

**SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE**  
**INQUIRY INTO THE FUNDING AND OPERATION OF THE COMMONWEALTH**  
**STATE/TERRITORY DISABILITY AGREEMENT**

**Rules of Engagement**

**Submission by**

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## **Summary**

There are various levels of engagement which come into operation because of the Commonwealth State/Territory Disability Agreement (CSTDA). Each level has its own rules of engagement.

The rules of engagement are the critical factor in determining whether or not the lives of people with disabilities, their families and carers are improved. Rules of engagement must be clear and unambiguous in their operation.

While undoubtedly there are issues to do with funding, jurisdictional responsibilities, administrative arrangements etc, resolving these issues but not addressing the rules of engagement will not progress the provision of specialist disability services in Australia.

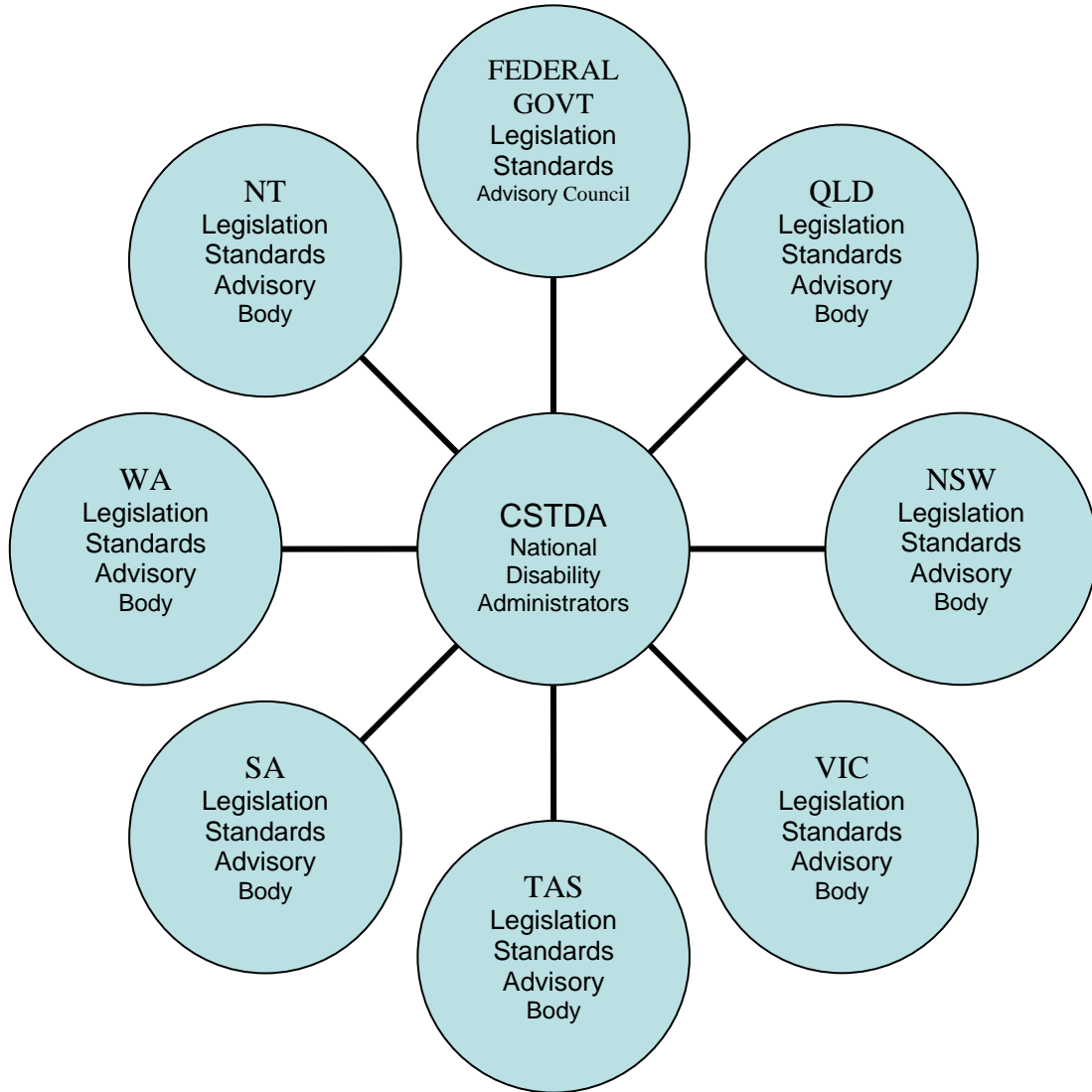
## **National levels of engagement**

The roles and responsibilities specified within the CSTDA create levels of engagement:

- The highest level is between governments (a) the Commonwealth with each or all State or Territory, whether this be by the Multilateral Agreement or Bi-Lateral Agreement (b) State or Territory governments with each other. This level has delegation to the Disability Administrators representing each government, who form the National Disability Administrators (NDA).
- There is another level, between the Federal Government and the National Disability Advisory Council, State/Territory governments and their respective Disability Advisory body; and further, between State/Territory government Disability Advisory bodies and the Federal government's National Disability Advisory Council (NDAC).

Figure 1 outlines the CSTDA national framework.

**Figure 1: CSTDA NATIONAL FRAMEWORK**



## **Purpose of the Agreement/engagement**

The Agreement sets out fairly clearly why the Federal government and the States/Territories are engaged in the third CSTDA:

*The Commonwealth and the States/Territories wish to make this Agreement, the purposes of which are to*

*–*  
*(a) provide for a national framework outlining the objective and policy priorities for services for people with disabilities across Australia to be progressed over the life of the Agreement, and outline a means for measuring and publicising the progress of Governments towards achieving this national framework (clauses 4 and 7);*

*(b) outline the respective and collective roles and responsibilities of the Commonwealth and States/Territories in the planning, policy setting and management of specialist disability services (clause 6);*

*(c) provide for accountability to funders in respect of funds contributed by one Government which are expended by another Government (clause 7);*

*(d) establish the financial arrangements for making funds available for the provision of specialist disability services (clause 8);*

*(e) define the persons eligible for services under this Agreement and acknowledge they may require services provided outside the Agreement (clause 5);*

*(f) provide for a nationally consistent approach to quality across specialist disability services (clause 9); and*

*(g) provide for funds to address key national and strategic research, development and innovation priorities (clause 10).*

## **State/Territory levels of engagement**

The system set up by respective governments/territories to give effect to the provision of specialist disability services involves engagement between government and service providers; which then gives rise to another level of engagement: between the service provider and a person with a disability/consumer (and their families and carers) who accesses a service provided with CSTDA funding. The service provider could be a government-managed provider, or a contracted service provider.

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STATE/TERRITORY GOVERNMENT  
Legislation, standards, policies

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SERVICE PROVIDER  
Government-managed or contracted

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PERSON WITH A DISABILITY, FAMILY AND CARERS

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The rules at State/Territory level come from the respective State/Territory legislation complementary to the Federal Disability Services Act 1986, either State/Territory specific standards or the national standards, and State/Territory policies.

## **Rules dictate that some people will miss out**

There are two levels of people with disabilities who miss out on support. One, those who fail to meet the eligibility criteria for support and two, those who pass the eligibility test but fail to gain access to services because of equity and merit considerations ie 'there are people worse off'.

In legislation and in the CSTDA there is definition of 'people with disabilities'. By definition, the population of people eligible to receive services is limited. The Federal Disability Services Act 1986 (DSA 1986) is not entitlement legislation, and neither is the complementary State/Territory legislation. The National Standards set down that access to services is based on 'relative need.'

Section 3A(2) of the DSA 1986 explicitly addresses limited resources for disability services and relative need: *In construing the objects and in administering this Act, due regard must be had to (a) the limited resources available to provide services and programs under this Act; and (b) the need to consider equity and merit in accessing those resources.*

Recent deliberations in the Victorian Parliament on new disability legislation highlight that not everybody accepts that the legislated 'rules of engagement' mean some people miss out, whether this be because of the definition or because of relative need. Conversely, there are

## **Rules for accountability and transparency concerning equitable, efficient and effective provision of services are neither transparent nor timely**

Under Clause 6(1)(c) of the CSTDA it is agreed that the Commonwealth and each State/Territory in respect of that State/Territory only have continuing responsibility for transparency and accountability to Parliaments, funders and citizens concerning the equitable, efficient and effective provision of specialist disability services.

National Disability Administrators are required to report in a publicly accessible format on progress and achievements in relation to the national framework.

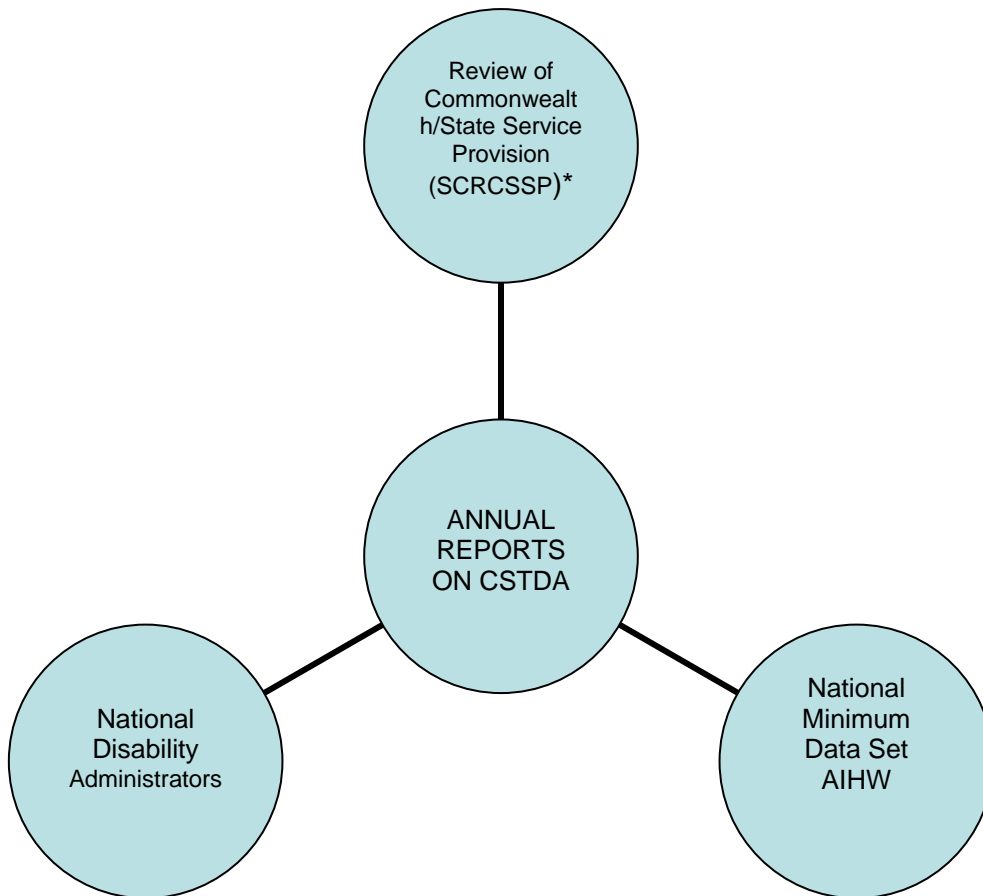
As things are, there are three reports providing information spanning a financial year on the provision of specialist disability services. All of these provide fascinating insight into the provision of disability services in Australia, but not to the extent that it is transparent that the national framework means there is an effective service system whereby the allocation and distribution of resources means that funding is used to the best advantage.

For example, the National Disability Administrators report gives the funding per capita of potential population, which has little if any relationship to the allocation and distribution of resources.

It must be noted that current reports reflect consideration of information for 2003-04, and even if the 04-05 reports are soon available, the time-lag in the availability of reports on the CSTDA decreases their accountability value.

This issue is compounded by Federal and State budgets (and associated policy actions) being publicly released around May of each year. When the 2006-07 budgets were brought down, the CSTDA data reflected the state of affairs from three years ago. It is difficult to engage with Federal and State MPs regarding disability services when, understandably, their terms of reference are the most recent budget.

**Figure 2: Reports on the funding and operation of the CSTDA**



\* Productivity Commission, Steering Committee for the Review of Commonwealth/State Service Provision

## **Some considerations about the State of Victoria**

The State of Victoria recently enacted disability legislation, the Disability Bill 2006, to come into effect 1 July 2007. This legislation replaces the Disability Services Act 1991 and the Intellectually Disabled Persons' Services Act 1986.

This Bill contains rules of engagement for people with disabilities engaging with the service system, for example:

- There is no entitlement to services
- There is definition of: disability in relation to a person, intellectual disability and developmental delay;
- There is assessment criteria for determining whether a person over the age of 5 years has an intellectual disability,
- The secretary of the Department will develop and publish criteria to enable priority of access to disability services to be determined in a fair manner
- Services can be directly requested from a service provider – and if a disability service provider agrees to provide disability services without requiring an assessment of the person, the provision of disability services to the person is not of itself to be taken as evidence that the person to whom the disability services are provided is a person with a disability
- Once a person starts using a service, the service provider must provide information about the service

The fact that some people who fit the eligibility criteria will miss out leads to demand management, ie assessing an individual's priority for service

In Victoria there is discontent at the level of engagement of people with disabilities, their families and carers with the service system. It is not clear to service users and their families how to access services and what the rules are; plus people complain that the rules keep changing.

The new legislation, which sets down that people may request a service of a service provider, has no clarity around a request for a service from a service provider and application of the secretary's published criteria to enable priority of access to be determined in a fair manner.

The legislation requires that the Minister must determine standards to be met by disability service providers in the provision of disability services, and the Secretary must specify different performance measures for different categories of disability service providers and different categories of disability services. It is easy to imagine that service users will have difficulty in knowing what standards they can expect service providers to meet.

The exclusion of recognition of "parents" from the disability legislation, the last minute slight recognition of "families", the barest of acknowledgements of children with disabilities, the denial of the inclusion of "carers", are all indicators that terms of

engagement regarding service provision for a person with a disability are only with the person with a disability. While some benefits may accrue to people with disabilities who can self-advocate and self-manage the service system, a disabling environment has been established for others.

An objective of the new legislation is to ensure the efficient and effective use of public funds in the provision of disability services. However, there are no apparent accountability and transparency requirements to make this objective a reality.

While this inquiry is considering administrative arrangements regarding the CSTDA, it is important to take into consideration the arrangements which a State/Territory controls because flaws and difficulties in this disability system impact directly on peoples' experience.

Blaming another level of government is an easy out to explain difficulties, and diverts from looking at the rules of engagement which can help or hinder improving the lives of people with a disability, their families and carers.

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