

ACROD's submission to the Senate Community Affairs Legislation Committee

in relation to the Disability Services Amendment (Improved Quality Assurance) Bill 2001

September 2001

ACROD is the peak industry association for disability services, with a membership covering 560 organisations, including around 70 per cent of Commonwealth-funded disability employment services.

The Disability Services Quality Assurance system to which this Bill would give effect will place substantial new demands on many service providers. ACROD is concerned about the impact of these new demands on service organisations that are already struggling to survive. However, because we believe that the new system would mark a significant step forward in ensuring the provision of quality employment services to Australians with disabilities, ACROD supports the Bill.

ACROD believes that the key to continued progress in disability employment services lies in ensuring that people with disabilities seeking employment are provided with high quality choices and expanded opportunities. The QA system as proposed will contribute to that goal. If the proposed system is altered in a way that increases the cost or administrative burden on services or if the legislative backing needed to implement the currently proposed system is further delayed, people with disabilities will be the losers.

The proposed system reflects a long process of consultation and development.

The proposed QA system has been long in gestation. Its development has involved extensive discussions over several years within the Disability Quality and Standards Working Group, which represents the disability sector. The system was successfully trialed last year; and it was the subject of public

consultations earlier this year. The proposed system has the majority support of the Working Group.

Were any significant changes to the Bill, the Standards or the KPIs to be considered at this stage, another process of potentially lengthy negotiation with the sector would be required.

The proposed system will protect the rights of people with disabilities and punish non-compliance

The proposed QA system is both robust and independent. It will protect the rights of employees with disabilities.

The certification agencies will be independent of both service providers and Government. They must themselves be accredited by JAS – ANZ, an internationally recognised non-profit accrediting authority.

Each audit team must include a person with a disability, either as a lead auditor or a technical expert, ensuring that the perspectives and insights of consumers are integral to the auditing process.

Disability Services Standard 7 requires service organisations to have an internal consumer complaints policy and procedure. In addition, an independent complaints process open to consumers will be developed by July 2002. As a further protection, JAS – ANZ has its own complaints process that allows for any decision in relation to certification or the auditing process to be reviewed.

The proposed system entails increased accountability. Services will be required to undergo a full audit every three years and annual surveillance audits for the other two years. At present, Departmental audits are conducted every five years and self-assessments annually.

After the implementation phase, organisations that do not meet the 12 Disability Service Standards will not receive Commonwealth Government funding. This is a very substantial penalty for non-compliance.

Notably, by disallowing the use of ‘incapacity to pay’ as a reason for paying low wages, KPI 9.1 imposes a condition that is tougher than the Workplace Relations Act, which in exceptional circumstances allows exemption from the ‘no disadvantage’ clause.

A three-year phase-in period is the minimum required.

The Bill stipulates a three-year implementation period for the new system (ending 1 January 2005) by which time all Commonwealth-funded disability employment services will be required to comply fully. This timeframe could not reasonably be reduced.

Meeting all of the Service Standards within this time will pose major challenges for many service providers, particularly smaller services and those in rural and remote areas - where management teams are small and resources are stretched. Imposing a shorter timeframe would force the closure of many services. The victims of such closures – particularly in rural areas where alternative services are few, if they exist at all – would be people with disabilities who wish to work.

Services which face viability problems require assistance, not closure

It is true that there currently exist Business Services that face significant viability problems and (as a consequence) pay only very low wages to their supported employees. The question is what to do about such services.

ACROD and the Commonwealth Department of Family and Community Services have jointly initiated an extensive and ambitious strategy to tackle this problem. This strategy, based on the findings of a major review of Business Services by KPMG, is designed to improve the financial viability of supported employment organisations, to introduce a process of continuous improvement into these organisations and to ensure that they provide high quality services, including good employment conditions.

In its implications for Business Services, the proposed QA system cannot be considered in isolation from this ambitious reform program, which involves 52 recommendations (from the Final Report of the Business Services Review – *A Viable Future*) to be implemented over the next three years – a timeframe consistent with the phasing in of the proposed QA system.

The Business Services Review recognises the viability problems facing many in the industry (it found that almost one in two Business Service organisations do not break even). Its approach differs from the critics of the industry in recognising that Business Services are a legitimate and valuable employment option for people with disabilities which need assistance to expand their capacity to provide good working conditions. *A Viable Future* says that “for Business Services to meet their employment obligations it is recognised that they are required to secure a level of revenue generation that enables them to maintain their employment base and provide appropriate employment conditions for their employees.” (Recommendation 6)

A Viable Future proposes a wide-ranging strategy to assist the industry to address its problems and to progress. A high-level group, chaired by Nobby Clark and including sector representatives, has been established to oversee the implementation of this strategy. ACROD, with the assistance of FaCS, has employed a senior officer specifically to assist Business Services with the challenges ahead.

The alternative to this strategy, which the industry’s critics seem to be proposing, is to insist that all Business Services pay higher wages without first

addressing their financial problems. The result would be to force services with viability problems to the wall. This would not be in the best interests of the people who rely on these services for employment and the social interaction, dignity, structure and support that employment brings.

The solution to the inadequate employment conditions provided by some Business Services is to set high standards and then implement a practical strategy within a realistic timeframe to enable these standards to be met. The Business Services Review, allied with the proposed QA system, does this.

The Supported Wages System is not appropriate for all employment services

ACROD supports a fair wage. A fair wage is not necessarily a high wage: it is a wage linked by objective and transparent means to a person's skills and productivity. KPI 9.1, as currently drafted, requires that linkage.

ACROD supports the proposed wording of KPI 9.1 which requires that where award wages are not paid, wages are linked to an award by "a transparent assessment tool or process, such as Supported Wage System (SWS), or tools that comply with the following criteria referred to in the Guide for Good Practice Wage Determination including: compliance with relevant legislation; validity; reliability; wage outcome; practical application of the tool."

The National Caucus of Consumer Organisations has argued (in relation to KPI 9.1) that the Supported Wage System should be the sole means of determining pro-rata wages for all disability employment services. ACROD strongly rejects this.

Current research evidence counsels against a general application of the SWS assessment tool to all employment services. Research commissioned by FaCS into wage assessment processes in Business Services (*Research into Pro-rata wage Assessment Tools for People Working in Business Services*, June 2001) found a number of significant limitations in the application of the Supported Wage Assessment Tool (SWAT) to Business Services. These included the cost of assessment, the failure of the SWAT to provide formal links with workplace training or career path structure; the lack of a link to National Competency Standards; the inconsistency of assessment; and the difficulty of making productivity comparisons with a non-disabled worker performing a similar job.

The Research Report recommended the development a new industry-wide tool. ACROD supports the development of a single industry-wide framework that could potentially accommodate a number of tools. In agreement with the Report, ACROD believes that a wage assessment tool appropriate for Business Services should measure competencies as well as productivity. The SWS tool measures only productivity.

The impact on employment opportunities in Business Services of a minimum wage at the level required by the SWS would be large and deleterious. One large service organisation has estimated that the imposition of a minimum wage at the level stipulated by the SWS would render around 40 per cent of jobs within that organisation unsustainable. The job losses would fall on employees with high support needs and low productivity. These people's right to employment would be effectively denied if the SWS were made mandatory across all disability employment services.

Wages are an important issue, but a more significant issue for some advocates than for many employees with disabilities. The National Disability Client Satisfaction Survey, published by the Productivity Commission last year, found that across Australia only nine per cent of clients of disability employment services thought their wages were unfair. 85 per cent expressed satisfaction with the employment service they received. (*Report on Government Services 2000*, pages 1039 and 1081).

The cost and administrative pressures on service organisations are already excessive

The proposed QA system is one pillar of a complex and ambitious disability services reform program, applying to both Open and Business Services, being undertaken by the Commonwealth Government. The reforms are inter-related and making the adjustments entailed will require substantial work and effort by service providers.

Complying with the new QA system will impose costs. The Government has said that it will cover the reasonable costs of certification – and ACROD welcomes that - but many services will incur additional costs in the preparations and adjustments required to gain certification.

Service providers are battling to cope with a range of other cost pressures. Until this year, the Commonwealth has applied an annual funding cut – a so-called efficiency dividend – to disability employment services. The New Tax System has imposed new compliance costs on the sector, which because of its charitable status, has formerly been largely excluded from the tax system. Year after year annual indexation of Commonwealth grants trails rises in Average Weekly Earnings and CPI. On top of this, many service organisations will experience reductions in funding as they move from block grants to case-based funding, as part of the disability employment reforms.

Any changes to the proposed system that would in any way add to these pressures would be unacceptable and make a difficult transition period impossible for many service organisations.

A decision to change the KPIs must not be unilateral

FaCS will review the QA strategy and the Key Performance Indicators will be reviewed during the three-year implementation phase to ensure that they are practical, effective and appropriate. This is reasonable; however it places an onus on Government not to change the KPIs (or other aspects of the QA process) without the agreement of affected parties. The Bill requires service providers to register their intent to seek accreditation by 1 January 2002 - in effect to enter into a contractual agreement with Government to comply with the KPIs as they then stand. If flaws emerge in the KPIs or other aspects of the QA process during the implementation period, changes should only be made with the agreement of all parties to the contract. Thus ACROD asks that the obligation on Government to consult with the disability sector noted in the Explanatory Memorandum be underlined: “Any changes to key performance indicators will be approved by the Minister *following consultation with the disability sector.* [emphasis added]”

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