

# REVIEW OF THE TASMANIAN *DISABILITY SERVICES ACT 1992*

## DIRECTIONS PAPER Content and Structure of new Disability Services Legislation in Tasmania

November 2009



# Foreword

Services to people with a disability in Tasmania are guided by a range of legislation, national agreements, government priorities and strategic plans. The *Disability Services Act 1992* is the central source of policy direction that determines how these services are provided. It is therefore important that this Act provides the framework for delivery of services according to contemporary best practice and accepted wisdom as well as being consistent with obligations under national and international protocols and conventions.

Since the *Disability Services Act* was proclaimed there have been many changes and reforms that have impacted on services and approaches to people with disabilities in Tasmania. Most recently, the *2008 Review of Disability Services in Tasmania* was released by Government. The Review reflected views expressed during extensive consultation with the community sector and people with disabilities, their families and carers

The report from this review indicated that the disability service system was in urgent need of reform, with substantial change required to ensure a holistic approach to meeting individual needs, inclusion of people with a disability and appropriate access to services.

The State Government committed to reform disability services according to the directions recommended by the review and accepted all seven recommendations of the report. A detailed implementation plan was developed to show how the reform would be undertaken over a three year period.

As a first step in the implementation process an *Operational Framework for Disability Services* was developed to provide a clear direction and operational model for disability services to follow over the next few years. The major emphasis of the Framework is on building stronger partnerships between government, the community sector, people with a disability and their families or carers. The implementation of this reform is resulting in major structural and service provision changes to create a more contemporary disability services system.

At the same time, there have also been significant changes in government policy on a national and global level, and this has been accompanied by shifts in community attitudes and expectations particularly in regard to principles of human rights and provision of flexible supports for people with a disability.

It is timely to review the Tasmanian Disability Services Act and consider amendments and updates necessary to reflect all of these developments.

The release of this Directions Paper will be followed by a further period of consultation with stakeholders prior to a final report being prepared for Government.

I hope that you will take this opportunity to comment on the Directions Paper and participate in the consultations to follow.

Lin Thorp MLC  
**MINISTER FOR HUMAN SERVICES**

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# PART I – BACKGROUND AND CONTEXT

## 1.1 Introduction

The Tasmanian *Disability Services Act 1992* (the Act) was developed in response to the first Commonwealth State Disability Agreement in 1991, which transferred responsibility for the administration of accommodation and support services from the Commonwealth government to state and territory governments.

The primary focus of the Act is the funding of services for persons with disabilities. The Act defines disability and eligibility for services, and specifies how services may be provided, either directly to persons with a disability or indirectly through service providers.

Over the past decade disability service systems, world wide, have undergone significant changes underpinned by a more inclusive approach to working with people with disabilities. There have been enhancements concerning the principles of human rights and citizenship and enabling the provision of flexible support in response to individual requirements.

There have also been changes in government policy, both at Commonwealth and state level, changes in community attitudes and expectations and the growth of a commitment to ensure that people with disabilities are provided with the support they need to enable them to actively participate in the community.

## 1.2 Recent Developments

In recent years, there have been changes in attitudes towards service provision for people with disabilities. For example, there has been an increased focus on the individual and planning for the needs of each person with a disability and their family at the centre of the service delivery process. This approach encourages people with disabilities, their families and carers to be fully involved in identifying, planning and overseeing the range of supports and resources they require. It also encourages a more flexible and responsive approach to service delivery.

In the past few years, there have been a number of key developments that have redirected the focus of support services for people with disabilities. These developments include:

- **Australia becoming a signatory, (on 17 July 2008), to the *United Nations Convention on the Rights of Persons with Disabilities (2006)*.** This Convention requires a move away from medical or welfare approaches to people with disabilities to a perspective firmly grounded in human rights, recognising that persons with any kind of disability enjoy human rights on an equal basis with others.

- **The development of a *National Disability Strategy (NDS)* by the Australian government in consultation with states and territories and the wider community.** A draft NDS is expected to be completed by March 2010 with a final document expected by the middle of that year. The NDS will provide a way for Australia's commitment to the *UN Convention of the Rights of Persons with Disabilities* to be translated into an action plan for Australia. A 2009 report from consultation with people with disabilities and their families<sup>1</sup> suggests that there is still significant disadvantage and discrimination experienced by people with disabilities. The draft vision of the NDS for 'An inclusive Australian society that enables people with disability to fulfil their potential as equal citizens' will be supported by a set of values, principles and policy outcome areas that should be expected to influence state and territory policy and direction.
- **A new *National Disability Agreement* signed in November 2008 by the Council of Australian Governments (COAG).** This Agreement commits the Commonwealth and state and territory governments to assist people with a disability to achieve economic and social inclusion, enjoy choice, wellbeing and the opportunity to live as independently as possible and to support their families and carers. The Agreement has a renewed focus on early intervention and greater flexibility in funding. The agreement also commits governments to review disability standards that will apply to all services that receive funding through this agreement. It is therefore important that these standards are considered in the review of state legislative approaches.
- **The *Tasmanian Disability Framework for Action (2005-2010)* which outlines a whole-of-government and whole-of-community vision for the future and priority strategies for realising this vision.** Four priority outcomes are identified to assist in achieving this vision for people with a disability. These are: fostering human rights; providing access to high quality services; increasing safeguards and advocacy; and working collaboratively.
- **The *Tasmanian 20-year social, environmental and economic plan, Tasmania Together*, which incorporates a vision of participation and equal access for all Tasmanians.** The goals of *Tasmania Together* include: improving the health and wellbeing of the Tasmanian community, fostering an inclusive society that respects our multicultural heritage; valuing diversity and treating everyone with compassion and respect; and to providing all Tasmanians with the opportunity to participate in decisions that affect their lives.

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<sup>1</sup> *Shut Out: the experience of People with Disabilities and their Families in Australia*, National Disability Strategy Consultation Report prepared by the National People with Disabilities and Carer Council, 2009

- **A renewed focus on issues related to the Willow Court Centre (a former residential institution for people with disabilities).** As a result of a submission to the Abuse of Children in State Care process from National Disability Service (Tasmania), a tri-partite motion was passed by the Tasmanian Parliament in October 2008. The tri-partite agreement –

- “
- (1) Recognises that institutional care is no longer appropriate for people with disabilities;
  - (2) Notes the institutional facility for people with disabilities, (Willow Court), officially closed its doors in October 2000; and
  - (3) Endorses the policy of all Tasmanian parties that primary care and support for people with disabilities be provided in the community.”

The motion also requested that the Joint Standing Committee on Community Development investigate and report on:

- (a) the objectives, outcomes and principles that should form the basis of a new Disability Services Act to ensure the approach of institutional care as experienced in Willow Court Centre cannot happen again.
  - (b) whether the legislative outcomes reflect the Tasmanian Government’s obligations to protect human rights under the United Nations Convention on the Rights of Persons with Disabilities.
  - (c) whether the quality and safety framework governing specialist disability service provision is consistent with modern approaches to service provision.
- **The development of a Social Inclusion Strategy for Tasmania.** A report prepared by the Social Inclusion Commissioner was released for public comment on September 23<sup>rd</sup> 2009<sup>2</sup>. Within this report:

*Social Inclusion means a fair go at having a decent education, skills, meaningful work, access to services, good relationships and a say on what matters to you. It’s about the relationships in life that make us happy and productive.*

The report acknowledges the entrenched and seemingly intractable social exclusion of some groups within the community including people with disabilities.

The report outlines ten strategies for addressing social exclusion that detail specific actions that are recommended.

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<sup>2</sup> A Social Inclusion Strategy for Tasmania, Social Inclusion Unit, 2009.

## 1.3 Review of Disability Services

The most significant development that impacts on the *Disability Services Act 1992* is the major review conducted in 2007/08 into the efficiency and effectiveness of specialist disability services in Tasmania<sup>3</sup>.

The review process included background research and analysis, targeted interviews, two rounds of regional consultation forums with key stakeholders, and opportunities to comment on an options paper. The review also included an industry roundtable meeting to engage service providers, departmental staff and people with disabilities and their carers in the decision making process.

The final report was provided to the Minister in April 2008. The report recommended wide-ranging reforms encapsulated in seven recommendations:

1. The endorsement and implementation of an entire 'vision for change';
2. Devolution of direct service delivery to the non government sector over a three year period;
3. The development and implementation of new business processes including streamlined contract management, planning by location and a new resource allocation and funding model;
4. Instigation of new governance structures, quality systems, and intake entry processes and outcomes based performance accountability processes;
5. Implementation of a population based model of service delivery with an emphasis on facilitating appropriate access to mainstream services;
6. Development of a detailed implementation plan to be the responsibility of a discrete implementation unit; and
7. Appropriate investment in the implementation of the vision for change and capacity to address areas of unmet need.

Government accepted the report and agreed to implement all recommendations over the subsequent three years, beginning in 2008-09.

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<sup>3</sup> Review of Tasmanian Disability Services, KPMG, April 2008

## Operational Framework for Disability Services

An *Operational Framework for Disability Services*<sup>4</sup> was developed as the first step in implementation of the recommendations of the *Review of Disability Services in Tasmania*.

The Framework provides a clear direction for disability services, including a vision for the future. This highlights what the Disability Services system is expected to look like in three to five years time and how the experiences, supports and outcomes for people with a disability and their carers will be enhanced.

The Framework articulates a set of principles that represent a stronger alignment with contemporary practice both nationally and internationally. The Framework also provides the broad operational model for future disability services.

It is important that the primary disability legislation, the *Disability Services Act 1992* is able to guide, endorse and support the new direction and vision for disability services articulated in this Framework.

The Framework identifies changes to disability services in a number of areas which should be reflected in enabling legislation. These areas include:

- consideration of contemporary practice in disability services focusing on partnerships, collaboration and coordination of services;
- underpinning principles, governance and resource allocation processes;
- new service delivery approaches for working with people with disabilities, their families, carers and informal networks;
- creating an outcomes focus with a new quality management system;
- supporting innovation and evaluation by facilitating partnerships, leadership for change, creating a learning culture; and
- integration with Child, Youth and Family Services reforms.

Specific initiatives to date under the reform process include the establishment of both *Gateway Services* and *Integrated Family Support Services (IFSS)* in the four regions of Disability, Child, Youth and Family Services across Tasmania.

*Gateway Services* provide the community with a visible entry and referral point for vulnerable families and other professionals to access family support services. Gateways provide information, identify needs and refer families to appropriate services. An *Integrated Family Support Service* in each area provides a range of services for vulnerable children, young people and families and people with a disability. While Gateways and IFSS were established in August 2009 for vulnerable children and their families, the extension of this service to people with disabilities and their families will occur in 2010.

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<sup>4</sup> Operational Framework for Disability Services, Department of Health and Human Services, February 2009.

Another significant project under the reform process is the development of a Common Assessment Framework. This framework will be used by community Gateway Services and Disability Services to provide a clear and transparent approach to the assessment of needs and levels of risk for each family and child, and person with a disability referred.

Assessments using this framework will be standardised and universally applicable. They will also assist individualised planning by identifying the most appropriate intervention/support mechanisms and means to address the presenting needs.

Further information on the disability services reform and implementation of particular initiatives is available on the Reform Unit (DHHS) website.

### **Opportunity to reflect recent developments in a revised Disability Services Act**

The Review of the Tasmanian *Disability Services Act 1992* provides an opportunity to consider all of these recent developments in a strategic manner and to ensure that legislation provides direction in implementing a best practice approach.

# **PART 2 –PROCESS FOR UNDERTAKING THE REVIEW OF THE *DISABILITY SERVICES ACT 1992***

The Minister for Human Services has endorsed the following process for conducting the review of the *Tasmanian Disability Services Act 1992*.

A Steering Committee has been formed to oversee the process. The Steering Committee consists of:

Alison Jacob	(Co-Chair)	Deputy Secretary Human Services Department of Health and Human Services
Sue Hodgson	(Co-Chair)	Chair, Ministerial and Disability Advisory Council
Margaret Reynolds		State Manager, National Disability Services (Tasmania)
Paul Mason		Commissioner for Children, Tasmania
Lynne James		Manager State Support Service Department of Education
Beverley Funnell		Manager, Disability Bureau, Department of Premier and Cabinet
Robyn Wilkinson		Ministerial and Disability Advisory Council
Dale Webster		Coordinating Member, Tasmanian Disability Services Ethics Committee
Nick Evans		Director, Policy and Programs Department of Health and Human Services
Lesley Mackay		Manager Disability Services, South East Department of Health and Human Services
Ingrid Ganley		Project Manager Reform, Disability Services Department of Health and Human Services
Maggie Aird		Manager Service and System Development Department of Health and Human Services
John Nehrmann		Project Manager Department of Health and Human Services

## **2.1 Preliminary Discussion and Consultation**

Preliminary discussions and public consultations have already occurred as part of the *Review of Disability Services*, and the development of the *Operational Framework*. These processes provided an opportunity for input from a wide cross section of people on the preferred vision for disability services in Tasmania and the issues that were considered important.

It is therefore not proposed to duplicate this recent work by undertaking an initial consultation process on the possible direction and vision for disability services in Tasmania.

Instead, the information collected during the *Review of Disability Services* and development of the *Operational Framework* has formed the basis of this Directions Paper.

## **2.2 Distribution of Directions Paper**

This *Directions Paper* is the next step in the consultation process. The focus of this paper is to encourage discussion and feedback on the intended content and focus of the new legislation. As indicated above the emphasis is on ensuring new legislation meets human rights requirements, aligns with contemporary best practice and considers related policy and legislative developments.

This Paper seeks public feedback and responses to the proposed contents and structure of the new disability legislation, as well as inviting comments on any other items that respondents believe should be included in the amended legislation.

The proposed structure for the new disability legislation broadly separates the content into two key sections:

1. underpinning direction and philosophical approach: including the purpose, objectives and principles of the Act; and
2. service delivery issues such as administration, funding, monitoring and evaluation, accountability, complaints, planning and reporting.

## **2.3 Development of Draft Report with Recommendations based on Responses to the Directions Paper**

The feedback received will be used to help develop recommendations for the legislative changes required. These recommendations will be collated into a report on which stakeholders will be invited to make final comments.

## **2.4 Finalising the Legislative Framework**

Based on the feedback received on the recommendations the government will finalise the legislative framework. This will involve drafting a Cabinet Minute addressing the outcomes of the review process and drafting instructions and providing the draft *Amendment Bill* for consultation with other government agencies.

## **2.5 Legislation Implementation**

The implementation of any new legislative provisions will be undertaken step-by-step. Depending on the extent of legislative change, full implementation may take some time. Some transitional arrangements may also be required to ensure a smooth passage to the new legislative framework where changes are significant.

Major changes to the legislation may involve development of relevant policies and procedures including change management strategy, information, training and implementation packages and consultations with major stakeholder groups.

The timelines for implementation, and the nature of any transitional arrangements, will only be determined when the proposals for the future legislative framework have been finalised.

## **PART 3      Content and Structure of new Disability Legislation**

This part of the Directions Paper outlines a number of issues and topics that may form part of a future legislative framework. As such it invites comments and feedback but **does not constitute a Government policy position.**

The issues and topics outlined generally reflect the priorities and recent developments discussed in Part I of this paper. There are however a number of issues that have not arisen specifically out of the initiatives mentioned in Part I, but have come about as a result of reviews or reports in related human services areas. Other issues are implied or pre-existing components of the current legislation which require update, discussion or clarification.

These topics particularly relate to the role and function of legislated committees; options for more individualised support and funding for persons with disabilities; and specific provisions required for children with disabilities.

You are invited to comment on each of the topics listed below, suggest alternate approaches, or identify other issues that you believe ought to be considered when developing a new legislative framework.

### **Section I      Issues Related to the Underpinning Framework of the Legislation**

#### **3.1.1 Purpose of the Act – (intent, scope, objectives of the Act).**

This part of the Act identifies the intended 'scope' by describing what the Act is intended to cover. This involves defining 'disability' or 'persons with disabilities'(eligibility); defining who 'service providers' are; specifying the intended target group for specialist disability services and the desired outcomes for people with disabilities

It is important to recognise that this Act only relates to 'disability services' that are funded or provided by the Department of Health and Human Services. It does not cover services provided for persons with a disability that are the responsibility of other agencies, such as education or transport, and governed by separate legislation.

### 3.1.2 Definition of Disability and Eligibility for services

#### Current Disability Services Act

The definition of 'disability' used in the current Tasmanian Act is as follows:

**“disability”** means a disability-

- (a) which is attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments; and
- (b) which is permanent or likely to be permanent; and
- (c) which results in –
  - (i) a substantially reduced capacity of a person for communication, learning or mobility; and
  - (ii) the need for continuing support services; and
- (d) which may or may not be of a chronic episodic nature;<sup>5</sup>

The definition of 'disability' is important as it is used to determine eligibility for specialist disability services. As such it is crucial that the definition captures the whole intended target group and exclusions are able to be validated on the basis of objectively verifiable criteria.

Given that funding for disability services is always likely to be under great demand, definitions of populations that are eligible for funding of services are paramount.

Under the current Act disability support services are provided on the basis of:

- the type of disability a person has,
- the extent to which the disability is permanent and
- its impact on the person's capacity for communication, learning or mobility, as well as the assessed need for continuing support services.

#### Other Approaches to Defining Disability

Most jurisdictions in Australia use a similar set of dimensions in defining disability and determining priority access. However, it should be noted that there is no universally accepted or agreed definition of 'disability' and whether or not a specific impairment is considered a 'disability' can vary over time and may also depend on the purpose of the legislation or document concerned. For instance the Commonwealth State Territory Disability Agreement, (CSTDA 3) was amended to specifically incorporate neurological impairment and acquired brain injury in the definition of disability.

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<sup>5</sup> Tasmania *Disability Services Act 1992*, Part 1, Section 3

There continues to be ongoing debate about whether diagnosed conditions, such as Attention Deficit Disorders, Prader-Willi syndrome and Tourette syndrome, require to be specifically referenced in a definition of disability in order to strengthen the case for eligibility and priority access to available funding and services.

The definition of 'disability' is likely to continue to be refined and expanded as specific impairments or conditions are recognised or accepted by the community as being the type of condition to be covered by legislation.

Consideration should therefore be given to whether identifying particular 'types' of disability in definitions under legislation is helpful in determining the extent to which a condition or impairment is 'permanent or likely to be permanent' and results in a 'substantially reduced capacity' in certain life areas.

It may be important for legislation to be framed in such a manner that eligibility for services and priority access to support is not determined solely or predominantly on the basis of the 'type' of impairment involved. The intent of the legislation should clearly be to recognise the impact of all types of impairments and the various combinations of impairments and to provide supports based on relative need.

### **The Irish Disability Act**

This legislation provides an interesting contrast to the above approaches to defining 'disability'<sup>6</sup> by placing the primary emphasis on the 'level of reduced capacity' rather than the 'type' of disability.

The Irish *Disability Act 2005* defines disability in relation to a person as:

*“..a substantial restriction in the capacity of the person to carry on a profession, business or occupation in the State or to participate in social or cultural life in the State by reason of an enduring physical, sensory, mental health or intellectual impairment;”*

This approach places the initial focus on defining a 'substantial restriction' and assessing the impact on the individual rather than on the type of disability in question.

The Irish Act defines “substantial restriction”<sup>7</sup> as a restriction that

- “(a) is permanent or likely to be permanent, results in a significant difficulty in communication, learning or mobility or in significant disordered cognitive processes.
- (b) gives rise to the need for services to be provided continually to the person whether or not a child or, if the person is a child, to the need for services to be provided early in life to ameliorate the disability”.

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<sup>6</sup> Ireland *Disability Act 2005*, Part 1, Section 2

<sup>7</sup> Ireland *Disability Act 2005*, Part 2, Section 7

A greater focus on the supports needed to access and participate in society is likely to result in assessments incorporating a person's 'type' of disability becoming less relevant and a persons' capacity to perform daily activities or to participate in the community becoming more relevant.

### **United Nations Convention on the Rights of Persons with Disabilities**

The UN Convention on the Rights of Persons with Disabilities provides an example of a significantly broader definition which is more concerned with rights and effective participation rather than priority access to specialist disability support services.

The UN definition of persons with disabilities as "*Those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*" brings into consideration the impact of external (societal) barriers in determining to what extent an impairment will result in being a disability for individuals.

### **3.1.3 Eligibility and Priority Access to services**

Most jurisdictions in Australia concur that priority access should be given to persons whose disability results in a 'substantially reduced capacity' in specific life areas. Both the Tasmanian and the Commonwealth Disability Services Acts<sup>8</sup> refer to communication, learning and mobility as being the areas in question. The CSTDA (3) replaced 'learning' with 'self-care/management'.

Priority access is usually given where the impact on an individual is such that the disability results in the need for ongoing or continuing support services. The CSTDA (3) strengthened this emphasis on relative need by talking about '**significant** ongoing....support' thereby targeting people with severe and profound disabilities.

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<sup>8</sup> Australian Government, *Disability Services Act 1986*, Part 2, Division 1, Section 8  
Tasmania *Disability Services Act 1992*, Part 1, Section 3

The following table illustrates the current dual process (that is assessing the type of disability and assessing the level of disability) utilised by various legislation and national agreements in determining priority access to services.

<b>Eligibility Criteria</b>	<b>Tasmanian Disability Services Act 1992</b>	<b>Commonwealth State Territory Disability Agreement (CSTDA 3)</b>	<b>Commonwealth Disability Services Act 1986</b>
<b>Type of disability</b>	<i>'attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of those impairments'</i>	<i>'attributable to an intellectual, psychiatric, sensory, physical or neurological impairment or acquired brain injury (or some combination of these)'</i>	<i>'attributable to an intellectual, psychiatric, sensory or physical impairment or a combination of such impairments'</i>
<b>Nature of disability</b>	<i>'is permanent or likely to be permanent; and....may or may not be of a chronic episodic nature'</i>	<i>'is likely to be permanent and....manifests itself before the age of 65'</i>	<i>'is permanent or likely to be permanent'</i>
<b>Priority Access Criteria</b>			
<b>Level of disability</b>	<i>'results in a substantially reduced capacity of a person for communication, learning or mobility'</i>	<i>'results in a substantially reduced capacity in at least one of the following: self-care/management, mobility, communication'</i>	<i>'results in a substantially reduced capacity of the person for communication, learning or mobility'</i>
<b>Impact on individual</b>	<i>'results in the need for continuing support services'</i>	<i>'requiring significant ongoing and/or long term episodic support'</i>	<i>'results in the need for ongoing support services'</i>

Assessments determining priority access to services must also take into account whether a person's needs are most appropriately met by specialist disability services rather than generic supports. Disability support services are services provided beyond the supports and services that are generally available in the community.

Finally, consideration needs to be given to whether guidelines to determine eligibility or priority target groups for disability support should be contained in legislation or are more appropriately contained in departmental policies and guidelines.

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**Questions Regarding the Definition of Disability, Eligibility and Priority Access:**

1. Does the current legislation adequately define “disability” and those who should fall within the scope of the Act?
  2. If not how can the definition be improved?
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### 3.1.4 Objectives of the Legislation

Once eligibility and priority access have been determined, there is a need to clarify the ‘objectives’ of the legislation, that is what the Act is intending to do. Much of this will be around what services and supports will be provided and the manner of that provision.

Objectives are important as they guide the desired outcomes, the expected quality and the required level of service provision necessary. Overall the objectives should clarify the boundaries of the intended legislation by specifying what is trying to be achieved for the identified target group.

Objectives may be ‘high level’ and ‘general’ in content, such as:

- ‘advance the inclusion and participation of persons with disabilities’,
- ‘promote a whole of government approach to the provision of services; and supports’;
- ‘facilitate system-wide planning’; or
- ‘provide for the efficient and effective use of public funds’

Alternatively, objectives may be more specifically aimed at particular aspects of services or activities covered by the legislation, such as to provide for:

- ‘the preparation of individual plans’;
- ‘stipulate assessment processes’;
- ‘mechanisms for appeals to decision making processes’; or
- ‘how particular services are to be accessed’.

Objectives can also indicate the intent of the legislation to be consistent with, or promote obligations or aspirations contained in other relevant legislation, national agreements or international protocols and conventions.

## **Current Disability Services Act**

The current Tasmanian *Disability Services Act 1992* contains the following objectives;

“The objectives to be furthered in respect of persons with disabilities are as follows:

- (a) to enable persons with disabilities to achieve their maximum potential as members of the community;
- (b) to enable persons with disabilities to-
  - (i) further their integration into the community and complement services available generally to persons in the community; and
  - (ii) achieve a better quality of life including increased independence, employment opportunities and integration in the community; and
  - (iii) use services that are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;
- (c) to ensure that the quality of life achieved by persons with disabilities as a result of the services provided for them is taken into account in the granting of financial assistance for the provision of those services;
- (d) to encourage innovation in the provision of services for persons with disabilities;
- (e) to provide a system to administer funding in respect of persons with disabilities that is flexible and responsive to the needs and aspirations of those persons.”<sup>9</sup>

These objectives are framed in terms of outcomes for persons with a disability, but are limited to qualified promotion of some level of integration, better quality of life, creating positive images of people with disabilities and to enable ‘maximum potential’ to be achieved.

## **Approaches in other Jurisdictions**

It is likely that the current objectives do not adequately encompass more recent aspirations and ideals for people with disabilities including the notion of inclusion, and rights and responsibilities.

## **National Disability Agreement**

For instance, the overarching objective of the National Disability Agreement is that people with disability and their carers have an enhanced quality of life and participate as valued members of the community.

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<sup>9</sup> Tasmania *Disability Services Act 1992*, Schedule 1

The Agreement aims to achieve this objective through delivery of the following outcomes:

- Outcome 1: People with disability achieve economic participation and social inclusion;
- Outcome 2: People with disability enjoy choice, wellbeing and the opportunity to live as independently as possible; and
- Outcome 3: Families and carers are well supported

### **UN Convention on the rights of Persons with Disabilities**

The objectives of the UN Convention on the Rights of Persons with Disabilities are that it be used as a human rights instrument with a specified social development dimension. As such it adopts a very broad definition of persons with disabilities and reaffirms that all persons, regardless of the type or severity of the disability are entitled to enjoy all human rights and fundamental freedoms.

The Convention clarifies and qualifies how all categories of rights apply to persons with disabilities and identifies areas where adaptations are required for persons with disabilities to effectively exercise their rights.

### **South Australian Disability Services Act**

An alternative approach is to more succinctly define the scope of the Legislation, without attempting to define the outcomes for people with disabilities that the Legislation is intended to promote. This approach is exemplified by the South Australian Disability Services Act

#### **Objects of the South Australia Disability Services Act 1993 <sup>10</sup>**

- (a) *to set out principles that are to be applied with respect to persons with disabilities;*
- (b) *to set out objectives for providers of disability services and for researchers;*
- (c) *to provide for the funding of disability services and research or development activities;*
- (d) *to ensure that disability services and research and development activities funded under this Act are provided or carried out in a manner that applies those principles and meets those objectives.*

Examples of objectives in other disability services legislation are provided in Appendix 3:

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<sup>10</sup> South Australia *Disability Services Act 1993*, Schedule 2

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**Questions Regarding Service Objectives:**

3. Do the objectives in the current legislation reflect desired outcomes for persons with disabilities and current community expectations?
  4. Are there any examples of objectives you would like to see included?
  5. Should legislation contain specific provisions for service objectives for children with a disability?
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### 3.1.5 Principles of the Act

A statement of principles is provided in order to put the legislation in context and give a clear focus about the intended purpose and meaning of the Act.

Principles are important as they establish the overarching philosophical and ideological parameters that govern the legislation.

Principles within disability legislation usually articulate the underlying values and philosophy regarding persons with disabilities that are important to a society or ought to be promoted. Principles can also be more specifically targeted to aspects of service provision, service planning or service accountability.

Legislative principles should reflect current local, national and international developments and best practice in the areas of human rights and service provision for persons with disabilities. This means that they should be consistent with Commonwealth and State governments' commitments to the rights and treatment of persons with disabilities in international Protocols and Conventions.

Consideration will have to be given as to whether the principles should form part of the body of the Act, or be included as a schedule with a preamble in the main body summarising the intent and purpose and the fact that the principles may be amended over time.

#### **Current Disability Services Act**

The current Tasmanian *Disability Services Act 1992* contains the following statement of principles.<sup>11</sup>

“The principles to be furthered in respect of persons with disabilities are as follows:

1. Persons with disabilities are individuals who have the inherent right to respect for their human worth and dignity.
2. Persons with disabilities have the same human rights as other members of society and are entitled to be assisted to exercise these human rights.
3. Persons with disabilities have the same rights as other members of society to realize their individual capacities for physical, social, emotional and intellectual development.
4. Persons with disabilities and carers of persons with disabilities have the same right as their members of society to services which will support their attaining a reasonable quality of life.
5. Persons with disabilities have the same right as other members of society to make and actively participate in, direct and implement the decisions which affect their lives.

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<sup>11</sup> Tasmania *Disability Services Act 1992*, Schedule 2

6. Persons with disabilities have the same right as other members of society to receive services in a manner which results in the least reasonable restriction of their rights and opportunities.
7. Persons with disabilities have the same right of pursuit of any grievance in relation to services as have other members of society.
8. Persons with disabilities who wish to pursue a grievance have the right-
  - (a) to adequate support to enable them to pursue the grievance; and
  - (b) to pursue the grievance without fear of discontinuation of services or recrimination from any person who may be involved in, or be the subject of, the grievance.”

These principles aim to promote and safeguard the rights of persons with disabilities, particularly in regard to access to services, participation in the community, decision making and the right to pursue grievances.

### **Tasmanian Operational Framework for Disability Services**

As part of the review of Tasmanian disability services conducted in 2007/08 the *Tasmanian Operational Framework for Disability Services* was developed. This Framework articulates a set of principles derived from the consultations conducted during the review process. It is important for the principles of the new disability legislation to be at least consistent with the principles of the Framework.

The Underpinning principles of the Tasmanian Operational Framework for Disability Services are<sup>12</sup>:

- **A focus on the individual** – Disability services are flexible and responsive to the needs of people with disabilities, their families and informal support networks, placing them at the centre of service delivery. Supports should reflect the individual needs, goals and aspirations of people with a disability.
- **Partnership** – People with disabilities are partners at all points in the journey – in policy development, planning, service delivery, workforce training and in evaluating effectiveness. Individuals, their families and informal support networks actively participate in decisions which affect their lives.
- **Equity** – People with disabilities have the same rights as other citizens to participate in all aspects of the community and life. Universal services, such as generic education, health, family services and early childhood services, provide access to people with disabilities, their families and support networks, to support quality of life and build potential.
- **Access** – People with disabilities should be able to access a range of specialist Disability Services that are appropriate to their needs. Priority of access should be given to those who are most vulnerable, and whose needs cannot be met through universal services and informal supports.

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<sup>12</sup> Operational Framework for Disability Services, 2009, Department of Health and Human Services, Part 3.

- **Inclusion** – People with disability, their family and support networks are embraced as belonging, sharing responsibility, and contributing and adding value to the Tasmanian community. There is a strong emphasis on building the knowledge, understanding and capacity of the wider service system to support people with disabilities.
- **Strengthening individuals, families and informal support networks** – This recognises the benefits of service models that promote individual capacity, and build and maintain family and community resilience.
- **Cultural proficiency** – Improving the access to Disability Services for Aboriginal and culturally and linguistically diverse (CALD) people with disabilities, their families and carers, through tailoring services to the particular needs of Aboriginal and CALD populations.

It would be consistent with the direction of disability reform in Tasmania to simply incorporate the principles contained in the Operational Framework into the new Act. Recently however other potentially relevant documents, reports and protocols have been developed on a state, national and international level and these may contain principles that the new Act should also incorporate (sections on principles included in some recent relevant documents, reports and protocols are provided in Appendix 4).

## Principles relating to children with disabilities

Consideration should also be given to whether there is a need in the new legislation for additional or specific principles relating to children.

*The UN Convention on the Rights of Persons with Disabilities*,<sup>13</sup> to which Australia is a signatory, outlines a number of rights and principles regarding children with disabilities that may be pertinent to the Tasmanian Disability Services Act, (see Appendix 4).

There may also be other principles that are relevant in relation to children, including ‘the importance of and commitment to early intervention’, ‘comprehensive life planning’ and ‘transition planning’.

It is generally accepted that ensuring coordination and collaboration between agencies is crucial for effective service provision to children with disabilities. One way to promote this is for disability legislation to stipulate that arrangements for co-operation and co-ordination between agencies be specified in the planning process.

An example of this can be found in the **Disability Act in Ireland** where the responsible minister must have ‘sectoral plans’ in place with any other agency or body in relation to the development and co-ordination of services to be provided by both agencies for persons with disabilities.

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<sup>13</sup> United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol, Preamble, Articles 3, 7 and 23, Ad Hoc Committee of the General Assembly, 2006.

A summary of the major principles that occur in the above examples, and in other disability legislation (see Appendix 4) has been collated in the following table so that the most prominent principles are easier to identify:

Principles	Current Tasmanian Disability Services Act	UN Convention	Tasmanian Operational Framework	Tasmanian Disability Framework for Action	WA Disability Legislation	SA Disability Legislation	Best Practice 2009 report	Social Inclusion Report
Inherent right to dignity, respect and independence	✓	✓	✓	✓	✓	✓	✓	
Right to non-discrimination	✓	✓	✓	✓	✓	✓		
Right to full participation and inclusion		✓	✓	✓			✓	✓
Right to make and implement decisions	✓	✓	✓	✓	✓	✓		
Right to pursue grievances	✓			✓	✓	✓		
Equity of access	✓	✓	✓	✓	✓		✓	
Right to receive services in least restrictive way	✓				✓	✓	✓	
Right to Access generic services	✓		✓	✓	✓	✓	✓	
Focus on the individual	✓	✓	✓		✓		✓	
Cultural proficiency (recognising cultural differences)		✓	✓			✓		

<b>Principles</b>	<b>Current Tasmanian Disability Services Act</b>	<b>UN Convention</b>	<b>Tasmanian Operational Framework</b>	<b>Tasmanian Disability Framework for Action</b>	<b>WA Disability Legislation</b>	<b>SA Disability Legislation</b>	<b>Best Practice 2009 Report</b>	<b>Social Inclusion Report</b>
Specific principles regarding the rights of children		✓						
Specific principles regarding strengthening individuals and families			✓				✓	✓
Services are sustainable responsive							✓	✓
Early intervention							✓	✓

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### Questions Regarding Principles

6. Should the principles of the Tasmanian Operational Framework for Disability Services be adopted in the new legislation?
  7. Are there others that should be added to provide the over-arching ideological framework for the Disability Services Act?
  8. Should legislation contain specific principles regarding the rights of, and service provision to children with a disability?
-

### 3.1.6 Standards

The reference to 'standards' in disability legislation varies considerably.

In some legislation the standards are specified. In these cases the standards are likely to operate as high level 'principles' applying to the provision of services and establishing the level or quality of services that should be expected.

In other legislation, the reference to standards is confined to how they are to be developed and administered, with the actual standards being contained in government policies or guidelines that are easier to change and update.

#### **Current Disability Services Act**

The current *Disability Services Act* specifies 17 Standards;<sup>14</sup>

"The standards to be complied with in respect of the provision of services relating to persons with disabilities are as follows:

1. Services are to be designed and administered so as to achieve positive outcomes for persons with disabilities, such as increased independence, education and employment opportunities and integration into the community.
2. Services are to be designed and administered so as to ensure that the conditions of every-day life of persons with disabilities are the same as, or as close as possible to, the conditions of every-day life of other members of the community.
3. Services are to be provided as part of local co-ordinated service systems and be integrated with services generally available to members of the community, wherever possible.
4. Services are to be tailored to meet the individual needs and goals of persons with disabilities.
5. Programs and services are to be designed and administered so as to meet the needs of persons with disabilities who experience additional disadvantage as a result of their sex, ethnic origin, Aboriginality or geographic location.
6. Programs and services are to be designed and administered so as to promote recognition of the competence of, and enhance the image of, persons with disabilities.

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<sup>14</sup> Tasmania *Disability Services Act 1992*, Schedule 3.

7. Programs and services are to be designed and administered so as to promote the participation of persons with disabilities in the life of the local community through maximum physical and social integration in that community.
8. Programs and services are to be designed and administered so as to ensure that no single organization providing services exercises control over all or most aspects of the life of a person with disabilities.
9. Programs and services are to be designed and administered so as to be as free as possible from aversive, restrictive and intrusive treatment practices.
10. Organizations providing services, whether those services are provided specifically to people with disabilities or generally to members of the community, are to be accountable to those persons with disabilities who use their services, the advocates of such people, the State and the community generally for the provision of information from which the quality of their services can be judged.
11. Programs and services are to be designed and administered so as to provide opportunities for persons with disabilities to reach goals and enjoy lifestyles which are valued by the community generally and are appropriate to their age.
12. Services are to be designed and administered so as to ensure that persons with disabilities have access to advocacy support where necessary to ensure adequate participation in decision making about the services they receive.
13. Programs and services are to be designed and administered so as to ensure that appropriate avenues exist for persons with disabilities to raise and have resolved any grievances about services.
14. Services are to be designed and administered so as to provide persons with disabilities with, and encourage them to make use of, avenues for on-going participation in the planning and operation of services which they receive.
15. Programs and services are to be designed and administered so as to provide persons with disabilities with opportunities for consultation in relation to the development of major policy and program changes.
16. Programs and services are to be designed and administered so as to respect the rights of persons with disabilities to privacy and confidentiality.

17. Priority of access to services is to be on the assessed needs of each person based on -
- (a) the person's wishes; and
  - (b) the level of disability and its impact on the person; and
  - (c) the extent of support provided to the person from all sources; and
  - (d) the benefits to the person of preventive services over remedial measures.

(It should be noted that Tasmania has a relatively high number of Standards compared to other jurisdictions which mostly operate on 8-10. These 8-10 standards tend to be derived and/or adapted from the National Standards).

### **National standards**

To support the development of a National Quality Framework, Disability Services Ministers in Australia have endorsed a revision of the *National Standards for Disability Services*. These standards articulate the minimum service quality elements that all Commonwealth, State and Territory governments should have in place.

The national standards were developed within the context of both international agreements or statements and other relevant legislation such as laws relating to discrimination, guardianship, equal opportunity and freedom of information.

These standards were developed in 1993 and are recognised as being outdated. A commitment to review and revise these standards was provided within the current National Disability Agreement. From February to July 2010 each jurisdiction will hold consultations to allow people the opportunity to provide input into the review of the National Standards.

Major drivers for a revision of these National Standards include a need to:

- focus on measuring outcomes for service users;
- modernise language and concepts;
- address gaps
- reflect contemporary disability services legislature, policy and practice that is underpinned by a rights based approach; and
- ensure applicability of the national standards to all supports, services and activities funded under the national disability agreement.

The need to revise the national standards is indicative of some of the issues surrounding the articulation of standards in legislation and high level policy.

## Issues with standards within legislation

There are several issues associated with incorporating standards within legislation:

1. In order to be effective, standards should specify criteria (performance indicators) that need to be met, and how service providers will be assessed against those criteria. While the current standards are concerned with how services are to be designed and administered, they do not provide any details as to how the quality of support services provided might be assessed or the indicators that might be used to monitor compliance.
2. The current standards in the Tasmanian legislation are so numerous and vague, that they are very difficult to apply in any meaningful way to assessing the quality of services, leaving them open to interpretation, arbitrary and inconsistent approaches, disagreements about what is required, and no clear understanding of the evidence that might be required to indicate compliance. There are no specific terms or conditions relating to the standards that can be used to objectively monitor performance.
3. Once standards are legislated there may be reduced capacity and flexibility to revise, amend or update them according to different contexts and circumstances. Standards used to establish and monitor contractual arrangements are likely to need to change in accordance with changing agreements and funding arrangements.
4. A further issue in incorporating standards in legislation is that there may be competing sets of standards that disability services are required to adhere to for specific administrative or contractual reasons. Where there are both national and state legislative standards and standards in numerous legislative frameworks and policies, there is potential for confusion as well as competing priorities.
5. The most limiting aspect to articulating overarching standards is that, at best, they provide an indication of the 'minimum' quality requirements to be met, which is inconsistent with the general move to continuous quality improvement as recommended in the Review of Disability Services.

As detailed in the *Review of Disability Services* there has also been a shift in thinking about quality systems from a standards based approach to quality assurance approach predicated on performance indicators.

One of the Recommendations of the Review is to implement appropriate output and outcome based performance accountabilities '**within funding agreements**' underpinned by a system of incentives and sanctions in regard to meeting agreed standards of performance.<sup>15</sup>

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<sup>15</sup> Review of Tasmanian Disability Services, KPMG, March 2008, Recommendation 4.

Under the *Operational Framework for Disability Services* the new quality monitoring system will be modelled on best practice within other jurisdictions nationally and internationally and will comprise the following key components:

- 1) Self-assessment, enabling providers to determine how well they are performing against the standards.
- 2) External review, designed to ascertain whether service providers are performing to expectations, isolating areas of compliance and non-compliance as per the standards and identifying best practice, innovation and requirements for sector capacity building.
- 3) Provider registration, as a basis to ensure that only those service providers that have the capacity to provide Disability Services in a safe and effective manner are involved in disability support provision.

This new quality monitoring system will result in a clearer prescription about what is required and a stronger move towards measuring the effectiveness of service outcomes in criteria that are meaningful to individuals, the community and government.

Increasingly jurisdictions are recognising the need for quality systems to go beyond assurance and compliance and focus on quality improvement and capacity building.

### **Approaches in other Jurisdictions**

Some jurisdictions have opted to embed broad ‘standards’ related to service quality within the ‘principles’ section of legislation and to specify how more operational and service specific standards will be determined and applied.

This is the approach taken in Victoria.<sup>16</sup> The **Victorian disability legislation** contains ‘principles’ related to the provision of services but does not provide a set of standards. The legislation states that the Minister must determine standards and that the Secretary is able to specify performance measures and monitor performance.<sup>17</sup>

Similarly under the **Queensland Act**<sup>18</sup> the Minister determines disability service standards for improving the quality of disability services and these must include indicators to measure whether funded service providers have met the standards.

In the Tasmanian Act the ‘principles’ (Schedule 2) generally apply to the rights, inclusion and participation of persons with a disability. The ‘standards’ (Schedule 3) are almost exclusively concerned with how services are to be designed and administered, that is they function more or less as ‘principles’ in regard to service provision to persons with a disability.

It may be useful to redraft the two Schedules into one Schedule of ‘principles’ covering the principles generally applicable to persons with disabilities in society (focus on rights and inclusion), and the principles underlying service design and administration.

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<sup>16</sup> Victoria *Disability Act 2006*, Part 2, Sections 4-7.

<sup>17</sup> Victoria *Disability Act 2006*, Part 6, Division 3, Sections 97&98.

<sup>18</sup> Queensland *Disability Services Act 2006*, Section 34

The Act could then specify who should have the capacity to determine individual standards (performance measures) and how they are to be administered and the powers and mechanisms to be in place to enable government to monitor and review these quality standards.

### **Standards relating to children**

There may also be a need to specify particular standards for service provision to children with a disability. These standards may relate to specialist disability services for children being provided in specific settings, i.e. not being provided in combination or co-location with services for adults.

The nature and type of services provided (or not provided), to children with disabilities could also be included as a standard. This could be in relation to all specialist disability services being community based and wherever possible in family, or family friendly settings.

The new legislation could also specify that certain provisions in the Act will not apply to children, for instance the use of restrictive interventions.

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### **Questions regarding Standards:**

- 9            Is it appropriate to include specific standards in legislation or should the Act simply specify who can determine and monitor standards?
  10.        Should the Act specify the requirements for compliance with standards and the sanctions for not complying or should this be part of administrative/policy specifications?
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## Section 2 Issues Related to Service Delivery

### 3.2.1 Roles and Responsibilities – (includes role and functions of the Secretary (Department), role and functions of funded service providers, role and functions of Individuals/researchers and other bodies, committees).

Historically, roles and responsibilities in relation to disability services have undergone change in accordance with the evolving models of support and service provision.

Provision of funding and services for persons with disabilities has moved from institutional models where government was the sole service provider to community based models where services are provided by a number of community based and government services.

There has also been a move away from government assuming multiple roles and recognition of the need to clarify the respective responsibilities and functions of the government. This was a central theme of the recommendations of the *Tasmanian Review of Disability Services*.

It is therefore important that the review of the Disability Services Act reflects changes to roles and responsibilities not just for government but for other service providers and partners involved in service provision.

### Current Disability Services Act

- **Government roles and responsibilities**

The current Tasmanian legislation contains a number of provisions in regard to the powers and functions of the Secretary of DHHS (on behalf of Government) in relation to the provision of services for persons with disabilities.<sup>19</sup>

The government is responsible for:

- making grants of financial assistance to establish or maintain services to persons with disabilities;
- ensuring compliance with funding agreements and review services provided or research activities carried out by grantees at least once every 5 years; and
- establishing an Ethics Committee to monitor programs and services in regard to aversive, restrictive and intrusive treatment practices.<sup>20</sup>

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<sup>19</sup> Tasmania *Disability Services Act 1992*, Part 2

<sup>20</sup> Tasmania *Disability Services Act 1992*, Part 3

- **Funded Services roles and responsibilities**

The responsibilities of funded service providers in the current Tasmanian legislation are primarily dealt with in terms of compliance with the Objectives, Principles and Standards and terms and conditions of the funding agreement. In relation to funding agreements, funded organisations must:

- comply with the objectives, principles and standards of the Act;
- enter into funding agreements and comply with the terms and conditions of those agreements (which entails compliance with the ‘quality and safety standards framework’ and the ‘financial accountability’ reporting under Schedules 2 and 3 of the Agreement); and
- return the balance of any grant to government.

### **Examples of specification of roles and responsibilities in other legislation**

**The Victorian Act**<sup>21</sup> is more expansive in regard to roles and responsibilities of government. The government is responsible for the planning and development of services, collection and analysis of data required to comply with national agreements, development of policies for disability services, development of criteria for priority access to services, determining policy priorities, resource allocation, and monitoring, evaluation and review of disability services.

A number of other functions are also included but these are couched in terms of ‘promoting’, ‘advancing’ and ‘fostering’ certain outcomes and as such can be interpreted as joint functions or responsibilities shared with the community sector.

For example, government is responsible for promoting awareness and understanding of disability in the community, advancing the inclusion and participation of people with disabilities, promoting quality services and fostering collaboration, coordination and integration of service provision.

Under the Victorian legislation the government is also responsible for the establishment and monitoring of functions of various advisory councils, disability boards and individual practitioners.

**The South Australian Act**<sup>22</sup> specifies that funded service providers must comply with principles and objectives of the Act but the government retains the role of monitoring performance of funded services.

**The Western Australian Act** outlines the functions of the Disability Services Commission<sup>23</sup> which include development of policies, provision of grants, provision of information and the promotion of acceptance of disability in the community.

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<sup>21</sup> Victoria *Disability Act 2006*, Part 3, Division 1, Sections 8-10.

<sup>22</sup> South Australia *Disability Services Act 1993*, Part 5

An interesting aspect of the Western Australia legislation is that there is a requirement for the Commission “to cooperate and act jointly with people or bodies so far as is necessary for the performance of its function.” – that is all functions can to some extent be considered as joint responsibilities.

### **Possible amendments to the Tasmanian Act**

The Review of the *Disability Services Act* provides the opportunity to consider all functions required to be performed in relation to disability services and clearly articulate who is responsible for them.

### **Roles and responsibilities of government**

For some functions it is likely that government will be responsible - for instance:

- the funding or purchasing of services,
- collection and analysis of data,
- entering into contracts or service agreements

Other functions that could be explicitly assigned to government are discussed in the *Review of Disability Services*. They include:

- strategic policy and service system development, purchasing, funding and regulation, and
- building the capacity of the NGO sector- placing an emphasis on the development of contemporary disability policy to guide effective service provision, encouraging inter-agency partnerships and the sharing of excellence and innovation in service delivery.

To achieve this end, all responsibility for direct service delivery will be devolved to the NGO sector over a three year period.<sup>24</sup>

### **Roles and Responsibilities of community sector and people with disabilities**

It is not within the scope of legislation to mandate the roles and responsibilities of community organisations, people with disabilities and their families and the broader community, except where the government is purchasing a service or allocating a grant. The roles and responsibilities of funded organisations are already set out in the *Disability Services Act*.

However, it may be important to be explicit about the role of government in involving stakeholders in the disability sector. For example, *The Review of Disability Services* suggests that government needs to work in partnerships and collaborative ways with the community sector and with people which disabilities in relation to things such as governance arrangements, monitoring and planning of services.

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<sup>23</sup> Western Australia *Disability Services Act 1993*, Section 12.

<sup>24</sup> Review of Tasmanian Disability Services, KPMG, March 2008, Recommendation 2

There may also be greater scope for joint responsibility in areas such as assessment of needs, collection of data, local and individual planning of services, provision of information, and promotion of acceptance and positive image of persons with disabilities as well as monitoring and evaluation of service delivery

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**Questions regarding Roles and Responsibilities:**

11. What do you regard as essential roles and responsibilities for government that should be included in the Disability Services Act?
  12. What do you regard as essential roles and responsibilities for funded non government organisations that should be included in the Disability Services Act?
  13. Are there roles and responsibilities for people with disabilities and their families that should be included in the Disabilities Services Act?
- 

### **3.2.2 Funding Assistance and Allocation Options**

**Allocation of resources at national and state level:**

**National level**

Funding for the provision of disability support services is primarily provided by the State government, with the Australian government contributing approximately 20% of total funding through the *National Disability Agreement*. The Australian government also retains responsibility for funding disability employment services.

The level of funding to each state and territory under the National Disability Agreement is determined on a weighted population basis.

**State level**

The total resources for disability services available at state level are then allocated in a variety of ways:

- There are some state-wide programs and staffing allocations such as the autism assessment team;
- There are regional/area programs and staffing allocations such as the resource teams; and
- There is funding to non government services catering for people with disabilities;

## **Service Level Funding**

Where funding is provided for the purchase of services, several models are possible:

- **Block grants**

Most funding for provision of services in Tasmania is still in the form of block grants to organisations to provide a certain level and type of service to a specified number of persons with a disability. Block grants are not necessarily based on the actual cost of service provision but are considered a 'grant' or contribution towards the total operating costs of the provider.

- **Individualised funding**

Individualised funding allocates funds to a particular service, based on the relative needs of individuals within the service. As individualised need assessments and planning of services became requirements under legislation, the level of funding to new services was based on the total assessed need of the client target group.

- **Individually tied funding**

Individually tied funding allocates funds to a particular person for a particular service or purpose. The allocation is preserved for the person and the funds/services are portable across service providers.

- **Direct payment models:**

Direct payment options allow a person with a disability to choose to have their funding for disability support paid directly to them. Systems of direct payment have been operating successfully in a number of countries and trialed in Australian jurisdictions such as Western Australia and Victoria.

## **Current Disability Service Act**

The current *Disability Services Act* covers funding options that include 'provision of assistance in respect to the provision of services' to individuals and to service providers. The Act also covers requirements for provision of grants to organisations, funding agreements, review of services and what to do when there is a failure to comply with service agreements.

Section 5 of the Act deals exclusively with grants to organisations and provides the Minister with the ability to make a grant of financial assistance "to any person...to establish or maintain services for persons with a disability" which appears to leave the option open that a person with a disability can directly obtain a grant of financial assistance to establish or maintain services for themselves.

The intent of the Act does appear to be limited to assistance in respect of the 'provision of services' to persons with disabilities. Services may be provided directly (by the department) to any person with a disability or indirectly through (non-government) service providers<sup>25</sup>.

This results in a lack of clarity around how funding can be directly transferred to individuals, what the implications might be in regard to other salary or pension payments and related tax issues. The consequence has been that funding is usually provided to a support organisation which then delivers supports to the person with a disability.

### **Provision for direct funding models**

In **Victoria** a pilot Direct Payments Project involved people already receiving funding through existing support programs receiving their funding directly over a six-month period. In the first phase of the Project different options as to how funding is provided to individuals were explored; these issues included how money will be transferred, record keeping, and tax and GST implications.

Similarly, in the **United Kingdom** persons who have been assessed as eligible for 'community care' can be given direct payments to purchase personal, domestic or social services<sup>26</sup>. The legislation enables discretionary power to pay cash directly to people with a disability including people aged over 65, young adults aged between 16 and 18 and to carers of young children.

In **Northern Ireland** the direct payments system works slightly differently with local health boards being responsible for the assessment of people with a disability and the provision of services. Another option operating in Northern Ireland is the establishment of *micro-boards*. A *micro-board* engages a number of key people involved in the life of the person with a disability, usually family and friends, who oversee the management of the direct payments scheme on his/her behalf. The micro-board is the 'employer' of the workers on the individual's behalf. This option is an alternative to the individual with a disability establishing their own incorporated body<sup>27</sup>.

In **Auckland** a scheme called Manawanui InCharge operates as a variation of the 'micro-board' model and involves the Ministry of Health appointing a non-government agency (in this case Manawanui InCharge) to assist people to be in control of their disability-related support. The agency assists people to make the necessary arrangements to manage their budgets and workers successfully. The agency offers information and support with managing payments, keeping records, writing job descriptions and employment agreements, recruiting staff, and advises on the requirements and responsibilities of being an employer.<sup>28</sup>

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<sup>25</sup> Tasmania *Disability Services Act 1992*, Part 2, Section 4.

<sup>26</sup> Community Care (Direct Payments) Act 1996 (England and Wales), Section 1.

<sup>27</sup> See LDC Quarterly, Issue Number 12, 2007

<sup>28</sup> See LDC Quarterly, Issue Number 12, 2007

### **Provision for other funding options**

As provision of funding for disability services is continuing to evolve it is important that the *Disability Services Act* provides for any new funding allocation models that are planned into the future. One way to accommodate the range of funding allocation options currently available as well as being able to implement future models is to provide for 'government' to have the capacity to determine funding methods and levels on a case by case basis.

For instance the relevant United Kingdom legislation provides the capacity to:

- (a) make different provision for different cases, and
- (b) include such supplementary, incidental, consequential and transitional provisions and savings as the Secretary of State thinks fit.”<sup>29</sup>

A similar clause could be provided in the Tasmanian legislation.

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### **Questions regarding Funding Assistance and Allocation Options**

- 14. Should the legislation be amended to clearly allow for other options of assistance to eligible persons apart from direct service provision?
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<sup>29</sup> Community Care (Direct Payments) Act 1996 (England and Wales), Chapter 30, Section 7.

### 3.2.3 – Service Planning

Planning for disability support services occurs on a number of levels. These different levels of planning have different purposes and require participation from different stakeholders. An important issue that needs to be addressed in updating legislation is what provisions about planning should be included?

#### System Level Planning

##### Planning at national level

On a national level the *National Disability Agreement* between the Australian Government and State and Territory Governments came into effect in January 2009, replacing the Commonwealth State Territory Disability Agreement (CSTDA 3).

Apart from setting funding levels the Agreement sets the national planning priorities through a reform agenda. Planning priorities under this agenda include *Better Management of Need, Population Benchmarking, Service Planning and Strategies to Simplify Access and Early Intervention and Prevention*.

Several of these priority areas show recognition of the need for improved long term planning:

- Population benchmarking will assist jurisdictions to achieve national consistency and support resource allocation decisions;
- Service planning is focusing on ways to simplify access to services and consistent processes for assessment and prioritising.

A forward work plan outlines the tasks to be undertaken and the expected timelines, with reporting to Ministers annually.

Given that national planning is covered by formal agreements between the Australian and Tasmanian governments, there would appear to be no necessity to include this level of planning within the Tasmanian legislation.

##### Planning at State level

Planning also occurs at a jurisdictional level with most State and Territory governments having formulated plans to deliver disability services.

In Tasmania, the 'Operational Framework for Disability Services'<sup>30</sup> is a three year agency, sector and community plan for implementing fundamental structural and service delivery changes in the Tasmanian disability sector.

However, there is no mandated responsibility under the current legislation to provide a state disability services plan on a regular basis.

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<sup>30</sup> *Operational Framework for Disability Services*, February 2009, Tasmania, Department of Health and Human Services

Current legislation does not mandate provisions for planning of support apart from an implication in the Standards that services should be designed and administered in a planned way.

This is despite the fact that individual organisations funded for the provision of disability support services are required (through service agreements or contracts) to have their own organisational plans outlining aims, objectives and service outcomes.

A possible direction for the legislative amendments in relation to system planning is contained in the *Operational Framework for Disability Services*.

Under the *Operational Framework for Disability Services* there is a requirement for planning at state and local area level: government, non-government organisations and individuals with disabilities will share in planning responsibilities.

- **A State Advisory Group** will have whole of system input in relation to policy setting, service system development and planning and regulation. Key responsibilities will include developing and monitoring the strategic plan for Disability Services, developing state-wide plans for 'growing' service system capacity and facilitating planning at a state-wide level.
- **Regional Advisory Groups** will support planning on a local level by ensuring a localised response to the needs of people with disabilities based on an understanding of regional community needs.

The *Operational Framework* specifies that this service level planning should be based on the following key principles:

- Planning will support better matching of service development to community needs and priorities
- The emphasis will be on strengthening pathways between specialist disability services and universal service options
- Planning will support effective demand management, and responsiveness to the requirements, goals and aspirations of people with disabilities
- Planning will support equity in the distribution of resources/services based on the identified characteristics and needs of regional populations
- There will be a strong focus on developing and consolidating a continuum of services as well as improving the range, flexibility and quality of services delivered
- Planning will enable ease of access to services, undertaking service development based on population needs analysis, starting from the preferred option of community based services.

## **Approaches to system planning in other legislation**

Several other jurisdictions provide examples of mandated system level planning requirements.

The **Victorian Act**<sup>31</sup> provides guiding principles for the planning of services and supports. The Act also specifies that there will be a State Disability Plan produced every four years that establishes the goals and furthers the objectives and principles of the Act.

The **South Australian Act**<sup>32</sup> specifies that before making any major decisions relating to the development, funding or discontinuance of disability services or research or development activities, the Minister must, to the extent that it is possible, consult with person with disabilities or carers likely to be affected by the decision.

The Act also specifies that the Minister should encourage the informed participation of persons with disabilities and carers in the design, development, management and evaluation of services.

In **Ireland**<sup>33</sup> legislation specifies that the relevant minister must prepare a 'sectoral plan' outlining the measures proposed to be taken in relation to the provision of services to persons with disabilities. The plan must include the services to be provided, the criteria governing eligibility as well as the proposed development, coordination and cooperation between agencies.

The **Queensland Act**<sup>34</sup> stipulates that services should be designed and implemented so that persons with disabilities are able to continually participate in the planning and operation of those services. The Act also requires that persons with disabilities have the opportunity for consultation in relation to the development of major policy changes.

### **Planning to meet individualised needs**

A different level of planning is individualised planning for support which focuses on planning outcomes for individuals. Planning at this level is fundamental to ensuring that services are provided in line with assessed needs and preferences of each individual and their families or care givers.

### **Tasmanian directions for individualised planning**

Under the current *Disability Services Act*, individualised planning is indirectly assumed in the Standards where it is stated that services provided must 'achieve positive outcomes for persons with disabilities, 'must be tailored to meet individual needs' and 'must meet the needs of persons who experience additional disadvantage'<sup>35</sup>. However there are no requirements in the Act regarding 'how' the planning process is to be conducted or reviewed.

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<sup>31</sup> Victoria *Disability Act 2006*, Part 4, Division 3, Sections 52-55

<sup>32</sup> South Australia *Disability Services Act 1993*, Schedule 2

<sup>33</sup> Ireland, *Disability Act 2005*, Part 3, Section 31

<sup>34</sup> Queensland *Disability Services Act 2006*, Section 22

<sup>35</sup> Tasmania *Disability Services Act 1992*, Schedule 3, Standards 1, 4 and 5.

A direction for legislative amendments is provided by the *Operational Framework for Disability Services* which specifies that there should be an individualised approach to planning that actively engages people with disabilities and their families in making choices and influencing decisions about the way they wish to live based on the following principles:

- The person is at the centre and should be supported to guide the planning process
- Family members and friends are key partners in planning
- Person centred planning takes into consideration all the supports and resources available to the individual rather than focusing on specialist services
- Planning should assist the individual to identify their goals and aspirations and reflect what is important to them
- Child centred family focused practice is used for children and families
- Planning should enable the coordination of support

### **Approaches in other jurisdictions**

The **Victorian Act**<sup>36</sup> specifies that planning should be individualised; be directed by the person with a disability; and consider and respect the role of family and other persons who are significant in the life of the person with a disability.

The Act recognises that individual planning encompasses “a range of responses from a brief discussion and agreement about actions required through to an extensive process and the development of a plan across a whole range of life areas documented in a format that is meaningful to the person and their network.”

This is similar to provisions in the **South Australian Act**<sup>37</sup> which also refers to achieving positive outcomes for persons with disabilities and meeting individual needs and goals.

The **Australian Capital Territory legislation**<sup>38</sup> implies individualised planning in terms of achieving outcomes for persons with disabilities such as increased independence and integration and services being designed to meet the needs of people with disabilities.

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<sup>36</sup> Victoria *Disability Act 2006*, Part 4, Division 3

<sup>37</sup> South Australia *Disability Services Act 1993*, Schedule 2, Section 1(a) and (b).

<sup>38</sup> Australian Capital Territory *Disability Services Act 1991*, Schedule 2, Parts 1 and 5.

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**Questions regarding Service Planning:**

15. Should there be any stipulation in the legislation in relation to system planning?
  16. If yes, do the principles from the *Operational Framework for Disability Services* (above) provide a sound basis for legislative direction?
  17. Should there be any stipulation in the legislation related to planning for individuals?
  18. If yes, do the principles from the *Operational Framework for Disability Services* (above) provide a sound basis for legislative direction?
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### **3.2.4 Monitoring Quality and Safety**

(This section deals with the safeguards that should be in place to ensure peoples rights are being respected and that services are provided in a transparent and open way).

A key objective in developing new disability legislation should be to ensure that the quality of disability supports and services is transparent and reflects best practice. The government is committed to developing mechanisms to monitor and continually improve the quality of services and to ensure that people with disabilities, their families and carers play a central role in the planning, monitoring, reviewing and evaluating services.

#### **Current Disability Services Act**

The Current Act provides the Government with powers to monitor compliance with service agreements but has little specific reference to other quality and safety provisions<sup>39</sup>.

#### **Examples in other legislation**

Most disability legislation does not contain specific provision in relation to quality and safety except in terms of standards to be applied to services and capacity to monitor service agreements.

**The Victorian Act** <sup>40</sup>specifies the power of the Secretary to determine service standards and monitor compliance as well as appoint an administrator if a service is inefficiently or incompetently managed. There is also provision for community visitors to inspect residential services.

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<sup>39</sup> Tasmania *Disability Services Act 1992*, Part 2.

<sup>40</sup> Victoria *Disability Act 2006*, Part 3 Division 1 and Division 6.

## Direction for Quality and Safety in Tasmania

The *Operational Framework for Disability Services* provides a strong vision for an approach to quality and safety<sup>41</sup>.

The *Framework* emphasises the need for continuous quality improvement with a clear focus on accountability to the individual, the community and to government in terms of the effectiveness of individual services and the broader service system, in achieving 'benefits' for people with disabilities and their families.

The *Framework* suggests that this will involve building a 'quality culture' in which there is:

- A focus on ensuring services meet best practice standards;
- A process for identifying, monitoring and responding to risks and an effective complaints mechanism;
- A continuous process that monitors problems, examines solutions and regularly monitors the action that has been taken to support improved performance; and
- An emphasis on building capacity and supporting the abilities of individuals and organisations.

A *Quality and Safety Framework* incorporating an incident monitoring system is currently being implemented across Tasmanian Human Services and funded non government organisations. There is now a requirement for funded organisations to demonstrate compliance with the Department's '*quality and safety standards framework*'<sup>42</sup>.

At the same time, one of the priority action areas of the current *National Disability Agreement* is to develop a *National Disability Quality Framework* that will provide a consistent approach to quality assurance and the continuous improvement of services. This strategy is underpinned by the national disability standards discussed in section 3.1.6.

In addition, the current *Disability Services Act* makes provision for an Ethics Committee<sup>43</sup> specifically designed to monitor service provision in regard to aversive, restrictive and intrusive treatment practices. In practice this Committee has operated on a referral basis only due to resource issues and voluntary membership.

The range of current safeguards include monitoring service agreements, service providers demonstrating compliance with the Quality and Safety Framework and the Ethics Committee monitoring aversive, restrictive and intrusive treatment practices. Consideration should be given to whether the above arrangements are sufficient or whether there is a need to have the additional capacity to enter, inspect and report on funded services.

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<sup>41</sup> Operational Framework for Disability Services, Department of Health and Human Services, 2009, Section 5

<sup>42</sup> Department of Health and Human Services, Quality and Safety Standards Framework for Tasmania's Agency Funded Community Sector, 2009-2012.

<sup>43</sup> Tasmania *Disability Services Act 1992*, Part 3.

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### Questions Regarding Monitoring Quality and Safety:

19. Should the Disability Services Act specify an approach for Quality and Safety or should this be the subject of operational requirements?
20. Is the 'Quality culture' approach described in the *Operational Framework for Disability Services* sufficient for monitoring quality and safety?
21. Is there a need to legislate for the capacity to enter, inspect and report on funded services?

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## 3.2 5 Complaints

There are a number of independent complaints and dispute resolution bodies available to Tasmanians to protect their rights.<sup>44</sup>

In reviewing the disability legislation consideration should be given to the extent that these external bodies are appropriate and sufficient for persons with a disability, particularly in relation to the capacity to resolve issues. If they are considered to be inadequate or inappropriate then that may be an argument for either strengthening complaints procedures within the agency (DHHS), strengthening provisions under the Disability Services Act, or alternately recommending additional new legislation be developed, (for instance establishing a Disability Commissioner to address and resolve complaints about disability specific services).

The purpose of new legislation would not be to replace existing systems but provide an avenue to arbitrate on issues that remain unresolved through those existing processes.

Current provisions in the Tasmanian *Disability Services Act* specify (in the Objectives) that persons with a disability have the same rights to pursue any grievance in relation to services as other members of society; that they have a right to support to enable them to pursue a grievance; and that pursuing a grievance will not result in discontinuation of services or recrimination from any person involved.

The Act also specifies that programs and services must be designed and administered to ensure that avenues exist for persons with disabilities to raise and have resolved any grievances about services.<sup>45</sup>

The implementation of the *Quality and Safety Framework* across government and non-government services requires complaints management processes and adherence to the incident monitoring system policy being demonstrated.<sup>46</sup> This will be monitored through service agreements.

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<sup>44</sup> For instance the Australian *Disability Discrimination Act 1992*, and the Tasmanian *Anti-Discrimination Act 1998*, *Guardianship and Administration Act 1995* and the *Health Complaints Act 1992*.

<sup>45</sup> *Tasmania Disability Services Act 1992*, Schedule 2 and 3.

<sup>46</sup> Quality and Safety Standards Framework for Tasmanian Agency Funded Community Sector, Section 2.3.1 - Mandatory Quality and Safety Standards Obligations.

### Examples in other legislation

The **South Australian legislation** has similar provisions to those in the Tasmanian legislation<sup>47</sup> as does the **Victorian Act**. However in Victoria the provisions, rather than being part of a service agreement, are articulated directly in the Act.<sup>48</sup> Under the Act service providers must have a system in place to receive and resolve complaints, must report annually to the Disability Services Commissioner in the form required by the Commissioner and must take all reasonable steps to ensure that a person with a disability is not adversely affected by making a complaint.

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### Questions regarding Complaints:

22. Should there be a legislative requirement that processes related to making and investigating complaints regarding services provided or funded by DHHS are in place, or is this more appropriately contained in service agreements?
  23. Are current independent complaints and dispute resolution bodies available in Tasmania appropriate and adequate to address and resolve concerns persons with a disability or their family may have in regard to service provision?
  24. If not what additional legislation or dispute resolution bodies should be established?
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## 3.2.6 Substitute Decision Making

### Guardianship and Administration arrangements

Some persons with a disability may have difficulty independently making decisions about their personal affairs. In most jurisdictions there is legislative provision designed to provide protections for these people related to decision making.

The Tasmanian *Guardianship and Administration Act 1995*<sup>49</sup> is one such vehicle. It provides for the Guardianship and Administration Board to appoint a Guardian to make personal and lifestyle decisions for an adult with a disability (referred to as 'the represented person'), or for an administrator to make financial and related decisions for the represented person, where this is seen to be required.

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<sup>47</sup> South Australia *Disability Services Act 1993*, Schedule 1, Section 4(c) and Schedule 2, Section 1(h).

<sup>48</sup> Victoria *Disability Act 2006*, Part 6, Division 5, Sections 104-106.

<sup>49</sup> Tasmania *Guardianship and Administration Act 1995*, Part 9, Section 66

In making decisions about guardianship or administration the Guardianship and Administration Board (the Board) is required by the Act<sup>50</sup> to ensure:

- a) the means which is the least restrictive of a person's freedom of decision and action as is possible in the circumstances is adopted;
- b) the best interests of a person with a disability or in respect of whom an application is made under this Act are promoted; and
- c) the wishes of a person with a disability or in respect of whom an application is made under this Act are, if possible, carried into effect.

### **Guardianship**

The Board may appoint a guardian for a person with a disability who is over the age of 18 years and is unable by reason of the disability to make reasonable judgements in respect of all or any matters relating to his or her person or circumstances.

A guardian is a person who has been given the legal power to make important decisions on behalf of another adult – such as where that person should live, or what care and services the person should have.

The Board most often appoints the Public guardian. However, any person over the age of 18 may be appointed as another person's guardian. A family member or close friend who the Board judges to be suitable and available would be preferred.

Many personal and lifestyle decisions are made under informal or family arrangements for adults with a disability. The Board encourages these informal arrangements and generally takes the view that without a good reason, these decisions do not need to be made by a guardian.

When the informal system breaks down, for example where a dispute arises or abuse has been alleged, then a guardian may need to be appointed. The appointment of a guardian is considered as a 'last resort' option.

When the Board appoints a guardian they make an order that tells the guardian what type of decisions can be made for the represented person.

### **Administration**

The Board may appoint an administrator for a person with a disability who is over the age of 18 years and is unable by reason of the disability to make reasonable judgements in respect of matters relating to all or any part of his or her estate. An administrator-who acts like a financial manager-makes decisions about a person's finances and property.

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<sup>50</sup> Ibid, Section 6

An administrator may either be a person or an organisation (eg The Public Trustee) who has been given the legal authority to manage some, or all of the financial and legal affairs of a person with a disability.

If the Board appoints a private administrator, it must be satisfied that the person has the appropriate qualifications and/or experience to carry out the duties of an administrator.

In each case the administrator's powers are determined by the Board's order. How far the administrator's decision-making authority extends depends on the terms set out in the order.

It is also important to note that the Guardianship and Administration Board will only appoint a guardian or administrator if it is satisfied that **there is not a less restrictive way of making these decisions**.<sup>51</sup>

For instance, it is doubtful that the Board would consider it appropriate, let alone practical, to appoint an administrator to manage the day-to-day finances and expenditures of every adult with a disability who required assistance with these decisions. The Board would want to be satisfied that there are not any less formal arrangements that can be put in place.

### **Medical decisions**

Part 6 of the Guardianship and Administration Act 1995 provides for a comprehensive and flexible statutory scheme for the authorisation and approval of medical and dental treatment for persons with a disability who are incapable of understanding the nature and effect of the medical and dental treatment and therefore incapable of giving or refusing consent to such treatment.

The Guardianship and Administration Board has authority to consent to treatment but in most cases the consent of the Board will not be required. This is because the Act gives the 'person responsible'<sup>52</sup> who may be the person's appointed guardian, spouse, carer or close friend, the authority to provide substitute consent. The Board, however, must consent to "special treatments" which are defined in the Guardianship and Administration Regulations 2007. Special treatments are generally very serious treatments such as sterilisation.

The Act excludes service providers who are providing care to a person with a disability from being the 'person responsible'.<sup>53</sup>

### **Protections for day to day financial decisions**

Many adults with a disability who have difficulty managing their financial affairs do not require the appointment of a guardian or administrator under the *Guardianship and Administration Act* but may need assistance with daily tasks such as banking, paying bills or managing their budget.

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<sup>51</sup> *ibid.* Part 7, Division 4.

<sup>52</sup> *Ibid.*, Section 4

<sup>53</sup> *Ibid.*

This assistance may be provided by a family member, a close friend, a carer or an employee of a funded service provider.

There is presently no legislative restriction that regulates a state service worker, funded service provider, a person employed by a funded provider or a paid carer entering into these informal arrangements.

Therefore there are no legislated accountability requirements and no processes to enable these informal arrangements to be monitored or reviewed. This can potentially result in situations where the rights of people with a disability, who are receiving services or supports under the *Disability Services Act*, are not adequately protected and safeguarded, leaving some people vulnerable or open to exploitation.

### **Approaches in other Jurisdictions**

In Australia the only jurisdiction to have specific arrangements in place related to providing assistance to people with disabilities for financial transactions, is **Victoria**.<sup>54</sup> The provision within the Victorian Act:

- (1) prohibits funded service providers or persons employed by funded service providers to act as formal financial administrators (the Secretary of the department is exempt from this provision); and
- (2) limits the informal management and control of clients money to residential service providers or persons employed by residential service providers, and then only under certain conditions. These conditions:
  - require consent from the person with a disability, their guardian or administrator,
  - limit the amount of money a residential service provider or person employed by a residential service provider may control and
  - specifies record keeping requirements including access to financial records by the client upon request.

### **Implications for Tasmanian Legislation**

The issues to be considered for Tasmanian disability legislation are whether:

- there are good reasons for restricting funded service providers, persons employed by funded service providers or funded carers, from being able to act as a formal guardian or administrator of an adult with a disability who is a client of that service.
- whether it is necessary to specify in legislation which service providers or employees of service providers can manage or control money of a client and under what conditions or whether these issues are more appropriately dealt with in departmental policies and guidelines?

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<sup>54</sup> Victoria *Disability Act 2006*, Sections 90-96

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### Questions Regarding Substitute Decision Making

25. Should the new legislation stipulate who can and who cannot act as a formal guardian or administrator?
  26. Should the new legislation stipulate who can and who cannot act in an informal capacity in assisting a person with a disability with decision making in certain areas?
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### 3.2.7 Restrictive Interventions

In the past restrictive and intrusive treatment practices have been used in an attempt to modify the 'challenging' behaviour of some persons with a disability particularly where the behaviour posed a threat to the safety of the person with a disability and/or others.

Restrictive practices may take the form of:

- chemical restraint (using medication for the primary purpose of modifying and controlling a person's behaviour);
- mechanical or physical restraint (using equipment or appliances to prevent a person from moving or behaving in a certain way); or
- seclusion (confining a person and preventing them from leaving should they choose to do so).

The very nature of this type of intervention is contentious. Practices such as restraint and seclusion impose significant limitations on the ability of an individual to exercise freedom of movement; are potentially abusive; and may constitute a denial of human rights.

Such interventions pose both ethical and legal questions as to their validity.

#### Aversive Treatment Practices

The legal and ethical questions related to aversive practices are even more contentious.

The Disability Services Act is the only legislation in Australia to specifically include 'aversive treatment practices', as part of restrictive interventions. This is despite the fact that Disability Services has a policy on restrictive treatment practices which states that aversive treatments 'are not to be used under any circumstances'.<sup>55</sup>

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<sup>55</sup> *Aversive, Restrictive and Intrusive Treatment Practices, Policy and Guidelines*, Disability Services, DHHS, July 2002, page 7.

An aversive practice is one that uses unpleasant physical or sensory stimuli in an attempt to reduce undesired behaviour. An aversive intervention is usually one which cannot be avoided and induces pain or discomfort. Aversive treatments also refer to any withholding of basic human rights or needs or a person's goods/belongings or a favoured activity for the purpose of behaviour management or control.

Under the provisions of the Criminal Code Act 1924 and the Police Offences Act 1935 certain forms of aversive practices could constitute an assault. Other forms of aversive practices, whilst of a non-criminal nature are still illegal and legal redress can be pursued through the Anti-Discrimination Commission, the Disability Discrimination Solicitor or through civil action.

A number of researchers and practitioners have also sought to demonstrate that aversive practices do not create lasting changes in behaviour.<sup>56</sup> These practices are usually only effective in the short term, whereas long term sustainable change in behaviour is achieved through positive, individualised environmental adaptations and the provision of skill development opportunities.

The right of any individual to be treated with dignity and respect and to be free from harm is affirmed in global charters such as the United Nations' *Declaration on the Rights of Mentally Retarded Persons* (1971), the United Nations' *Declaration on the rights of Disabled Persons* (1975), and most recently in the United Nations' *Convention on the Rights of Persons with Disabilities* (2006).

The new legislation must consider whether aversive practices are in any way acceptable or whether they should be clearly rejected as an option.

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<sup>56</sup> For example, La Vigna G. W., Donnellan A. M., *Alternatives to Punishment. Solving behaviour problems with non-aversive strategies*, (1986) Irvington Publishers Inc.

### **Tasmanian Disability Services Ethics Committee**

As a means of monitoring and regulating restrictive practices the current *Disability Services Act* provides for an *Ethics Committee* to monitor programs and services in respect to aversive, restrictive and intrusive treatment practices<sup>57</sup>

The Ethics Committee has two main functions, namely to monitor programs and services in regard to aversive, restrictive and intrusive treatment practices and to report or give recommendations to the Minister in respect of such programs or services or in relation to specific treatment practices.

The Minister also has the capacity to determine other functions to be undertaken by the Committee<sup>58</sup>.

### **Functions of the Ethics Committee**

Under the current Departmental processes referral to the Ethics Committee is required for funded service providers to proceed with restrictive or aversive practices.

There has been concern expressed over an extended period as to whether the current legislation provides for the Ethics Committee to determine whether *individual* behaviour management (treatment) plans developed by funded service providers, which include the use of aversive, restrictive and intrusive practices are appropriate. This role was one which was ascribed to the Ethics Committee in previous Departmental policies.

The concern is whether this function being undertaken by the Ethics Committee is within the spirit of the Act. The functions of the Ethics Committee provide for the broad monitoring of programs and services but do not extend to assessments of *individual* treatment plans. The Committee's role is to advise on the appropriateness of 'types' of treatment programs rather than reviewing and approving individual program plans.

The Ethics Committee agrees with the legal advice that it does not have the authority to approve treatment plans in the current legislation and it is not a role it is comfortable taking on given the complexities of both the legislation and the common law in relation to this.

It has been argued that as Section 10(1) (c) provides that the Minister may allocate to the Ethics Committee "such other functions as the Minister may determine", in which case the Minister should be able to direct that the Committee has the power to assess and approve individual programs. The most recent legal advice is that this direction by the Minister would not be consistent with the remainder of the provisions of the Act that are concerned with matters of principles rather than the detail of individual treatment programs.

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<sup>57</sup> Tasmania *Disability Services Act 1992*, Part 3.

<sup>58</sup> *ibid*, Part 3, Section 10(c).

As it presently stands, it is not the intent of the Act to utilise the Ethics Committee to make judgments and provide approval on specific, individual treatment practices. This may well be appropriate and if so the issue remains that in order to ensure the protection of individuals alternate bodies or mechanisms may need to be identified or developed.

### **Approaches in other Jurisdictions**

Most jurisdictions in Australia, except for Victoria and Queensland, do not have any provisions related to restrictive practices contained in their disability legislation.

**In Queensland** funded service providers can request the Chief Executive Officer of the Department to authorise the use of restrictive treatment practices based on an assessment and plan provided by a health professional. The Chief Executive Officer can approve the plan, require changes to be made or refuse the plan. The person with a disability, or a person on their behalf, can appeal the use of restrictive practices through the *Queensland Guardianship and Administration Act*.

**In Victoria** the Secretary can approve the use of restrictive practices on the advice of the Senior Practitioner (an appropriately clinically qualified and experienced health professional). The Senior Practitioner can monitor and amend the treatment plan and the person with a disability, or a person on their behalf, can appeal the use restrictive practices to the Victorian Civil and Administrative Tribunal (VCAT).

Comparison with the Victorian legislation has limited relevance to the Tasmanian context given that the Victorian legislation has provision for compulsory treatment of some persons with disabilities.

In contrast, under the Tasmanian *Disability Services Act* participation by persons with disabilities in services and programs provided or funded is voluntary. The Act does not provide for the compulsory treatment of clients; has no provision for 'security residents' or 'forensic residents' and therefore no obvious legislative basis for the use of restrictive treatment practices. In fact recent decisions of relevant tribunals have even questioned whether a guardian can consent to certain behaviour management practices.

The use of restrictive treatment practices under the Tasmanian legislation appears to be limited to cases where it is necessary to prevent harm or to meet duty of care requirements. Again this is different to the Victorian legislation which also allows the use of restraint and seclusion in order to 'prevent the person from destroying property'<sup>59</sup>.

The primary consideration will be whether disability legislation is, or should be, the appropriate mechanism for approving and monitoring restrictive practices. If disability legislation is to be used what process is required for approval or endorsement and appeal and who is best placed to monitor and review the use of such practices?

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<sup>59</sup> Victoria *Disability Act 2006*, Section 140.

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**Questions Regarding Restrictive Interventions:**

27. Are the current provisions in the Act pertaining to restrictive practices and the Ethics Committee still adequate and appropriate?
  28. Should new legislation provide for restrictive interventions under certain circumstances, should this include aversive practices?
  29. Who should give approval for the use of restrictive interventions and who should monitor the process?
  30. Should legislation exclude the use of restrictive interventions on children with a disability?
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### **3.2.8 Provisions regarding Parental Responsibility**

The Tasmanian *Disability Services Act 1992* has no provisions pertaining specifically to children, either in terms of statements of rights and principles or in regard to service provision. This is also true of disability services legislation in other states and territories.

There are a number of areas where specific reference to issues affecting children may be important, one such area is parental responsibility.

#### ***Parens Patriae – Who Will Take Responsibility***

In February 2009 the Tasmanian Commissioner for Children provided a Report and recommendations to the Minister for Human Services from an inquiry into children living in disability respite facilities<sup>60</sup>.

The Inquiry found that:

Some parents of children with significant disabilities struggled to fulfil their parental responsibilities due to the stress, exhaustion or personal safety risks of fulfilling constant care expectations;

- The State's own respite services constituted a risk to children with disabilities who lived in these facilities on a long term basis; and
- That taking action under *the Children, Young Persons and Their Families Act* in relation to a child with a disability (when a parent was no longer able to provide care) required a charge of abuse or neglect against the parents and that this extreme practice that should not be necessary in order for parents to get help and support.

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<sup>60</sup> Tasmania Commissioner for Children – ‘Parens Patriae – Who Will Take Responsibility? “Inquiry into the circumstances of certain children living in disability respite facilities”, February 2009’

The Report recommended that further work be undertaken to determine if the Commonwealth *Family Law Act 1975* provides an avenue as a less adversarial and preferred means of achieving the best outcomes for children involving sharing aspects of parental responsibility between government and the parents. The Minister has asked the Commissioner for Children to provide further advice about the possibility of incorporating a model for allocating parental responsibility in a less adversarial manner into a revised *Disability Services Act*.

There is also endorsement in the Report of the provision of family support and early intervention services to children with disabilities and their families so that families do not reach a stage where they feel unable to continue with parental responsibilities.

The Report also recommends amendment to the *Children, Young Persons and Their Families Act* to provide for care arrangements where a child is eligible for disability services and their parents have not reached agreement with the Secretary in relation to their ongoing care, or the child has not been collected from out of home care after a defined period of time.

There is a legitimate view that if a child is not the subject of abuse or neglect then it is not appropriate to make provision under the *Children, Young Persons and Their Families Act* to provide for care arrangements that may be directly related to the child's disability. In these circumstances it may be more appropriate to provide for the child's care under the *Disability Services Act*.

There is an equally legitimate view that provisions for shared parental responsibility not linked to child protection issues are outside the scope of the *Disability Services Act* as this Act is primarily concerned with the manner in which services are to be provided, not with issues around parental responsibility or guardianship.

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### **Questions Regarding Parental Responsibility:**

31. Should future Disability legislation contain specific provisions regarding the formal allocation of parental responsibility for children with a disability?
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### **Other provisions**

There may be a number of other areas where you consider specific provisions are needed, please feel free to outline the issues and proposed legislative provisions to address them.

## APPENDIX ONE:

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### How to provide comment on this Directions Paper

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This Directions Paper sets out the proposed content and structure for the new Tasmanian disability legislation. We are seeking comments, feedback and suggestions on this Paper.

The Directions Paper has identified a number of issues that may be relevant for future legislation and has also provided a broad outline as to how new legislation may be structured.

Both the proposed content and structure are outlined to encourage feedback and discussion and do not in any way constitute a current Government policy position.

You may wish to comment on the specific issues and questions raised in the Directions Paper, or you may wish to identify alternate and additional issues that you believe need to be considered. The Department of Health and Human Services welcomes all comments and feedback.

Please note that all submissions made are treated as public documents unless they are specified otherwise. If you do not wish your name, submission or comments to be directly identified or quoted or if you wish your comments to be treated as confidential – please indicate this clearly on your submission.

Feedback can be provided in writing in one of three ways:

1) By **mail** to:

John Nehrmann, Project Management Officer, Disability, Child, Youth and Family Services, Department of Health and Human Services.

3/99 Bathurst Street, Hobart, TAS, 7000

2) By **Fax** to: John Nehrmann, 03 6233 7360

3) By **Email** to: [john.nehrmann@dhhs.tas.gov.au](mailto:john.nehrmann@dhhs.tas.gov.au)

Written comments and feedback should reach the Department of Health and Human Services **by Friday 26 February 2010**.

If you require further copies of this Directions Paper or have any queries, please contact John Nehrmann (phone) 6233 4772.

## **APPENDIX 2:**

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### **Summary of Questions:**

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#### **Questions Regarding the Definition of Disability, Eligibility and Priority Access: (PAGE 17)**

1. Does the current legislation adequately define “disability” and those who should fall within the scope of the Act?
  2. If not, how can the definition be improved?
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#### **Questions Regarding Service Objectives: (PAGE 20)**

3. Do the objectives in the current legislation reflect desired outcomes for persons with disabilities and current community expectations?
  4. Are there any examples of objectives you would like to see included?
  5. Should legislation contain specific provisions for service objectives for children with a disability?
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#### **Questions Regarding the Principles of the Act: (PAGE 25)**

6. Should the principles of the Tasmanian Operational Framework for Disability Services be adopted in the new legislation?
  7. Are there others that should be added to provide the over-arching ideological framework for the Disability Services Act?
  8. Should legislation contain specific principles regarding the rights of, and service provision to, children with a disability?
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#### **Questions Regarding Standards: (PAGE 31)**

9. Is it appropriate to include specific standards in legislation or should the Act simply specify who can determine and monitor standards?
  10. Should the Act specify requirements for compliance with standards and the sanctions for not complying or should this be part of administrative/policy specifications?
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**Questions Regarding Roles and Responsibilities: (PAGE 35)**

11. What do you regard as essential roles and responsibilities for government that should be included in the Disability Services Act?
  12. What do you regard as essential roles and responsibilities for funded non-government organisations that should be included in the Disability Services Act?
  13. Are there roles and responsibilities for people with disabilities and their families that should be included in the Disability Services Act?
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**Questions Regarding Funding Assistance and Allocation Options: (PAGE 38)**

14. Should the legislation be amended to clearly allow for other options of assistance to eligible persons apart from direct service provision?
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**Questions Regarding Service Planning: (PAGE 43)**

15. Should there be any stipulation in the legislation in relation to system planning?
  16. If yes, do the principles from the *Operational Framework for Disability Services* (above) provide a sound basis for legislative direction?
  17. Should there be any stipulation in the legislation related to planning for individuals?
  18. If yes, do the principles from the *Operational Framework for Disability Services* (above) provide a sound basis for legislative direction?
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**Questions Regarding Monitoring Quality and Safety: (PAGE 45)**

19. Should the Disability Services Act specify an approach for Quality and Safety or should this be the subject of operational requirements?
  20. Is the “Quality culture’ approach described in the *Operational Framework for Disability Services* sufficient for monitoring quality and safety?
  21. Is there a need to legislate for the capacity to enter, inspect and report on funded services?
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**Questions Regarding Complaints – (PAGE 46)**

22. Should there be a legislated requirement that processes related to making and investigating complaints regarding services provided or funded by DHHS are in place, or is this more appropriately contained in service agreements?
23. Are current independent complaints and dispute resolution bodies available in Tasmania appropriate and adequate to address and resolve concerns persons with a disability or their family may have in regard to service provision?
24. If not, what additional legislation or dispute resolution bodies should be established?

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**Questions Regarding Substitute Decision Making (PAGE 50)**

25. Should the new legislation stipulate who can and who cannot act as a formal guardian or administrator?
26. Should the new legislation stipulate who can and who cannot act in an informal capacity in assisting a person with a disability with decision making in certain areas?

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**Questions Regarding Restrictive Interventions: (PAGE 54)**

27. Are the current provisions in the Act pertaining to restrictive practices and the Ethics Committee still adequate or appropriate?
28. Should new legislation provide for restrictive interventions under certain circumstances, should this include aversive practices?
29. Who should give approval for the use of restrictive interventions and who should monitor the process?
30. Should legislation exclude the use of restrictive interventions on children with a disability?

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**Questions Regarding Parental Responsibility: (PAGE 55)**

31. Should future Disability legislation contain specific provisions regarding the formal allocation of parental responsibility for children with a disability?
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## APPENDIX 3

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### Examples of Objectives in other disability legislation

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**1) *Objects of Australian Capital Territory Disability Services Act 1991:*<sup>61</sup>**

- (a) to enable people with disabilities to receive the services necessary to enable them to achieve their maximum potential as members of the community; and
- (b) to enable people with disabilities to receive services that –
  - (i) further their integration into the community and complement services available generally to people in the community; and
  - (ii) enable them to achieve a better quality of life including increased independence, employment opportunities and integration in the community; and
  - (iii) are provided in ways that promote in the community a positive image of people with disabilities and enhance their self-esteem; and
- (c) to ensure that the quality of life achieved by people with disabilities as the result of the services provided for them is taken into account in the granting of financial assistance for the provision of those services; and
- (d) to encourage innovation in the provision of services for people with disabilities; and
- (e) to provide a system to administer funding in respect of people with disabilities that is flexible and responsive to the needs and aspirations of those people;

**2) *Objects of the Queensland Disability Services Act 2006* <sup>62</sup>**

- (a) to acknowledge the rights of people with a disability including by promoting their inclusion in the life of the community generally; and
- (b) to ensure that disability services funded by the department are safe, accountable and respond to the needs of people with a disability; and
- (c) to safeguard the rights of adults with an intellectual or cognitive disability including by regulating the use of restrictive practices by funded service providers in relation to those adults -

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<sup>61</sup> Australian Capital Territory *Disability Services Act 1991*, Section 1, Part 3

<sup>62</sup> Queensland *Disability Services Act 2006*, Section 6, Part 6

- (i) only where it is necessary to protect a person from harm; and
- (ii) with the aim of reducing or eliminating the need for use of the restrictive practices.

**3) Objects of the Commonwealth Disability Services Act 1986<sup>63</sup>**

- (a) to replace provisions of the *Handicapped Persons Assistance Act 1974*, and of Part VIII of the *Social Security Act 1947*, with provisions that are more flexible and more responsive to the needs and aspirations of persons with disabilities;
  - (b) to assist persons with disabilities to receive services necessary to enable them to work towards full participation as members of the community;
  - (c) to promote services provided to persons with disabilities that:
    - (i) assist persons with disabilities to integrate in the community, and complement services available generally to persons in the community;
    - (ii) assist persons with disabilities to achieve positive outcomes, such as Increased independence, employment opportunities and integration in the community; and
    - (iii) are provided in ways that promote in the community a positive image of persons with disabilities and enhance their self-esteem;
  - (d) to ensure that the outcomes achieved by persons with disabilities by the provision of services for them are taken into account in the granting of financial assistance for the provision of such services;
  - (e) to encourage innovation in the provision of services for persons with disabilities; and
  - (f) to assist in achieving positive outcomes, such as increased independence, employment opportunities and integration in the community, for persons with disabilities who are of working age by the provision of comprehensive rehabilitation services.
- (2) 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.

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<sup>63</sup> Australian Government, *Disability Services Act 1986*, Part 1, Section 3

## APPENDIX 4

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### Examples of principles in other disability legislation

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#### 1) ***Commonwealth Disability Services Act – Principles, objectives and guidelines:***<sup>64</sup>

- (1) The Minister must, by legislative instrument, formulate principles and objectives to be furthered and guidelines to be complied with in the administration of this Act.
- (2) A copy of the guidelines formulated under subsection (1) is to be laid before each House of the Parliament within 15 sitting days of that House after the guidelines are formulated and the guidelines take effect only as provided by the following provisions of this section.

#### 2. ***Western Australia Disability Services Act – Principles*** <sup>65</sup>

1. People with disabilities have the inherent right to respect for their human worth and dignity.
2. People with disabilities, whatever the origin, nature, type or degree of disability, have the same basic human rights as other members of society and should be enabled to exercise those basic human rights.
3. People with disabilities have the same rights as other members of society to realise their individual capacities for physical, social, emotional, intellectual and spiritual development.
4. People with disabilities have the same right as other members of society to services which will support their attaining a reasonable quality of life in a way that also recognises the role and needs of their families and cares.
5. People with disabilities have the same right as other members of society to participate in, direct and implement the decisions which affect their lives.
6. People with disabilities have the same right as other members of society to receive services in a manner that results in the least restriction of their rights and opportunities.
7. People with disabilities have the same right as other members of society to pursue any grievance concerning services.
8. People with disabilities have the same right to access the type of services and supports that they believe are most appropriate to meet their needs.

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<sup>64</sup> Australian Government, *Disability Services Act 1986*, Part 1, Section 5

<sup>65</sup> Western Australia *Disability Services Act 1993*, Schedule 1

9. People with disabilities who reside in rural and regional areas have a right, as far as is reasonable to expect, to have access to similar services provided to people with disabilities who reside in the metropolitan area.
10. People with disabilities have a right to an environment free from neglect, abuse, intimidation and exploitation.

### **3) South Australia Disability Services Act - Principles<sup>66</sup>**

- 1 Persons with disabilities, whatever the origin, nature or degree of their disabilities might be, are individuals –
  - (a) who have the inherent right to respect for their human worth and dignity; and
  - (b) who have the same fundamental human rights and responsibilities as other members of the Australian community; and
  - (c) who have the same right as other members of the Australian community to realise their potential for intellectual, physical, social, emotional, sexual and spiritual development; and
  - (d) who have the same rights as other members of the Australian community to choose their own lifestyle and generally to control their own lives.
- 2 Persons with disabilities have a right to protection from neglect, abuse, intimidation and exploitation.
- 3 Persons with disabilities have the same right as other members of the Australian community to the assistance and support that will enable them to exercise their rights, discharge their responsibilities and attain a reasonable quality of life.
- 4 In receiving the services that supply such assistance and support, persons with disabilities -
  - (a) have the right to choose between those services, and to choose between the options available within a particular service, so as to provide assistance and support that best meets their individual (including cultural) needs; and
  - (b) have the right to have those services provided in a manner that -
    - (i) involves the least restriction of their rights and opportunities; and
    - (ii) takes into account their individual needs, goals, age and other personal circumstances; and

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<sup>66</sup> South Australia Disability Services Act 1993, Schedule 1

- (iii) takes into account any further disadvantage that may be suffered as result of their gender, ethnic origin, aboriginality, financial situation or location; and
- (c) have the right to pursue any grievance in relation to those services without fear of the discontinuance of services or of recriminations or retribution from service providers.

**4) Guiding Principles of the UN Convention on the Rights of Persons with Disabilities:**<sup>67</sup>

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

**5) Guiding Principles of the Tasmanian Disability Framework for Action/2005-2010:**<sup>68</sup>

- **Equity** – People with a disability have the same rights as other citizens and equal opportunity to participate in the social, cultural, economic and political life of our community and to access the structures, processes and resources to realise these opportunities.
- **Inclusiveness** – Mainstream programs, services and facilities should be available and accessible to people with disabilities.
- **Access** – Ensure access to specialist services that are appropriate to the needs of individuals.
- **Autonomy** – People with a disability should be free to make or influence the decisions and choices that affect their lives.

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<sup>67</sup> United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol, Guiding Principles of the Convention, Ad Hoc Committee of the General Assembly, 2006.

<sup>68</sup> Disability Framework for Action/2005-2010, Tasmania Department of Premier and Cabinet, 2005, page 5.

- **Recognising and Supporting Diversity** – The knowledge and life experience of people with a disability, and the contribution they make to society, should be acknowledged and valued, including in government policy.
- **Non-discrimination** – All people have the right to live their lives free of discrimination.
- **Prioritising Resources** – Resources should be targeted to areas in which they can make the greatest difference in the lives of people with a disability. Priority should be given to those in greatest need, particularly those with severe or profound disabilities.

**6). Relevant goals of Tasmania Together:<sup>69</sup>**

- (1) Improve the health and wellbeing of the Tasmanian community through delivery of coordinated services.
- (2) Foster an inclusive society that acknowledges and respects our multicultural heritage, values diversity and treats everyone with compassion and respect.
- (3) Provide all Tasmanians with the opportunity to participate in decisions that affect their lives.

**7). The Contemporary Disability Service system<sup>70</sup>**

A 2009 Australian Report on contemporary disability service systems identified the following key components of a contemporary best practice disability system that serve as a set of principles:

- *Systems protect and promote human rights and maximise social inclusion*
- *Supports are sustainable and responsive*
- *Services intervene early to improve quality of life, increase independence and plan for future needs*
- *Services are provided to respond to varying needs over life stages and transitions*
- *Supports are person centred*
- *Services are family centred and strengthen informal care networks*
- *Equitable access to services*
- *Services build community awareness and provide information about supports*
- *Services are integrated and work together in collaboration and partnership*
- *Participation of people with a disability in the development and delivery of supports*

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<sup>69</sup> *Tasmania Together*, Goals and Benchmarks 2006, Tasmania Together Progress Board, Goals 6, 9 and 12.

<sup>70</sup> *The Contemporary Disability Service System*, KPMG, 2009

- *Services are of a high quality*
- *A skilled and competent workforce*
- *Services are innovative, effective and informed by robust research and evaluation*

## **8) A Social Inclusion Strategy for Tasmania<sup>71</sup>**

The recent report outlining a social inclusion strategy for Tasmania suggests five principles for organising a Tasmanian Social Inclusion Strategy:

- Community driven solutions- social inclusion is everyone’s responsibility
- Enterprise not welfare- a hand up and not a hand out
- Family centres communities- think family
- Addressing the basics as well as tackling structural causes
- Prevention and early intervention

## **9) Principles regarding children with a disability - United Nations Convention on the Rights of Persons with Disabilities<sup>72</sup>**

### **“Preamble**

r. Recognising that children with disabilities should have full enjoyment of all human rights and fundamental freedoms on an equal basis with other children

x. Convinced that the family is the natural and fundamental group unit of society and is entitled to protection by society and the State and that persons with disabilities and their family members should receive the necessary protection and assistance to enable families to contribute towards the full and equal enjoyment of the rights of persons with disabilities”

### **“Article 3 – General principles**

- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.”

### **“Article 7 – Children with disabilities**

- I. State parties shall take all necessary measures to ensure the full enjoyment by children with disabilities of all human rights and fundamental freedoms on an equal basis with other children

<sup>71</sup> A Social Inclusion Strategy for Tasmania, Social Inclusion Unit, 2009

<sup>72</sup> United Nations Convention on the Rights of Persons with Disabilities and Optional Protocol, Preamble, Articles 3, 7 and 23 – Ad Hoc Committee of the General Assembly, 2006.

2. In all actions concerning children with disabilities, the best interests of the child shall be a primary consideration
3. State parties shall ensure that children with disabilities have the right to express their views freely on all matters affecting them, their views being given equal weight in accordance with their age and maturity, on an equal basis with other children, and to be provided with disability and age- appropriate assistance to realise that right”

**“Article 23 – Respect for home and the family**

3. State parties shall ensure that children with disabilities have equal rights with respect to family life. With a view to realising these rights, and to prevent concealment, abandonment, neglect and segregation of children with disabilities, state parties shall undertake to provide early and comprehensive information, services and support to children with disabilities and their families.
4. State parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to the judicial review determine in accordance with applicable law and procedures that such separation is necessary for the best interests of the child. In no case shall a child be separated from parents on the basis of disability of either the child or both of the parents.
5. State parties shall, where the immediate family is unable to care for a child with disabilities, undertake every effort to provide alternative care within the wider family, and failing that, within the community in a family setting.”