

**SUBMISSION TO THE SENATE COMMUNITY AFFAIRS
LEGISLATION COMMITTEE BY THE DEPARTMENT OF
FAMILY AND COMMUNITY SERVICES**

**CERTAIN ISSUES ARISING FROM
THE DISABILITY SERVICES AMENDMENT (IMPROVED
QUALITY ASSURANCE BILL) 2001**

The Quality Assurance Initiative

1. This Bill provides the legislative framework for a new quality system for disability and rehabilitation services.

Background

2. The Commonwealth helps people with disabilities to find and maintain employment either through the Department of Employment, Workplace Relations and Small Business programs or employment assistance programs funded by the Department of Family and Community Services (FaCS). FaCS' programs typically provide employment support for people with more severe disabilities through either open or supported employment services. These services are mainly charitable, non-profit agencies that are contracted by FaCS to provide employment support. Many agencies are likely to be funded from a number of sources.

3. FaCS funds 435 organisations to provide more than 870 specialist employment services, which are used by 49,285 people with disabilities. \$279 million was allocated to these programs in 2000-2001. FaCS also provides vocational rehabilitation through 160 CRS Australia outlets at a cost of \$101.9 million (2000-2001). The new quality strategy will be applied to both vocational rehabilitation and FaCS funded disability employment assistance programs.

4. These disability employment and rehabilitation providers are funded under the *Disability Services Act*, which was introduced in 1986. This legislation marked a turning point in the Commonwealth's legislative regulation of services for people with a disability. The Act was a result of a review of the *Handicapped Persons Assistance Act 1974* which concluded that although people with disabilities wanted to participate in community and economic life, they were often prevented from doing so by prevailing attitudes amongst service providers and sectors of the broader community.

5. The *Disability Services Act 1986* came into operation in 1987. It provided all the then funded services with five years to meet the higher standard of service embodied in the objects, and the principles and objectives of the *Disability Services Act*. This five-year period ended on 30 June 1992.

6. Although significant achievements had been made, it became clear that for many services this five-year period was not long enough to deal with the complexity of change required. In 1992 the *Disability Services Act 1986* was amended to remove the sunset clause.

The Current System

7. In March 1993, the then Government adopted the Disability Services Standards that were developed in consultation with service providers and consumer bodies, unions and State/Territory Governments. They set out eleven areas of service quality that consumers are entitled to expect. They cover:

- Service access
- Individual needs
- Decision making and choice
- Privacy, dignity and confidentiality
- Participation and integration
- Valued status
- Complaints & disputes
- Service management
- Employment conditions
- Employment support
- Employment skills & development

8. In 1993 the Disability Services Standards (the Standards) were introduced with a plan to move services through a three tiered process of service improvement to fully meet the Standards.

9. This process of change has met with limited success – many of the supported employment services (many of which are the traditional sheltered workshops) have not made the expected improvements to meet the highest level of Standards. Currently, 341 services (39% of funded services) meet the Disability Services Standards at the minimum level.

How the Current System Works

10. Current monitoring of service quality against the Disability Services Standards is required under section 14K of the Disability Services Act, and involves the measurement of service performance against 11 Disability Services Standards and 101 supporting Standards with examples of good practice. An annual self-assessment process is undertaken by each service, in consultation with its consumers, and is lodged for scrutiny by FaCS. The Department also conducts an audit of each service at least every five years, to verify compliance against the Standards. The Government funds a Consumer Training and Support Program to provide independent training and support for consumers in this process.

Findings of Review of the Current System

11. This new quality assurance system will address concerns raised by a review of the current system conducted by representatives of the disability sector - *Assuring Quality by the Disability Standards Review and Quality Assurance Working Party (April 1997)*. The review concluded that 'there is no formal accreditation system which provides assurance of service quality for consumers or for the government as the purchaser'. Other major concerns were that the current system provided poor measures of quality, little incentive for improvement and an ad hoc complaints and referral system.

Building the Proposed Quality Assurance System

12. A comprehensive quality assurance strategy has been developed and trialed in close consultation with the disability sector as reflected in the following policy development process.

13. In May 1996, the Government announced its intention to restructure disability employment assistance programs to develop a service system committed to quality outcomes, individual need, consumer choice and integrated service. Development of a new quality assurance system was a key element of this reform agenda.

14. In November 1996, the Disability Standards Review and Quality Assurance Working Party (Working Party) was established to:

- assess the continuing suitability of the Standards as the basis for the new quality assurance system; and
- recommend a quality assurance system that would ensure improve service delivery for people with a disability seeking employment assistance funded by the Commonwealth.

15. This Working Party is a sub-committee of the National Disability Advisory Council (NDAC), chaired by Mr Ian Spicer (also Chair of NDAC) and includes representatives from the key stakeholders from the disability sector including consumers represented by the National Caucus of Disability Consumer Organisations (Caucus), services providers and State/Territory Governments.

16. In April 1997, the Working Party released its report *Assuring Quality*. In this report the Working Party agreed that the existing Standards should largely be retained to provide the core values for the new quality assurance system. Changes include the amalgamation of two existing Standards, the addition of two new Standards and some minor wording changes. Working Party deliberations were informed by an independent study of the disability sector's views on the overall effectiveness of the Standards (*Evaluation of The Barriers to the Implementation of the Disability Services Standards Project, 1997*).

17. The Working Party recommended the following objectives for a quality assurance system, which were subsequently approved by the then Minister for Family and Community Services:

- to provide people with disabilities with an improved level of confidence in the quality of service delivery;
- to treat all service providers equally;
- to make assessment of quality more objective and measurable;
- to link quality assurance to funding through an accreditation process; and
- to reduce government intervention in the day to day operation of services.

Consultative Approach to Development

18. In June 1999, the Working Party was reconvened under revised Terms of Reference that gave the Department of Family and Community Services a stronger role in managing the policy development process – the Working Party in effect became a Reference Group. Since this time the Working Party has met twelve times to develop the quality assurance system in detail. These all-day, Working Party meetings have provided a very fair and transparent mechanism for the views of the various stakeholders to be fully considered.

19. Over an eleven-month period the Working Party, in consultation with the Department, developed a detailed model of the quality assurance system. They agreed to a quality assurance system based on a system of accreditation/certification that is well-established in Australian industry and utilises international standards of best practice. It involves the use of skilled audit teams whose competence and impartiality will be monitored by an independent, internationally recognised accreditation agency, JAS-ANZ. The Australian and New Zealand Governments established JAS-ANZ to ensure that the certification agencies responsible for providing independent audit teams are competent and impartial. Each audit team is to include a person with a disability that will bring to the process critical insights into consumer experience – this is a world first.

20. In April 2000 the Department of Family and Community Services held a national round of consultations with the disability sector regarding the proposed quality assurance system.

Trial of the Proposed System

21. Between July 2000 to January 2001, a trial of the proposed quality assurance system was conducted with twenty-one disability employment services across Australia. These services provided a representative mix of open and supported employment services and consumers with different disabilities in a range of locations.

22. In January 2001, an independent evaluation of the trial concluded that the system could provide “a robust and credible system for measuring the extent to which disability employment services comply with the Disability Services Standards.” While the evaluation recommended the use of the quality assurance system it pointed to a number of refinements that have since been adopted. The evaluation report is at Attachment A.

Further Consultation

23. During April/May 2001 a second round of national consultations were held with the disability sector about the quality assurance system and the results of the evaluation. These national consultations indicated widespread support for the introduction of the proposed quality assurance system. Separate and targeted national consultations were also held with consumers. These indicated strong consumer support for the new quality assurance system. The reports of the national public and consumer consultations are at Attachment B.

24. In the 2001-02 Budget the Government committed more than \$17 million over four financial years to fund the new system from 1 January 2002. This commitment includes funding for reasonable certification costs, the development of an independent complaint resolution and referral service, a continuous improvement program and training for people with disabilities on the audit team.

25. A post implementation review of the new quality assurance system (including key performance indicators) is planned for 12-18 months after implementation of the system. This reflects a continuing commitment to refining and developing the quality assurance system in light of feedback from the disability sector and operational experience.

Support for the System

Working Party

26. The Working Party has worked closely to develop the quality assurance system. All Working Party members have agreed to the:

- establishment of a quality assurance system;
- revised Disability Services Standards;
- quality assurance system based around an accreditation model;
- use of JAS-ANZ as the accreditation agency;
- criteria that will be used by JAS-ANZ to assess the certification bodies;
- use of a person with a disability on the audit team to ensuring that the consumers' experiences and views are fully considered by the audit team;
- training and support requirements for consumers in the system; and
- most of the Key Performance Indicators.

27. The only remaining areas of contention relate to the Key Performance Indicators – particularly the Key Performance Indicator for Disability Services Standard 9 (Employment Conditions). Specification of the Key Performance Indicators is not part of the proposed legislation; this will occur later through a Ministerial determination under the legislation.

Disability Employment Services

28. The two national rounds of consultations on quality assurance system indicated broad support for the new quality assurance system by service providers. The main

areas of concern were the need for information and support and the payment for the system. The Government has agreed to pay for reasonable certification costs during the three-year phase-in period. The Department will also provide information and support through a range of strategies.

29. Feedback from disability employment services involved in the trial of the quality assurance system indicated that, whilst it will be challenging for the industry, this initiative represented a significant advance for service quality and consumer outcomes.

Consumers

30. The Department of Family and Community Services contracted Caucus to undertake the first round of national consumer consultations that were held in April 2000. Experienced facilitators in each State and Territory conducted the second round of national consultations during April-May 2001 (selected in consultation with NCID).

31. Feedback from these consultations was very positive, with consumers expressing strong support for the new system and a belief that it would result in better services. Consumers appreciated their high level of involvement in the certification process.

32. Some of the issues raised during the consultations concerned information and support for consumers during the audit process. Consumers strongly supported award wages, staff qualifications and training receiving greater attention and the development of an independent complaint mechanism. Comments made by consumers reflected frustration with delays in implementing reforms over the past decade and more.

Safeguarding the Basic Employment Rights of People for Disabilities

33. This system provides a significant advance in safeguarding the employment rights of people with disabilities. If the legislation is passed, it will tie Government funding to service quality following a three-year phase-in period. Certification of service providers will be based on an independent internationally recognised assessment of quality against the Disability Services Standards, including a Standard specifically dedicated to employment wages and conditions. There will be established independent appeal mechanisms to review certification decisions.

34. This system is designed to encourage services to not only safeguard the basic employment rights of people with disabilities but also look for opportunities and strategies for improving the quality services through a range of best practice initiatives and information sharing across the sector.

Concerns with the Quality of the Draft Key Performance Indicators

35. The Working Party members, independent consultants and the Department have been developing, trialing and refining the Key Performance Indicators for over two years involving sixteen all-day meetings. Four of these meetings were held specifically to discuss the key performance indicators.

36. The six-month trial that was completed in December 2000 provided important feedback to the Working Party members on the measurability of the Key Performance Indicators. It was agreed that an assessment framework should be developed around each of the Standards to ensure consistency of measurement. The assessment framework includes a policy context for each of the Standards, the Key Performance Indicators, evidence questions and sources of evidence. This framework has been designed to ensure that auditors seek appropriate outcome based evidence of the services' performance against each of the Standards.

37. While agreement has been reached on most of the Key Performance Indicators, the Key Performance Indicator for Standard 9 remains the most contentious. A Working Party meeting was convened on 7 June 2001 to discuss all outstanding issues including performance indicators for Standard 9. Caucus instructed their members not to attend this meeting and instead sought an urgent meeting with the Minister's Office to present their views directly on a number of issues including the Key Performance Indicator for Standard 9.

38. Caucus wanted the Key Performance Indicator for Standard 9 to stipulate that the Supported Wage System (SWS) is the only mechanism that disability employment services can use to determine pro rata wages for people with disabilities not able to work at full productivity.

39. The Supported Wage System allows for people with a disability in open employment settings, to receive a pro-rata award-based wage, where their productivity is less than 100 per cent. There are currently only around 2 000 people accessing this system across Australia, and on average, each wage determination takes approximately 3 to 6 months to achieve. A recent independent evaluation of the SWS found that the system did not suit all disability types and required administrative streamlining.

40. At the 7 June 2001 meeting, all Working Party members present agreed that the policy context for this Standard should stipulate that 'real wages' are to be paid to people with disabilities and that all disability employment support services should identify wages as part of their operating costs like any other business.

41. Working Party members agreed that disability employment services could not use incapacity to pay as an excuse not to pay wages.

42. Working Party members also agreed that the performance indicator for Standard 9 would require services to assess pro-rata wages using a transparent assessment tool that met a number of specific 'good practice' criteria.

43. Stipulating the SWS as the only assessment tool was discussed at length at this meeting. It was agreed that this action would be premature. All agreed that the appropriateness of the SWS for support employment services needs to be fully assessed in the context of developing a single assessment tool that could be used for both open and supported employment services. The disability sector and other relevant stakeholders would need to be consulted about the proposed changes before implementation.

44. Furthermore, sole use of the SWS would likely require a considerable Government resource injection and a detailed justification and costing would need to be presented to Government for consideration in the Budget context. There are also logistical issues in extending the SWS from its current 2,000 people to nearly 70,000 people in FaCS-funded disability employment services in coming years.

45. There is a commitment that the Key Performance Indicators once approved would be reviewed periodically to ensure that they remain relevant and meaningful. The revised Disability Services Standards and draft Key Performance Indicators recommended by the majority of the Working Party members have yet to be formally approved by the Minister for Family and Community Services (Attachment C).

Wages and working conditions for people with disabilities

Background

46. People with a disability who are eligible for, or in receipt of Disability Support Pension, are not under any obligation to work. The majority of people in supported services have chosen to work there or would be unable to work in an open employment setting due to the severity of their disability. The *Disability Services Act 1986* states that supported employment services offer “paid employment” but does not define paid employment. The funding agreement between the Department of Family and Community Services and supported employment services specifies the payment of a “wage” that is also undefined.

47. Under the Disability Services Standards, formulated under section 9C of the *Disability Services Act 1986* services funded under section 13 are only required to meet minimum standard 9.1. This states that the service must ensure “*that each employee with a disability has the same rights, protections and responsibilities as other people in the workforce*”. Services funded under section 10 of the *Disability Services Act 1986* are required to pay award wage rates or pro-rata award wage rates determined through an independent industrial relations process. There are few section 10 supported employment services, and the *Disability Services Act 1986* does not mandate use of the Supported Wage System.

Industrial relations issues

48. The payment of wages to people with a disability in supported employment services involves a complicated and complex set of funding and industrial arrangements across jurisdictions. Several States retain legislation that recognises that supported employment services and people with a disability can be excluded from the industrial relations arena and exempt from award provisions. The *Workplace Relations Act 1996* (the WR Act) does not allow for people with an intellectual disability to have an advocate enter non-union enterprise agreements on their behalf. In addition, the WR Act allows for a person with a disability to enter into an Australian Workplace Agreement, but not to change or terminate one.

49. The Australian Industrial Relations Commission has a role in ratifying enterprise agreements. Some agreements that do not pay award wages have been ratified; others

have been rejected because the person with an intellectual disability could not be determined to have given informed consent.

50. The proposed quality assurance system supports the payment of real wages assessed using a transparent assessment tool, with no possibility of adjusting wages because a service claims they cannot afford the appropriate wage levels.

A single wage assessment tool for both open and supported employment services

51. A tool that can appropriately assess the productivity and work contribution of a person in supported employment, has not yet been devised or thoroughly tested.

52. The Supported Wage System was implemented with tripartite agreement (Government, unions and employers) as a system for people with a disability in open employment in 1994. People in open employment can have their productivity compared to another worker who is working at full productivity to determine the level of wage to be paid, that is a person with a disability, who is 70% productive receives 70% of the award wage. It was decided at this time to exclude section 13 supported employment services from the Supported Wage System.

53. In supported employment, the benchmark of a fully productive worker is harder to achieve. Services generally structure work so that the elements of work positions are broken down to accommodate the severe disabilities of the workers. In many cases complex equipment that could be used to speed up productivity and make a business more viable has to be discarded in favour of simple equipment operated by people with particular disabilities. Thus, the use of the Supported Wage Assessment Tool as it currently stands is not entirely appropriate for assessment of wages in a supported employment setting.

54. Currently supported employment services are using a range of wage assessment mechanisms to determine wage levels for their employees with disabilities. Research commissioned by the Department indicates that some of these tools are better than others and result in differing wage outcomes for people with disabilities. This research compared the Supported Wage Assessment Tool to other tools being used. The research found that, although there were elements of good practice in many tools, including the Supported Wage Assessment Tool, there was no single tool, currently available that meets the unique circumstances of supported employment services.

55. There is some support for the development of an assessment tool, based on the Supported Wage Assessment Tool, that could be used in both open and supported environments for all people with a disability.

Quality Assurance Working Party position on use of the Supported Wage System in supported employment

56. Given the above, the Quality Assurance Working Party was unable to fully support the sole use of the Supported Wage System at this time. The key performance indicator for 9.1 provides the direction that services will need to be paying award-based wages or equivalent to be funded under the new quality assurance system. The proposed changes are a significant improvement over the current wage obligations of

service providers currently funded under sections 12A and 13 of the *Disability Services Act 1986*.

57. However, NCID have indicated that they will only accept the specification of the Supported Wage System as the only tool for all employment services. We do not believe this is soundly based on all the existing evidence around the known benefits and deficiencies of the SWS, and the practical constraints also applying at this time.

Risks of not proceeding

58. There are very high risks around not proceeding with the proposed quality assurance system, including disenchantment among the disability sector. Extensive national consultation with the disability sector over a long period of time, has developed momentum supporting the proposed quality assurance system as indicated earlier. There is broad support for the changes that are expected to improve service quality and outcomes for people with disabilities.

59. The introduction of this quality assurance system is critical to further funding reform in the sector.

60. There is public expectation that these changes will be introduced from 1 January 2002 subject to the successful passage of legislation.

Conclusion

61. If the legislation is not passed now, an opportunity to reform the disability sector will have been missed and there is great likelihood that the wages and conditions for people with a disability in employment, including the many with an intellectual disability, will remain unchanged for some considerable time.