulating day activity programs which cost the taxpayer more in the long term.⁴¹

A Legislative Council Committee report in 2005 on changes to post school disability programs in NSW has also referred to similar problems:

...the Commonwealth is responsible for employment issues, but does not take responsibility for pre-vocational training. This leads to a lack of coordination between Commonwealth funded open and supported employment services and State-funded programs designed to prepare young people to enter the workforce. The Committee considers that the lack of communication between the Commonwealth and the NSW Governments in relation to the [Transition to Work] program is indicative of wider lack of communication in relation to the provision of disability services, which often leaves people with a disability, their families and service providers caught in the middle.⁴²

The Committee noted that, following a Council of Australian Governments (COAG) meeting in June 2005, there was a proposal to establish a high level working group to look at the possibility of the State Governments assuming responsibility for all disability services and the Federal Government taking responsibility for all aged-care services.⁴³

⁴¹ Brogden J, 'Practical Federalism', address to Federal Council of Liberal Party of Australia, June 2005, p6. Note that COAG has recently taken action to reduce the number of young people with disabilities living in nursing homes (this is outlined in Section 8).

⁴² NSW Parliament, Legislative Council General Purpose Standing Committee No. 2, *Changes to Post School Programs for Young Adults with a Disability*, Report 20, August 2005, p118.

⁴³ NSW Legislative Council GPSC No.2 Report, note 42, p119. It is not clear whether this proposal has progressed.

4. REGULATION OF DISABILITY SUPPORT SERVICES

Disability services legislation

As noted in Section 2, Federal and State legislation has been enacted that regulates the funding and provision of specialist disability support services. The *Disability Services Act 1986* (Cth) regulates Federal Government funding of States and eligible organisations in relation to the provision of employment services and other “eligible services”. It also regulates Federal Government provision of rehabilitation programs. The *Disability Services Act 1993* (NSW) regulates NSW Government provision of disability services and the funding of eligible organisations to provide disability services. The following section summarises the NSW Act and it notes some differences with the Federal Act.

Disability Services Act 1993 (NSW)

Provision and funding of services

Under the NSW Act:

- The Minister has a duty in providing and funding services to people with disabilities, either directly to those persons or indirectly through other persons or bodies, to ensure that the services are provided and funded in conformity with the objects of the Act and the principles and applications of principles in the Act.⁴⁴
- The Minister may not approve funding to an eligible organisation unless satisfied on reasonable grounds that providing the funding would conform with the objects of the Act and the principles and applications of principles in the Act.⁴⁵
- When approving funding the Minister must determine the terms and conditions of funding.⁴⁶ These conditions must deal with a range of specified matters, including the extent to which the organisation must conform to the principles and applications, and the outcomes to be achieved for people with disabilities.⁴⁷

Note that the Federal Act also requires the Minister to be satisfied that an eligible organisation complies, or will comply with, Disability Services Standards; and employment services need to obtain a certificate of compliance from a certification body.⁴⁸

⁴⁴ Section 6

⁴⁵ Section 10

⁴⁶ Section 11

⁴⁷ Section 12

⁴⁸ *Disability Services Act 1986* (Cth), sections 10, 12AD.

Transitional funding

The NSW Act allowed a three-year transition period for disability services that were being provided or funded by the Minister and which did not conform to the objects, principles and applications of principles in the Act.⁴⁹ The Minister could adopt a transition plan for such services, requiring the service to be provided or funded as closely as possible in conformity with the objects, principles and applications and indicating the date by which the service would be provided in full conformity. In its 1999 report on the Act, the NSW Law Reform Commission noted that, “at least 30% of non-government and 86% of [government] disability services [still] do not conform fully to the objects, principles and applications of principles”.⁵⁰ The report noted that funding had been made available which would eventually assist all transition services to achieve conformity but it also noted that only some transition services had received such funding.⁵¹

Objects, principles and applications of principles

The objects of the NSW Act include ensuring the provision of services necessary to enable persons with disabilities to achieve their maximum potential as members of the community, and ensuring the provision of services that:

- further the integration of persons with disabilities in the community and complement services available generally to such persons in the community, and
- enable persons with disabilities to achieve positive outcomes, such as increased independence, employment opportunities and integration in the community, and
- are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem.⁵²

The principles and applications of principles are set out in Appendix 1.

Disability Services Standards

Unlike the Federal Act, the NSW Act does not refer to disability services standards. However, the NSW Department of Disability, Ageing and Home Care has adopted 10 NSW Disability Services Standards (set out in Appendix 2), which are intended as a guide to assist service providers to meet the objects, principles and applications of principles.⁵³ All

⁴⁹ See section 6(2), (3) and section 7.

⁵⁰ New South Wales Law Reform Commission, *Review of the Disability Services Act 1993* (NSW), Report 91, July 1999, p87.

⁵¹ NSWLRC Report, note 50, p84. The Federal Act initially allowed a five-year transition period for Federally funded services. However, at the expiry of the five-year period many services had failed to conform with the principles and objectives of the Act. Consequently, in 1992, the Federal Government amended the Act to extend the deadline for compliance until June 1995: see Lindsay M, note 18, p27.

⁵² Section 3.

⁵³ NSWLRC report, note 50, p101.

services must comply with the Standards as a condition of funding.⁵⁴ The Department has supplemented the NSW Standards with a manual entitled *Standards in Action*, which provides practical guidance on complying with the Standards.⁵⁵ There is a separate *Standards in Action* manual in relation to children and young persons with disabilities.⁵⁶ The NSW Standards are very similar to the Federal Disability Services Standards.⁵⁷

Compliance monitoring

As noted above, the NSW Act imposes a general duty on the Minister to ensure that the services are provided and funded in conformity with the objects of the Act and the principles and applications of principles. The Act also states that the Minister must ensure that, at intervals of not more than 3 years, a review is conducted of the extent to which each eligible organisation has complied with the terms and conditions of funding.⁵⁸ In its November 2002 report on disability services, the Standing Committee on Social Issues referred to the NSW Department's existing monitoring system:

All funded services are required to complete an annual self-assessment form provided by the Department. In addition, Service Support and Development Officers (SSDOs) visit non-government services to review their procedures and develop service capacity. Where issues of concern are identified, the Service Review and Support program will investigate and ensure that services develop an action plan to address any problems and monitor the service to ensure that outcomes specified in the action plans are achieved.⁵⁹

In 2005/06, the Department implemented a new monitoring system, which is known as the Integrated Monitoring Framework (IMF).⁶⁰ The IMF "integrates the various monitoring activities currently undertaken by the Department that is consistent with the general approaches taken by other human services. The Framework applies to services operated by

⁵⁴ NSWLRC report, note 50, p101, 102.

⁵⁵ NSW Ageing and Disability Department, *Standards in Action: Practice Requirements and Guidelines for Services Funded under the Disability Services Act*, May 1998.

⁵⁶ NSW Department of Ageing, Disability and Home Care, *Children's Standards in Action: A resource for service providers working with children and young people with a disability*, 2004.

⁵⁷ There are three different Federal Standards relating to: (i) Employment conditions, (ii) Service recipient training and support; and (iii) Staff recruitment, employment and training.

⁵⁸ Section 15.

⁵⁹ Legislative Council Standing Committee on Social Issues 2002 report, note 40, p101. For a brief history of the monitoring of disability services funded by the NSW Government from 1995 to 2003/04 see NSW Ombudsman, *Report under Section 11(c) of the Community Services (Complaints Reviews and Monitoring) Act 1993*, 16 September 2004.

⁶⁰ NSW Department of Ageing, Disability and Home Care, *Annual Report 2005-06*, NSW Government, October 2006, p43.

the Department and service providers delivering DADHC funded services”.⁶¹ The IMF has two broad components: (1) Annual accountability and reporting requirements, which includes an annual statement of the organisation’s compliance with the Funding Agreement; (2) Services reviews and monitoring, which involves regional Departmental staff visiting a service provider and conducting a comprehensive on-site assessment.⁶²

The service review looks at 23 performance indicators, which includes the disability services standards.⁶³ A service provider that does not satisfy those 23 indicators may be required to develop an action plan and regional staff monitor implementation of the Action Plan.⁶⁴ In budget estimates hearings in September 2006, Janet Milligan, the Director of the Service and Development and Planning unit of DADHC, reported that by the end of June 2006, 309 full service reviews had been completed using the new system.⁶⁵

Under the Federal Act, prior to 2002, monitoring involved an annual self-assessment process undertaken by each service in consultation with its consumers; and the Department of Family and Community Services conducting an audit of each service at least every five years, to verify compliance against the Standards.⁶⁶ Legislative changes were made in 2002 because a review of the quality assurance system found that there had been “a loss in confidence in the ability of the current system to ensure that disability employment services meet quality standards”.⁶⁷ As a result of the 2002 changes:

- An industry-based quality assurance system applies to the assessment of employment disability services and rehabilitation programs.
- Accredited certification bodies assess these services and programs against disability standards and new key performance indicators.
- The certification bodies monitor the provision of certified services through annual surveillance audits and full assessment audits every three years.
- The certification bodies give service providers certificates of compliance in respect of a service that meets the standards.
- Generally, after the transition period ending in December 2004, grants of funding

⁶¹ NSW Department of Ageing, Disability and Home Care, ‘Integrated Monitoring Framework’, published on DADHC website: <http://www.dadhc.nsw.gov.au>

⁶² NSW Department of Ageing, Disability and Home Care, ‘The Integrated Monitoring Framework Process’, published on DADHC website: <http://www.dadhc.nsw.gov.au>

⁶³ NSW Parliament Legislative Council General Purpose Standing Committee No.2, *Examination of Proposed Expenditure for the Portfolio Areas: Ageing, Disability Services - , Transcript of Evidence*, 8 September 2006, p12.

⁶⁴ NSW Department of Ageing, Disability and Home Care, ‘The Integrated Monitoring Framework Process’, published on DADHC website: <http://www.dadhc.nsw.gov.au>

⁶⁵ Budget Estimates Transcript of Evidence, note 63, p12.

⁶⁶ Parliament of Australia, *Disability Services Amendment (Improved Quality Assurance) Bill 2002: Explanatory Memorandum*, 2002.

⁶⁷ Explanatory Memorandum to the bill, note 66.

under the Act are only to be made in respect of certified services.⁶⁸

Termination of funding

Under the NSW Act the Minister may at any time suspend or terminate future instalments of funding.⁶⁹ Before terminating funding, the Minister must comply with procedural requirements such as allowing the organisation to make submissions to the Minister.⁷⁰

Review of Act by Law Reform Commission

In 1998, the Minister asked the NSW Law Reform Commission to conduct the statutory five-year review of the Act. The Commission published its report in July 1999.⁷¹ The report made 40 recommendations including:

- Making changes to the objects of the Act including adding the object of ensuring that access to services is determined on a fair and equitable basis.⁷²
- Amending the Act to include a special Part for children and young people with a disability, which should include special additional principles and applications of principles for children and young people.⁷³
- Establishing a new quality assurance process including replacing the current self-assessment procedure with a more accountable system of peer review; and involving independent monitoring and certification of services by a new Disability Services Quality Assurance Council.⁷⁴
- Amending the Act to require the Minister to prepare and publish a four-year plan, which must identify appropriate planning areas, collect the best available data on unmet need in these areas, identify priorities for service provision by location and type and identify the funds available and how the funds are to be spent.⁷⁵

The NSW Government has not yet implemented the Commission's recommendations.

⁶⁸ *Disability Services Amendment (Improved Quality Assurance) Act 2002 (Cth)*. This summary was adapted from the Explanatory Memorandum to the bill, note 66.

⁶⁹ Section 16.

⁷⁰ Section 16(2).

⁷¹ NSWLRC report, note 50.

⁷² NSWLRC report, note 50, Recommendation No.7.

⁷³ NSWLRC report, note 50, Recommendation No. 31 (see also Rec Nos. 32-35)

⁷⁴ NSWLRC report, note 50, Recommendation Nos. 26-28.

⁷⁵ NSWLRC report, note 50, Recommendation No.12

Other legislation relevant to disability services

The *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) applies to services provided under the *Disability Services Act 1993* (DSA). The Act confers on the NSW Ombudsman a number of general functions in relation to the monitoring and review of disability services⁷⁶ and it also provides for the following:

- *Complaints:* A person may make a complaint to the Ombudsman about the conduct of a service provider with respect to the provision, failure to provide, withdrawal, variation or administration of a service provided under the DSA in respect of a particular person or group of persons.⁷⁷ The Ombudsman may deal with a complaint in accordance with the *Ombudsman Act 1974*, which provides for conciliation, investigation and the making of recommendations.
- *Official Community Visitors:* Official Community Visitors appointed under the Act may enter and inspect a place at which (a) an accommodation service is provided by the Department (b) an accommodation service is provided by a funded agency where the person using the service is in the service providers' full-time care, or (c) a licensed boarding house.⁷⁸ Official Visitors may provide the relevant Minister with advice or reports on any matters relating to the conduct of such a place.
- *Review of situation of people with disabilities in care and review of deaths:* The Ombudsman may, on application or on its own initiative, review the situation of people with disabilities who are in the care of a government or non-government service provider, or a licensed boarding house.⁷⁹ In addition, the Ombudsman is responsible for monitoring and reviewing the deaths of people with disabilities who, at the time of their death, were living in residential care provided and authorised or funded under the DSA, or in a licensed boarding house.⁸⁰

Other relevant legislation includes the *Youth and Community Services Act 1973* (NSW), which provides for the licensing of boarding houses for people with disabilities. In June 2006, the NSW Ombudsman presented a report to Parliament, which highlighted “serious problems with the way boarding houses are licensed and monitored in NSW”.⁸¹ The report noted that the Government was prioritising the completion of its review of the Act.

⁷⁶ See section 11 of the Act.

⁷⁷ Section 22(1).

⁷⁸ Section 8(1).

⁷⁹ Section 13.

⁸⁰ Sections 35(1)(f) and 36(1).

⁸¹ NSW Ombudsman, *DADHC: Monitoring Standards in Boarding Houses – A special report to Parliament under s 31 of the Ombudsman Act 1974*, June 2006, foreword.

5. FEDERAL GOVERNMENT DISABILITY SUPPORT

Overview

This section provides a brief overview of the two main types of Federal Government specialist disability support: (1) Income support and (2) Employment support services. Note that the Federal Government provides and funds other disability support services.⁸²

Income support

Summary of payments

The Federal Government provides income support to people with a disability and to carers of people with a disability as shown in the Table below.⁸³

Name	Type and eligibility	Rate
Disability support pension	An income support payment for people aged over 15 and under 65 who, because of illness, injury or disability are unable to work, or to be retrained to work, at least 15 hours per week in open employment within 2 years. Except for people who are permanently blind, it is subject to an income and assets test. This summary reflects changes introduced in 2006 (see below).	Maximum rate of \$512.10 per fortnight for single person over age of 21.
Sickness Allowance	A payment to people aged over 21 and under 65 who are temporarily incapacitated for work or full-time study because of disability, illness or injury and who have a job or full-time study to return to. It is subject to an income and assets test.	\$420.90 per fortnight for a person who is single with no children
Mobility allowance	Income supplement paid to people aged 16 years or over with a disability who are in paid employment, voluntary work, vocational training, or job search and who are unable to use public transport without substantial assistance. It is not subject to an income or assets test.	Standard rate of \$71.40 per fortnight. Higher rate of \$100 per fortnight.
Disability pension for war veterans	The disability pension is a compensation payment to veterans for injuries or diseases caused or aggravated by war service or certain defence service on behalf of Australia before 1 July 2004. Those injured after 1 July 2004 can receive payments under the military rehabilitation and compensation scheme.	Maximum general rate of \$316.20 per fortnight.

⁸² For an overview of other Federal Government disability support see McIntosh G and Phillips J, 'Disability Support and Services in Australia', Parliament of Australia, Parliamentary Library Research Service, *E-Brief*, March 2001 (updated October 2002).

⁸³ The descriptions of income support payments in the Table are adapted from Australian Institute of Health and Welfare, *Disability and Disability Services in Australia*, Canberra, January 2006, p22-23. The rates are taken from the Centrelink website: http://www.centrelink.gov.au/internet/internet.nsf/individuals/iid_pay_adult.htm

Carer Payment	Income support payment for people who are unable to work while providing constant care for a person with a severe disability or medical condition, or who is frail aged, at their home. The carer must pass an income and assets test and the person receiving the care must be receiving an income support payment or pass an income and assets test.	Maximum rate of \$512.10 per fortnight for a carer who is single
Carer Allowance	Income supplement for carers who provide daily care and attention for a person with a severe disability or medical condition, or who is frail aged, at their home. It is not subject to an income/assets test. It can be paid on top of the Carer Payment.	Standard rate of \$94.70 per fortnight.

The Disability Support Pension (DSP) is the most common form of income support for people with a disability. In June 2006, there were over 712,000 recipients of the DSP.⁸⁴ The majority of DSP recipients are aged between 45 and 64 years. The number of recipients of other payments (as at June 2006) is outlined below:⁸⁵

Type of payment	Number of recipients
Sickness Allowance	7,510
Mobility Allowance	51,669
Carer Payment	105,058
Carer Allowance	366,304

Note that people with a disability who are not eligible for the DSP or the sickness Allowance may be eligible for income support payments that are not disability-specific: eg Youth Allowance or the Newstart Allowance (unemployment benefits).

2006 welfare-to-work changes

The Federal Government's controversial welfare-to-work changes, which came into effect on 1 July 2006, have changed the eligibility criteria for the Disability Support Pension (DSP).⁸⁶ Prior to the changes, a person with a disability was eligible for the DSP if they were unable to work, or to be retrained to work, at least 30 hours per week within 2 years. Under the changes, the 30-hour per week threshold has been lowered to 15 hours per week. In other words, people with a disability who are assessed as having the capacity to work 15 hours per week within 2 years are now not eligible to claim the DSP. The changes do not apply to people who were receiving the DSP prior to 10 May 2005.

⁸⁴ Department of Employment and Workplace Relations, *Annual Report 2005/06*, Australian Government, p31.

⁸⁵ The number of recipients of the Sickness Allowance and Mobility Allowance are sourced from DEWR Annual Report 2005/06, note 84, p32-33; The number of recipients of Carer Payments and Carer Allowance are sourced from Department of Families, Community Services and Indigenous Affairs, *Annual Report 2005/06*, Australian Government, p131-132.

⁸⁶ As to the controversy about the reforms, see Senate Community Affairs Legislation Committee, *Provisions of Employment and Workplace Relations Legislation Amendment (Welfare to Work and Other Measures) Bill 2005; Family and Community Services Legislation Amendment (Welfare to Work) Bill 2005*, November 2005.

People who are not eligible for the DSP will need to apply for another payment such as Newstart (unemployment benefits) or Youth Allowance. These are paid at lower rates compared to the DSP (Newstart payment is \$420.90 per fortnight for a single person with no children). To receive such payments, people with a disability will need to meet activity requirements, including looking for work to their level of capacity. The Federal Government has stated that people with a disability will have “access to the full range of vocational and pre-vocational services to assist them with job preparation and job search requirements to help find employment consistent with their capacity”.⁸⁷

*Concessions for people with a disability and carers*⁸⁸

The Federal Government provides a range of concession cards to eligible people with a disability. They entitle the holder to various concessions on specific national, state and local government services as well as some private sector services. The core areas agreed by state governments are energy consumption, water and sewerage, municipal rates and transport (including public transport and vehicle registration). Other concession areas vary across the country, eg ambulance travel for isolated patients, glasses, and dental care.

Employment support

Overview

People with a disability can access mainstream employment services provided through the Federal Government’s Job Network.⁸⁹ In addition, the Federal Government provides, and funds organisations to provide, specialist disability employment services.⁹⁰

Some specialist disability employment services provide assistance to people with a disability in obtaining and/or retaining employment in the open labour market (known as ‘open employment’ services). Other services provide support to, and employment for, people with a disability within the same organisation (known as ‘supported employment’ services – formerly known as ‘sheltered workshops’). These open and supported disability employment services are primarily funded under the CSTDA (note that vocational rehabilitation services – outlined below – are not funded under the CSTDA).

The Federal Government also provides financial incentives to employers to encourage the employment of people with disabilities in the open labour market.

⁸⁷ DEWR Annual Report 2005/06, note 84, p31.

⁸⁸ This information was sourced from AIHW, *Disability and Disability Services in Australia*, note 83, p26.

⁸⁹ The Job Network provides assistance to people with disability who do not need ongoing support or rehabilitation to find or keep a job: see the JobAccess website: <http://www.jobaccess.gov.au>

⁹⁰ As noted in Section 3, under the CSTDA, the Federal Government is responsible for the funding, planning and management of specialist disability employment services.

This section provides a brief overview of open employment services, financial incentives to encourage employment in open labour market; and supported employment services.⁹¹ It does not cover Federal Government assistance in relation to apprenticeships.⁹²

Open employment services

Disability Employment Network

The Disability Employment Network (DEN) is a network of service provider organisations contracted by the Department of Employment and Workplace Relations (DEWR) to provide open employment services.⁹³ Organisations in the DEN provide the following services:

- Support while training for a particular job;
- Help in finding a job and starting employment in the open labour market;
- Continuing support once employment has commenced.⁹⁴

To be eligible for DEN assistance under the capped stream (ie where there is a cap on the number of places available), a “person must be assessed as likely to require ongoing support to retain employment after they have found a job, and be able to work a minimum of eight hours per week at award based wages in the open employment market”.⁹⁵ Ongoing support is usually defined as more than six months support.⁹⁶ DEN also provides help to people with disability who are likely to lose their job as a result of their disability.⁹⁷

To be eligible for DEN assistance under the new demand driven, uncapped stream (introduced from 1 July 2006 as part of the welfare to work reforms), a person must be assessed as [being] able to work between 15-19 hours per week independently at full award

⁹¹ For further information, see the JobAccess website: <http://www.jobaccess.gov.au>; and see also Human Rights and Equal Opportunities Commission, *Issues Paper 5: Mapping of Commonwealth Government Services – Stage One of the Information Gathering Exercise*,

⁹² For information on apprenticeships for people with disabilities, see the JobAccess website at: <http://www.jobaccess.gov.au/JOAC/Services/Training+and+apprenticeships/>

⁹³ Note that the DEN was formerly known as Disability Open Employment Services. Note also that after the 2004 Federal election, the responsibility for open employment services was transferred from the Department of Family and Community Services to the Department for Employment and Workplace Relations.

⁹⁴ Centrelink, ‘Disability Employment Assistance’: accessed on Centrelink website: http://www.centrelink.gov.au/internet/internet.nsf/services/disability_emp.htm

⁹⁵ DEWR Annual Report 2005/06, note 84, p54.

⁹⁶ HREOC Issues Paper 5, note 91.

⁹⁷ Job Access website: <http://www.jobaccess.gov.au/JOAC/Jobseekers/Getting+advice+and+support/DisabilityEmploymentNetwo.htm>

wages with up to two years of employment assistance”.⁹⁸

In 2005/06, the DEN assisted over 55,000 clients.⁹⁹ The DEN “placed over 10,500 people into jobs with more than 6,700 job seekers with disability achieving long term sustainable jobs (26 weeks)”.¹⁰⁰ The DEN also “provided ongoing support during the year to more than 12,000 workers with disability to assist them to remain in work”.¹⁰¹

Vocational rehabilitation services¹⁰²

DEWR contracts CRS Australia (formerly known as the Commonwealth Rehabilitation Service) to provide Vocational Rehabilitation services (VRS).¹⁰³ CRS Australia provides VRS through an extensive metropolitan and regional network throughout Australia. VRS can be accessed by people aged between 14 and 65 who have an injury, disability or health condition that makes it hard for them to gain employment or return to work.¹⁰⁴

VRS aim to assist people to understand and manage the barriers associated with their disability so that they can work independently in the open labour market.¹⁰⁵ VRS programs are “tailored to individual needs and can include vocational assessment and counselling; job preparation, placement and training; injury management; and workplace modifications”.¹⁰⁶

In relation to placement and training, CRS Australia operates a Work Training Scheme, which involves clients having a placement in a work environment for a period of up to 13 weeks. The client does not receive payment from the host employer but the client receives a Government training allowance as an incentive payment.¹⁰⁷ All VRS programs include

⁹⁸ DEWR Annual Report 2005/06, note 84, p54.

⁹⁹ DEWR Annual Report 2005/06, note 84, p54.

¹⁰⁰ JobAccess website:
<http://www.jobaccess.gov.au/JOAC/Services/Employment+services/DisabilityEmploymentNetwo.htm>

¹⁰¹ JobAccess website, note 100.

¹⁰² A brief history of vocational rehabilitation services in Australia is provided in Macali L, ‘Contemporary Disability Employment Policy in Australia: How Can it Best Support Transitions from Welfare to Work’, (2006) 32(3) *Australian Bulletin of Labour* 227 at 228.

¹⁰³ CRS Australia is a business unit of the Federal Department of Human Services.

¹⁰⁴ CRS Australia website: <http://www.crsaaustralia.gov.au>

¹⁰⁵ CRS Australia website, note 104.

¹⁰⁶ DEWR Annual Report 2005/06, note 84, p54.

¹⁰⁷ As to Working Training Scheme, see further, Human Rights and Equal Opportunities Commission, *WORKability II: Solutions – People with disability in the open workplace – Final Report of the National Inquiry into Employment and Disability*, December 2005, p86ff.

support for up to six months following job placement.¹⁰⁸

In 2004/05, CRS Australia “provided services to more than 42,000 DEWR clients (including more than 25,000 new clients). Of the 24,256 people who completed programs, 11,294 were placed in employment and 9,183 achieved sustainable employment outcomes”.¹⁰⁹ Sustainable employment outcomes is defined as at least 8 hours per week for 13 weeks.¹¹⁰ The Welfare to Work changes “commits an additional \$192 million to assist an estimated additional 48,000 people in the three years to 30 June 2009”.¹¹¹

National Disability Recruitment Coordinator¹¹²

The National Disability Recruitment Coordinator provides larger employers with a single point of contact for the recruitment of employees with disability. The Coordinator can link the employer with DEN service providers and VRS. If a larger employer provides details of job vacancies, the Coordinator can broadcast the vacancies to all the DEN service providers and VRS in the employer’s local area. Applications from suitable job seekers are then forwarded to the Coordinator by DEN service providers and VRS. The Coordinator pre-screens the applications on the employer’s behalf and provides the employer with details of the job seekers who have the skills and experience to perform the job.

Financial incentives for employers in open labour market

Under the Employer Incentives Strategy, the Government funds a range of incentives to encourage employers to employ people with disabilities. These are outlined below.

Wage Subsidy Scheme¹¹³

The Wage Subsidy Scheme “aims to increase the competitiveness of people with a disability in gaining employment”. The scheme “offers financial assistance through wage subsidies to employers who employ eligible employees with a disability”. The subsidies are paid to employers by DEN providers and by CRS Australia. Subsidies of up to \$1,500 are available in relation to people with a disability who are employed for at least 13 weeks.¹¹⁴

¹⁰⁸ CRS Australia website, note 104.

¹⁰⁹ Department of Human Services, *Annual Report 2004/05*, Australian Government, p91.

¹¹⁰ Department of Human Services, *Annual Report 2004/05*, Australian Government, p88.

¹¹¹ DEWR Annual Report 2005/06, note 84, p54.

¹¹² This information was sourced from the JobAccess website:
<http://www.jobaccess.gov.au/joac/Employers/Getting+advice+and+support/NDRC.htm>

¹¹³ Unless otherwise stated, this information was sourced from the JobAccess website:
<http://www.jobaccess.gov.au/joac/ServiceProviders/Employer+incentives/WageSubsidyScheme.htm>

¹¹⁴ Moving into Work website: <http://www.movingintowork.gov.au>

In 2003/04, 2,580 people with disability were assisted under the Wage Subsidy Scheme.¹¹⁵

Supported Wage System

Most employees with a disability in the open labour market earn full wage rates but some find it hard to get or keep a job at full wage rates because their disability affects their productivity.¹¹⁶ The Supported Wage System (SWS), which is administered by DEWR, enables “employers to pay people with disability the proportion of the applicable award wage that equates to their independently assessed productivity”.¹¹⁷ For example, “if a person is assessed as having a productivity level of 70 per cent compared to co-workers performing the same duties, the worker and the employer can agree to ongoing employment at a pay rate of 70 per cent of the normal rate”.¹¹⁸ The SWS operates within the Federal and State industrial relations systems and for an employee to be eligible the relevant award or workplace agreement must contain a clause allowing for supported wages. In 2003/04, 3,425 people with disability were assisted under the SWS.¹¹⁹

Workplace modifications scheme

The aim of the Workplace Modifications Scheme is “to encourage and support the employment of eligible people with disability by providing financial assistance for the cost of modifications and adjustments that may be needed to a workplace”.¹²⁰ To be eligible for assistance, a worker must have an ongoing disability that:

- Has lasted or is likely to last for at least two years; and
- Results in an impairment affecting the worker’s everyday activities; and
- Requires a workplace adjustment.¹²¹

In addition, the worker must be seeking employment, or be in employment, which is reasonably expected to continue for a period in excess of 13 weeks at a minimum of 8 hours per week.¹²² Assistance under the scheme is approved at the discretion of JobAccess,

¹¹⁵ HREOC Issues Paper 5, note 91.

¹¹⁶ JobAccess website:
<http://www.jobaccess.gov.au/joac/Employers/Employer+incentives/SupportedWageSystem.htm>

¹¹⁷ Bill A and Cowling S et al ‘Employment programs for people with psychiatric disability: the case for change’, (2006) 41(2) *Australian Journal of Social Issues* 209 at 214.

¹¹⁸ Centrelink website:
http://www.centrelink.gov.au/internet/internet.nsf/services/supp_wage_system.htm

¹¹⁹ HREOC Issues Paper 5, note 91.

¹²⁰ Department of Employment and Workplace Relations, *Workplace Modification Scheme Guidelines as at 14 July 2006*, Australian Government, p4.

¹²¹ WMS Guidelines, note 120, p6.

¹²² WMS Guidelines, note 120, p6.

where funds are available.¹²³ Examples of modifications that can be made under the scheme include physical or environmental workplace adjustments, communication technology or software upgrades, and items of equipment or modifications to existing items.¹²⁴ In 2003/04, 275 people with disability were assisted under the scheme.¹²⁵

Supported employment services

The Department of Family and Community Services and Indigenous Affairs (FaCSIA) funds a network of Business Services outlets to provide supported employment assistance to people with a disability. Business Services are commercial enterprises whose workforce is predominantly people with a disability.¹²⁶ As at 30 June 2006, “FaCSIA funded a network of approximately 400 business service outlets across Australia to provide supported employment assistance to over 18,000 people with a disability”.¹²⁷ People who work for Business Services generally receive pro rata wages linked to their productivity.¹²⁸

Number of recipients of CSTDA funded employment services in NSW

Data compiled by the Australian Institute of Health and Welfare (AIHW) on services provided under the CSTDA gives some indication of the number of recipients of specialist disability employment services in NSW. Note that Vocational Rehabilitation Services are not funded under the CSTDA. Data for the 2004/05 year is shown below:¹²⁹

Type of service	Number of recipients in NSW	Number of recipients in Australia
Open employment	11,787	43,831
Supported employment	6,691	18,615
Open and supported	995	3,635
Total	19,037	64,835

¹²³ WMS Guidelines, note 120, p7.

¹²⁴ See WMS Guidelines, note 120, p7.

¹²⁵ HREOC Issues Paper 5, note 91.

¹²⁶ JobAccess website:
<http://www.jobaccess.gov.au/JOAC/Services/Related+services/businessservices.htm>

¹²⁷ FaCSIA Annual Report 2005/06, note 85, p125.

¹²⁸ FaCSIA Annual Report 2005/06, note 85, p119-120.

¹²⁹ Australian Institute of Health and Welfare, *Disability Support Services 2004-05: National data on services provided under the Commonwealth State/Territory Disability Agreement*, Canberra, August 2006, p 20. Note that the combination of open and supported employment services ceased to be operational from 1 December 2004.

Recent national inquiry into employment of people with disability

In 2005, the Human Rights and Equal Opportunities Commission conducted a national inquiry into equal opportunity in employment for people with a disability. The goal of the inquiry was to “identify the primary reasons for low participation and employment rates for people with disabilities, and to work towards practical, achievable solutions”.¹³⁰ The Commission published an interim report in August 2005, which identified the main barriers to employment for people with a disability, namely:

- **Information** – people with disability and employers are concerned about the absence of easily accessible and comprehensive information that can assist in their decision making processes and support their ongoing needs.
- **Cost** – people with disability are concerned about the costs of participation, and employers are concerned about the costs of employing a person with disability.
- **Risk** – people with disability and employers are concerned about the financial and personal impact of participating in the workplace, especially if a job does not work out.¹³¹

The Commission’s final report, published in December 2005, made 30 recommendations to overcome these obstacles.¹³² The key recommendation was that the Federal Government lead the development of a National Disability Employment Strategy, in cooperation with a multi-sector coalition, with a view to ensuring increased participation, recruitment and retention of people with disability.¹³³ The report listed a number of issues that such a Strategy should focus on as a matter of priority. These included developing a whole of government approach to ensuring appropriate financial and practical support to people with disability, including a streamlined system to provide adequate workplace modifications, income support, and subsidies and concessions in relation to transport, equipment and health care. The priority issues also included “improving the effectiveness of government-funded employment service delivery to people with disability and employers (including recruitment assistance and access to supports on an as-needed basis)”.

¹³⁰ Human Rights and Equal Opportunities Commission, *WORKability I: Barriers – People with disability in the open workplace - Interim Report of the National Inquiry into Employment and Disability*, August 2005, p1

¹³¹ WORKability I, note 130.

¹³² Human Rights and Equal Opportunities Commission, *WORKability II: Solutions – People with disability in the open workplace – Final Report of the National Inquiry into Employment and Disability*, December 2005.

¹³³ WORKability II, note 132, Recommendation 30.

6. NSW GOVERNMENT DISABILITY SUPPORT SERVICES

Overview

This section presents an outline of the main types of specialist disability support services provided, and funded, by the NSW Government. These services include accommodation support, respite care, and community access and support services. These services are provided to children, young people and adults with disabilities.¹³⁴ The Government provides or funds these services through its Department of Ageing, Disability and Home Care (DADHC). These services are primarily funded under the CSTDA but some in-home accommodation support services and respite care services are funded under the HACC program. This section also outlines the Government's Program of Appliances for Disabled People, which is administered by NSW Health. The last part of this section looks at the Government's policy in relation to services for children and young persons with disabilities and its new *Stronger Together* strategy to improve disability support services. Figures outlined in this section are sourced from DADHC annual reports.¹³⁵

Accommodation support

In-home accommodation support

In-home accommodation support includes the HACC program, the Attendant Care Program and other in-home accommodation support. These are outlined below.

The HACC program

As noted in Section 3, the Federal and State Governments jointly fund the Home and Community Care (HACC) program, which provides a range of community supports to frail older people, younger people with a disability and their carers. Services include domestic assistance, personal care, respite, nursing care and transport. DADHC has the lead role in administering the HACC program in NSW, in partnership with NSW Health and the Ministry of Transport.¹³⁶ There are about 580 HACC service providers in NSW but the Government's Home Care Service of NSW (HCS) is the largest.¹³⁷ In 2003/04, HCS

¹³⁴ For an overview of disability support services specifically for children and young people and their families in NSW, see NSW Department of Ageing, Disability and Home Care, *Supporting children and young people with a disability and their families*, July 2004.

¹³⁵ Note that the Australian Institute of Health and Welfare also provides figures on CSTDA funded specialist disability support services. The most recent AIHW figures are for the 2004/05 year: see Australian Institute of Health and Welfare, *Disability Support Services 2004-05 – National data on services provided under the Commonwealth State/Territory Disability Agreement*, Canberra, August 2006, p19.

¹³⁶ Australian Government Department of Health and Ageing, NSW Department of Ageing, Disability and Home Care, *New South Wales HACC Program Annual Plan 2006-07*, p6.

¹³⁷ Legislative Assembly, Public Accounts Committee, *Inquiry into the Home and Community Care Program*, NSW Parliament, Report No.20/53 (No. 163), January 2007, p4, para1.23.

provided about 90 per cent of all HACC domestic assistance and personal care services.¹³⁸

In 2005/06, HCS provided over 3.6 million service hours to 52,500 clients.¹³⁹ Most clients were over the age of 65.¹⁴⁰ The main types of services provided were domestic assistance (48%) and personal care (34%).¹⁴¹ The vast majority (83%) of HCS clients “receive 0-10 hours of support per four-week period, 12% receive 10-28 hours support and 4% receive 29-59 hours of support per period. Around 1% of clients receive 60 or more hours of service per four-week period. This group is referred to as the High Need Pool”.¹⁴² In 2005/06, there were over 400 people receiving services from the High Need Pool.¹⁴³

Note that the Legislative Assembly Public Accounts Committee has recently completed a review of the HACC program, which made a number of recommendations.¹⁴⁴

The Attendant Care Program

The Attendant Care Program targets people aged 16 to 64 years who have a physical disability and require between 15 and 34 hours per week of personal care support.¹⁴⁵ Services include assistance with (or supervision of) toileting, dressing and undressing, eating and drinking, transferring, bathing, grooming and related domestic assistance.¹⁴⁶ In 2005/06, there were 314 people in the Attendant Care Program.¹⁴⁷

Other in-home accommodation support

In 2005/06 DADHC also provided, and funded other organisations to provide, other in-

¹³⁸ NSW Auditor-General, *Auditor-General's Report – Performance Audit – Home Care Service – Department of Ageing, Disability and Home Care*, NSW Audit Office, October 2004, p12.

¹³⁹ NSW Department of Ageing, Disability and Home Care, *Annual Report 05/06*, NSW Government, 2006, p34.

¹⁴⁰ See DADHC Annual Report 05/06, note 139, p300. As to total HACC services provided in NSW, see Department of Health and Ageing, *Home and Community Care Program, Minimum Data Set, 2004-05 Annual Bulletin*, Australian Government, 2006.

¹⁴¹ DADHC Annual report 05/06, note 139, p34.

¹⁴² DADHC Annual Report 05/06, note 139, p31.

¹⁴³ DADHC Annual Report 05/06, note 139, p33.

¹⁴⁴ Legislative Assembly, Public Accounts Committee, *Inquiry into the Home and Community Care Program*, NSW Parliament, Report No.20/53 (No. 163), January 2007.

¹⁴⁵ NSW Department of Ageing, Disability and Home Care, *The Attendant Care Program, Fact Sheet*, October 2006. Accessed on DADHC website:
<http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Attendant+Care.htm>

¹⁴⁶ DADHC Attendant Care Program Fact Sheet, note 145.

¹⁴⁷ DADHC Annual Report 05/06, note 139, p33.

home support services to 1,630 people.¹⁴⁸

Out-of-home supported accommodation

The NSW Government provides, and funds non-government organisations to provide, out-of-home supported accommodation to people with disabilities. Historically, supported accommodation has been provided in large residential centres. However, as noted in Section 2, since the early 1980s there has been a movement towards housing people with disabilities in community-based settings (group homes) rather than in large institutions.¹⁴⁹ In 1998, the Government announced that it would close all large residential centres by 2010.¹⁵⁰ This process commenced in 2000 and since then, 11 large residential centres have closed and 309 people have been relocated into the community.¹⁵¹

Group homes are usually located in residential neighbourhoods and “provide accommodation and (usually) 24 hour support to people with an intellectual disability in [a] group setting for between 4 to 6 people”.¹⁵² Group homes “are for people over the age of 18 who have an intellectual disability with moderate to high support needs... People aged from 12 to 18 can access the service only with the approval of the Director-General or Minister, and people under the age of 12 are not eligible”.¹⁵³ Staff in DADHC group homes work with clients and their support networks to develop and implement Individual Plans, with the aim of supporting each client with such matters as maintenance of personal hygiene, general self care, household management, decision making, accessing community resources, making community contacts, skills development, and living as part of a group.¹⁵⁴

In 2005/06, 1,782 people were housed in 33 large and small residential centres and hostels while 3,076 people were accommodated in 696 group homes.¹⁵⁵ Of those in centres and hostels, the vast majority were in DADHC-operated centres and hostels. Of those in group homes, the majority were in homes operated by the non-government sector.¹⁵⁶

¹⁴⁸ DADHC Annual Report 05/06, note 139, p289.

¹⁴⁹ For further background on the devolution process, see Legislative Council, Standing Committee on Social Issues, *A Matter of Priority: Report on Disability Services – Second Report*, NSW Parliament, Report 23, December 2000, Chapter 4.

¹⁵⁰ DADHC Annual Report 05/06, note 139, p17.

¹⁵¹ DADHC Annual report 2005/06, note 139, p17.

¹⁵² NSW Department of Ageing, Disability and Home Care, ‘Accommodation: Group Homes’, accessed on website:
<http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Accommodation.htm>

¹⁵³ DADHC, ‘Accommodation- Group Homes’, note 152.

¹⁵⁴ DADHC, ‘Accommodation- Group Homes’, note 152.

¹⁵⁵ DADHC Annual report 2005/06, note 139, p289. See also graph on p21.

¹⁵⁶ DADHC Annual report 2005/06, note 139, p289. See also graph on p21.

Note that a Memorandum of Understanding between DADHC and the Department of Family and Community Services sets out the roles of the two agencies in relation to out-of-home placements for children and young people with a disability.¹⁵⁷ DADHC supports various models of out-of-home placement including family placement, shared care, foster care, group homes, and specialist accommodation support.¹⁵⁸

Respite care

Respite programs “provide planned short-term and time-limited breaks for families and other unpaid [carers] of children with a developmental delay and adults with an intellectual disability in order to support and maintain the primary care-giving relationship”.¹⁵⁹ There are five main types of respite: (i) centre-based; (ii) home-based; (iii) host family; (iv) community based (eg group activities), (v) flexible (combination of types).

The typical or ideal respite stay is for between 4 and 7 days. Alternative lengths of stay include planned extended respite of 2-6 weeks or a single day to accommodate carer needs such as a holiday or medical issues or client needs such as monitoring changes in medication. Emergency short-term respite is an immediate time-limited break (4 days) for families and carers who are unable to provide care due to an unforeseen crisis.

In 2005/06, 5,225 people received CSTDA funded respite care:

- 2,727 people received centre-based respite care,
- 2,021 people receive flexible/combination respite care and
- 477 people received own-home/other respite care.¹⁶⁰

DADHC operated most respite centres but all other CSTDA funded respite care was provided by the non-government sector. In addition to CSTDA funded respite care, in 2005/06, over 8,000 people (including the frail aged) received HACC respite care.¹⁶¹

¹⁵⁷ Memorandum of Understanding between the Department of Community Services and the Department of Ageing, Disability and Home Care on Children and Young Persons with a Disability, 21 November 2003. As to DADHC provided and funded out of home placements, see Department of Ageing, Disability and Home Care, *Supporting children and young people with a disability and their families*, July 2004, p13ff.

¹⁵⁸ Department of Ageing, Disability and Home Care, *Supporting children and young people with a disability and their families*, July 2004, p17-18.

¹⁵⁹ NSW Department of Ageing, Disability and Home Care, 'Respite', accessed on website: <http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Respite.htm>. Unless otherwise indicated, the following information about respite is from the same source.

¹⁶⁰ DADHC, Annual report 2005/06, note 139, p289.

¹⁶¹ DADHC, Annual report 2005/06, note 139, p289.

Community access and support

Overview

Community access and support services encompass a range of programs aimed at: (1) supporting families as they raise their child or young person; and (2) for adults, bridging the gap between school and vocational choices, and promoting independence and community connection.¹⁶² The main community access and support services are outlined below. In 2005/06, 41,089 people received community access and support services.¹⁶³

Early childhood intervention

Early childhood intervention services

In 2005/06, DADHC provided early childhood intervention services for 2,116 children aged 0-6 with disabilities.¹⁶⁴ DADHC also funded other organisations to provide early childhood intervention services for 5,037 children aged 0-6 with disabilities.¹⁶⁵ These early childhood intervention services include early childhood special education, therapy services, information and referral and parent support groups.¹⁶⁶

Early childhood intervention coordination program

DADHC is the lead agency of the Early Childhood Intervention Coordination (ECICP) Program, which aims to “provide a coordinate early childhood intervention services for children with a disability or developmental delay, through involving people from health, therapy, education and support services working together with families”.¹⁶⁷ The program’s main initiative has been “the establishment of a network of committees throughout the state that aim to facilitate communication between families, service providers and policy makers to enable coordination of early childhood intervention services”.¹⁶⁸

¹⁶² NSW Department of Ageing, Disability and Home Care, *Annual Report 2004/05*, NSW Government, 2005, p20.

¹⁶³ DADHC, Annual report 2005/06, note 137, p290 (sum of figures for skills development and day programs, support for children and community support services). Note this figure does not include services provided by Local Support Coordinators.

¹⁶⁴ DADHC, Annual report 2005/06, note 139, p290.

¹⁶⁵ DADHC, Annual report 2005/06, note 139, p290.

¹⁶⁶ NSW Department of Ageing, Disability and Home Care, *Supporting children and young people with a disability and their families*, July 2004, p10.

¹⁶⁷ NSW Department of Ageing, Disability and Home Care, *Early Childhood Intervention Coordination Program Procedures Manual*, November 1999, quoted in Jacq Hackett Consulting, *Final Report: Review of the Early Childhood Intervention Coordination Program*, accessed on the DADHC website at: <http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Supporting+Children.htm>

¹⁶⁸ Review of Early Childhood Intervention Coordination Program, note 167, p3.

Community Support Teams¹⁶⁹

A Community Support Team (CST) is a multi-disciplinary team generally comprised of professionals who provide a range of support services to people over the age of 6 who have an intellectual disability, and to their families and carers. Services include assessment, case planning and management, counselling, referral, therapy, family support, early intervention and behaviour management. CSTs are run by DADHC and they operate on either a geographical basis (eg local government area) or on an age basis (early intervention, school aged and adult). Location based teams are usually rural and age based teams are usually metropolitan. In 2005/06, 90 CSTs provided services to 11,548 clients.¹⁷⁰ Therapy services accounted for 38% of services, 24% were assessment services, 14% were case management services, 7% were behaviour support services and 17% were other services.¹⁷¹

Other therapy, early intervention, family support services

DADHC funds non-government organisations to provide similar services to those provided by Community Support Teams. In 2005/06, 189 non-government organisations provided therapy, prevention and early intervention services to 11,489 clients.¹⁷²

Behaviour Intervention Service¹⁷³

The Behaviour Intervention Service (BIS) is a DADHC statewide service that works with families, government and non-government agencies that provide support to people with an intellectual disability who have challenging or offending behaviour. There are two teams of Senior Clinical Consultants, one for services that work with children and the other for services that work with adults. There are also Forensic Casework Specialists that work with DADHC services and community-based support agencies that support people with an intellectual disability who have offended or who are at risk of offending. Access to the BIS is generally through a referral from a Community Support Team. In 2003/04, the BIS supported an estimated 83 people through direct client work.¹⁷⁴

¹⁶⁹ Unless otherwise indicated, the following information was sourced from NSW Department of Ageing, Disability and Home Care, 'Community Support Teams', accessed on website: <http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Community+Support+Teams.htm>

¹⁷⁰ DADHC, Annual report 2005/06, note 139, p26.

¹⁷¹ DADHC, Annual report 2005/06, note 139, p26.

¹⁷² DADHC, Annual report 2005/06, note 139, p290. As to family support services, see Department of Ageing, Disability and Home Care, *Supporting children and young people with a disability and their families*, July 2004, p11.

¹⁷³ This information was sourced from NSW Department of Ageing, Disability and Home Care, 'Behaviour Intervention Service', accessed on website: <http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Behaviour+Intervention+Service.htm>

¹⁷⁴ NSW Department of Ageing, Disability and Home Care, *Annual Report 2003/04*, NSW Government, 2004, p26.

Local Support Coordinators¹⁷⁵

Local Support Coordinators (LSCs) operate in a number of local government (mainly rural) areas and they provide a personal, flexible service that aims to increase the links between people with a disability, their families and their local community. LSCs assist people with disabilities to determine their own needs and to identify the supports that may be required to make a difference to their lives. LSCs assist people with a disability and their family to gain access to information to make informed choices, to advocacy and support, to a range of supports that enable families/carers to care for a person with a disability with minimum disruption to family life, to solutions to educational, accommodation, employment and leisure needs, and to opportunities to participate in their local community. In 2004/05, 28 Local Support Coordinators provided services to 1,396 clients.¹⁷⁶

Day Programs¹⁷⁷

Day Programs run by DADHC provide purposeful day activities to people aged from 18-65 who have an intellectual disability with moderate to high support needs. There are four areas of activity (i) skills development; (ii) community access; (iii) adult education; (iv) leisure and recreation. Day Program services are offered on a long term basis, where clients attend for a minimum of 0.5 days per week for an extended length of time. The programs either have a centre as a primary base or provide services across a range of settings. They occur primarily in group settings. In 2005/06, 31 day program centres assisted 685 people.¹⁷⁸

Other community engagement programs

In addition to DADHC-run day programs, DADHC funds non-government organisations to provide similar activities. In 2005/06, 319 community engagement program organisations provided services to 6,054 clients with disabilities.¹⁷⁹

¹⁷⁵ This information was sourced from NSW Department of Ageing, Disability and Home Care, 'Local Support Coordination', accessed on website at: <http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Local+Support+Coordination.htm>

¹⁷⁶ NSW Department of Ageing, Disability and Home Care, *Annual Report 2004/05*, NSW Government, 2005, p10. The 2005/06 annual report does not provide figures.

¹⁷⁷ This information was sourced from NSW Department of Ageing, Disability and Home Care, 'Day Programs', accessed on website: <http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Day+Programs.htm>

¹⁷⁸ DADHC, Annual report 2005/06, note 139, p12.

¹⁷⁹ DADHC, Annual report 2005/06, note 139, p290.

Post school programs

Brief history of post school programs¹⁸⁰

In 1993, the NSW Government introduced the Post School Options (PSO) program to facilitate access to work and education for school leavers with mid to high-level disabilities. In 1998, the Adult Training, Learning and Support (ATLAS) program replaced the PSO program. The PSO program still operates for those who were involved in it prior to 1998 – as at 30 June 2006, there were 1,333 people in the PSO program.¹⁸¹ In 2005, the ATLAS program was replaced by two new post school programs, the Transition to Work Program and the Community Participation Program, which are outlined below. The non-government sector is funded to provide all post-school programs.

Transition to Work Program¹⁸²

The Transition to Work Program supports school leavers with a disability to develop skills that will assist them to move to employment, vocational education and training, or higher education. This support is available for up to two years after leaving school. The program aims to assist school leavers who require more support in the short term than can be provided by Commonwealth employment services. To be eligible, a person must be in year 12, have a disability with moderate to high support needs, and be assessed as having the capacity to work. As at 30 June 2006, there were 1,071 people in the program.¹⁸³

Community Participation Program¹⁸⁴

The Community Participation Program is for a school leaver with a disability who requires an alternative to paid employment, vocational education and training or higher education. The program provides the school leaver with educational opportunities for continued learning, life skill development and participation in the community which increase the school leaver's independence and ability to meet his or her life goals. To be eligible, a person must have completed year 12, have a disability with moderate to high support needs, and be assessed as eligible. As at 30 June 2006, there were 1,756 people in the program.¹⁸⁵

¹⁸⁰ For more detailed history on post school programs, see NSW Parliament, Legislative Council General Purpose Standing Committee No.2, *Changes to Post School Programs for Young Adults with a Disability*, Report 20, August 2005, p2-5.

¹⁸¹ DADHC, Annual report 2005/06, note 139, p27.

¹⁸² This information was sourced from NSW Department of Ageing, Disability and Home Care, '2006 Post School programs: Transition to Work and Community Participation', *Information Sheet*, 2006. Accessed on website at: <http://www.dadhc.nsw.gov.au/dadhc/People+with+a+disability/Post+School+Programs.htm>

¹⁸³ DADHC, Annual report 2005/06, note 139, p27.

¹⁸⁴ DADHC Information Sheet, note 182. For further information, see NSW Department of Ageing, Disability and Home Care, *Community Participation Guidelines*, October 2006.

¹⁸⁵ DADHC, Annual report 2005/06, note 139, p27.

Recent developments in relation to post-school programs

In August 2005, the Legislative Council Standing Committee No.2 published its report on the recent changes to post-school programs for young adults with a disability (ie the introduction of the Transition to Work and Community Participation programs).¹⁸⁶ The Committee made 17 recommendations for reform including:

- Developing a new funding model.
- Changing the eligibility criteria for the two programs, to accept students who apply for a Universities Admission Index.
- Ensuring that participants in the programs are eligible to study at TAFE.
- Developing performance indicators for the two programs.
- Providing a minimum of four program days per week for participants in the Community Participation Program, and five days per week for those who are assessed as having high support needs.
- Greater cooperation between the NSW Government and the Federal Government in relation to services for young adults leaving school.

In budget estimate hearings in September 2006, the Minister, Hon John Della Bosca MLC, reported that the Government had made a number of changes to the Community Participation Program (CPP) through its recent tender and that it had “implemented every recommendation” from the Standing Committee’s inquiry.¹⁸⁷ The Minister stated that the changes to the CPP through the recent tender included:

... a very strong focus on outcomes and individual planning and more choice of service types... There is also greater emphasis on skill development and more focus on young people being involved in the local community... There is a guarantee of at least 18 hours or three days of support each week this year. In 2007 this will increase to four days each week, and five days for people with higher support needs...

Other changes include recurrent, portable individual funding, which means that people can choose to move from one service provider to another and the funds go with them, with a higher proportion of funds going to direct service delivery; and a new program for young people with high physical support needs undertaking further education...¹⁸⁸

¹⁸⁶ NSW Parliament, Legislative Council General Purpose Standing Committee No.2, *Changes to Post School Programs for Young Adults with a Disability*, Report 20, August 2005, p2-5.

¹⁸⁷ NSW Parliament Legislative Council General Purpose Standing Committee No.2, *Examination of Proposed Expenditure for the Portfolio Areas: Ageing, Disability Services - , Transcript of Evidence*, 8 September 2006, p16.

¹⁸⁸ Budget estimates transcript, note 187, p16. Note that issues surrounding the implementation of the changes through the recent tender are discussed in the transcript at p19ff.

Program of Appliances for Disabled People

The Program of Appliances for Disabled People (PADP), is designed to provide appropriate equipment, aids and appliances to assist people who have a disability of a permanent or indefinite nature to live and participate within their community”.¹⁸⁹ It is administered by NSW Health and Area Health Services, which operate PADP lodgement centres.

Children under the age of 16 within the target population qualify for the full range of equipment provided by PADP.¹⁹⁰ People above the age of 16 within the target population are subject to an income test and people on higher incomes may qualify for high cost items only.¹⁹¹ People who receive assistance through the PADP are required to make a payment of \$100 towards the cost of the items they receive.¹⁹² Equipment is allocated according to budgetary constraints and priority of need. The most commonly supplied items include showering and toileting aids, wheelchairs, seating support systems, patient lifters, continence aids, communication devices, and environmental control units.¹⁹³ In 2003/04, around 15,000 people were provided with more than 70,000 items under the program.¹⁹⁴

In 2005, NSW Health appointed PricewaterhouseCoopers (PWC) to undertake a review of the PADP program. The review is examining management and administration, target population and demand, and budgetary requirements and financial management. PWC released a discussion paper in November 2005.¹⁹⁵ It has not yet published a report.

Policy in relation to services for children and young persons

Many of the services described above are provided to children and young persons with disabilities. In July 2002, DADHC released its policy for supporting children and young people with a disability and their families in NSW.¹⁹⁶ The policy contains objectives, policy principles, and an outline of strategies developed by DADHC to ensure that children

¹⁸⁹ NSW Health, ‘Program of Appliances for Disabled People (PADP) – NSW Health Policy’, *Policy Directive*, 22 March 2005, p3.

¹⁹⁰ NSW Health PADP Policy Directive, note 189, p5.

¹⁹¹ NSW Health PADP Policy Directive, note 189, p5; and NSW Health, ‘Program of Appliances for Disabled People – Consumer Guide’, p1.

¹⁹² NSW Health, ‘Program of Appliances for Disabled People – Consumer Guide’, p2. Note that some higher income earners must pay 20 per cent of the cost of the item.

¹⁹³ Price Waterhouse Coopers, *Program of Appliances for Disabled People: Discussion Paper*, NSW Health, November 2005, p5.

¹⁹⁴ Hon Morris Iemma MP, *NSW Parliamentary Debates*, 21/6/05, p17084.

¹⁹⁵ PWC Discussion Paper, note 193.

¹⁹⁶ NSW Department of Ageing, Disability and Home Care, *Living in the Community: Putting Children First*, July 2002.

and young people with a disability reach their potential in the community. The substance of the policy has been summarised as follows:

- Children and young people with disabilities will have the best outcomes if they are brought up in the community in a family environment, preferably their own;
- They should have the same access to mainstream services as other families in the community;
- Where their needs cannot be met through mainstream services, these needs should be met through specialist disability services;
- For children and young people with disabilities who cannot live with their families, family type care is the preferred option.¹⁹⁷

In 2004, the NSW Ombudsman found that “there were significant deficiencies in the department’s implementation of its policy leading to inadequate service provision for many families”.¹⁹⁸ In a follow up report in May 2006, the Ombudsman, concluded (in summary):

While DADHC has made progress to improve its service delivery to children with disabilities and their families, it is critical that this continues as many of the initiatives are still in their infancy. However, systems to support quality service provision are now in place and DADHC has made a commitment to continuous improvement. Whether these developments result in families receiving the support they need, is yet to be fully evaluated.¹⁹⁹

The NSW Government’s *Stronger Together* strategy

Introduction of the strategy

On 26 May 2006, the Premier, Hon Morris Iemma MP, launched the Government’s new 10-year disability strategy, *Stronger Together: A New Direction for Disability Services in NSW: 2006-2016*.²⁰⁰ Premier Iemma said that, “with more than \$1 billion in additional funding over the first five years *Stronger Together* represents a new direction for the provision of disability services in NSW”.²⁰¹ The strategy was developed after 16 months of consultation between the Department of Ageing, Disability and Home Care, the Minister

¹⁹⁷ NSW Ombudsman, *DADHC – The Need to Improve Services for Children, Young People and Their Families: A report arising from an investigation into the Department of Ageing, Disability and Home Care*, April 2004, p2.

¹⁹⁸ NSW Ombudsman 2004 report, note 197, p1.

¹⁹⁹ NSW Ombudsman, *Services for Children with a Disability and Their Families: Department of Ageing, Disability and Home Care (DADHC): Progress and Future Challenges*, May 2006, foreword.

²⁰⁰ Premier Iemma, ‘Premier unveils landmark \$1 billion disability plan’, *Media Release*, 26/5/06.

²⁰¹ Premier Iemma, ‘Premier unveils landmark \$1 billion disability plan’, *Media Release*, 26/5/06.

for Disability Services and people with a disability, their families, service providers, advocates, academics, peak bodies and the community generally.²⁰²

Broad outline of the strategy

According to the Government, the *Stronger Together* strategy will:

- Create fair and more transparent access;
- Help people remain in their own homes;
- Link services to need;
- Provide more options for people living in specialist support services;
- Create a sustainable support system.²⁰³

The policy aims to achieve change through the following three “areas of effort”:

- (1) **Strengthening families** – enabling children with a disability to grow up in a family and participate in the community;
- (2) **Count me in...promoting community inclusion** – supporting adults with a disability to live in and be part of the community;
- (3) **Improving the system’s capacity and accountability** - fairer and clearer ways to access services, greater accountability and more opportunities for innovation.²⁰⁴

Over the first five years of the strategy, funding of \$83 million will be allocated to strengthening families, \$1,013 million to promoting community inclusion and \$242 million to improving the system’s capacity and accountability. The main features of the strategy in each of the three areas of effort over the first five years are outlined below.

Strengthening Families (\$83m)

Category	New places/new measures	Cost (\$m)
Respite	450 new places for children (30% increase)	28
Therapy	960 new places for children (25% increase)	14
Family support	1,800 new places for children and their families	31

²⁰² NSW Government, *Stronger Together: A New Direction for Disability Services in NSW: 2006 – 2016*, May 2006, pi.

²⁰³ NSW Government, *Stronger Together*, note 202, p3-5.

²⁰⁴ NSW Government, *Stronger Together*, note 202, p5.

Count me in...promoting community inclusion (\$1,013m)

Category	New places/new measures	Cost (\$m)
Supported accommodation	990 new places including: <ul style="list-style-type: none"> • 450 new places for people leaving care of DOCS; • 200 for people leaving corrective services; • 340 other specialist support places 	514
Public and community housing	Initiative jointly with Department of Housing to allow 40 people to make transition to public and community housing	10
Young people in nursing homes	Measures to prevent young people entering nursing homes, improve the circumstances of young people in nursing homes and develop alternative models of support for them	80
In-home support	320 new Attendant Care program places	66
Respite	810 new places for adults	33
Therapy	1,920 new places for adults	27
Post school programs	Community Participation program places to increase from 3 days per week to 4 days per week; and to 5 days per week for people with very high support needs.	235
Other day programs	780 new places for adults and greater range of programs	33

Improving the system's capacity and accountability (\$242m)

Category	New places/new measures	Cost (\$m)
Large residence redevelopment	Large residential centres will continue to close over time with some properties being redeveloped into village-style accommodation	23
Case managers	100 new case managers assisting 4,000 people with a disability and their families per year	53
Training	Expansion of training for government and non-government disability workers	15
Research & development	Increased investment in research and development	4.5

7. UNMET DEMAND FOR DISABILITY SUPPORT SERVICES

National surveys of unmet demand for disability services

Unmet demand for specialist disability support services has been a matter of concern for Federal and State governments for a long time but the issue was “crystallised into public consciousness following the 1993 National Survey of Disability and a [1996] Australian Institute of Health and Welfare study”.²⁰⁵ The 1996 study found that “there were an estimated 13,500 people in Australia in 1993 with unmet demand for formal support services of the kind provided as accommodation, accommodation support and respite care services”.²⁰⁶ In the AIHW’s most recent (2002) report on levels of unmet demand for disability services, its conservative estimates were that in 2001:

- 12,500 people needed accommodation and respite services;
- 8,200 places were needed for community access services; and
- 5,400 people needed employment support.²⁰⁷

It is relevant to note that the AIHW 2002 report had been commissioned by the National Disability Administrators to assess the effectiveness of an increase in funding under the CSTDA in 2000/01 and 2001/02 (totalling \$519 million) to reduce unmet demand – particularly the funding made available in 2000/01 (\$210 million); and to identify any remaining unmet demand for certain disability support services.²⁰⁸

The Australian Bureau of Statistics’ 2003 survey on Disability, Ageing and Carers contains the most recent estimates of unmet needs for assistance, although not according to service type. In summary, the 2003 national survey found that:

- Of the 2,324,000 people with a disability living in households in Australia who needed assistance to manage their health conditions or cope with activities of everyday life, 35 per cent (814,500) only had their needs partly met, and 5 per cent (107,200) did not have their needs met at all.
- In terms of different degrees of disability, 50 per cent (220,000) of those with a profound core activity limitation who needed assistance had their needs only partly met or not met at all. This compared with 42 per cent (260,400) of those

²⁰⁵ Ohlin J, ‘Unmet Need in Disability Services: Shortfall or Systematic Failure’, Parliamentary Library of Australia, Parliamentary Library Research Service, *Current Issues Brief* 6 1999-00, 28 September 1999, p1.

²⁰⁶ Australian Institute of Health and Welfare, *Demand for disability support services in Australia: size, cost and growth*, Canberra, 1997, p1.

²⁰⁷ Australian Institute of Health and Welfare, *Unmet need for disability services: Effectiveness of funding and remaining shortfalls*, Canberra, July 2002, p205. Note that the AIHW did not look at community support services as they were not part of the project brief (at p206).

²⁰⁸ AIHW, *Unmet need for disability services*, note 207, p xv, p xvii

with a severe core activity limitation, 38 per cent (184,800) of those with a moderate limitation and 33 per cent (173,300) of those with a mild limitation.²⁰⁹

General comments about level of unmet demand in NSW

The Standing Committee on Social Issues' report on disability services, published in 2000, referred to unmet need for a range of disability support services in NSW and it quoted a NSW Cabinet Office submission, which noted that while there were 199,800 people in NSW between the ages of 5 and 64 with a profound or severe core activity restriction, the disability service system provided services (including Federal employment services) to only 16,063 people.²¹⁰ According to an article in the *Sydney Morning Herald* in 2005:

The Department of Ageing, Disability and Home Care provides care for about 32,000 severely disabled people a year, although some estimates say that there may be as many as 460,000 people who require support.²¹¹

Unmet demand for HACC services in NSW

In October 2004, the NSW Auditor-General published a performance audit of the NSW Government's Home Care Service (HCS). The audit found:

The demand for HACC services far exceeds HCS's resources. In 2002-03, 53 per cent (one in two) of the 26,249 eligible HACC applicants received a service. However, in 2003-04, only 26 per cent (one in four) of applicants received a service from the 23,762 eligible applicants.²¹²

The audit stated that this was partly due to "priority being given to applicants with more complex needs (requiring more hours of care)" and "the policy of replacing one in four clients exiting the service to prevent possible budget overruns".²¹³ The report noted that another factor influencing HCS's ability to offer services to new clients was the low turnover rate of existing clients, which might have been due to HCS not having a service exit policy for clients who could receive more appropriate care in other programs.²¹⁴

According to the audit, HCS strategies to manage demand included capping hours of

²⁰⁹ Australian Bureau of Statistics, *Disability, Ageing and Carers, Australia: Summary of Findings, 2003*, Category 4430.0, Canberra, 2004, p33, Table 14.

²¹⁰ NSW Parliament, Legislative Council Standing Committee on Social Issues, *A Matter of Priority: Report on Disability Services – Second Report*, Report 23, December 2000, p7.

²¹¹ 'Disabled care under scrutiny', *Sydney Morning Herald*, 13/7/05.

²¹² NSW Auditor-General, *Auditor-General's Report – Performance Audit – Home Care Service – Department of Ageing, Disability and Home Care*, NSW Audit Office, October 2004, p17.

²¹³ NSW Audit-General's report, note 212, p17.

²¹⁴ NSW Audit-General's report, note 212, p17.

service offered to new clients, closing intake at particular branches (8 out of 33 HCS branches had reached capacity) and referring eligible applicants to other providers.²¹⁵ The audit made recommendations to enable HCS to better manage demand and noted that:

[The Department] proposes to introduce a range of measures to address the concerns raised regarding access to HCS services. These measures will include a review of demand management practices and a review of the RAC. These projects are both due for completion by December 2004.²¹⁶

The audit noted that the waiting list for the High Needs Pool (HNP) “has grown from zero in June 2000 to 346 as at December 2003 (which includes 93 people already in the HNP wanting extra services)”.²¹⁷ According to data reported in 2006 budget estimates hearings, as at July 2006, there were 567 people on the waiting list for high-level personal care services through the High Needs Pool and/or the Attendant Care Program.²¹⁸

The Public Accounts Committee has recently conducted an inquiry into the Home and Community Care Program, which included a follow up inquiry of the Auditor-General’s review. The Committee published its report in January 2007.²¹⁹ In relation to the issue of unmet need for HACC services, the Committee Chair stated (in summary):

...stakeholders...presented compelling evidence of the need for the Government to be more proactive in quantifying and responding to those people assessed as eligible for services but whose needs cannot be met currently through the HACC program, either through the Home Care Service of NSW or other HACC service providers. There are respected sources of information indicating that unmet need for HACC services is large and growing. I believe, and the Committee has recommended, that this critical gap should be addressed jointly by the NSW and Commonwealth Governments to ensure the HACC program remains robust, responsive to community needs and able to demonstrate value for money.²²⁰

²¹⁵ NSW Audit-General’s report, note 212, p17.

²¹⁶ NSW Audit-General’s report, note 212, p21.

²¹⁷ NSW Audit-General’s report, note 212, p18.

²¹⁸ NSW Parliament Legislative Council General Purpose Standing Committee No.2, *Examination of Proposed Expenditure for the Portfolio Areas: Ageing, Disability Services - , Transcript of Evidence*, 8 September 2006, p9.

²¹⁹ Legislative Assembly, Public Accounts Committee, *Inquiry into the Home and Community Care Program*, NSW Parliament, Report No.20/53 (No. 163), January 2007.

²²⁰ Public Accounts Committee report, note 219, pxi. See the Committee’s conclusions and recommendations in relation to unmet need on p32 and p65-66 of the report.

Unmet demand for supported accommodation

NSW Legislative Council Standing Committee on Social Issues Reports (2000-2002)

In its 2000 report on disability services in NSW, the Legislative Council Standing Committee on Social Issues referred to a number of studies conducted in the mid 1990s on demand for supported accommodation in NSW.²²¹ The Committee stated:

While these studies provide an indication of the dimensions of the problem of unmet demand the reported level of need varies significantly between studies. Thus they do not provide a reliable index of the number of people who require accommodation either immediately or in the near future. However, the Committee notes that ADD's [the Department of Ageing and Disability's] analysis of the *300 places initiative* suggests that in 1996/97, following allocation of the 300 places, a minimum of 250 people were known to ADD and DoCS to be in urgent need of accommodation. This minimum figure corresponds to the AIHW's conservative estimate in 1997 that 750 people nationally, equating to 250 people in NSW, require group home accommodation. At the upper level, ADD's 1996 plans for disability services produced a very approximate figure of 1,990 [people in need].²²²

The Committee's report then noted that the studies were several years old and that it had not received any up-to-date information on the number of people requiring accommodation.²²³ The report stated that while demographic information as to growth in the number of people with a disability and the ageing of carers indicated that "the number of people in need of accommodation continues to rise, this is difficult to translate into accurate figures to determine the number of people who need services".²²⁴

The Committee referred to a number of past initiatives to meet demand for out-of-home accommodation and stated, "these past initiatives have been important in addressing the problem of unmet need".²²⁵ However, the Committee concluded that, "it is clear that the recent growth rate of approximately 100 places per year has not been sufficient to reduce the backlog in demand for accommodation".²²⁶ The Committee therefore recommended that the Government "should adopt a growth target of 200 additional supported accommodation places for people with disability per year for five years"; and that the Department should review this growth target if accurate information on current and future unmet need became available within two years from the date of the report.²²⁷ The

²²¹ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p29-31.

²²² Legislative Council Standing Committee on Social Issues 2000 report, note 210, p32.

²²³ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p32.

²²⁴ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p32.

²²⁵ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p33.

²²⁶ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p36.

²²⁷ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p36-37.

Committee was of the view that “the strain placed on the disability services system as a whole by unmet need for accommodation means that other areas of need cannot be addressed unless demand for accommodation is reduced”.²²⁸

In response to the Committee’s recommendations, the Government stated:

To a large extent, the accommodation growth proposal is predicated on a traditional and narrowly defined support response. The Government, through the Department of Ageing, Disability and Home Care (DADHC), is moving to ensure a much greater range of supports are available to assist individuals to live in their communities either with their families or independently.²²⁹

The Government also noted that the “the broad targets identified by the Australian Institute of Health and Welfare (AIHW) in 1997 for addressing unmet demand in NSW were estimated to require additional funding of approximately \$100m”.²³⁰ The Government pointed out that State and Federal Governments had committed in excess of \$100m to disability services in 2000/01 as well as additional funds in 2001/02.²³¹ It then stated:

The level of investment in coming years to maintain current and future infrastructure to support people with disabilities in the community requires further research and investigation. This will inform a critical element of NSW’s position leading up to the re-negotiation of the [CSDA] in 2002.²³²

In its final report on disability services, published in November 2002, the Committee looked at what progress had been made in relation to unmet demand for permanent accommodation. The Committee noted that funding was announced in the May 2000 budget for the *197 Places Program* to assist people known to DoCS as being in crisis; and that funding to support people in crisis through the Service Access System was allocated in May 2000 and May 2001. The Committee concluded that:

While the current program will ultimately provide accommodation for a defined number of individuals, the Government has not yet stated a target for the number of additional permanent places that will be delivered over the medium to longer term. Similarly, no population-based targets for permanent out-of-home accommodation appear to have been established. There is a need, as part of a broader planning process, to clarify exactly what level of projected growth in permanent

²²⁸ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p7.

²²⁹ NSW Government, *Government Response to the NSW Parliament Legislative Council Standing Committee on Social Issues Second Report – A Matter of Priority: Report on disability services*, undated, p1.

²³⁰ Government response, note 229, p2.

²³¹ Government response, note 229, p2.

²³² Government response, note 229, p2.

accommodation is likely to be provided to manage growing demand.²³³

Coalition for Disability Services report (2005)

In October 2005, the Coalition for Disability Services published a document entitled *An End to the Silence: The Crisis in Supported Accommodation for People with a Disability in NSW*. Relying on Australian Institute of Health and Welfare (AIHW) data for 2003/04, the Coalition compared accommodation access rates in NSW with those in Australia and Victoria. The Coalition for Disability Services concluded:

Australia as a whole had 4.8% of people requiring supported accommodation services accessing them, while Victoria had a figure of 7.9%. NSW by contrast had only 2.8% of the potential pool of people with disabilities requiring supported accommodation accessing it. The AIHW data showed that NSW had the lowest proportion of any of the states.²³⁴

The Coalition for Disability Services also stated that:

It is understood that the NSW Department of Ageing Disability and Home Care (DADHC) has between 70 and 150 families in each of its 8 regions requiring a supported accommodation service for a person with a disability, who are not able to access that service.

In other words, at any point in time between 560 and 1,200 families will be on the verge of crisis. Of these, each region has between 1 and 2 families per week actually falling into crisis.²³⁵

Recent articles in the media on unmet need for supported accommodation

An article in the *Daily Telegraph* in April 2005 reported that parents were being forced to leave children with disabilities indefinitely at respite centres because there was a “state-wide shortage of supported homes for the under 18s”.²³⁶

An article in the *Sydney Morning Herald* in June 2005 reported on a mother who had been waiting for five years for a permanent group home place for her son who has autism. Referring to the Standing Committee on Social Issues inquiry, the article stated:

The key recommendation of the disability inquiry – that 1000 group-home places be

²³³ NSW Parliament, Legislative Council Standing Committee on Social issues, *Making it Happen: Final Report on Disability Services*, Report 28, November 2002, p50-51.

²³⁴ Coalition for Disability Services, *An End to the Silence: The Crisis in Supported Accommodation for People with a Disability in NSW*, October 2005.

²³⁵ Coalition for Disability Services, note 234, p2.

²³⁶ ‘Who will care when their parents can’t’, *The Daily Telegraph*, 15/4/05.

created was never implemented. New places were created because of extra funding that flowed from the inquiry but most have gone to people who were in institutions and boarding houses.

A spokesman for the Minister for Disability Services, John Della Bosca, confirmed that only 350 places have been created in the past six years for people such as Dean who are not in care.²³⁷

Responding to a question in Parliament about these figures, the Minister stated:

In the five years from 1999 more than 1,000 people with a disability have received new group home accommodation. This figure includes 400 people relocated from boarding houses that were substandard or closed down, 250 people relocated from large residential centres, 150 people housed under a program to free up blocked respite beds, and more than 200 people who were at risk of becoming homeless and were housed as a result of the Emergency Response Fund.²³⁸

Another article in the *Sydney Morning Herald* in March 2006 reported that:

Almost 90 per cent of people who applied for disability accommodation in NSW last year missed out, figures show.

The data, provided by the Department of Ageing, Disability and Home Care, highlight the huge need for special housing and support staff for people with intellectual and physical handicaps.

Across the state 976 people applied for only 104 vacancies in group homes in 2004/05. In some regions, the chances of securing a place were virtually nil.

The Opposition spokesman on disability services, John Ryan, said the figures were the tip of the iceberg. "I know many people don't bother applying to the department because they know they're not going to get help".²³⁹

In October 2006, Hon John Ryan MLC stated that new figures that had become available for 2005/06 which indicated that, "1,339 people who were eligible for supported accommodation applied for 96 vacancies in the State's group homes".²⁴⁰

²³⁷ 'Still waiting for peace of mind', *Sydney Morning Herald*, 22/6/05.

²³⁸ Hon John Della Bosca MLC, *NSW Parliamentary Debates*, 22/6/05, p17178.

²³⁹ 'Faces of despair as calls for help go unanswered', *Sydney Morning Herald*, 18/3/06.

²⁴⁰ Hon John Ryan MLC, *NSW Parliamentary Debates*, 25/10/06, p3400.

Unmet demand for respite care

In its 2000 report on disability services, the NSW Standing Committee on Social Issues referred to two past studies on unmet demand for respite care.²⁴¹ The first was the 1996 Australian Institute of Health and Welfare report on demand for disability services. According to the Committee, the AIHW report stated that in 1996 there were 7,000 carers nationally who wanted to obtain respite but were unable to do so because the service was not available. The Committee noted that this equated to around 2,300 people in NSW. The Committee also noted that need was likely to be greater than this because the AIHW study reported that over 58,000 people nationally did not use respite because they did not know, or know enough, about respite services.

The second study that the Committee referred to was the 1997/98 review by the Community Services Commission (CSC) of the centre-based respite system in NSW. According to the Committee, the CSC found that at least 4,500 people were unable to have their request for respite met. Most requests were for scheduled respite and the remainder were for temporary crisis accommodation. The Committee noted that the CSC review made it clear that blockage of respite places (ie use of respite places for long periods of time rather than for genuine respite) was one of the key reasons why demand for respite exceeded supply. The Committee stated that blockage of respite places was due to breakdown in informal support arrangements and the unavailability of permanent accommodation alternatives.

The Committee noted that the Government had established a Working Group to consider the issues raised by the CSC review and that the Working Group had finalised its report, making recommendations for comprehensive reform of the respite system. The Committee recommended that the Government implement these recommendations. It also noted that since the CSC's report, the government had announced a range of measures to address the current situation. The Committee commented:

Successful implementation of the recent measures will significantly increase the effective supply of centre-based respite. However, the level of unmet need for services, particularly accommodation and respite, means that there is a risk that centre-based respite services will again become blocked over time. Consequently, the long-term value of these measures will depend on strategies and resources being put in place to maintain the availability and effectiveness of respite.²⁴²

The Committee then outlined its views on ensuring the long-term efficacy of respite.²⁴³ One important element of this was the need for an increase in the supply of permanent accommodation. Another point raised by the Committee was that "the lack of clear information about the level of demand for respite makes it difficult to plan service

²⁴¹ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p46-48.

²⁴² Legislative Council Standing Committee on Social Issues 2000 report, note 210, p52.

²⁴³ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p52ff.

provision”.²⁴⁴ The Committee noted that the Working Group had highlighted the need to adopt a population based funding model for disability services and the Committee agreed that population-based targets should be established for respite services.

In response to the Committee’s report, the Government stated (in part):

Respite reform is underway. Following the review of respite care services, DADHC prepared an Action Plan to implement the accepted recommendations. The Department is currently implementing the key elements of this Action Plan. The major aims of this respite reform are twofold: first to free up residential respite care beds that have been blocked and secondly to increase the flexibility and capacity of the respite care system.²⁴⁵

The Committee’s final report on disability services in 2002 looked at progress that had been made in relation to respite. The Committee noted that the Government had acted on many of the recommendations of the Working Group, noting:

In May 2002, DADHC advised...that the number of blocked respite beds had been reduced from 149 to 73 and that 34 new respite services have been funded.

There has also been an expansion in the overall supply of respite services, through the allocation of 1,200 flexible respite packages over three years and the funding of new centre-based respite services.²⁴⁶

The Committee was pleased to note this progress but stated that “continued growth in supply of respite is...necessary to address the level of demand identified by” the Australian Institute of Health and Welfare. The Committee referred to the AIHW study of unmet demand in 2001, which indicated that 3,830 people in NSW with high needs were unable to access any respite or accommodation services and a further 3,570 people in NSW with high needs were unable to access a sufficient level of accommodation or respite support.²⁴⁷ The Committee noted that these were conservative estimates. The Committee concluded that the Department should fund additional respite services and it also stated that:

There is a need for better information about the extent and nature of need for respite services to inform medium to longer term planning...[T]he Committee considers that DADHC should undertake a survey of the current capacity of respite services in [NSW] and the level of demand for these services. The survey should be undertaken on a regional basis and consider whether there is an appropriate balance

²⁴⁴ Legislative Council Standing Committee on Social Issues 2000 report, note 210, p57.

²⁴⁵ NSW Government, *Government Response to the NSW Parliament Legislative Council Standing Committee on Social Issues Second Report – A Matter of Priority: Report on disability services*, undated, p2.

²⁴⁶ Legislative Council Standing Committee on Social Issues 2002 report, note 233, p54.

²⁴⁷ Legislative Council Standing Committee on Social Issues 2002 report, note 233, p56.

between flexible and centre-based respite services in these regions. The survey should also consider the extent to which the current respite services meet the needs of groups who are currently under-represented in the disability service system including people from culturally and linguistically diverse communities, people with physical disability and people with acquired brain injury.²⁴⁸

In reply to the Committee's final report in 2002, the Government acknowledged that the disability service system was facing growing demand and it stated that, "in response, substantial additional funding has been provided in recent years".²⁴⁹

Unmet demand for aids, equipment and appliances

In April 2004, a coalition of 33 disability agencies wrote to the former Minister for Health and current Premier, Hon Morris Iemma MP, stating:

We understand that every stakeholder, including the NSW Government, accepts that there are substantial and growing levels of unmet need for equipment. We have been given indications from around the State that those levels probably mean the budget for equipment provided through [the Program of Appliances for Disabled People (PADP)] needs to increase to about \$30 million.²⁵⁰

In June 2004, Hon Morris Iemma MP noted that the NSW Government had increased funding for the PADP program by \$5.4 million (40 per cent) since 1998/99 and he announced an increase in funding of \$3.9 million over the next four years.²⁵¹ The budget for 2004/05 would be \$18.8 million and this would grow to \$21.8 million by 2007/08.

In January 2006, the Council of Social Service of NSW (NCOSS) stated that::

The [PADP] program is significantly under-resourced...Long waiting lists remain a major concern, with many consumers lacking basic equipment to assist with mobility or other impairments. NCOSS regional consultations have revealed very worrying examples of people waiting a number of years for basic equipment including mobility aids and beds.²⁵²

²⁴⁸ Legislative Council Standing Committee on Social Issues 2002 report, note 233, p56-57.

²⁴⁹ NSW Government, *Government's response to the Final Report on Disability Services, Making it Happen*, 2003, p8.

²⁵⁰ Coalition of Disability Agencies, *PADP and Unmet Need: The case for Budget enhancement of the Programme of Appliances for Disabled People (PADP)*, Presented to Members of the NSW Parliament on 24 June 2004.

²⁵¹ Hon Morris Iemma MP, 'Additional funding for people with disabilities', *News Release*, 23/6/04.

²⁵² Council of Social Service of New South Wales, *NCOSS Submission to Review of NSW Health Program of Appliances for Disabled People*, January 2006, p2.

NCOSS recommended that the Government increase annual funding of PADP by \$15.5 million, taking funding from \$22 million per annum to \$37.5 million per annum.²⁵³

In April 2006, the Premier, Hon Morris Iemma MP, announced an additional \$2 million in non-recurrent funding for the PADP program “to clear the waiting list statewide for specialist equipment and aids for children under 16”.²⁵⁴

Comments about the *Stronger Together* strategy and unmet demand

The former Shadow Minister for disability services, Hon John Ryan MLC, has criticised the *Stronger Together* strategy for its lack of response to unmet demand for supported accommodation.²⁵⁵ He noted that even with the extra 320 attendant care places, “another 250 places, not including any extra people who join the waiting list during the next five years, will still be needed”. He also pointed out that only 340 of the 990 new supported accommodation places would be available for people with disabilities who are cared for by unpaid carers; and that these people made up most of the 1,243 people who applied unsuccessfully for supported accommodation places in 2005/06.

A *Sydney Morning Herald* editorial on the new strategy stated (in part):

...the measures go some way towards dealing with the huge backlog of demand for disability services, and to relieving the often intolerable burden on families caring for a disabled relative.

The task is enormous – but exactly how enormous is unclear. There are no waiting lists for disability services, not because no-one is waiting, but because any list would be so long as to be virtually useless...²⁵⁶

NCOSS “warmly welcomed” the new Strategy, noting that it came a time when “stresses on families and carers responsible for people with disabilities are reaching critical levels and demands for essential services like transition to work, supported accommodation in the community and in home support far outstrip supply”. NCROSS considered that implementing the package would be a “very challenging process” and it concluded, “the package must also not be seen as the last word on improving services and support for people with disabilities in NSW. Delivering major funding increases to programs that assist people with disabilities [to] obtain aids and appliances and giving further assistance to move younger people with disabilities out of nursing homes in NSW remain priorities.”²⁵⁷

²⁵³ NCROSS Submission, note 252, p2.

²⁵⁴ Premier Iemma, ‘Iemma increases funding for children with disabilities’, *News Release*, 26/4/06.

²⁵⁵ Hon John Ryan MLC, *NSW Parliamentary Debates*, 25/10/06, p3400.

²⁵⁶ ‘A helping hand at last: Disabled get a down payment’, *Sydney Morning Herald*, 29/5/06.

²⁵⁷ NCROSS, ‘Premier keeps faith with his disability promise’, *Media Release*, 26/5/06.

8. YOUNG PEOPLE WITH DISABILITIES IN NURSING HOMES

Recent concerns about this issue

Despite concerns being raised about the issue as early as 1986, the number of young people with disabilities living in nursing homes has grown over the last decade and in recent years this issue has become a matter of substantial public concern.²⁵⁸ The issue began to receive greater attention in 2002 with the holding of a national summit, the formation of the National Alliance of Young People in Nursing Homes, and the issue being raised during the inquiry into disability services in NSW by the Standing Committee on Social Issues.

Reason why young people are living in nursing homes

In its 2002 report, the Standing Committee on Social Issues stated that, “younger people tend to be placed in nursing homes when there are no other accommodation options for them. This is especially likely to occur when they have complex needs arising from acquired brain injury, from conditions such as advanced multiple sclerosis or muscular dystrophy, or from the combination of both intellectual and physical disability”.²⁵⁹ As noted above in Section 3, it has been suggested that the shortage of appropriate accommodation is due to State Governments attempting to shift costs to the Federal Government, as the Federal Government is primarily responsible for funding residential aged-care.

Number of young people living in nursing homes

In evidence to the Standing Committee’s inquiry, the NSW Department of Ageing, Disability and Home Care stated that:

The figure that is most often quoted is 1,316 people aged under 60 live in residential aged care facilities...883 of those are aged 50 to 60 years. 433 are aged 50 years or less. Of those aged 50 or less, one in ten have an intellectual or developmental disability, one in three have a brain injury, two in three require high levels of care...36 people are aged 30 years or less and 50 percent of this group have a brain injury or damage. 80 percent of those people require high levels of care.²⁶⁰

Subsequent evidence provided to the Committee by the Department indicated that as at 31 July 2002, 1,349 people aged under 60 were living in nursing homes in NSW including 929 aged 50 to 60 years and 420 people aged under 50.²⁶¹ In November 2005, the Shadow

²⁵⁸ See Senate Community Affairs References Committee, *Quality and equity in aged care*, Commonwealth of Australia, June 2005, p79.

²⁵⁹ Legislative Council Standing Committee on Social Issues 2002 report, note 233, p33.

²⁶⁰ Legislative Council Standing Committee on Social Issues 2002 report, note 233, p33.

²⁶¹ Legislative Council Standing Committee on Social Issues 2002 report, note 233, p33.

Minister for Disability Services, Hon John Ryan MLC, asked the Minister for Disability Services, Hon John Della Bosca MLC, “Is it a fact that more than 1,350 people with disabilities under the age of 60 are living in aged care facilities in New South Wales?; and the Minister answered, “Yes...there are approximately 1,350 young people living in nursing home accommodation in New South Wales”.²⁶²

Inappropriateness of young people living in nursing homes

The 2002 report by the Standing Committee on Social Issues stated that “there is general agreement among government agencies, parents, advocates and people with disability that residential aged care facilities or nursing homes are highly inappropriate places for younger people with disability to live”. The reasons why they are inappropriate places have been summarised in a recent Senate Committee report:

...[aged care] facilities are designed for, and respond to, the needs of the frail elderly. Elderly residents have care needs, health and social needs which are quite different from young people.

Aged care facilities are not places which readily enable a young person to socialise with family and friends. They are not places where young people can listen to their music or have their own space. They are generally inward-looking places with little interaction with the greater community as would benefit, and is needed by, a young person.

Evidence suggests that the environment of an aged care facility significantly reduces the ability of an individual to work towards a future, redevelop life skills and re-establish social and inclusive networks. This is particularly the case for young people with acquired brain injury. For those young people with, for example, degenerative disease, aged care facilities may not provide the specific complex health support or palliative care required.²⁶³

Recent reports addressing this issue

The 2002 report by the Standing Committee on Social Issues recommended that the NSW and Federal Governments “collaborate to develop an agreed process and funding arrangement to address the inappropriate placement of younger people with disability in nursing homes”.²⁶⁴ The Federal and State Governments subsequently concluded bilateral agreements under the CSTD that identified this as an issue to be addressed but by 2005 little progress had been made.²⁶⁵ A 2005 Senate Committee inquiry into aged care in Australia considered the issue at length and strongly recommended that all jurisdictions

²⁶² *NSW Parliamentary Debates*, 29/11/05, p20,045.

²⁶³ Senate report on quality and equity in aged care, note 258, p126.

²⁶⁴ Legislative Council Standing Committee on Social Issues 2002 report, note 233, p37.

²⁶⁵ Senate report on quality and equity in aged care, note 258, p115ff.

work cooperatively to identify viable solutions.²⁶⁶ The Committee noted that the Council of Australian Governments had agreed in June 2005 that Senior Officials would consider ways to address this issue and that it would be reporting back in December 2005.²⁶⁷

Recent COAG agreement to address the problem

At a Council of Australian Governments meeting on 10 February 2006, the Federal and State Governments made a “commitment to start to reduce the number of younger people with disabilities living in residential aged care services”.²⁶⁸ They announced that:

A new five-year program will begin in July 2006, with funding of up to \$122 million from the Commonwealth and up to \$122 million from States and Territories, and will be implemented in close consultation with younger people, their families and carers. The program will initially target people aged under 50 in residential aged care services. The program will...provide cost-effective alternative residential care services for some younger people with disabilities, improve support services for those who continue to stay in residential aged care and may assist younger people who are at risk of entering nursing homes.²⁶⁹

When the NSW Government released its *Stronger Together* policy in May 2006 it stated the policy would implement the COAG agreement and that total investment, shared equally with the Federal Government, would be up to \$80 million over 5 years.²⁷⁰ In September, the Minister for Disability Services, Hon John Della Bosca MLC, stated (in part):

The investment will assist up to 300 people over the next five years. Young people under the age of 50 who are most inappropriately housed will be prioritised for assistance under the program. The [NSW] Government is currently negotiating a bilateral agreement with the Commonwealth which will include an implementation plan to roll out the program...

...By the end of year one it is anticipated that 10 young people will be assisted to transition from, or be diverted from, entering residential aged care, and up to 25 young people who remain in residential aged care will receive specific disability support services to improve their lives.²⁷¹

²⁶⁶ Senate report on quality and equity in aged care, note 258, p126-127

²⁶⁷ Senate report on quality and equity in aged care, note 258, p127.

²⁶⁸ Council of Australian Governments, *Council of Australian Governments' Meeting 10 February 2006: Communiqué*, p12.

²⁶⁹ COAG meeting communiqué, note 268, p12.

²⁷⁰ NSW Government, *Stronger Together*, note 202, p22.

²⁷¹ *NSW Parliamentary Debates*, 26/9/06, p2,175.

9. DISABILITY DISCRIMINATION LAWS

Overview

Both NSW and Federal anti-discrimination laws make it unlawful to discriminate against a person on the ground of disability in a number of areas of public life. The NSW provisions were enacted in 1981 (in relation to physical disability) and 1982 (intellectual disability) by way of amendment to the *Anti-Discrimination Act 1977* (NSW). The Federal laws, which are very similar to the NSW provisions, were enacted in 1992 in the *Disability Discrimination Act 1992* (Cth). The Federal laws operate concurrently with the NSW provisions. A summary of the NSW provisions is presented below.

Summary of NSW provisions

Definition of disability

Disability means:

- (a) Total or partial loss of a person's bodily or mental functions or of a part of a person's body; or
- (b) The presence in a person's body of organisms causing or capable of causing disease or illness; or
- (c) The malfunction, malformation or disfigurement of a part of a person's body; or
- (d) A disorder or malfunction that results in a person learning differently from a person without the disorder or malfunction; or
- (e) A disorder, illness or disease that affects a person's thought processes, perception of reality, emotions or judgment or that results in disturbed behaviour.²⁷²

Areas where discrimination is unlawful

Areas where discrimination is unlawful include:

- Employment;
- Public education;²⁷³
- Provision of goods and services;²⁷⁴
- Accommodation;
- Registered clubs.

²⁷² Section 4.

²⁷³ This includes schools, public colleges, public universities and other public institutions where education and training are provided: section 4. Note that section 49L(3)(a) excludes private educational institutions.

²⁷⁴ Services include those relating to banking, insurance, credit, transport or travel, those provided by a council or public authority. Services also include access to and use of facilities open to the general public: see section 4.

Unlawful discrimination on ground of disability

Discrimination encompasses both direct and indirect discrimination.

Direct discrimination: This occurs if a person or organisation treats a person with a disability less favourably than, in the same or similar circumstances, the person or organisation treats, or would treat, a person who does not have that disability.²⁷⁵

Indirect discrimination: This occurs if a person or organisation requires a person with a disability to comply with a requirement or condition and:

- (i) The person with a disability does not or is not able to comply with it;
- (ii) A substantially higher proportion of persons who do not have that disability can comply with it; and
- (iii) The requirement is not reasonable in the circumstances of the case.²⁷⁶

Note that it is also unlawful to directly or indirectly discriminate against a person on the ground of the disability of their relative or associate.²⁷⁷

Note also that the NSW Law Reform Commission has recommended that the definitions of direct and indirect discrimination be changed.²⁷⁸

Making adjustments for people with a disability

The Act does not contain an explicit provision requiring adjustments to be made to accommodate the needs of people with disabilities. However, the Act implicitly recognises that, unless there would be ‘unjustifiable hardship’ in doing so (discussed below), the failure to make adjustments to accommodate the needs of people with disabilities may constitute direct or indirect discrimination.²⁷⁹ For example, the refusal to employ a person with a disability who uses a wheelchair on the basis that adjustments would need to be made to the workplace may result in a finding of discrimination.

²⁷⁵ Section 49B(1)(a).

²⁷⁶ Section 49B(1)(b).

²⁷⁷ See section 49B.

²⁷⁸ See NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977*, Report 92, November 1999, Chapter 3.

²⁷⁹ This is implication arises from the provisions creating a defence of unjustifiable hardship. Note that the NSW Law Reform Commission has recommended that the Act should expressly impose an obligation to provide reasonable accommodation: see NSW Law Reform Commission, *Review of the Anti-Discrimination Act 1977*, Report 92, November 1999, p91. For a discussion of an implication in Federal laws to make reasonable adjustments for people with disabilities, see Productivity Commission, *Review of the Disability Discrimination Act 1992*, Report No.30, Australian Government, 30 April 2004, p185-202. Note that section 5(2) of the Federal laws is not replicated in the NSW Act.

Exceptions to unlawful discrimination

Unjustifiable hardship

An exception of ‘unjustifiable hardship’ applies to each of the areas mentioned above (ie employment, education, provision of goods and services etc).²⁸⁰ The exception is stated in very similar terms in relation to each of these areas. In relation to education, for example, the Act provides that it is not unlawful for an educational authority to discriminate against a student with a disability if the student requires services or facilities that are not required by students who do not have a disability and the provision of such services or facilities would impose unjustifiable hardship on the educational authority.²⁸¹

In determining whether there is unjustifiable hardship, all relevant circumstances of the particular case are to be taken into account including:

- (a) The nature of the benefit or detriment likely to accrue or be suffered by any persons concerned;
- (b) The effect of the disability of a person concerned, and
- (c) The financial circumstances and the estimated amount of expenditure required to be made by the person claiming unjustifiable hardship.²⁸²

Inherent requirements of a job

There is an exception if a person with a disability would be unable to carry out the inherent requirements of the job.²⁸³ However, an employer may be required to provide a person with a disability with services or facilities to enable him or her to carry out the inherent requirements of the job unless this would cause the employer unjustifiable hardship.²⁸⁴

Other exceptions to unlawful discrimination

There are a number of other exceptions including:

- *Superannuation and insurance*: There is an exception in relation to the terms of a superannuation or insurance policy where the terms are based on actuarial or statistical data on which it is reasonable to rely.²⁸⁵

²⁸⁰ However, the defence does not apply to all aspects of each of these areas. For example, in relation to education, the defence applies in relation to admission and expulsion: see section 49L(4). As to employment, see s 49D(4).

²⁸¹ Section 49L(4). Note that the defence only applies in relation to admission and expulsion.

²⁸² Section 49C.

²⁸³ Section 49D(4)(a).

²⁸⁴ See section 49D(4)(b).

²⁸⁵ Section 49Q.

- *Sporting activities:* There is an exception if a person with a disability is not reasonably capable of performing the actions reasonably required in relation to a sporting activity.²⁸⁶
- *Compliance with a requirement in other legislation:* There is a general exception for acts done by a person that were necessary in order to comply with a requirement in other legislation.²⁸⁷

Discrimination complaints and their resolution

A person may lodge a written complaint to the NSW Anti-Discrimination Board in respect of a breach of the NSW laws.²⁸⁸ The Board will investigate the complaint and may attempt to resolve the complaint through conciliation.²⁸⁹ If conciliation is not successful, the Board may refer the matter to the Administrative Decisions Tribunal.²⁹⁰ The Tribunal determines whether discrimination has occurred and makes a binding decision. If the Tribunal determines that the complaint is made out, the Tribunal can award damages (up to \$40,000) and can make orders such as preventing the discriminator from continuing the conduct.²⁹¹ There is a similar complaints and determination process for breaches of Federal laws.²⁹² Complaints for breaches of Federal laws may be lodged with the Human Rights and Equal Opportunities Commission. If conciliation is not successful, the complainant may commence an action in the Federal Court or Federal Magistrates Court.

Number of disability discrimination complaints

The number of disability discrimination complaints received by the NSW Anti-Discrimination Board and the Human Rights and Equal Opportunity Commission in the past five reporting periods is shown in the Table below.²⁹³

²⁸⁶ Section 49R.

²⁸⁷ Section 54.

²⁸⁸ Part 9, Division 2. Subdivisions 1 and 2.

²⁸⁹ Part 9, Division 2, Subdivision 3.

²⁹⁰ Part 9, Division 2, Subdivision 6.

²⁹¹ Section 108.

²⁹² See Human Rights and Equal Opportunities Commission, 'Complaints under the Disability Discrimination Act', *Information Sheet*, accessed on website: http://www.hreoc.gov.au/complaints_information/index.html

²⁹³ The information in this table was sourced from annual reports of the NSW Anti-Discrimination Board and the Human Rights and Equal Opportunities Commission.

Year	Number of complaints received by NSW ADB	Number of complaints received by HREOC ²⁹⁴
2004/05	214	323
2003/04	186	483
2002/03	323	493
2001/02	332	452
2000/01	349	443

Most complaints related to employment, followed by provision of goods of services.²⁹⁵

Disability discrimination decisions

Some decisions that have involved findings of discrimination on the grounds of disability are referred to below to provide examples of the application of the laws.

Education

Some significant cases in relation to education are referred to in our 2005 briefing paper on Children's Rights in NSW.²⁹⁶ In one of the cases referred to in that paper (*Clarke*), the Court upheld a complaint of indirect discrimination in relation to a school's failure to provide Auslan (Australian sign language) interpreting services for a 12-year-old child who was deaf. A recent decision in relation to similar facts is *Hurst and Devlin v Education Queensland*.²⁹⁷ This case involved a complaint of indirect discrimination in relation to the education of two profoundly deaf children, Ben and Tiahna. It was argued that Education Queensland indirectly discriminated against these children by requiring them to be taught in English and signed English, rather than in Auslan.²⁹⁸

The Federal Court held that the requirement that they be taught in English and signed English was one that a substantially higher proportion of persons without a disability could comply with and that this requirement was not reasonable in the circumstances. The Court found that Ben could not comply with the requirement (because the evidence established that he had fallen behind his peers academically) but that Tiahna could (because the evidence established that she had not fallen behind her peers). The Court held that there

²⁹⁴ Note that these complaints are from all States and Territories.

²⁹⁵ The information in this table was sourced from annual reports of the NSW Anti-Discrimination Board and the Human Rights and Equal Opportunities Commission.

²⁹⁶ Roth L, 'Children's Rights in NSW', NSW Parliamentary Library Research Service, *Background Paper No.2/05*, June 2005, p26-28.

²⁹⁷ [2005] FCA 405.

²⁹⁸ For a comment on this case see Fogarty B, 'The Silence is Deafening: Access to education for deaf children', (2005) 30(5) *Alternative Law Journal* 226.

had been indirect discrimination in relation to Ben but not in relation to Tiahna.

Tiahna successfully appealed against this decision to the Full Court.²⁹⁹ The Full Court held that although Tiahna may have been able “to cope” with the requirement to be taught in signed English, the evidence established that she would suffer serious disadvantage in complying with the requirement. She was therefore “not able to comply” with the requirement. The Full Federal Court stressed that its decision was not a test case and it:

...did not establish that educational authorities must make provision for Auslan teaching or interpreting for any deaf child who desires it. It does not establish that Auslan is better than signed English as a method of teaching deaf children. It does not determine that an educational authority necessarily acts unreasonably if it declines to provide Auslan assistance.³⁰⁰

Employment

In *Daghlian v Australian Postal Corporation* (2003)³⁰¹, a customer service employee at a post office, who suffered from osteoarthritis, heel spurs and varicose veins, claimed that she had been indirectly discriminated against by the introduction of a workplace policy that banned employees from using stools at retail counters. The Court upheld the employee’s claim of indirect discrimination, finding that the employee could not comply with the requirement to serve customers while standing, that a higher proportion of employees without a disability could comply with this requirement and that this requirement was not reasonable in all the circumstances. The Court held that the employee could perform the inherent requirements of the job without endangering other employees and that it would not have imposed unjustifiable hardship on the employer to provide her with a chair.

In *Browne v NSW Ambulance Service* (2004)³⁰², a person who had applied for employment as an ambulance officer had his application rejected because he had red colour blindness. The Ambulance Service claimed that the applicant was unable to perform the inherent requirements of the job (driving at excessive speed and patient care) because of his colour blindness. The Tribunal held that the evidence did not establish that the applicant would not be able to perform the inherent requirements of the job. The Tribunal stated that the employer had given insufficient regard to the applicant’s past experience, skills and capabilities. The Tribunal was of the view that the applicant should be given the opportunity through practical testing in a clinical setting to demonstrate whether or not he was capable of carrying out the inherent requirements of the job.³⁰³

²⁹⁹ [2006] FCAFC 100.

³⁰⁰ [2006] FCAFC 100, para 131.

³⁰¹ (2003) EOC 93-287.

³⁰² [2004] NSW ADT 192

³⁰³ See also *Zraika v Commissioner of Police* [2004] NSWADT 67, which held that an applicant to become a police officer was discriminated against when his application was refused on the grounds of his vision impairment. This decision was affirmed on appeal: [2005] NSWADTAP 1. See also *Vickers v Ambulance Service of NSW* [2006] FMCA 1232, which

Goods and services

In *Scott v Telstra Corporation Ltd* (1995)³⁰⁴ a person who was profoundly deaf complained that Telstra had discriminated against him by not providing him with a tele-typewriter in the same way it provides hearing subscribers with a standard telephone headset. The Commission found that Telstra had indirectly discriminated against the person. In coming to this conclusion, the Commission rejected Telstra's defence of unjustifiable hardship.

In *Maguire v Sydney Olympic Organising Committee for the Olympic Games*³⁰⁵, a person who was blind claimed that he had been discriminated against by SOCOG because it had not provided braille copies of the Olympic Games ticket application booklets; and it had not set up a web site that was accessible to him. The Commission upheld both of these discrimination complaints, rejecting SOCOG's defence of unjustifiable hardship.

Federal Disability Standards

Provision for Disability Standards

Federal disability discrimination laws allow the Attorney-General to formulate disability standards in relation to employment, education, accommodation, provision of public transport and facilities, administration of Federal Government laws and programs and in relation to access to, or the use of, premises open to the public.³⁰⁶ The purpose of such standards is to provide more certain benchmarks for accessibility and equality than are provided by the general provisions in the Act and to set deadlines for achieving equal access for people with disabilities.³⁰⁷ To come into effect, a standard formulated by the Attorney General needs to be approved by the Federal Parliament.³⁰⁸ Once a standard is in force, it is unlawful to contravene the standard.³⁰⁹ On the other hand, acting in accordance with a standard is a defence to a disability discrimination complaint.³¹⁰

held that an applicant to become an ambulance officer was discriminated against when his application was refused because he had Type 1 diabetes.

³⁰⁴ (1995) EOC 92-717

³⁰⁵ (2001) EOC 93-123 and 93-124.

³⁰⁶ Section 31, *Disability Discrimination Act 1992* (Cth).

³⁰⁷ Human Rights and Equal Opportunities Commission, 'Frequently asked questions: Disability Standards', accessed on website:
http://www.hreoc.gov.au/disability_rights/faq/stanfaq/stanfaq.html

³⁰⁸ Section 31(2), (3), (4), *Disability Discrimination Act 1992* (Cth).

³⁰⁹ Section 32, *Disability Discrimination Act 1992* (Cth).

³¹⁰ Section 34, *Disability Discrimination Act 1992* (Cth). Note that there is uncertainty about what the legal position is where a Federal disability standard imposes a different standard to what is required under State laws: see Productivity Commission, *Review of the Disability Discrimination Act 1992*, Report No. 30, Australian Government, 30 April 2004, p412-415.

Progress in relation to Disability Standards

Development of Standards

In developing Disability Standards, the Attorney General consults with the disability sector, relevant industry bodies, and with State and Territory Governments.³¹¹ Progress in formulating disability standards has been very slow due to a lack of stakeholder consensus about the content of Standards and the Federal Government's reluctance to make Standards in the absence of a consensus. Beecher has criticised this process:

The delay in implementing enforceable disability standards is excessive and unjustified. It is incumbent on government to bring the extensive consultation and negotiation process to a conclusion. Disability standards (where consultation has occurred) should be issued taking into account the competing views of stakeholders, but making the tough decision to settle disagreements about content.³¹²

Disability Standards in force

The first Disability Standards to be made were the Disability Standards for Accessible Public Transport, which came into force in October 2002. The only other Disability Standards that have been made are the Disability Standards for Education, which came into force in August 2005. Both Standards are outlined in brief below.

Disability Standards for Accessible Public Transport: These Standards establish:

...minimum accessibility requirements to be met by providers and operators of public transport conveyances, infrastructure and premises, in accordance with the Standards' compliance timetable...

The Standards prescribe detailed requirements in relation to accessibility issues such as access paths, manoeuvring areas, ramps and boarding devices, allocated spaces, handrails, doorways, controls, symbols and signs, the payment of fares, the provision of information, belongings etc.

All conveyances, premises and infrastructure brought into use for public transport after the commencement of the Standards must comply with the Standards. A compliance timetable allows between 5 and 30 years for existing facilities to be made compliant.³¹³

³¹¹ Note that there is a requirement in section 132(2) of the Act to consult with State and Territory Ministers in relation to the development of Disability Standards.

³¹² Beecher G, 'Disability standards: the challenge of achieving compliance with the Disability Discrimination Act', (2005) 11(1) *Australian Journal of Human Rights*, accessed online at: <http://austlii.org/au/journals/AJHR/2005/5.html>

³¹³ Attorney General's Department, 'Disability Standards for Accessible Public Transport', Australian Government, accessed online at:

Disability Standards for Education: These Standards, which apply to the entire spectrum of the education system³¹⁴, specify how education and training are to be made accessible to students with disabilities. The Standards cover the areas of:

- Enrolment
- Participation
- Curriculum development, accreditation and delivery
- Student support services; and
- Elimination of harassment and victimisation.³¹⁵

The Standards generally require education providers to make reasonable adjustments where necessary to accommodate students with disabilities in each of the above areas but education providers can still rely on the defence of ‘unjustifiable hardship’.³¹⁶

The Federal Government introduced the Disability Standards for Education even though many States (including NSW) had not endorsed them because the Federal Government would not agree to fund certain costs associated with implementing the Standards.³¹⁷

Progress in relation to other areas

In January 2004, a draft Disability Standard on Access to Premises was released. However, it has not yet been finalised due to “a lack of agreement between some of the organisations involved in the negotiations over a number of crucial issues, such as access to the upper floor in small, low-rise buildings”.³¹⁸ In relation to progress on Disability Standards in other areas to which the Act applies, Beecher reports:

Many [other] disability standards have been discussed and, in some cases, drafted. However, for the most part their progress has stalled. These include draft standards on employment (abandoned in 1998); the world wide web (released in 1999 as advisory notes); insurance and superannuation (released in 1998 as guidelines and revised in 2005); and Commonwealth Government information and communication

http://www.ag.gov.au/www/agd/agd.nsf/Page/Humanrightsandantidiscrimination_DisabilityStandardsforAccessiblePublicTransport. For an update on implementation of the Standards, see Innes G, ‘The Disability Standards for Accessible Public Transport: Where Are We’, speech presented at Bus Industry Confederation Conference, Canberra, 30 October 2006: available on HREOC website. As to criticisms of transport in NSW, see Hon Lee Rhiannon MLC, *NSW Parliamentary Debates*, 1/3/06, p20,804.

³¹⁴ See *Disability Standards for Education 2005*, clause 1.5.

³¹⁵ *Disability Standards for Education 2005*, p4.

³¹⁶ See *Disability Standards for Education 2005*, note to subsection 3.4(2).

³¹⁷ Australian Government, *Disability Standards for Education 2004, Regulation Impact Statement*, 2004, p4, 28.

³¹⁸ Innes G Graeme, ‘2006 – An opportunity not to be missed’, accessed on HREOC website: <http://www.hreoc.gov.au/disability%5Frights/speeches/speeches.html>.

(released in 1996 as a discussion paper). At this stage, there are no firm plans to progress the development of these discussions as disability standards....³¹⁹

Disability Action Plans

Under Federal disability discrimination laws, service providers *may* prepare and implement an Action Plan.³²⁰ Service providers are Federal and State Government departments, public authorities, educational institutions and persons who provide goods or services or make facilities available.³²¹ Action plans must include provisions relating to:

- Devising policies and programs to achieve the objects of the Act;³²²
- Communication of these policies and programs to staff;
- Review of practices to identify any discriminatory practices;
- The means of evaluating the policies and programs including the setting of goals;
- The appointment of persons to implement the above provisions.³²³

Service providers may lodge a copy of their Action Plan with HREOC.³²⁴ Action plans that have been lodged with HREOC are to be considered in relation to a defence of unjustifiable hardship.³²⁵ According to a report by the Productivity Commission:

HREOC had registered 305 actions plans as at 24 March 2004. Most plans were submitted by local governments (122), State, Territory and Australian Government departments and agencies (73), and tertiary education providers (40). Only two non-government schools and one State educational department (Tasmania) registered action plans. Nationally, only 38 action plans were registered by private businesses. Many State government departments and agencies make action plans under State legislation rather than under the [*Disability Discrimination Act 1992*].³²⁶

³¹⁹ Beecher G, 'Disability standards: the challenge of achieving compliance with the Disability Discrimination Act', (2005) 11(1) *Australian Journal of Human Rights*, accessed online at: <http://austlii.org/au/journals/AJHR/2005/5.html>

³²⁰ Section 60, *Disability Discrimination Act 1992* (Cth).

³²¹ Section 59, *Disability Discrimination Act 1992* (Cth).

³²² Note that the objects of the Act are outlined in section 3 of the Act.

³²³ Section 61, *Disability Discrimination Act 1992* (Cth).

³²⁴ Section 64, *Disability Discrimination Act 1992* (Cth).

³²⁵ Section 11(d), *Disability Discrimination Act 1992* (Cth).

³²⁶ Productivity Commission, *Review of the Disability Discrimination Act 1992*, Report No.30, Australian Government, 30 April 2004, p429.

The effectiveness of disability discrimination laws

The Productivity Commission's report of the review of the *Disability Discrimination Act 1992* (Cth) (DDA), published in 2004, assessed the effectiveness of the Act in eliminating discrimination.³²⁷ The Commission noted that discrimination was difficult to measure and the Commission relied on many sources of information including complaints and inquiries, outcomes for people with disabilities (such as employment rates and educational achievement), indicators of accessibility (such as access to public transport) and many submissions that it received.³²⁸ The Commission concluded (in part):

The DDA has been reasonably effective in addressing disability discrimination. But its effectiveness has been patchy and there is still a long way to go. The Commission is especially concerned about discrimination in employment, because having a job is a key to people participating more fully in the community. Furthermore, the nature of the challenge facing the DDA is changing as the focus shifts from addressing physical barriers to attitudinal barriers.³²⁹

In relation to particular areas, the Commission stated that the DDA appears to have been:

- Relatively ineffective in reducing discrimination in *employment*. However, employer peak bodies are working with their members to develop policies...
- Of only limited effectiveness in improving *access to premises* due to inconsistencies with the Building Code of Australia (BCA). The recently released draft disability standards on access to premises, if implemented, would help to create consistency by linking the DDA to the BCA, but as discussed later would introduce problems of their own.
- Somewhat effective in making *public transport* more accessible. The public transport disability standards were introduced in 2002 and many providers are already well ahead of targets. However, most improvements have been in cities, with many regional areas still suffering significant problems.
- Effective in reducing discrimination in the *provision of certain services* such as telecommunications and electronic banking. Concerns remain about discrimination in other areas, such as insurance.
- Reasonably effective in improving *educational* opportunities for tertiary students with disabilities, with mixed results in school education. Educational attainment has improved modestly and the number of students in mainstream schools identified as having disabilities has grown substantially. But this has strained the resources of many schools, especially in the non-government sector.³³⁰

³²⁷ Productivity Commission report, note 326.

³²⁸ Productivity Commission report, note 326, pxxxii-xxxiii.

³²⁹ Productivity Commission report, note 326, p109.

³³⁰ Productivity Commission report, note 326, pxxxii-xxxiii.

10. POLICY TO PROMOTE ACCESS TO MAINSTREAM SERVICES

Overview

It is beyond the scope of this paper to undertake an examination of the way in which the Federal and NSW governments provide mainstream services to people with disabilities in areas such as health, education, vocational training, housing, aged care, recreation and transport.³³¹ This section is limited to outlining general Federal and State government policies that require government departments and agencies delivering such services to promote access for people with disabilities. These policies were developed having regard to disability discrimination and disability services legislation.

Federal Government policy

In 1994, the Federal Government launched the Commonwealth Disability Strategy, which provided a 10-year planning framework for Australian Government organisations to:

- Promote acceptance that people with disabilities have the same fundamental rights as the rest of the community;
- Identify and remove barriers in program development and delivery;
- Eliminate discriminatory practices as employers and program administrators; and
- Develop plans, strategies and actions to ensure planning and service delivery takes into account the needs of people with disabilities.³³²

Following a mid-term evaluation in 1999 a significantly revised Strategy was launched in October 2000. The revised Strategy is based on the following principles:

- *Equity*: people with disabilities have the right to participate in all aspects of the community including the opportunity to contribute to its social, political, economic and cultural life.
- *Inclusion*: all mainstream Australian Government programs, services and facilities should be available to people with disabilities. The requirements of people with disabilities should be taken into account at all stages in the development and delivery of these programs and services.
- *Participation*: people with disabilities should have access to information in appropriate formats about the programs and services they use; and
- *Accountability*: all areas of Australian Government organisations should be clearly

³³¹ For information regarding the provision of mainstream services to people with a disability, see for example Australian Institute of Health and Welfare, *Disability and Disability Services in Australia*, Cat No. DIS43, Canberra, January 2006.

³³² Department of Family and Community Services, 'Commonwealth Disability Strategy, accessed on website at: http://www.facs.gov.au/disability/cds/cds/cds_index.htm

accountable for the provision of access to their programs, facilities and services for people with disabilities. This includes specifying the outcomes to be achieved, establishing performance indicators and linking reporting on outcomes of the Strategy to mainstream reporting requirements.³³³

In 2005, the Department of Family and Community Services commissioned Erebus International to conduct an evaluation of the Strategy. Erebus published its report in September 2006.³³⁴ The report concluded that the Strategy had resulted “in a range of positive outcomes over the past five years”.³³⁵ However, “people with disabilities had not universally or uniformly enjoyed these benefits in all areas or from all areas of government”.³³⁶ The report proposed future directions in a number of areas including:

- Revising the current performance reporting framework in order to place greater emphasis on the achievement of outcomes.
- Consider introducing a monitoring and feedback role to assist departments to develop actions plans and meet their obligations in terms of reporting progress.
- Extending the scope of the CDS to all Australian Government departments, authorities, instrumentalities and trading enterprises.
- Implementing a planned, educative process to inform APS employees, managers and contractors of their responsibilities and obligations.
- Encouraging all Australian Government departments to ensure that their action plans take account of the specific needs of people with disabilities, in particular those from a non-English speaking background, those with multiple/complex disabilities and those with episodic and psychiatric disabilities.³³⁷

NSW Government policy

Disability Action Plans

In addition to regulating the funding and provision of *specialist* disability services, the *Disability Services Act 1993* (NSW) requires all NSW Government Departments and other public authorities to prepare, and provide for the implementation of, a plan to encourage the provision of services by that authority in a manner that furthers the principles and applications of principles of the Act.³³⁸ These plans were to be prepared within two years

³³³ Department of Family and Community Services, ‘Commonwealth Disability Strategy, accessed on website at: http://www.facs.gov.au/disability/cds/cds/cds_index.htm

³³⁴ Erebus International, *Report of the Evaluation of the Commonwealth Disability Strategy*, September 2006.

³³⁵ Evaluation report, note 334, p5.

³³⁶ Evaluation report, note 334, p5.

³³⁷ Evaluation report, note 334, p5-6. As to the Federal Government’s response to the evaluation report, see Hon Mal Brough MP, ‘Evaluation demonstrates the Howard Government’s ongoing commitment’, *Media Release*, 8/11/06.

³³⁸ *Disability Services Act 1993* (NSW), section 9(1).

of the Act commencing (by April 1995) and were to be made available to the public.³³⁹

Disability Strategic Plan (1994)

In November 1994, the NSW Government released its *Disability Strategic Plan*, which provided a framework for the development of Disability Action Plans under section 9 of the *Disability Services Act*.³⁴⁰ It required planning in public authorities to focus on three areas, one of which was ensuring that people with disabilities have access to generic services provided or funded by public authorities.³⁴¹ According to the NSW Law Reform Commission, “most public authorities submitted plans of some form as required”.³⁴² The Strategic Plan has been replaced by the Disability Policy Framework (see below).

NSW Disability Policy Framework (1998)

In December 1998, the Government released its Disability Policy Framework, which “sets down the parameters within which State Government agencies will do their planning and adjust their programs to better meet the needs of people with disabilities”³⁴³. Government agencies were required to “work within this Policy Framework when developing their Disability Actions Plans” under the *Disability Services Act 1993*.³⁴⁴ The Government also encouraged local councils to develop Action Plans within the Framework.³⁴⁵ Guidelines were published at the same time as the Disability Policy Framework to assist Government agencies and participating local councils to develop Disability Action Plans.

The Framework states that its goal is “a society in which individuals with disabilities and their carers live as full citizens with optimum quality of life, independence and participation”.³⁴⁶ The Framework has three core objectives:

1. The achievement of a planned, coordinated and flexible approach to policy and service provision in NSW for and with people with disabilities and their carers.
2. The creation and promotion of opportunities, services and facilities which enable people with disabilities and their carers to participate in the wider community and attain a better quality of life.

³³⁹ Section 9(3), (4).

³⁴⁰ NSW Government, *Disability Direction: Tomorrow's Blueprint – The NSW Government Disability Strategic Plan*, November 1994.

³⁴¹ Disability Strategic Plan, note 340, p22-23.

³⁴² NSW Law Reform Commission, *Review of the Disability Services Act 1993 (NSW)*, Report 91, July 1999,

³⁴³ NSW Government, *NSW Government Disability Policy Framework*, p2.

³⁴⁴ NSW Government, *NSW Government Disability Policy Framework*, p4.

³⁴⁵ NSW Government, *NSW Government Disability Policy Framework*, p4.

³⁴⁶ NSW Government, *NSW Government Disability Policy Framework*, p5

3. Provision of ways for State Government service providers to measure and report on their progress in increasing access for people with disabilities.³⁴⁷

A number of priority areas of action are associated with each core objective. For example, priority areas in relation to Objective 2 include: physical access, promoting positive community attitudes, training of staff in mainstream agencies, information about services to people with disabilities, and employment in the public sector.³⁴⁸

In accordance with Objective 3, State government providers of services to the general community are required to submit every three years to the NSW Department of Ageing, Disability and Home Care a Disability Action Plan drawn up according to the Guidelines; and in each Annual Report to summarise progress against performance measures detailed in the Action Plan.³⁴⁹ In addition, the Ministers of Disability and Health are required to submit an annual report for the Social Justice Committee of Cabinet and for Parliament on the progress as measured against commitments in the Disability Action Plans.³⁵⁰

Recommendations of Law Reform Commission

In its review of the *Disability Services Act 1993* (NSW), the NSW Law Reform Commission recommended that section 9 be strengthened in a number of ways including:

- Extension to all departments, agencies and local government authorities;
- Containing more specific requirements about the content of Action Plans;
- Containing legislative reporting requirements similar to those outlined in the NSW Disability Policy Framework, including requiring the Minister for Disability Services to report annually to Parliament on the progress government departments and agencies have made in implementing their Disability Action Plans.³⁵¹

The NSW Government has not yet implemented these recommendations.

³⁴⁷ NSW Government, *NSW Government Disability Policy Framework*, p5.

³⁴⁸ NSW Government, *NSW Government Disability Policy Framework: Guidelines*, p8.

³⁴⁹ NSW Government, *NSW Government Disability Policy Framework: Guidelines*, p9.

³⁵⁰ NSW Government, *NSW Government Disability Policy Framework: Guidelines*, p5.

³⁵¹ NSW Law Reform Commission, *Review of the Disability Services Act 1993 (NSW)*, Report 91, July 1999, p68-70.

11. CONVENTION ON RIGHTS OF PERSONS WITH DISABILITIES

Recent adoption of Convention

On 13 December 2006, the United Nations adopted the Convention on the Rights of Persons with Disabilities. The Convention will be open for signature and ratification by States as of 30 March 2007. It will enter into force after ratification by 20 States.

Background to the Convention

Since the 1970s, the UN has adopted a number of non-binding instruments and policies to recognise and promote the rights of persons with disabilities. These include the:

- 1971 Declaration on the Rights of Mentally Retarded Persons
- 1975 Declaration on the Rights of Disabled Persons
- 1981 International Year of Disabled Persons
- 1982 World Programme of Action Concerning Disabled Persons
- 1991 Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care.
- 1993 Standard Rules on the Equalization of Opportunities for Persons with Disabilities.³⁵²

In December 2001, the UN resolved to establish an Ad Hoc Committee “to consider proposals for a comprehensive and integral international convention to promote and protect the rights and dignity of persons with disabilities”. The Ad Hoc Committee’s first session took place in July/August 2002 and at its eighth session in August 2006, the Committee adopted the draft text of a *Convention on the Rights of Persons with Disabilities*. The Australian Government participated in the development of the Convention.³⁵³

Summary of Convention

Purpose

The purpose of the Convention is “to promote, protect and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity”.³⁵⁴ Consistent with this purpose, the Convention does not establish a new set of rights for persons with disabilities. Instead, it primarily restates and elaborates on a number of human rights set out in existing treaties: in particular, human rights set out in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. The Convention requires States to take measures to ensure that persons with disabilities can enjoy a number

³⁵² For more information on these instruments and policies, and UN disability policy generally, see the UN enable website: <http://www.un.org/esa/socdev/enable/>

³⁵³ Hon Phillip Ruddock MP, ‘Australia welcomes conclusion of UN Convention to protect rights of people with disability’, *News Release*, 29/8/06.

³⁵⁴ Article 1.

of these human rights on an equal basis with others.

General principles

The general principles of the Convention include:

- (a) Respect for the inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons;
- (b) Non-discrimination
- (c) Full and effective participation and inclusion in society;
- (d) Respect for difference and acceptance of disability as part of human diversity and humanity;
- (e) Equality of opportunity;
- (f) Accessibility;
- (g) Equality between men and women;
- (h) Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.³⁵⁵

Accessibility

Article 9 of the Convention (accessibility) states (in part):

States Parties shall take appropriate measures to ensure to persons with disabilities access, on an equal basis with others, to the physical environment, to transportation, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, both in urban and in rural areas...

Rights

Civil and political rights

Civil and political rights that are restated and elaborated on include the rights to:

- Life
- Be free from discrimination
- Equal recognition before the law
- Liberty and security of the person
- Be free from torture and cruel, inhuman or degrading treatment
- Liberty of movement and freedom to choose one's residence
- Freedom of expression and opinion
- Respect for privacy
- Marry and have a family
- Participate in political and public life.

³⁵⁵

Article 3.

In addition to the freedom to choose one's own residence restated in Article 18, the Convention recognises (in Article 19) the right of all persons with disabilities "to live in the community, with choices equal to others".³⁵⁶ The Convention requires States Parties to "take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community" including by ensuring that persons with disabilities have the opportunity to choose their place of residence on an equal basis with others; and that they have access to a range of in-home, residential and other community support services.³⁵⁷

Economic, social and cultural rights

Economic, social and cultural rights that are restated and elaborated on include the rights to:

- Education
- Work and to just and favourable conditions of work
- The highest attainable standard of health
- An adequate standard of living
- Participate in cultural life.

In relation to education, the Convention requires States Parties to ensure that people are not excluded from the general education system on the basis of disability; that they can access an inclusive, quality, free education on an equal basis with others in the communities in which they live; and that there is reasonable accommodation of the individual's requirements.³⁵⁸ The Convention defines "reasonable accommodation" as "necessary and appropriate modification and adjustments, not imposing a disproportionate or undue burden, where needed in a particular case, to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights..."³⁵⁹

Implementation of Convention

The Convention contains a general obligation for all States Parties to adopt all appropriate legislative, administrative and other measures for the implementation of the rights in the Convention.³⁶⁰ This includes modifying or abolishing existing laws and practices that discriminate against people with disabilities; and taking into account the protection and promotion of the rights of persons with disabilities in all policies and programs.

The Convention also requires States Parties to adopt effective and appropriate measures to

³⁵⁶ Article 19

³⁵⁷ Article 19.

³⁵⁸ Article 24(2).

³⁵⁹ Article 2.

³⁶⁰ Article 4(1)(a).

raise awareness throughout society regarding persons with disabilities, to combat stereotypes, prejudices and harmful practices relating to people with disabilities and to promote awareness of the capabilities and contributions of people with disabilities.³⁶¹

Monitoring implementation of the Convention

The Convention provides for the establishment of a Committee on the Rights of Persons with Disabilities, to be comprised of 12 experts.³⁶² States Parties are required to submit to the Committee within two years a comprehensive report on measures taken to give effect to its obligations under the Convention; and, thereafter, to submit to the Committee reports at least every four years.³⁶³ The Committee is required to consider each report and to make suggestions and general recommendations to the State concerned.³⁶⁴ States Parties are required to make their reports widely available to the public in their own countries and to facilitate access to the Committee's suggestions and recommendations.³⁶⁵ The draft Optional Protocol to the Convention also provides for the Committee to receive and consider communications from individuals or groups of individuals who claim to be victims of a violation by a State Party of the provisions of the Convention.

Legal effect of Convention if ratified by Australia

If, as expected, the Australian Government ratifies the Convention, Australia will be bound under international law to implement the Convention; and it will have a duty to ensure that States and Territories implement the Convention. However, ratification will not result in the Convention becoming part of domestic law in Australia. This can only happen if Federal or State legislation incorporates the rights of the Convention into domestic law. However, the Convention could influence the development of the common law and courts could use it to resolve ambiguity in the meaning of legislation.³⁶⁶

³⁶¹ Article 8.

³⁶² Article 34.

³⁶³ Article 35.

³⁶⁴ Article 36.

³⁶⁵ Article 36(4).

³⁶⁶ See *Re Kavanagh's Application* [2003] HCA 76 at [11]-13]. See also *Coleman v Power* [2004] HCA 39. Note that Gleeson CJ doubted whether an international treaty could be used in the interpretation of legislation that was enacted before ratification of the treaty.

12. CONCLUSION

This paper has highlighted some important developments in disability policy since 1981 including deinstitutionalisation, the installation of service systems based on rights and outcomes, rationalisation of Federal/State responsibilities and a focus on improving access to mainstream government services. It has also outlined the range of specialist disability supports provided, and funded, by the Federal and NSW Governments. These include income support, employment services, accommodation services, respite services and community access and support services. In addition to specialist disability services, this paper has also outlined disability discrimination laws and Federal and State Government policies to promote access to mainstream government services.

A number of issues outlined in this paper make it clear that whatever progress has been made for people with disabilities in the last 25 years, more is needed. People with disabilities continue to experience poor outcomes in relation to education, employment and income; there is significant unmet demand for specialist disability services; and there are a large number of young people with disabilities living in nursing homes. Recent developments such as the HREOC report on employment for people with a disability, the NSW Government's *Stronger Together* Strategy, and the COAG plan to reduce the number of young people living in nursing homes, will go some way towards addressing some of these problems. In addition, the new UN Convention will hopefully provide impetus for greater support and inclusion of people with disabilities in NSW.

APPENDIX 1: PRINCIPLES AND APPLICATIONS OF PRINCIPLES

The *Disability Services Act 1993* (NSW) sets out (in Schedule 1 of the Act) the following principles and applications of principles:

Principles

Persons with disabilities have the same basic human rights as other members of Australian society. They also have the rights needed to ensure that their specific needs are met. Their rights, which apply irrespective of the nature, origin, type or degree of disability, include the following:

- (a) persons with disabilities are individuals who have the inherent right to respect for their human worth and dignity,
- (b) persons with disabilities have the right to live in and be part of the community,
- (c) persons with disabilities have the right to realise their individual capacities for physical, social, emotional and intellectual development,
- (d) persons with disabilities have the same rights as other members of Australian society to services which will support their attaining a reasonable quality of life,
- (e) persons with disabilities have the right to choose their own lifestyle and to have access to information, provided in a manner appropriate to their disability and cultural background, necessary to allow informed choice,
- (f) persons with disabilities have the same right as other members of Australian society to participate in the decisions which affect their lives,
- (g) persons with disabilities receiving services have the same right as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities,
- (h) persons with disabilities have the right to pursue any grievance in relation to services without fear of the services being discontinued or recrimination from service providers,
- (i) persons with disabilities have the right to protection from neglect, abuse and exploitation.

Applications of principles

Services and programs of services must apply the principles set out in clause 1. In particular, they must be designed and administered so as to achieve the following:

- (a) to have as their focus the achievement of positive outcomes for persons with disabilities, such as increased independence, employment opportunities and integration into the community,
- (b) to contribute to ensuring that the conditions of the everyday life of persons with disabilities are the same as, or as close as possible to, norms and patterns which are valued in the general community,
- (c) to form part of local co-ordinated service systems and other services generally available to members of the community, wherever possible,
- (d) to meet the individual needs and goals of the persons with disabilities receiving services,
- (e) to meet the needs of persons with disabilities who experience an additional disadvantage as a result of their gender, ethnic origin or Aboriginality,

- (f) to promote recognition of the competence of, and enhance the image of, persons with disabilities,
- (g) to promote the participation of persons with disabilities in the life of the local community through maximum physical and social integration in that community,
- (h) to ensure that no single organisation providing services exercises control over all or most aspects of the life of a person with disabilities,
- (i) to ensure that organisations providing services (whether specifically to persons with disabilities or generally to members of the community) are accountable to persons with disabilities who use them, the advocates of those persons, the State and the community generally for the provision of information from which the quality of those services can be judged,
- (j) to provide opportunities for persons with disabilities to reach goals and enjoy lifestyles which are valued by the community generally and are appropriate to their chronological age,
- (k) to ensure that persons with disabilities participate in the decisions that affect their lives,
- (l) to ensure that persons with disabilities have access to advocacy support where necessary to ensure adequate participation in decision-making about the services they receive,
- (m) to recognise the importance of preserving the family relationships and the cultural and linguistic environments of persons with disabilities,
- (n) to ensure that appropriate avenues exist for persons with disabilities to raise and have resolved any grievances about services, and to ensure that a person raising any such grievance does not suffer any reprisal,
- (o) to provide persons with disabilities with, and encourage them to make use of, avenues for participating in the planning and operation of services and programs which they receive and to provide opportunities for consultation in relation to the development of major policy and program changes,
- (p) to respect the rights of persons with disabilities to privacy and confidentiality.

APPENDIX 2: DISABILITY SERVICES STANDARDS

The 10 NSW Disability Services Standards are set out below:

- 1. STANDARD SERVICE ACCESS:** Each service user seeking a service has access to a service on the basis of relative need and available resources.
- 2. INDIVIDUAL NEEDS:** Each person with a disability receives a service which is designed to meet, in the least restrictive way, his/her individual needs.
- 3. DECISION MAKING AND CHOICE:** Each person with a disability has the opportunity to participate as fully as possible in making decisions about the events and activities of his or her daily life in relation to the services he/she receives
- 4. PRIVACY, DIGNITY AND CONFIDENTIALITY:** Each service user's right to privacy, dignity and confidentiality in all aspects of his/her life is recognised and respected.
- 5. PARTICIPATION AND INTEGRATION:** Each person with a disability is supported and encouraged to participate and be involved in the life of the community.
- 6. VALUED STATUS:** Each person with a disability has the opportunity to develop and maintain skills to participate in activities that enable him/her to achieve valued roles in the community.
- 7. COMPLAINTS AND DISPUTES:** Each service user is free to raise and have resolved, any complaints or disputes he/she may have regarding the agency or the service.
- 8. SERVICE MANAGEMENT:** Each Agency adopts sound management practices which maximise outcomes for service users.
- 9. FAMILY RELATIONSHIPS:** Each person with a disability receives a service which recognises the importance of preserving family relationships, informal social networks and is sensitive to their cultural and linguistic environments.
- 10. RIGHTS AND FREEDOM FROM ABUSE:** The Agency ensures the legal and human rights of people with a disability are upheld in relation to the prevention of sexual, physical and emotional abuse within the service.

Source: NSW Department of Ageing and Disability, *Standards in Action: Practice requirements and guidelines for services funded under the Disability Services Act, 1998.*

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