

A Queensland Parents for People with a Disability Inc. Campaign

THE DISABILITY SERVICES ACT HAS NOT BEEN IMPLEMENTED



**RECLAIMING THE DSA
TO ENABLE
PROTECTION FOR PEOPLE WITH
DISABILITY**

History of the DSA

In 1981, people with disability, their families and allies came together around the International Year of Disabled Persons. People were saying that they wanted to have their human rights protected. They were not happy with the way people with disability had been treated by services and society. It was time for change.

In 1986, the Commonwealth Government enacted the Disability Services Act to replace parts of the previous Handicapped Persons' Assistance Act 1974 and the Social Security Act 1947. This new Commonwealth act reflected the change in thinking, passionately expressed during the International Year of Disabled Persons.

The Commonwealth act of 1986 aims:

- To ensure that persons with disability receive the services necessary to enable them to achieve their maximum potential as members of the community
- To ensure that services provided to people with disabilities:
 - ◆ Further their integration with the community and compliment generic services
 - ◆ Enable achievement of positive outcomes
 - ◆ Promote positive image in the community

In 1992, the Queensland Government enacted a State Disability Services Act. This act was the result of the tireless efforts of many Queenslanders with disabilities, their families and allies, who worked over two years to develop the legislation.

The State act of 1992 aims:

- To affirm the principle that people with disabilities have the same rights as other members of society; and
- To set out the objectives to be promoted in the development and implementation of programs and services for people with disabilities; and
- To establish a funding mechanism so that services are provided to, and services are developed for, people with

disabilities in a way that assists them achieve their maximum potential as members of society; and

- To encourage innovative programs and services for people with disabilities.



In 1992 the Minister for Family Services and Aboriginal and Islander Affairs, the Honourable Anne Warner stated at the launch of the State DSA :

“Queensland’s Disability Services Act affirms my government’s commitment to protecting the rights of people with disabilities, to furthering their inclusion in the community and to enabling people with disabilities to enjoy the same quality of life that most Queenslanders happily take for granted.

It also recognises and acknowledges that this must proceed in a predictable, managed and secure way.

Through the Commonwealth’s Disability Services Act of 1986, much attention has been given to the development of community-based services which support people with disabilities to live in the community, rather than in institutions.

Queensland’s act complements the Commonwealth legislation.....and will contribute to a national approach to disability services in line with the Commonwealth/State Disability Agreement.”

(Launch speech, June 19, 1992)

The KEY Issues of Concern

The DSA has not been implemented

The Disability Services Act states in its Objects for the Development of Programs and Services for People with Disability (Part 4. S. 13) that **“1. Services should be designed and implemented as part of local coordinated service systems and integrated with services generally available to members of the community, wherever possible.”** Clearly, many services remain segregated from the community, keeping people with disabilities on the margins of community.

The Disability Services Act states in its Objects for the Development of Programs and Services for People with Disability (Part 4. S. 14) that **“Services should be tailored to meet the individual needs and goals of people with disabilities.”** Some disability service providers in Queensland continue to provide one-size-fits-all services. Clearly, this contravenes the act.

The Disability Services Act states in its Objects for the Development of Programs and Services for People with Disability (Part 4. S. 18) that **“Programs and services should be designed and implemented to ensure that no single organisation that is a service provider exercises control over all or most aspects of the life of the person with a disability.”** Clearly, many services are in breach of the act.

The Disability Services Act states in its Objects for the Development of Programs and Services for People with Disability (Part 4. S. 19) that **“1. Organisations that are service providers should make available information that allows the quality of their services to be judged. 2. The information should be available to the people using the service, their advocates, any person who provides financial assistance for the services and the community generally.”** QPPD continually hears of services who will not provide information to people with disabilities and families. They continue to be funded.

The Disability Services Act states in its Objects for the Development of Programs and Services for People with Disability (Part 4. S. 20) that **“Services should be designed and implemented to ensure that people with disabilities have access to any independent advocacy support so that they can participate adequately in decision making about the services they receive”.** The Minister continues to fund services to provide their own in-house advocacy. Clearly this advocacy is not independent.

The Disability Services Act states in its Objects for the Development of Programs and Services for People with Disability (Part 5. S. 26) that **“the Minister may approve grants of financial assistance only if the Minister is satisfied that—**a) the principles set out in part 3 will be promoted by the grant; and b) the programs and services funded by the grant will promote the objectives set out in part 4.” The Minister continues to approve grants to services that do not comply with parts 3 and 4 of the act.

***Why does the Minister continue to fund services which do NOT conform to the act?
How do we properly review an act that has NOT been implemented?***

The KEY Issues of Concern

Keeping people SAFE - Shifting the power balance

The first purpose of the Act is to affirm the principle that people with disabilities have the same rights as other members of society. This should include their right not to be abused. There are laws and policies already in existence to protect people from abuse. Why are people with disabilities treated so differently from everyone else? **How do we create environments so that abuse does not occur?**

People and families need authority to decide who they will live with, who will support them and what those supports look like. Where people have more direct say over their lives they are less likely to be abused and neglected.

From the outset people and families experience the effects of a system that intrudes upon their culture and lifestyle. Opportunities are limited and restrictions are imposed. What a person with a disability does, where they go and with whom they participate are all subject to the policies and practices of services and those who manage them. **Frequently the needs of individuals are secondary to the needs of paid staff and services which can lead to unsatisfactory outcomes, neglect and abuse.**

Often people are told what they can have and when, where they can have it and how, who will provide it and how long it will last. Many adults are forced to live in places that are unsuitable, with people they do not like or get along with, are supervised by staff who taunt them (and in some cases abuse them), and are expected to engage in activities they find humiliating, repetitive and frustrating. Many others are compelled to live in settings where the levels of care and supervision are disproportionate to their need for support. **The rights to participate in decisions that are fundamental to the provision of supports are essential if people are to have control of their lives and be safe.**

When people are connected and have relationships with others they are safer, more respected, have greater opportunities and more enriched lives. Typically the services and supports offered to people and their families are separate from those available within and open to the rest of the community. From the outset people and their families are regarded and treated differently. They get to do special things, attend special places and get treated in special ways. Their lives and their culture take on aspects of a system that has focused on their different-ness. They become clients of the disability system that effectively replaces many if not all aspects of neighbourhood and community life. **The special stuff causes dislocation and harm.** The community in general believe that special needs can only be addressed by the special system and therefore has given over the natural protection and support of some of its members who it believes must require something more than what it has to give. Consequently people with disability are overlooked and disregarded in the planning and conduct of community life.

DSQ has a policy on "Preventing and responding to the abuse, assault and neglect of people with a disability". This specific policy is not referred to in the DSA Review.

What really keeps people safe?

Will pre-employment screening of workers be effective in preventing abuse?

Why doesn't the DSA Review mention the DSQ policy on abuse and neglect?

The KEY Issues of Concern

Accountability to the People

DSQ claims in their Issues Papers that “DSQ is limited in its ability to impose sanctions for deficient service delivery or non-compliance with conditions of funding” (IP3, p13). Yet, in Part 6 of the Act the Chief Executive has the powers to request any person or organisation receiving a grant of financial assistance (funding) to provide an explanation or to suspend further payments if they are suspicious that the Act is not being adhered to. The Chief Executive is the Director-General. The D-G can request production of books and records and examine them and/or request the auditor-general to audit books.

Rather than being investigated by government, services in Queensland who breach the act continue to be funded. These are also the government and non-government services that are absorbing the greatest portion by far of the resources available in Queensland. QPPD has continued to remind government of these breaches. **It is no longer acceptable that the Minister and DSQ funded services ignore the legislation that governs them.**

Services who breach the act should have consequences such as reductions in pay for executive staff, de-funding and imprisonment.

Both government and non-government services need to be accountable to the PEOPLE.

The current system of internal complaints management is ineffectual. **It is clear that people and families need an INDEPENDENT complaints system.** QPPD has been advised by many people and families that they are reluctant to complain as they fear retribution. Unfortunately, their fears are warranted as this is the reality for many people. The present system does not keep people safe when they complain. Additionally, the lack of independence in the complaints system mean that DSQ is policing itself. Any system where “Caesar judges Caesar” is unlikely to be successful.

Services need to be accountable to the people for the use of public monies. Written service agreements are made between the government and those receiving funds and outline what the service will do for the money it receives. Service agreements should be a way for people and families to know whether the service is accountable. QPPD has been advised by many people and families that they are unable to see their services’ agreement. **The service agreement must be made available to all people who access the service.** Government and services need to be accountable to the people and allow ways in which the people can monitor and comment on compliance with the Act and the individual service agreement.

Why do services (including DSQ) who persistently breach the act continue to be funded?

Why are people NOT protected from retribution when they complain?

How can the Disability Services Act ensure accountability to the people?

Questions raised in Queensland Advocacy Inc's Discussion Paper on DSA Review

Why does the present consultation process avoid making any suggestions or inviting comment on any potential legislation dealing in detail with the way in which services for people with disability are funded in Queensland? Will such input ever be sought? If so, when?

Why does this 'review' consider whether the present Act needs to be amended to allow for contemporary practice? Shouldn't a 'review' consider whether contemporary practice is what was intended by the Act and what changes might need to be introduced to ensure that it does?

Why does the present process provide no alternative to the creation of a 'Super Act' drawing together an increasing range of topics impacting on people with a disability while retaining a title suggesting a much smaller scope?

Shouldn't we begin with a vision of what could be achieved by an Act like this and include that as the purpose? Shouldn't all further provisions of the Act then be drafted to meet this purpose? At the very least shouldn't the purpose describe what is eventually encapsulated in the Act rather than what is anticipated it might be?

Why would we legislate for the making of plans as to the observance of the principle of the DSA when it is possible to instead legislate to make observance of the DSA mandatory within government and failure to do so punishable in an appropriate fashion?

Capturing valuable ideas like these in sections dealing with 'Principles' and 'Objectives' is a useful exercise but how effective are the efforts being made to ensure corresponding provisions

elsewhere in the Act make observance of those 'Principles' and 'Objectives' mandatory?

If it is worth including a new objective in the Act about preventing abuse and neglect then why wouldn't it apply to all services not just DSQ services and DSQ funded services?

Why are we still talking about defining advocacy and ruminating about access to advocacy in terms of physical access when the reality is there are many times more people in need than there are advocates, paid or unpaid?

Is pre-employment screening of workers really as much as can be expected from this review when it comes to ensuring the safety of vulnerable people with disability? Given the above discussion as to the insufficiency of pre-employment criminal checks to control the nature of the workforce and the wider concepts involved, why is the possibility of a tiered licensing regime for support workers not raised?

Does the Quality Assurance model presently proposed by DSQ manage to ensure that the principle and objectives already set down in the Act will actually be observed by service providers, be they DSQ funded or not? If not, how else is it intended to give real, enforceable meaning to these provisions?

Isn't it important to recognise a fundamental difference between the type of matters that can properly be handled by a 'Complaint Management System' and those of a more serious nature, which demand proper investigation by an external body with no potential for conflict of interest?

DSQ thinks it can handle all complaints matters not within the jurisdiction of the Police or Adult Guardian because there are presently no other offence-worthy matters listed. Shouldn't they decide what matters they are capable of investigating after laws are made dictating what acts are to be accorded the most seriousness?

Shouldn't the Act provide a clear link between the principles and objectives, the quality assurance system, offence provisions and the complaints system so as to provide certainty to both decision makers and service providers in relation to the imposition of possible sanctions?

QAI DISCUSSION PAPER ASSUMES A FAMILIARITY WITH THE DSQ ISSUES PAPERS

For a copy of the full QAI Discussion Paper go to www.qai.org.au or contact QAI on 32361122

HOW YOU CAN SUPPORT THE CAMPAIGN

Please sign and return the response letter on the enclosed page to show you support our position on the Disability Services Act Review.

Ask your family, friends and colleagues to sign a response letter. Feel free to copy or contact QPPD for more copies as needed.

Contact your local MP to ask for his/her support.

Telephone DSQ on 1800 177 120 during their PHONE IN from Monday, 1 Sept–Wednesday, 3 September to give your views.

Write a submission stating your views on the Disability Services Act Review and send it to:

Legal Policy Unit
Disability Services Queensland
GPO Box 806
Brisbane Q 4001



For more information

Queensland Parents for People
with a Disability

PO Box 470
Paddington Q 4064

(07) 3368 3055
1800 805 184

Email: qppd@qppd.org

INCLUDING:

- ♦ QAI Discussion Paper on the DSA Review
- ♦ QPPD thoughts and notes from discussions with members on the DSA Review
- ♦ Copies of the Disability Services Act

The Disability Services Act must remain on the side of people with disability

To whom it may concern,

RESPONSE TO THE DISABILITY SERVICES ACT REVIEW

It is clear that the DSA has not been implemented. Grants continue to be made to services even when they do not comply with the Act. Services which congregate, segregate and deny people their human rights contravene the Act in respect to the following sections:

Section 13 (1) Services should be designed and implemented as part of local coordinated services systems and integrated with services generally available to members of the community wherever possible.

Section 14 Services should be tailored to meet the individual needs and goals of people with disabilities.

Section 18 Programs and services should be designed and implemented to ensure that no single organisation that is a service provider exercises control over all or most aspects of the life of the person with a disability.

Section 19 (1) Organisations that are service providers should make available information that allows the quality of their services to be judged. (2) The information should be available to the people using the service, their advocates, any person who provides financial assistance for the services and the community generally.

Section 20 Services should be designed and implemented to ensure that people with disabilities have access to any independent advocacy support so that they can participate adequately in decision making about the services they receive.

Section 26 “The Minister may approve grants of financial assistance only if the Minister is satisfied that—(a) the principles set out in part 3 will be promoted by the grant; and (b) the programs and services funded by the grant will promote the objectives set out in part 4.

Keeping people safe means giving people more authority over the decisions, supports and services that affect their lives. **People and families want the authority to decide who they will live with, who will support them and what those supports look like. They need to have authority over the resources that are used to support their lives.**

When people are connected to community and have relationships with others they are safer, more respected, have greater opportunities and more enriched lives. **When properly used the DSA should keep people with disabilities in Queensland safe. Supports and services should ONLY be funded if they adhere to the principles of the DSA. Ministers and governments should ONLY approve grants of financial assistance to supports and services that follow the law.**

Both government and non-government services need to be accountable to the PEOPLE. Services who breach the act should have consequences such as reductions in pay for executive staff, de-funding and imprisonment.

The current system of internal complaints management is ineffectual. **People and families need an INDEPENDENT complaints system that will respond IMMEDIATELY and act to ensure people are not subjected to any further harm.**

Government and services need to be accountable to the people and allow ways in which the people can monitor and comment on adherence to the Act. **Service agreements must be available to all people who access the service.**

How do we properly review an act that has NOT been implemented?

Why does the Minister continue to fund services which do NOT conform to the act?

How do we create environments so that abuse does not occur?

How can the Disability Services Act ensure accountability to the people?

Signature:

Date:

Contact Details:

**Send to: Legal Policy Unit
Disability Services Queensland
GPO Box 806
Brisbane Q 4001**