GOVERNMENT OF WESTERN AUSTRALIA

DISABILITY SERVICES COMMISSION
making a difference

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Senate Community Affairs Committee

The Secretary
Senate Community Affairs References Committee
Suite S1 59
Parliament House
CANBERRA ACT 2000

Dear Sir / Madam

SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE INQUIRY INTO CHILDREN IN INSTITUTIONAL CARE

The attached submission represents that Disability Services Commission's contribution to the Senate Inquiry. For further information please contact Ms Judith Chernysh, Principal Policy and Program Officer on 9426 9225.

Yours sincerely

Dr Ruth Shean
DIRECTOR GENERAL
DISABILITY SERVICES COMMISSION

30 July 2003
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Att

SENATE COMMUNITY AFFAIRS REFERENCES COMMITTEE INQUIRY INTO CHLDREN IN INSTITUTIONAL CARE

The following is the Disability Services Commission's submission to the Senate Community Affairs Reference Committee Inquiry into Children in Institutional Care.

The Commission has responded to those terms of reference that relate specifically to its role and function.

These include:

1. (a) in relation to any government or non-government institutions, and fostering practices, established or licensed under relevant legislation to provide care and/or education for children:

   (i) whether any unsafe, improper or unlawful care or treatment of children occurred in these institutions or places,
   (ii) whether any serious breach of any relevant statutory obligation occurred at any time when children were in care or under protection, and
   (iii) an estimate of the scale of any unsafe, improper or unlawful care or treatment of children in such institutions or places.

   (c) the nature and cause of major changes to professional practices employed in the administration and delivery of care compared to past practice.

Introduction

The primary focus of the Commission is to make a positive difference to the lives of people with disabilities, their families and carers.

The Commission provides leadership to:

- support local communities in welcoming and assisting people with disabilities, their families and carers;
- achieve access to quality support and services for people with disabilities; and
- protect the rights of people with disabilities who are especially vulnerable and support them to live a full and valued life.

The Commission provides and funds specialist services to people with disabilities to enhance their independence and to support their participation in activities of daily living and community life. It also plays a key role in supporting families who care for and support people with disabilities.

The Disability Services Commission provides a range of services, based on eligibility and relative need, to children with disabilities and their families. Some of these are provided directly by the Commission while others are contracted through the non-government sector. They include:

- respite and family support;
- professional services and therapy;
- aids, equipment and modifications; and, where required
- out-of-home accommodation.

The Commission also provides a Local Area Coordination Service (LAC), which aims to support people with disabilities and their families to plan, select and receive services. There is a strong emphasis in the work of LAC on the development of informal supports and networks in the community to reduce the need for formal services.

Under 24 1(a) of the *Disability Services Act 1993* the Commission makes available funding direct to consumers to purchase a range of supports to meet their individual needs. This funding is provided through the Commission's Local Area Coordination program. Typically, supports are individually tailored around the specific needs of families and their family member with a disability.

Families may choose between accessing a range of informal supports, or utilising more formal supports provided through specialist agencies.

The Commission does not have a statutory responsibility for the care and protection of children. This function is the responsibility of the Department for Community Development (DCD).

The Commission does have a significant role to play in the supporting children with disabilities and their families and works closely with the DCD where the well being of children with disabilities is at risk.

The Commission's involvement with families is based on a voluntary engagement between the family, person with a disability-funded and its services. The aim of this engagement is to support families and complement family strengths. There is a strong emphasis on individuals and families being in the best position to know their own needs.

Children in need of out of family home care (Terms of Reference 1 c)

Historically, when families were not able to care for their children with disabilities, they were placed in health, and later disability residential facilities. In line with international and national trends, this policy is no longer considered acceptable or appropriate.

Where families are having difficulty in supporting their children with disabilities the Commission works with families to develop a network of informal and formal supports that will enable the child to remain within the family.

Families can use in and/or out-of-home respite provided by non-government agencies or through the provision of direct funding purchase and manage their own in and/or out home supports.

In the relatively few circumstances where the child is not able to be supported in the home a family may seek funding from the Commission to provide for an out-of-home option. If this is granted the Commission will work with the family to develop the option that most appropriately meets the needs of the child and the family. The family again has the choice of arranging and managing the option or arranging for a non-government agency to manage the funding and provision of the service.

The range of options that have been funded include foster care, host family, co-residency models and a limited number of group home options. In 1994 the Commission contracted a non-government agency to establish a Family Care Program to provide foster options for children with disabilities with very high support needs in need of out of family home care. This program provided support to 18 children in 2001/02. In 2001/02 there were an estimated 35 children in total under the age of 13 in out-of-home options.

Prior to individual funding being available in Western Australia, families who required an out of family home option for their child usually approached a non-government provider of disability accommodation services for a place in a group home. This practice is no longer possible as most agencies require funding tied to the individual in order to provide an accommodation option.

SAFEGUARDING MECHANISMS (Terms of reference 1 a)

The *Disability Services Act 1993* does not provide specifically for the establishment or licensing of any government or non-government institutions, or fostering practices to provide care and/or education for children.

It does, however, provide for the funding of people of disabilities and their family carers and organisations that provide disability services to them.

The Commission recognises that people with a disability have a right to feel safe and to live and receive services in an environment free from any type of abuse, neglect and exploitation and, therefore, has a duty of care to ensure that these rights are protected.

In exercising this duty of care the Commission has a number of systemic safeguard mechanisms in place.

Disability Services Act 1993

Section 25 (4) of the *Disability Services Act 1993* requires mandatory reporting by all recipients of grants under section 24 (1) (b) and (c) of the death or non-trivial injury (including physical, psychological and sexual abuse or neglect) to a person in their care. Proposed amendments to the *Disability Services Act 1993* will require that such reports will be lodged with the Commission within seven days.

The Commission is to report to the Minister and the Disability Services Commission Board on a quarterly basis on any mandatory reports that have been received. The Commission also monitors and initiates any follow up action where required.

Review of Section 25 Mandatory Reporting Files

A total of 125 mandatory reports have been reviewed to address terms of reference 1 (a) (i) (ii) . The files date back to 1999 when mandatory reporting came into effect for all Commission funded and provided services.

There is no information from these reports to suggest that service providers have been involved in any unsafe, improper or unlawful care or treatment or that any serious breach of any relevant statutory obligation has occurred when children under the age of 13 years were in care.

Disability Service Standards

In addition to the mandatory reporting requirements under the DSA, as part of the Commonwealth, States and Territories Disability Agreement (CSTDA), all services which receive CSTDA funding are required to meet the National Disability Service Standards.

Since 1995 all services provided or funded by the Commission have been required to complete an annual self-assessment of their performance against the Standards. Since 1997 a process of external monitoring visits has been implemented with each agency externally monitored every four years.

The following are the eight standards that agencies are required to meet.

1. Service Access
2. Individual Needs
3. Decision Making and Choice
4. Privacy, Dignity and Confidentiality
5. Participation and Integration
6. Valued Status
7. Complaints and Disputes
8. Service Management

Standard 8 requires that the legal and human rights of people with disabilities are upheld and that they are provided with a safe physical environment.

A ninth standard on abuse, neglect and exploitation is being considered nationally. The Commission is in the process of undertaking consultations with the disability sector on this standard.

Contractual funding agreements on behalf of people with disabilities

The current contractual agreements between the Commission and its funded services requires that agencies have in place documented policies and procedures to ensure that its consumers are protected from abuse, neglect and exploitation. When agencies are either monitoring themselves or are being externally monitored this requirement is dealt with under Standard 2 *Individual Needs*.

In addition, the Commission also requires that funded or provided services have police clearances for all agency staff, volunteers and board members.

Service Guidelines for services that provide out of family home care to children with a disability

In addition to the Act, National Disability Standards and Conditions of Contract, the Commission has an endorsement process for those agencies seeking funding from the Commission to become approved providers.

In order to ensure that out of family home options for children with disabilities are in keeping with current practice within the child welfare sector, the Commission is in the process of developing principles and indicators of practice to be adopted as specific service standards for children in out of family home care either in shared care arrangements, residential respite, foster care, co-residencies or group homes.

Self-Managed Options

Where families have been provided with funding for respite and choose to purchase and manage their own supports, this is done through LAC. The following safeguards are applied in this case:

- determination by LAC of the suitability of families to self-manage an option;
- a self-management checklist required to be completed by all families prior to them managing their own funding;
- the requirement for all LACs to have at least monthly contact with families;
- regular standards monitoring and supervision of LACs;
- workshops for children and families on protective behaviours; and
- application of the Commission's Care and Protection policy, which includes mandatory reporting of suspected abuse and neglect and guidelines for liaison with the DCD.

Provided Services – Care and Protection Policy

The Commission has a Care and Protection Policy which applies to all staff who work for the Commission, which identifies a process to support and protect children and adults who may be at risk of and/or suffering abuse, neglect or exploitation.

The policy requires that Commission staff notify the DCD if they are aware of allegations or have concerns that a child with a disability under the age of 18 years has been abused and/or neglected. The DCD has the mandate to pursue allegations of child abuse or neglect (reciprocal guidelines are in place).

Interagency Child Protection Framework

In addition, the Commission is also a partner in the Interagency Child Protection Framework that is being led by the DCD.

The Minister for Community Development established the Interagency Child Protection Committee in February 2002. The committee is comprised of senior officers from government agencies, non-government representatives and representatives from the Aboriginal and ethnic communities. The committee was established to develop a strategic approach for ensuring co-ordination and collaboration across relevant government agencies. This was to include the development and maintenance of interagency child protection intervention guidelines and protocols and interagency co-ordination and collaboration strategies in child protection matters, including initiatives such as inter-sectorial training.

Conclusion

Children with disabilities can be one of the most vulnerable groups of children. Often they are not able to communicate any acts of abuse or neglect that may be perpetrated against them.

While systemic safeguards are important, keeping families positively engaged with their child with a disability even when that child is being cared for in an out of family home option, is an important way to ensure the child's wellbeing is safeguarded.

As an individual safeguard it is one of the most potent and one that the Commission is concerned to ensure is available for each child in need of out of family home care to the degree that it is possible and appropriate.