



Physical Disability Council
New South Wales

Physical Disability Council of NSW Inc

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Mr. Peter Hennessy

Executive Director

NSW Law Reform Commission

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Dear Mr. Hennessy

The Physical Disability Council of NSW (PDCN) is the peak organisation in NSW representing people with physical disabilities, their families and carers.

The review of the *Disability Services Act 1993* (NSW) (the DSA) and the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) (the CAMA) is of great interest to PDCN and its members because both pieces of legislation have a direct impact on the quality of daily life for people with physical disabilities.

The introduction of the DSA has been a positive step for people with disabilities, incorporating a clear rights basis consistent with values of participation, inclusion and citizenship and has placed the consumer as the focal point of service development and delivery.

The introduction of the CAMA has established an effective framework to monitor the community service system. The CAMA has been extremely successful in providing independent and accessible mechanisms for resolving complaints, reviewing administrative decisions and monitoring services, programs and complaints procedures through bodies such as the Community Services Commission (CSC) and the Community Services Appeals Tribunal (CSAT).

The DSA and CAMA in NSW are easily the clearest and strongest in Australia and are the only state laws to articulate that people with disabilities have the right to live and participate in their chosen community. It is crucial that the strengths are safeguarded and any amendments made to the Acts continue to enhance and promote the rights of people with disabilities whilst maximising opportunities for participation in the community.

PDCN strongly supports maintaining the link between the CAMA and the DSA as well as protecting and strengthening the Objects, Principles and Applications of Principles of both Acts.

PDCN strongly supports the focus of the legislation remaining on the person with a disability alongside better provisions to ensure all funded disability services comply with the principles and applications of principles of both Acts.

The independence of CAMA bodies such as the CSC and CSAT must be strengthened to ensure that services comply and continue to make improvements to the quality of service provided.

PDCN's response to both pieces legislation follows and have been made together because of the closeness in relevance of the two Acts.

If you wish to discuss any aspect of the response please feel free to contact me on (02) 9639 9110 or 0412 539 110.

Yours sincerely

John Moxon

PRESIDENT

RESPONSE TO

THE REVIEW OF THE

DISABILITY SERVICES ACT

1993 (NSW)

AND THE

COMMUNITY SERVICES

(COMPLAINTS, APPEALS

AND MONITORING) ACT

1993 (NSW)

Physical Disability Council of NSW Inc

December 1998

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THE DISABILITY SERVICES ACT 1993 (NSW) (the DSA)

ISSUE 1 Policy Objectives

The primary objective of the DSA is to ...*ensure the provision of services necessary to enable persons with disabilities to achieve their maximum potential as members of the community...*The strong focus on the rights of people with disabilities rather than service providers has resulted in a major shift in the way services are provided.

The objectives of the DSA are broad human rights based statements which encourage the integration and participation of people with disabilities within their community, placing responsibility onto service providers to ensure that this can happen.

The objectives are still **relevant** to all people with disabilities and are reinforced by the principles and applications of the Act. Whilst the objects have gone some way towards creating positive change for people with disabilities, it is imperative they are translated into actual service delivery otherwise they become empty statements.

Recommendations

PDCN is strongly opposed to any changes that could effectively weaken the objects of the Act. However there are two instances where changes to wording could strengthen the objects.

PDCN recommends that the objects of the DSA:

- ▶ include the needs of children with a disability into the objects which could be expanded in the Principles and Applications of Principles because there is no specific provision for children anywhere in the DSA;
- ▶ replace the word 'integration' with 'participation' because it is more appropriate and consistent with the notions of citizenship.

ISSUE 3 'Target Group'

The DSA deals primarily with the provision of specialist services to people in the 'target group' as set out in Section 5. The target group does encompass a wide range of people with different disabilities but is not a comprehensive definition of disability or impairment.

Although limitations can be dealt with through administration it is important that there is a definition which is as inclusive as possible and consistent with existing legislation.

Recommendations

PDCN recommends that:

- ▶ the 'target group' of the DSA is consistent with the definition of disability used in Section 4 of the Commonwealth *Disability Discrimination Act 1992* (DDA).

It is fundamental to the effectiveness of the Act that the target group is inclusive of all people with disabilities.

ISSUE 4 Private, For-Profit and Unfunded Services

A number of agencies that provide services for people with disabilities do not receive funding under the DSA. For example there is a number of private for profit organisations that provide services such as holidays or recreational activities for people with disabilities. The principles and applications of the DSA do not protect people using these services.

Of greater concern however are boarding houses which are not subject to the DSA or the CAMA. Boarding houses are private for profit services which provide accommodation, some with appalling physical conditions, to vulnerable people in the community.

People with disabilities living in this sort of arrangement are extremely vulnerable because they:

- ▶ are not considered residents and have no protection under *Residential Tenancy Act 1987*;
- ▶ have no money of their own because the majority receive government pensions or other welfare payments which they pay to the manager or proprietor;
- ▶ have no say in the way the house is run;
- ▶ receive little if any support services; and
- ▶ have no chance to participate in the community.

Recommendations

PDCN recommends that two types of action happen simultaneously to address this problem.

The first is that licensing conditions must be improved and boarding houses brought under the DSA and required to comply with the standards. If this is done:

- ▶ advocates can have access to people with disabilities living under this arrangement;
- ▶ Community Service inspectors will be able to enter the premises and remove people who are abused or neglected;
- ▶ complaints can be heard at the CSC and CSAT etc.

Second, and more importantly, better standards of accommodation must be provided for people with disabilities. Boarding houses must provide a level of accommodation which allows people with disabilities to live with dignity.

ISSUE 5 Need to Include Children

There are no specific provisions in the DSA about children with disabilities. Children must be included in the legislation because they and their parents are consumers of services.

Currently the *Children (Care and Protection) Act 1987* (NSW) and the *Community Welfare Act 1987* (NSW) are also in the process of being reviewed. There should be consistency

and links built in between all legislation affecting the welfare of children, including legislation governing children in substitute care.

The Ageing and Disability Department (ADD) has developed a Children's Policy to ensure that children and young people with disabilities are supported to live at home with their families or other families and are given the support and opportunities necessary to become participating and independent citizens. Within this policy is the premise that children should use ordinary mainstream children's services and that specialist disability services must play their role in supporting mainstream services to include children with disabilities. To have children included in the legislation will strengthen this policy because it will then have the support of appropriate legislation.

Recommendations

PDCN recommends that any provision made in the DSA about children include:

- ▶ that children are children first but are also 'people';
- ▶ children should grow up in a family unit or in a family-like environment;
- ▶ children with disabilities must have the same protection as other children;
- ▶ the role of parents and guardians; and
- ▶ the role of advocates.

ISSUE 8 Home and Community Care Program (HACC)

HACC is funded by both the Commonwealth and the NSW government. The Program provides funds to services that support people with a moderate to severe disability living at home within their community, who are at risk of inappropriate institutionalisation,.

HACC programs are excluded from the provisions of the DSA and CAMA. PDCN believes the right of the Minister to exclude a service contradicts the essence of the legislation and should be removed entirely.

Recommendations

PDCN recommends that:

- ▶ HACC services be covered by the DSA and CAMA.

ISSUE 9 Link with the CAMA

The links between the DSA and CAMA are critical to provide transparency and public scrutiny of decision making. The links must be maintained and strengthened and any changes to the DSA should be considered in context with the CAMA.

Recommendations

PDCN recommends that the links could be strengthened by:

- ▶ maximising requirements for reasons to be given for decisions by service providers;
- ▶ consistent jurisdiction of the CAMA bodies, allowing the DSA and CAMA to interrelate as a more comprehensive administrative review framework;
- ▶ making formal recommendations from the CSC appealable to the Community Services division of the Administrative Decisions Tribunal (ADT) for non compliance;
- ▶ providing for a direct appeal to the CS division of the ADT for breaches of the Principles and Applications where an individual is in a situation of harm or imminent harm;
- ▶ providing a role for CAMA bodies in monitoring section 9 plans.

This could be provided by:

- ▶ giving the CAMA bodies jurisdiction to handle complaints against the Minister's approval of the plan; and
- ▶ making a failure by the Minister to implement the recommendations of the CSC appealable to the CS Division of the ADT.

ISSUE 11 The Principles of the DSA

PDCN believes that the principles and applications of principles are the cornerstone of this Act. The principles are based on strong, clear statements about the citizenship rights of people with disabilities and the values that go with that - dignity, choice, participation and the ability to take up opportunities.

The most important success of the Act is that the principles have been useful in changing the state of mind around disabilities. Although they are not necessarily enforceable they have created an environment which has led to considerable improvement in the observance of human rights of people with disabilities and in the nature and quality of services received.

Recommendations

PDCN would be very reluctant to see any changes made to the principles that would weaken or undermine them.

PDCN recommends that:

- ▶ it would be preferable to leave them as they are rather than make changes that might work to the detriment of people with disabilities.

ISSUE 12 Applications of Principles

The applications of principles is another crucial part of this act because they provide guidance in the implementation of the principles - ie. how the principles become action.

Like the principles, the applications of principles have been extremely beneficial to people with physical disabilities. For instance they:

- ▶ create an expectation of improvement;
- ▶ support the development of action plans to provide for improved service delivery; and
- ▶ provide for consumer involvement through consumer support and training processes.

However, there are some problems with the way the application of principles are being implemented by public authorities. The principles and applications are not being taken seriously by public authorities who tend to substitute them with the weak and ineffective disability service standards.

Other concerns are:

- ▶ although the principles are expressed in general terms, which provides flexibility, this leaves a wide scope for interpretation of implementation, which can be detrimental to people with disabilities;
- ▶ there is no specific provision for children with disabilities;
- ▶ the applications are difficult to measure outcomes against and do not explicitly support continuous improvement in service provision;
- ▶ there is a serious lack of resources allocated to their implementation and maintenance; and
- ▶ there is a real need for independent monitoring mechanisms to review the application of principles.

Recommendations

PDCN recommends that:

- ▶ increased focus be given to individualised service plans within the application of principles;
- ▶ the addition of an application supporting the right of children with disabilities to grow up in their family or in family-like environments where both the child and the family receive all necessary support;

- ▶ the application of principles should clearly state that support persons or advocates be funded for people with disabilities including children;
- ▶ there is ongoing training for public authority staff on the needs for people with disabilities;
- ▶ objective measurements of the principles and application of principles be developed;
- ▶ less emphasis be put on written policies and procedures and more on the principles being implemented in the service;
- ▶ a way of enforcing the Principles be established that challenges services not meeting them;
- ▶ a closer relationship between the principles and applications and service providers be established via monitoring mechanisms such as expansion of community visitors scheme.

ISSUE 14 Standards

The DSA sets out the rights of people with disabilities in the principles. The applications set out how the principles should be applied to services and programs of services. There is nothing in the legislation about how services should be monitored to see if they are conforming to the principles and applications.

However, ADD has developed a process for monitoring compliance which includes:

- ▶ annual self assessment;
- ▶ departmental officers checking safety.

This process involves the use of standards developed by ADD which services must comply with as a condition of funding. The use of these standards is problematic because they:

- ▶ do not adequately reflect the principles and applications;
- ▶ are confusing and too prescriptive;
- ▶ do not reflect the range of methods which organisations can use to provide services thus creating an impediment to innovative and flexible service provision;
- ▶ have no clear legal status.

The self-assessment process is not believed to be an adequate method for monitoring services to determine if they are complying with the principles and applications.

In addition, ADD assesses funding contracts based on standards yet when making a complaint the individual bases the complaint around the principles and applications, not the ADD standard. This creates confusion for both the service provider and the person with a disability.

Disability service standards were to act as guide to public authorities in implementing the Principles and Applications. Instead they have become a benchmark for public authorities.

More importantly the Act has failed to deliver a 'whole of Government approach' to services used by people with physical disabilities. Whilst disability specific services - funded by ADD or provided by DOCS - are required to meet conditions spelt out in the Act, services - disability specific or generic - provided by other State Government departments/authorities are not required to meet the principles or application of principles.

For example, people with severe physical disabilities require ready access to disability equipment such as wheelchairs. Such equipment is provided through the Health Department's Program of Appliance for Disabled Persons Scheme. The introduction of the DSA has seen no improvement in the standard of this service.

Moreover many people with physical disabilities live in the community. They require the same services as people without disabilities - accommodation, transport, entertainment, access to education, the law, the health system and so on. The DSA has had very little impact on the accessibility of such services to people with disabilities.

Recommendations

PDCN makes the following suggestions which can be achieved through administration rather than changes to the legislation:

- ▶ funding contracts should relate to principles and applications rather than standards;
- ▶ provisions are needed which specifically provide for a quality assurance process and set out the principles that should govern it;
- ▶ expand the CAMA to specifically review the implementation of the principles and applications by public authorities;
- ▶ statements from the Law Reform Commission in the findings of the review that the government has a responsibility to ensure that all its services comply with the legislation, with a 5 year time frame for conformity as a minimum.

ISSUE 15 Individual Funding Packages

The DSA makes provisions for funding of services for people with disabilities. The Act also provides for individual funding but this appears to be underutilised.

There is positive potential for individual funding packages especially for people with physical disabilities.

This style of funding could give people with physical disabilities more control over their lives rather than services having the control. The use of individual funding packages also further promotes the principles of the DSA because it allows greater independence, choice and participation.

Whilst PDCN supports the use individual funding packages for its members it is also important that other types of service provision remain and individual packages should not become the only option for people with disabilities.

Infrastructure supports must be developed to ensure the effective use of the individual funding packages.

Recommendations

PDCN recommends that these supports include:

- ▶ readily obtainable information about the packages;
- ▶ orientation and training for the individual and the service provider about how the packages will be implemented;
- ▶ a system of brokerage to help people with disabilities put together a package of services and to provide assistance with the complexities of service provision;
- ▶ development of an administrative and management structure to deal with the packages.

It is also necessary to have safeguards to protect people with disabilities using the packages:

- ▶ any amount for individual funding packages should be paid into an independent account and not be classed as taxable income;
- ▶ appropriate monitoring mechanisms be put in place to review the allocation and purchasing of services for people with disabilities;
- ▶ safeguards to ensure that people with disabilities do not have their funding exploited by those in positions of power.

ISSUE 16 Disability Services Plans

An important measure in the DSA which aims at maximising the participation of people with disabilities in the community is spelt out in Section 9 which requires public authorities to prepare a disability services plan.

Section 9 (1) states that public authorities are to prepare and ...*make provision for the implementation of a plan to provide services in a way that conform with the objects and principles and applications of the Act.* The plan must provide for reporting the authority's progress in implementing the plan and must be made publicly available.

Section 9 requires the government to provide conformity across all of its services and this section has the possibility of changing the lives of people with physical disabilities, many of whom do not rely on specialist disability services. This section has the potential for services that impinge on the lives of people with physical disabilities such as transport, health, employment, education to be made accessibly and equitable.

Whilst Section 9 plans are crucial to enable people with disabilities to use mainstream services there are still a number of government agencies that are not required to prepare

a plan. Some agencies that are required to make a plan have not and some of the ones that have been prepared are vague and lack key features.

The majority of plans do not build planning for people with disabilities into their regular management systems and very few have done their planning and their delivery of services in co-operation with other agencies, even when the agency's services were linked or overlapped. Neither the Police Service nor local government authorities are required to prepare a plan.

Other problems include:

- ▶ the provision is unclear because it only states that authorities have to prepare a plan, not necessarily implement it;
- ▶ Section 9 does not specify what has to be in the plan, how often authorities must prepare or review the plan or who should monitor implementation;
- ▶ there are no legal consequences for failure to prepare or implement a plan;
- ▶ there is no independent review mechanism for the implementation of action plans.

Recommendations

PDCN recommends that:

- ▶ Section 9 is strengthened;
- ▶ this Section should make public authorities more accountable by providing for mechanisms of review and by providing for sanctions;
- ▶ staff training, support and advice be given on how to develop productive plans that 'encourage the provision of services by that authority in a manner that furthers the principles and applications of principles ;
- ▶ an independent review mechanism on action plans should be implemented linking Section 9 of the DSA with expansion of the role of conciliators under the CAMA;
- ▶ plans should be incorporated into the performance agreements of the CEO with the support of that department's relevant Minister. The Minister could then engage the Auditor General to conduct a review of the CEO's performance on Section 9 plans;
- ▶ local governments should become a 'public authority' under the Act;
- ▶ an accreditation system should be established that requires public authorities to clearly demonstrate quality outcome measures based on the needs of people with disabilities;
- ▶ the requirement to prepare a plan should extend beyond government authorities to include organisations that occupy Crown land or receive State or local government assistance.

ISSUE 17 Advocacy

The right to independent advocates is fundamental to safeguarding the rights of people with disability. Advocacy must be recognised and protected within the DSA and CAMA.

Recommendations

PDCN recommends that:

- ▶ the right to access advocacy must be guaranteed;
- ▶ the role of advocacy must be recognised and strengthened;
- ▶ advocacy must be recognised in a separate section of the Act to ensure it is distinguished from disability service provision, community visitors or complaints handling;
- ▶ where an individual is in dispute with a service provider, an independent advocate be assigned to them.

ISSUE 19 Enforcing the Provisions of the DSA

If a service does not comply with the provisions of the DSA the only power the Minister currently has under the legislation is to suspend the payment of an instalment for no longer than 28 days or to terminate payments completely. The Minister is unlikely to take either of these steps because this means either the standard of service will fall or the service will close.

In most cases there will be nowhere else for the people who use the service to go. The DSA does not require the Minister to provide alternative accommodation or other services if he or she defunds a service.

Recommendations

PDCN recommends that the DSA provide for:

- ▶ varying the terms or conditions of funding;
- ▶ the appointment of an administrator;
- ▶ stopping a service from admitting more clients;
- ▶ naming a service in Parliament;
- ▶ more frequent monitoring.

THE COMMUNITY SERVICES (COMPLAINTS, APPEALS AND MONITORING) ACT 1993 (NSW) (the CAMA)

ISSUE 1 Objects of CAMA

The objects of CAMA remain relevant to people with disabilities.

The objects place a heavier emphasis on individual complaints handling rather than overall systemic monitoring and reform. Whilst PDCN believes that the success of both the DSA and CAMA is the focus of the legislation on the person with a disability it is important that a balance is struck between the two.

Service monitoring and systemic oversight are crucial for the continuing improvement of services for people with physical disabilities. The Community Services Commission has certainly been successful in achieving a reasonable balance but the wording of the legislation could be used to minimise the systems functions particularly when the functions provide sensitive information to the government.

Recommendations

PDCN recommends that:

- ▶ the Objects of the CAMA be protected;
- ▶ a balance is achieved between individual complaints handling and system monitoring and reform.

ISSUE 2 Principles of CAMA

PDCN believes that the overall principles of CAMA are still relevant

The Principles focus very much on the responsibilities of the service providers rather than CAMA bodies. Additional guidelines are needed to provide guidance for CAMA bodies.

Recommendations

PDCN recommends that additional principles include that:

- ▶ the main consideration of all actions of CAMA bodies must be the best interest of the consumer;
- ▶ CAMA bodies should recognise the difficulties faced by consumers in seeking redress for themselves and operate in a manner that is sensitive to this difficulty;
- ▶ CAMA bodies should consult with consumers to determine their views about proposed decisions, action, reviews etc.

ISSUE 3 Removing Section 5

Section 5 of the CAMA restricts the CSC and the CSAT from making recommendations that are not consistent with government policy and resource allocation.

Whilst this section has not seemed to hinder the CAMA bodies from making recommendations that are required to provide the best interests of consumers, the section has the capacity to unnecessarily restrict the independence intended under CAMA.

Recommendations

PDCN recommends that:

- ▶ Section 5 of the CAMA be removed to safeguard the interests of the person with a disability.

COMMUNITY SERVICES COMMISSION (CSC)

ISSUE 4 Independence of the Community Services Commission

The independence of the CSC and all CAMA bodies is essential for effective scrutiny of the community services system.

Recommendations

PDCN recommends that:

- ▶ the CSC NOT be incorporated under any other body such as the Ombudsman or the proposed Children's Commission;
- ▶ the appointment of the Commissioner must be independent of party politics to ensure the independence of the CAMA bodies.

ISSUE 5 Functions of the CSC

PDCN supports the retention of all current functions undertaken by the CSC.

Recommendations

PDCN recommends that:

- ▶ the CSC maintain its ability to initiate action of its own accord;
- ▶ the systemic role of the CSC is retained and strengthened;
- ▶ any additional functions of the DSA are followed through with complementary additional functions of review and monitoring provided to the CAMA bodies.

ISSUE 6 & 7 Review Function and Power of the CSC

The review power of the CSC must be adequate to provide authority to review all persons who are potentially or thought to be at risk of abuse.

Recommendations

PDCN recommends that the review power could be improved by:

- ▶ removal of provision about minimum time in care prior to review;
- ▶ addressing jurisdictional anomalies;

- ▶ providing clearer powers of follow up after recommendations are made;
- ▶ providing applicants and CSC with the right to appeal to the CSAT for non-compliance of recommendations;
- ▶ provisions requiring regular information from service providers about their progress of implementation of recommendations;
- ▶ extend the CSC review function to groups of people in care.

ISSUE 13 Time Limits

Many reviewable decisions are published in documents inaccessible to people affected by the decision such as the Government Gazette.

Recommendations

PDCN recommends that:

- ▶ the ADT should accept late applications when the decision is not publicised in a manner accessible to people affected by the decision.

ISSUE 15 Enforcement of CSC Recommendations

CSC recommendations must be able to be enforced and a range of mechanisms must be developed to ensure this happens.

Currently in order to enforce CSC recommendations that are not readily implemented by a service provider, the complainant must appeal to the CSAT. The burdensome nature of this appeal may be reduced if the CSC is given the capacity to appeal to the CSAT if its recommendations are not implemented.

Recommendations

PDCN recommends that :

- ▶ the core recommendations of the CSC be made mandatory - service providers must show cause if recommendations are not implemented; and
- ▶ the CSC is given the authority to appeal to the CSAT when mandatory recommendations have not been implemented by a service provider.

ISSUE 16 CSC Jurisdiction

Recommendations

PDCN recommends that the jurisdiction of the CSC should be extended to include all people with disabilities who:

- ▶ live in licensed boarding houses;

- ▶ are in contact with the criminal justice system;
- ▶ are in contact with juvenile justice system.

In addition a review team must be established to monitor and investigate all deaths of **all** people with disability in care.

ISSUE 17 Powers of the Commissioner

PDCN supports the retention of all powers currently provided to the Commissioner.

However:

- ▶ the Commissioner does lack some of the powers provided under the *Health Care Complaints Act*;
- ▶ there is some inconsistency to the powers provided for the different functions of CSC;
- ▶ the power to account for the new disability death review function needs to be provided.

Recommendations

PDCN recommends that:

- ▶ the powers of the Commissioner are in line with the *Health Care Complaints Act*;
- ▶ consistently broad powers is provided for all functions of the CSC; and
- ▶ the power to undertake disability death review function is included.

COMMUNITY VISITORS

The Community Visitor scheme provides an important monitoring mechanism but their effectiveness is severely constrained by a lack of resources.

ISSUE 19 Appointment of Community Visitors

Community visitors are appointed by the CSC in conjunction and with the approval of the Minister. The need for Ministerial approval opens the possibility for party politics.

Recommendations

PDCN recommends that

- ▶ a Joint Parliamentary Committee is appointed to oversee the operation of the CAMA bodies including the Community Visitor scheme.

ISSUE 20 Functions of Community Visitors

The functions of community visitors are not outlined in the legislation.

Recommendations

PDCN recommends that:

- ▶ the functions of the Community Visitors be included into the legislation in order to clarify their role and avoid confusion.

ISSUE 21 Jurisdiction of Community Visitors

Recommendations

PDCN recommends that:

- ▶ provisions in the CAMA allow broad jurisdiction for the Community Visitors scheme with the fundamental criteria relating to vulnerability, lack of choice and dependency of the consumer;
- ▶ people with disabilities who have the least capacity to complain be covered by the Community Visitor scheme.

ISSUE 22 Powers of Community Visitors

Overall the powers provided to Community Visitors are sufficient.

Recommendations

To strengthen the capacity of the Community Visitors is to undertake its work PDCN recommends that the Visitors have the power to:

- ▶ follow a person or child in care from a visitable service to other places; and
- ▶ to deliberate alone with that person.

COMMUNITY SERVICES APPEALS TRIBUNAL (CSAT)

ISSUE 23 Independence of the CSAT

Recommendations

PDCN recommends that:

- ▶ the independence of the CSAT must be protected and strengthened if it is to provide an effective monitoring and reviewing function.

ISSUE 25 & 26 Reviewable Decisions

The issues paper highlights the inconsistent and unclear nature of the CSAT's jurisdiction and there must be consistency in relation to reviewable decisions.

Recommendations

PDCN recommends that:

- ▶ significant recommendations made by the CSC whereby service providers must show cause as to why the recommendations have not been implemented;
- ▶ the CSC must be given the right to appeal, as well as a complainant, if a service does not implement the recommendations of the CSC;
- ▶ breaches of the principles and applications in which a person is perceived to be in imminent harm must be able to be dealt with immediately and effectively.

ADMINISTRATIVE DECISIONS TRIBUNAL (ADT)

An independent mechanism for the review of administrative decisions is crucial for safeguarding the rights of people with disabilities.

ISSUE 24 Qualifications of Members of CS Division of ADT

Recommendations

PDCN recommends that:

- ▶ appointment to the Community Services Division of the ADT must include knowledge of and experience in disability issues as a criteria for membership;
- ▶ the Act clearly outline what the qualifications necessary are.

ISSUE 27 ADT Review of Non-Government Agencies

Recommendations

PDCN recommends that:

- ▶ decisions of non government agencies are subject to review by the ADT.

ISSUE 28 Standing

Recommendations

PDCN recommends that

- ▶ a broad definition of standing is adopted in which "a genuine concern" can be understood in terms of the best interest of people with disabilities and the public interest nature of the issue;
- ▶ advocacy groups must have the ability to have standing in all matters concerning people with disabilities before the ADT to enable the Tribunal to examine the broader issues that may arise from a decision.

ISSUE 30 The Right to be Heard

Recommendations

PDCN recommends that:

- ▶ children and people with disability who have a reduced capacity to express their own views about what they would like, have an advocate appointed;
- ▶ proceedings are as informal as possible and discussed without legal representation.

ISSUE 31 Enforcement of Decisions

Recommendations

PDCN recommends that:

- ▶ all end of line decisions by the CSC must be appealable to the Community Services Division of the ADT;
- ▶ sanctions for non-compliance of Tribunal decisions such as naming in Parliament, reauspice of a service, compulsory mentoring and monitoring.

ISSUE 33 Community Services Review Council (CSRC)

Whilst PDCN supports the use of an oversight body with expertise in the community services area, problems with the constitution and operation of the Review Council have constrained its effectiveness.

Recommendations

PDCN recommends that

- ▶ a Joint Parliamentary Committee oversee the operation of the CSC which would also advise the Parliament about the operational effectiveness of the CAMA system;
- ▶ the Joint Parliamentary Committee be complemented by an Expert Advisory Committee comprising of people with expertise in disability service delivery in disability, child protection and substitute care and should also include consumer representatives from these areas.

CONCLUSION

In summary PDCN makes this submission on behalf of its members. PDCN is of the view that the following must occur in order to continue safeguarding the rights of people with physical disabilities:

- ▶ the Objects, Principles and Applications of Principles of the DSA and CAMA be protected and strengthened;

- ▶ the focus of the legislation to remain with the person with a disability;
- ▶ better provisions to ensure **ALL** funded services comply with the principles and applications of principles and for sanctions to be imposed on those services which do not comply;
- ▶ DSA Section 9 plans be made **MANDATORY** for all government agencies including a requirement that an annual audit be conducted by the Auditor General's Department together with the Community Services Commission to ensure their appropriateness and implementation;
- ▶ the link between the DSA and CAMA to be maintained;
- ▶ the independence of CAMA bodies such as the Community Services Commission and the Community Services Appeals Tribunal be strengthened.

LIST OF RECOMMENDATIONS

DSA

Issue 1. PDCN recommends that the objects of the DSA:

- ▶ include the needs of children with a disability into the objects which could be expanded in the Principles and Applications of Principles because there is no specific provision for children anywhere in the DSA;
- ▶ replace the word 'integration' with 'participation' because it is more appropriate and consistent with the notions of citizenship.

Issue 3. PDCN recommends that:

- ▶ the 'target group' of the DSA is consistent with the definition of disability used in Section 4 of the Commonwealth *Disability Discrimination Act 1992* (DDA).

Issue 4. PDCN recommends that:

- ▶ licensing conditions must be improved for boarding houses;
- ▶ boarding houses be brought under the DSA and required to comply with the standards;
- ▶ boarding houses provide a level of accommodation which allows people with disabilities to live with dignity;
- ▶ better standards of accommodation must be provided for people with disabilities.

Issue 5. PDCN recommends that provision made in the DSA about children include:

- ▶ that children are children first but are also 'people';
- ▶ children should grow up in a family unit or in a family-like environment;
- ▶ children with disabilities must have the same protection as other children;
- ▶ the role of parents and guardians; and
- ▶ the role of advocates.

Issue 8. PDCN recommends that:

- ▶ HACC services be covered by the DSA and CAMA.

Issue 9. PDCN recommends that the links between both Acts could be strengthened by:

- ▶ maximising requirements for reasons to be given for decisions by service providers;
- ▶ consistent jurisdiction of the CAMA bodies, allowing the DSA and CAMA to interrelate as a more comprehensive administrative review framework;

- ▶ making formal recommendations from the CSC appealable to the Community Services division of the Administrative Decisions Tribunal (ADT) for non compliance;
- ▶ providing for a direct appeal to the CS division of the ADT for breaches of the Principles and Applications where an individual is in a situation of harm or imminent harm;
- ▶ providing a role for CAMA bodies in monitoring section 9 plans.

This could be provided by:

- ▶ giving the CAMA bodies jurisdiction to handle complaints against the Minister's approval of the plan; and
- ▶ making a failure by the Minister to implement the recommendations of the CSC appealable to the CS Division of the ADT.

Issue 11. PDCN recommends that:

- ▶ it would be preferable to leave the principles of the DSA as they are rather than make changes that might work to the detriment of people with disabilities.

Issue 12. PDCN recommends that:

- ▶ increased focus be given to individualised service plans within the application of principles;
- ▶ the addition of an application supporting the right of children with disabilities to grow up in their family or in family-like environments where both the child and the family receive all necessary support;
- ▶ the application of principles should clearly state that support persons or advocates be funded for people with disabilities including children;
- ▶ there is ongoing training for public authority staff on the needs for people with disabilities;
- ▶ objective measurements of the principles and application of principles be developed;
- ▶ less emphasis be put on written policies and procedures and more on the principles being implemented in the service;
- ▶ a way of enforcing the Principles be established that challenges services not meeting them;
- ▶ a closer relationship between the principles and applications and service providers be established via monitoring mechanisms such as expansion of community visitors scheme.

Issue 14. PDCN recommends that:

- ▶ funding contracts should relate to principles and applications rather than standards;
- ▶ provisions are needed which specifically provide for a quality assurance process and set out the principles that should govern it;
- ▶ expand the CAMA to specifically review the implementation of the principles and applications by public authorities;
- ▶ statements from the Law Reform Commission in the findings of the review that the government has a responsibility to ensure that all its services comply with the legislation, with a 5 year time frame for conformity as a minimum.

Issue 15. PDCN recommends that these supports include:

- ▶ readily obtainable information about the packages;
- ▶ orientation and training for the individual and the service provider about how the packages will be implemented;
- ▶ a system of brokerage to help people with disabilities put together a package of services and to provide assistance with the complexities of service provision;
- ▶ development of an administrative and management structure to deal with the packages.

It is also necessary to have safeguards to protect people with disabilities using the packages:

- ▶ any amount for individual funding packages should be paid into an independent account and not be classed as taxable income;
- ▶ appropriate monitoring mechanisms be put in place to review the allocation and purchasing of services for people with disabilities;
- ▶ safeguards to ensure that people with disabilities do not have their funding exploited by those in positions of power.

Issue 16. PDCN recommends that:

- ▶ Section 9 is strengthened;
- ▶ this Section should make public authorities more accountable by providing for mechanisms of review and by providing for sanctions;
- ▶ staff training, support and advice be given on how to develop productive plans that 'encourage the provision of services by that authority in a manner that furthers the principles and applications of principles ;
- ▶ an independent review mechanism on action plans should be implemented linking Section 9 of the DSA with expansion of the role of conciliators under the CAMA;

- ▶ plans should be incorporated into the performance agreements of the CEO with the support of that department's relevant Minister. The Minister could then engage the Auditor General to conduct a review of the CEO's performance on Section 9 plans;
- ▶ local governments should become a 'public authority' under the Act;
- ▶ an accreditation system should be established that requires public authorities to clearly demonstrate quality outcome measures based on the needs of people with disabilities;
- ▶ the requirement to prepare a plan should extend beyond government authorities to include organisations that occupy Crown land or receive State or local government assistance.

Issue 17. PDCN recommends that:

- ▶ the right to access advocacy must be guaranteed;
- ▶ the role of advocacy must be recognised and strengthened;
- ▶ advocacy must be recognised in a separate section of the Act to ensure it is distinguished from disability service provision, community visitors or complaints handling;
- ▶ where an individual is in dispute with a service provider, an independent advocate be assigned to them.

Issue 19. PDCN recommends that the DSA provide for:

- ▶ varying the terms or conditions of funding;
- ▶ the appointment of an administrator;
- ▶ stopping a service from admitting more clients;
- ▶ naming a service in Parliament;
- ▶ more frequent monitoring.

CAMA

Issue 1. PDCN recommends that:

- ▶ the Objects of the CAMA be protected;
- ▶ a balance is achieved between individual complaints handling and system monitoring and reform.

Issue 2. PDCN recommends that additional principles include that:

- ▶ the main consideration of all actions of CAMA bodies must be the best interest of the consumer;
- ▶ CAMA bodies should recognise the difficulties faced by consumers in seeking redress for themselves and operate in a manner that is sensitive to this difficulty;

- ▶ CAMA bodies should consult with consumers to determine their views about proposed decisions, action, reviews etc.

Issue 3. PDCN recommends that:

- ▶ Section 5 of the CAMA be removed to safeguard the interests of the person with a disability.

Issue 4. PDCN recommends that:

- ▶ the CSC NOT be incorporated under any other body such as the Ombudsman or the proposed Children's Commission;
- ▶ the appointment of the Commissioner must be independent of party politics to ensure the independence of the CAMA bodies.

Issue 5. PDCN recommends that:

- ▶ the CSC maintain its ability to initiate action of its own accord;
- ▶ the systemic role of the CSC is retained and strengthened;
- ▶ any additional functions of the DSA are followed through with complementary additional functions of review and monitoring provided to the CAMA bodies.

Issue 6 & 7. PDCN recommends that the review power could be improved by:

- ▶ removal of provision about minimum time in care prior to review;
- ▶ addressing jurisdictional anomalies;
- ▶ providing clearer powers of follow up after recommendations are made;
- ▶ providing applicants and CSC with the right to appeal to the CSAT for non-compliance of recommendations;
- ▶ provisions requiring regular information from service providers about their progress of implementation of recommendations;
- ▶ extend the CSC review function to groups of people in care.

Issue 13. PDCN recommends that:

- ▶ the ADT should accept late applications when the decision is not publicised in a manner accessible to people affected by the decision.

Issue 15. PDCN recommends that:

- ▶ the core recommendations of the CSC be made mandatory - service providers must show cause if recommendations are not implemented; and
- ▶ the CSC is given the authority to appeal to the CSAT when mandatory recommendations have not been implemented by a service provider.

Issue 16. PDCN recommends that the jurisdiction of the CSC should be extended to include all people with disabilities who:

- ▶ live in licensed boarding houses;
- ▶ are in contact with the criminal justice system;
- ▶ are in contact with juvenile justice system.

In addition a review team must be established to monitor and investigate all deaths of **all** people with disability in care.

Issue 17. PDCN recommends that:

- ▶ the powers of the Commissioner are in line with the *Health Care Complaints Act*;
- ▶ consistently broad powers is provided for all functions of the CSC; and
- ▶ the power to undertake disability death review function is included.

Issue 19. PDCN recommends that

- ▶ a Joint Parliamentary Committee is appointed to oversee the operation of the CAMA bodies including the Community Visitor scheme.

Issue 20. PDCN recommends that:

- ▶ the functions of the Community Visitors be included into the legislation in order to clarify their role and avoid confusion.

Issue 21. PDCN recommends that:

- ▶ provisions in the CAMA allow broad jurisdiction for the Community Visitors scheme with the fundamental criteria relating to vulnerability, lack of choice and dependency of the consumer;
- ▶ people with disabilities who have the least capacity to complain be covered by the Community Visitor scheme.

Issue 22. PDCN recommends that the Visitors have the power to:

- ▶ follow a person or child in care from a visitable service to other places; and
- ▶ to deliberate alone with that person.

Issue 23. PDCN recommends that:

- ▶ the independence of the CSAT must be protected and strengthened if it is to provide an effective monitoring and reviewing function.

Issue 25 & 26. PDCN recommends that:

- ▶ significant recommendations made by the CSC whereby service providers must show cause as to why the recommendations have not been implemented;

- ▶ the CSC must be given the right to appeal, as well as a complainant, if a service does not implement the recommendations of the CSC;
- ▶ breaches of the principles and applications in which a person is perceived to be in imminent harm must be able to be dealt with immediately and effectively.

Issue 24. PDCN recommends that:

- ▶ appointment to the Community Services Division of the ADT must include knowledge of and experience in disability issues as a criteria for membership;
- ▶ the Act clearly outline what the qualifications necessary are.

Issue 27. PDCN recommends that:

- ▶ decisions of non government agencies are subject to review by the ADT.

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- ▶ proceedings are as informal as possible and discussed without legal representation.

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Issue 33. PDCN recommends that:

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- ▶ the Joint Parliamentary Committee be complemented by an Expert Advisory Committee comprising of people with expertise in disability service delivery in disability, child protection and substitute care and should also include consumer representatives from these areas.