New South Wales
Law Reform Commission

Issues Paper
16

Review of the Disability Services Act 1993 (NSW)

September 1998

New South Wales. Law Reform Commission.
Sydney 1998
ISSN 1031-0002 (Issues Paper)

National Library of Australia
Cataloguing-in-publication entry

Review of the Disability Services Act 1993 (NSW).

ISBN 0 7313 1025 X

1. Handicapped - Services for - New South Wales. 2. Handicapped - Legal status, laws, etc - New South Wales. I. New South Wales. Law Reform Commission. (Series : Issues paper (New South Wales. Law Reform Commission) ; IP 16).

344.9440324

Contents

1. INTRODUCTION 1
TERMS OF REFERENCE 2
BACKGROUND TO THE REFERENCE 2
THIS PAPER 3
HAVE YOUR SAY 3

2. THE OPERATION OF THE DSA 5
THE POLICY OBJECTIVES OF THE DSA 6
What are the terms and policy objectives of the DSA? 6
Limitations on achieving the policy objectives 7
Are the policy objectives still appropriate? 8
Balancing competing interests 9
WHO THE DSA COVERS 10
The target group 10
Exclusion of private for profit and unfunded services for people with a disability 11
Boarding Houses 11
Providing for children 13
THE DISABILITY SERVICES PROGRAM 15
Planning the distribution of funds 16
Provision of funding to other government agencies 18
Application of the DSA to Home and Community Care services 18
INTERACTION WITH THE CAMA 19
CO-ORDINATION WITH OTHER PUBLIC AGENCIES 20
DO THE TERMS OF THE DSA ENSURE THAT SERVICES COMPLY WITH THE PRINCIPLES AND APPLICATIONS OF PRINCIPLES? 21
The principles and the applications of principles 21
Can the principles and applications be improved? 24
Services provided and funded in conformity with the principles 26
Transition plans 26
Transition provisions in the DSA out of date 27
Transitional standards provisions inadequate 27
Preparation and approval of transition plans 28
Enforcing compliance with principles and applications 29
Quality assurance process 30
Concerns about the current quality assurance process 30
Improving the quality assurance processes 31

DO THE TERMS OF THE DSA ENABLE PEOPLE WITH A DISABILITY TO GET THE KINDS OF SERVICES THEY WANT? 32
Delivery of innovative services 32
No provisions about terms and conditions for individual funding 33
Funding models provided in the DSA 33
Provisions for loans, leasing arrangement etc as well as grants 33
DO THE TERMS OF THE DSA ENABLE PEOPLE WITH A DISABILITY TO GET THE MAINSTREAM SERVICES IN THE COMMUNITY THEY NEED OR WANT? 34
Disability services plans 34
Concerns about plans 35
ADVOCACY 36
THE DISABILITY SERVICES REGULATION 37
The power to exclude a service by regulation 37
ENFORCING THE PROVISIONS OF THE DSA 39
Action which can be taken if a service does not comply 39
Emergency protection for people with a disability 40
Powers of search and entry 40
Review of funding for services 42
Appeal of decisions 42
RESOURCE IMPLICATIONS 44
OTHER ISSUES? 44

APPENDIX A — SUBMISSIONS RECEIVED 45

Terms of reference

Pursuant to section 10 of the *Law Reform Commission Act 1967* (NSW), the Attorney General, the Honourable Jeff Shaw QC MLC, referred the following matter to the Law Reform Commission:

The Law Reform Commission is to:

1. Review the *Disability Services Act 1993* (NSW) (the DSA) to determine whether the policy objectives of the DSA remain valid and whether the terms of the DSA remain appropriate for securing those objectives;

2. Review the *Disability Services Regulation 1993* to determine whether there is a need for a regulation and if so whether the policy objectives of the DSA Regulation remain valid and whether the terms of the DSA Regulation remain appropriate for securing those objectives;

3. Conduct the review, with consideration given to the resource or financial implications for the current legislation and regulation and any proposed legislative or regulatory amendments; and

4. Conduct the review having regard to the obligations arising under s 29 of the DSA and the provisions of the *Subordinate Legislation Act 1989* (NSW).

Participants

Pursuant to s 12A of the *Law Reform Commission Act 1967* (NSW) the Chairman of the Commission constituted a Division for the purpose of conducting the reference. The members of the Division are:

Mr Michael Adams QC
Professor David Weisbrot
Mr Jerrold Cripps
Professor Neil Rees*

(* denotes Commissioner-in-Charge)

Officers of the Commission

Executive Director
Mr Peter Hennessy

Legal Research and Writing
Kearney McKenzie and Associates

Librarians
Ms Beverley Caska
Ms Aferdita Kryeziu

Desktop Publishing
Ms Rebecca Young

Submissions

The Commission invites submissions on the issues relevant to this review, including but not limited to the issues raised in this *Issues Paper*.

All submissions and enquiries should be directed to:

Mr Peter Hennessy
Executive Director
NSW Law Reform Commission
GPO Box 5199
Sydney NSW 1044

[DX 1227 Sydney]

Phone: (02) 9228 8230
Fax: (02) 9228 8225

There is no special form required for submissions. If it is inconvenient or impractical to make a written submission you may telephone the Commission and either direct your comments to a Legal Officer over the telephone, or else arrange to make your submission in person.

The closing date for submissions is 14 December 1998.

Use of submissions and confidentiality

If you would like your submission to be treated as confidential, please indicate this in your submission. Submissions made to the Commission may be used in two ways:

- Since the Commission's process of law reform is essentially public, copies of submissions made to the Commission will normally be made available on request to other persons or organisations. However, if you would like all or part of your submission to be treated as confidential, please indicate this in your submission. Any request for a copy of a submission marked "confidential" will be determined in accordance with the *Freedom of Information Act 1989* (NSW).

- In preparing the Report on this reference, the Commission will refer to submissions made in response to this Discussion Paper. However, requests for confidentiality will be respected by the Commission in relation to the publication of submissions.

1. Introduction

- Terms of reference
- Background to the reference
- This paper
- Have your say

TERMS OF REFERENCE

1.1 On 9 June 1998, the Attorney General, the Hon JW Shaw QC MLC, asked the Law Reform Commission (the Commission) to:

1. Review the *Disability Services Act 1993* (NSW) (the DSA) to determine whether the policy objectives of the DSA remain valid and whether the terms of the DSA remain appropriate for securing those objectives;
2. Review the *Disability Services Regulation 1993* to determine whether there is a need for a regulation and if so whether the policy objectives of the DSA Regulation remain valid and whether the terms of the DSA Regulation remain appropriate for securing those objectives;
3. Conduct the review, with consideration given to the resource or financial implications of the current legislation and regulation and any proposed legislative or regulatory amendments; and
4. Conduct the review having regard to the obligations arising under s 29 of the DSA and the provisions of the *Subordinate Legislation Act 1989* (NSW).

BACKGROUND TO THE REFERENCE

1.2 Section 29 of the DSA requires the Act to be reviewed in order to determine whether its policy objectives remain valid, and whether its terms remain appropriate for securing those objectives. The review must be conducted as soon as possible after five years from 8 April 1993. A report of the review is to be tabled in Parliament by 8 April 1999. The Commission is also reviewing the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) and has released an issues paper, *Review of the Community Services (Complaints, Appeals and Monitoring) Act 1993 (NSW)* (IP 15).

THIS PAPER

1.3 This paper is an issues paper. It is designed to provoke comment. It examines the provisions of the DSA. It considers the objects of the DSA and whether they remain valid. It then examines other terms of the DSA and asks whether they remain appropriate. It asks questions about the provisions of the DSA and its operation. It also asks about the resource implications of the DSA. In preparing this paper, a number of people and organisations made submissions to the Commission, identifying what they considered to be the main issues and concerns about the DSA. A list of those submissions appears as Appendix A to this paper. The Commission greatly appreciates the assistance provided by these submissions.

HAVE YOUR SAY

1.4 The Commission will be undertaking community consultation during October, November and December 1998. If you wish to respond to some of the questions in the issues paper, you are invited to do so. You need not respond to all the questions. How to make a submission is outlined on page vii of this paper.

2. The operation of the DSA

- The policy objectives of the DSA
- Who the DSA covers
- The disability services program
- Interaction with the CAMA
- Co-ordination with other public agencies
- Do the terms of the DSA ensure that services comply with the principles and applications of principles?
- Do the terms of the DSA enable people with a disability to get the kinds of services they want?
- Do the terms of the DSA enable people with a disability to get the mainstream services in the community they need or want?
- Advocacy
- The Disability Services Regulation
- Enforcing the provisions of the DSA
- Resource implications
- Other issues?

THE POLICY OBJECTIVES OF THE DSA

2.1 One of the purposes of this review is to consider the policy objectives of the DSA, and whether the terms of the DSA are appropriate for meeting these objectives.

What are the terms and policy objectives of the DSA?

2.2 The "terms" are the provisions actually written in the legislation. These terms are the framework that the Government uses to enable it to deliver support and services to people with a disability. The terms give the Government power and tell it how it can exercise that power. The terms do not necessarily guarantee that what the Government sets out to achieve will actually be achieved. "Policy objectives" are what the Government is trying to achieve by bringing in an Act. You can find out what these are by looking at the objects of an Act and also from what the Government said when it introduced the Act in Parliament.

2.3 The main policy objective of the DSA is to ensure that people with disabilities have the same basic human rights as other members of the community. From the point of view of providing services, the policy objective is to:

> ensure the provision of services necessary to enable people with a disability to achieve their maximum potential as members of the community.[1]

2.4 Other policy objectives listed in s 3 of the DSA relate to ways in which this primary policy objective is to be achieved in the provision of services. The DSA aims to ensure the provision of services which:

- further the integration of people with a disability into the community;

1. DSA s 3(a).

- complement services available generally to people with a disability in the community;
- enable people with a disability to become more independent, have employment opportunities and become integrated; and
- promote a positive image of people with a disability and enhance their self-esteem.[2]

2.5 Most of the other objectives listed in the DSA are aimed at ensuring that the mechanisms for funding promote and achieve these policy objectives,[3] as well as encourage innovation in the provision of services.[4]

Limitations on achieving the policy objectives

2.6 There are a number of reasons why, despite having what seems to be a workable framework in legislation, the objectives of the DSA might not be achieved.

2.7 One reason could be that there are not enough resources available to enable the objectives to be achieved. If this is so, the solution would be to make more resources available. This is a matter for Government, and the Commission cannot make recommendations about this (although we are required to consider the resource implications of the DSA's terms). It is true that the objectives listed in the DSA place considerable emphasis on the "rights" of people with a disability. This is reinforced by the principles and applications in the Schedule to the DSA.[5] Despite these high aspirations, the DSA does not create an enforceable entitlement for people with disabilities to receive funded support or services. The DSA requires the Minister to ensure that services are provided and funded in conformity with its objects, principles and

2. s 3(b).
3. s 3(c),(e),(f).
4. s 3(d).
5. See para 1.33-1.35.

applications,[6] but limits the provision of funding to funds "that are available to the Minister for that purpose."[7]

2.8 Another reason why objectives might not be achieved is that there are problems with the way in which the terms of the DSA have been interpreted or carried out by those responsible for administering the DSA. The Commission can look at this because changing the terms of the DSA, for example, by putting in more or different detail, may overcome some of these problems. However, if the Commission recommends changes it must also consider their resource implications.

Are the policy objectives still appropriate?

2.9 Five years have passed since the DSA commenced. What people with a disability seek to achieve from services they receive may have changed. For example, having individualised service provision, control and choice in their lives may now be of much greater importance to people with a disability. Some people might think that the word "integration" emphasises achieving "normality", rather than the more desirable outcome of participation and acceptance of difference. The environment in which the Government must plan and provide services may have changed. There may be a need or a desire to include in the policy objectives consideration of particular groups of people with a disability, such as children, or Aborigines and Torres Strait Islanders, who have not received specific policy attention before. The policy objectives might be more complete if the role of, and the need to support, families and service providers are recognised.[8] Forward planning and a fair distribution of financial help and service provision is another area that could become a policy objective.

6. s 6(1).
7. See s 19.
8. For example, the HACC guidelines say at page 11 that "services are to be provided to an individual or carer in a way which recognises the role of the carer and his/her need for support and an independent and fulfilling life".

ISSUE 1

What do people with a disability seek to achieve from the services they receive?

Are the policy objectives of the DSA still valid? Why or why not?

What, if any, other factors or goals should be taken into account in the policy objectives for meeting the support needs of people with a disability?

What should the objectives in the DSA be?

Balancing competing interests

2.10 Legislation regulating the provision of support to people with disabilities should have people with disabilities and their interests as its primary focus. However, there are a number of competing interests or factors that must also be balanced in the DSA and should be taken into account in assessing the appropriateness of its terms, such as the interests of families of people with a disability and service providers. Families and service providers may be unable to provide effective support for people with a disability if their needs are not also met. The interests or factors to be balanced include:

- individual rights and the needs and responsibilities of families and service providers;
- the needs and rights of children and those of parents and other adults;
- meeting need and balancing the State Government budget;
- the financial costs of meeting need and the social (and attendant financial) costs of not meeting it;
- the ideal objective and what is realistically achievable and enforceable;
- mainstream and specialist services;

- government and non-government service provision; and
- accountability, flexibility and innovation.

ISSUE 2

What should be the balance between these competing interests or factors?

Which terms of the DSA do or do not strike the right balance in any of these areas and why?

How might any imbalance be overcome?

WHO THE DSA COVERS

The target group

2.11 The DSA deals primarily with the provision of services to people who are in the "target group". Under s 5(1) of the DSA, a person is in the target group if that person has a disability (however arising, chronic or episodic) that is attributable to an intellectual, psychiatric, sensory, physical or like impairment that is permanent and results in a significantly reduced capacity in one or more major life activities (communication, learning, mobility, decision-making or self-care) and the need for support. Section 5(2) provides that certain persons within the *Mental Health Act 1990* (NSW) are also in the target group. This covers a wide range of people with a disability but is not a comprehensive definition of disability or impairment.

2.12 Although the DSA has a widely defined target group, there may be some groups of people with a disability with significant need for support who do not receive it. For example, the Commission has been told of the unmet support needs of people characterised as having mild or borderline intellectual disabilities

and who lack effective family support.[9] This is a matter of the way in which the DSA has been administered. However, one approach to overcoming gaps in administration could be to make provision in the DSA for groups requiring special attention.

ISSUE 3

Is the target group of people with a disability covered by the DSA appropriate? If not, how should it be changed?

Are there particular groups of people with a disability with significant support needs that are not receiving support under the DSA?

How, if at all, should the DSA play a role in overcoming this problem?

Exclusion of private for profit and unfunded services for people with a disability

2.13 A number of agencies that provide services for people with a disability do not receive funding under the DSA. Some of these are privately funded charitable organisations. There is also an increasing number of private for profit organisations that provide services such as holidays or recreational activities for people with a disability. The principles and applications of the DSA do not protect people with a disability using these services.

Boarding Houses

2.14 Many people with a disability, including those with an intellectual or developmental disability, live in boarding houses because there is nowhere else for them to live. The DSA does not apply to boarding houses. Many operators of this type of accommodation charge residents up to 100% of their pension or benefit.

9. These were known as Part IX wards under the now repealed *Child Welfare Act 1939* (NSW).

2.15 Boarding houses that house two or more people with a disability must be licensed under the *Youth and Community Services Act 1973* (NSW). In granting a licence, the Minister may impose conditions on the proprietor of the boarding house including how many people may live there.[10] The manager must tell the police and the Director General if a resident person with a disability dies, and must tell the Director General if a person with a disability is away from the boarding house for more than 24 hours without informing the manager where he or she is.[11] The *Youth and Community Services Act 1973* (NSW) also has procedures for removing and protecting people with a disability under the age of 18 who live in a boarding house.[12]

2.16 A recently released position paper, *Room to Move*,[13] states that the rights of people with a disability are constantly being infringed in these boarding houses. For example:

- The physical condition of the premises is often appalling.
- The residents do not have resident protection under the *Residential Tenancies Act 1987* (NSW).
- Managers of boarding houses sometimes move their residents to another boarding house without notice and without permission.
- Residents may have no money of their own if they give all their pension or benefit to the manager.
- Residents often have no say in the way the house is run.
- Large numbers of people with a disability live together and have no chance to participate in the community.
- Many residents need other support to participate successfully in the community but have not been assessed and do not receive any other support.

10. s 16.
11. s 26.
12. s 27.
13. Coalition for Appropriate Supported Accommodation for People with Disabilities, *Room to Move: A Position Paper on Licensed Boarding Houses* (March 1998).

2.17 A Boarding House Team from the Central Sydney Health service is assessing all licensed boarding house residents in NSW. A number of submissions suggest that, to ensure that the rights of people with a disability are protected, licensed boarding houses should be subject to the principles and applications under the DSA.

ISSUE 4

How can the rights and interests of people with a disability using services that do not receive funding under the DSA be protected?

How can the rights of people with a disability in licensed boarding houses be protected?

What, if any, linkages should there be between the DSA, the *Youth and Community Services Act 1973* (NSW) and licensed boarding houses?

Providing for children

2.18 There are approximately 200 children under the age of 18 living in large residential centres. In addition, the Ageing and Disability Department funds respite care, early intervention services, therapy services, Outside School Hours Support, and intensive family support services for children with a disability. However, there are no specific provisions in the DSA about children. The principles and applications do not specifically mention children. They do not address the issue of the participation of children and their parents as consumers of services. There are no special standards for organisations that provide accommodation or other support for children with a disability. Some children with a disability are effectively in the full-time care of people other than their parents (often in a large institution), without having been through the appropriate procedures under the *Children (Care and Protection) Act 1987* (NSW). Some people in charge of residential centres with whom the Commission spoke said they no longer admit children with a

disability on a permanent basis.[14] In addition, they only allow admission for respite care in very limited circumstances. However, the Commission has been told that children are still being admitted to large residential centres.

2.19 The Ageing and Disability Department is developing a policy for services for children with a disability. The *Children (Care and Protection) Act 1987* (NSW) and the *Community Welfare Act 1987* (NSW) are in the process of being reviewed.[15] Children with a disability in need of protection should have the benefit of any changes implemented. There should be consistency between legislation affecting the welfare of children, including legislation governing children in substitute care.

ISSUE 5

How could the DSA be amended to ensure that children with a disability receive the same protection from child welfare legislation as children who do not have a disability?

What special principles or applications of principles should apply to children with a disability?

What kinds of accommodation or support are appropriate for children with a disability? Should the DSA have special provisions regarding this?

What linkages should the DSA have with other legislation affecting the welfare of children?

14. North Rocks Deaf and Blind Institute, *Consultation* (28 July 1998); Western Sydney Development Disability Service, Marsden, *Consultation* (5 August 1998).
15. P Parkinson, *Submission*.

THE DISABILITY SERVICES PROGRAM

2.20 The funding which the New South Wales Government provides under the DSA for services for people with a disability is administered by the Ageing and Disability Department. The Department funds a range of organisations to provide a range of services under the DSA.[16] It funds the Department of Community Services to provide some services. It also funds a number of non-government organisations to provide services. Some of these organisations contribute significant amounts of their own funds, or funds raised from other non-government sources, to the running of their service. Some organisations that provide services for people with a disability are entirely self-funded.

2.21 The Department provides funding for:

- ***accommodation support***, which includes large residential services, hostels, group homes, attendant care (help with personal daily living tasks), in-home support and alternative family placement;
- ***community support***, which includes early intervention, therapy, information and referral, advocacy, recreation and holiday programs, family and individual case management, mutual support and self-help groups;
- ***community access***, which includes independent living training, day programs, post school options (support for transition from school to adult community living);
- ***respite***, which includes own-home respite, centre based respite, host family respite; and
- ***other support***, which includes peak bodies, research and development, service evaluation and training.

2.22 In the 1996-97 financial year, the Ageing and Disability Department distributed $176.2 million to non-government community organisations to provide services. Accommodation support received 62.7% of these funds, community support received

16. The Minister approves funding under s 10 of the DSA.

9.5%, community access received 4.7%, and other support received 0.4%. The Department funds approximately 700 non-government organisations to provide services.[17] It provided approximately $220.2 million to the Department of Community Services to provide accommodation and support services.[18] Numbers of people with a disability receiving accommodation support include approximately:

- 1825 people living in 17 large government residential centres;
- 563 people living in 30 large non-government residential centres;
- 1055 people living in 219 government group homes;
- 1260 people living in 286 non-government group homes; and
- 201 children under the age of 18 living in large residential centres.[19]

2.23 In 1996-97, 137 people with a disability received attendant care, and 290 people received individualised supported accommodation packages.[20] From funding targeted at children, 804 children received early intervention services, 353 received respite care, 1531 received therapy services, 159 received Outside School Hours support and 20 received intensive family support services.[21]

Planning the distribution of funds

2.24 If people with a disability are to be fairly treated in getting funding or services, the distribution of funds must be planned. If there is no planning, services tend to go to communities which are most able to make their demands known, or where charitable

17. Ageing and Disability Department, *Annual Report 1996-97* at 33.
18. Ageing and Disability Department, *Annual Report 1996-97* at 96.
19. See Community Services Commission, the Audit Office, *Performance Audit Report: Large Residential Centres for People with a Disability in New South Wales* (June 1997) at 2.
20. Ageing and Disability Department, *Annual Report 1996-97* at 37-38.
21. Ageing and Disability Department, *Annual Report 1996-97* at 21.

or other organisations able to provide services are located, or to individuals who have strong advocates to support them. The services or funds may not go where they are most needed or to those who most need them.

2.25 The Ageing and Disability Department says that resources are currently distributed unequally across the State. It is developing a new planning process called "population group planning" which will be based on outcomes for people rather than inputs into programs.[22] It will take into account carers' needs. Allocation of resources will be on a range of key indicators, including current service supply, population demographics, and identified needs.

2.26 The Commission has been told that there are "black holes" in service provision in some areas of need and that planning is necessary to address these.[23] The DSA does not provide for a planning process. To provide for planning, it could require the Ageing and Disability Department to take certain steps, for example:

- to collect specified data to determine need;
- to prepare and publish a detailed plan for each planning region;
- to develop linkages with related service providers in preparing the plan; and
- to consult with relevant interest groups.

ISSUE 6

What provision, if any, should the DSA make for planning the distribution of disability service program funds?

22. Ageing and Disability Department, *Annual Report 1996-97* at 14.
23. ACROD, *Consultation* (9 July 1998).

Provision of funding to other government agencies

2.27 Section 12A of the DSA allows the Minister for Ageing and Disability to give money to the Minister for Health to pass on to services for people who fall within the DSA target group who have a psychiatric impairment.[24] This was an amendment inserted into the DSA because of doubts about whether the Department of Health could be considered to be an "eligible organisation" proposing to provide or providing a "designated service" within the terms of the DSA.[25] To clear up any doubts and to better meet the objective of overcoming artificial barriers to service provision, it may be useful for the section to be amended to enable the Minister to give money to other appropriate Government agencies as well.

ISSUE 7

Should s 12A of the DSA be amended to give the Minister for Ageing and Disability the power to give money to other government agencies besides the Department of Health?

Application of the DSA to Home and Community Care services

2.28 The Home and Community Care (HACC) program is a cost shared program between the Commonwealth and the NSW Government. It gives money to services that support people living at home who are at risk of inappropriate institutionalisation. The program aims to help people considered to have a moderate to severe disability to remain within the community. The program is not intended to address intensive care needs.[26] The DSA does not mention the HACC program and there has been conflicting legal

24. s 12A.
25. See s 4, 10(1)(b).
26. Home and Community Care Program, *National Guidelines*.

opinion about whether the principles and applications of principles of the DSA apply to it. It is currently excluded from the DSA by regulation.[27]

ISSUE 8

What problems, if any, are caused for people with a disability, families, service providers and the Department of Ageing and Disability by the fact that the DSA does not apply to HACC services provided to people with a disability?

What, if any, linkages should there be between the DSA and the HACC program?

INTERACTION WITH THE CAMA

2.29 The DSA has a strong link with the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) (the CAMA). Certain decisions which the Minister makes can be appealed to the Community Services Appeals Tribunal. Community Visitors appointed under the CAMA visit services funded under the DSA to monitor the rights and well-being of people with a disability. The Community Services Commission can:

- inquire into matters affecting service providers and consumers (on its own initiative or at the request of the relevant Minister); and
- monitor and review the delivery of disability (and other community) services.

27. *Disability Services Regulation 1993* cl 3 and Sch 1.

ISSUE 9

How important to people with a disability is the link between the DSA and the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW)?

In what ways (if any) could the links be strengthened?

CO-ORDINATION WITH OTHER PUBLIC AGENCIES

2.30 People with a disability receive services and support from a range of other agencies which are important in enabling them to participate fully in the community. These include employment services funded by the Commonwealth, and schools. It is very important that people with a disability can move easily between services provided by these agencies and DSA funded services. There is also the need for effective co-ordination between disability service provision and the Guardianship Board, particularly where the person with a disability needs a "person responsible" but has no involved family who can take this role.[28] Achieving co-ordination is mostly a matter of good administration. However, the DSA may be able to facilitate or promote a co-ordinated approach.

ISSUE 10

How important to people with a disability is co-ordination between relevant services and agencies?

In what ways, if any, do the terms of the DSA prevent co-ordination with other legislation or services?

How, if at all, could the DSA better promote a co-ordinated approach?

28. See the recommendation of the Community Services Commission, the Audit Office, *Performance Audit Report: Large Residential Centres for People with a Disability in NSW* (June 1997) at xiv.

DO THE TERMS OF THE DSA ENSURE THAT SERVICES COMPLY WITH THE PRINCIPLES AND APPLICATIONS OF PRINCIPLES?

The principles and the applications of principles

2.31 The DSA has a number of sections which are aimed at ensuring that people with disabilities have the same basic human rights as other members of the community, and that they achieve their maximum potential as members of the community. The most important of these are the principles and the applications of principles set out in Schedule 1 to the DSA. The principles say that:

> Persons with disabilities have the same basic human rights as other members of Australian society. They also have the rights needed to ensure that their specific needs are met. Their rights, which apply irrespective of the nature, origin, type or degree of disability, include the following:
>
> (a) persons with disabilities are individuals who have the inherent right to respect for their human worth and dignity,
>
> (b) persons with disabilities have the right to live in and be part of the community,
>
> (c) persons with disabilities have the right to realise their individual capacities for physical, social, emotional and intellectual development,
>
> (d) persons with disabilities have the same rights as other members of Australian society to services which will support their attaining a reasonable quality of life,
>
> (e) persons with disabilities have the right to choose their own lifestyle and to have access to information, provided in a manner appropriate to their disability and cultural background, necessary to allow informed choice,
>
> (f) persons with disabilities have the same right as other members of Australian society to participate in the decisions which affect their lives,

(g) persons with disabilities receiving services have the same right as other members of Australian society to receive those services in a manner which results in the least restriction of their rights and opportunities,

(h) persons with disabilities have the right to pursue any grievance in relation to services without fear of the services being discontinued or recrimination from service providers,

(i) persons with disabilities have the right to protection from neglect, abuse and exploitation.

2.32 The applications of principles say that services and programs of services must apply the principles. In particular, they must be designed and administered so as to achieve the following:

(a) to have as their focus the achievement of positive outcomes for persons with disabilities, such as increased independence, employment opportunities and integration into the community,

(b) to contribute to ensuring that the conditions of the everyday life of persons with disabilities are the same as, or as close as possible to, norms and patterns which are valued in the general community,

(c) to form part of local co-ordinated service systems and other services generally available to members of the community, wherever possible,

(d) to meet the individual needs and goals of the persons with disabilities receiving services,

(e) to meet the needs of persons with disabilities who experience an additional disadvantage as a result of their gender, ethnic origin or Aboriginality,

(f) to promote recognition of the competence of, and enhance the image of, persons with disabilities,

(g) to promote the participation of persons with disabilities in the life of the local community through maximum physical and social integration in that community,

(h) to ensure that no single organisation providing services exercises control over all or most aspects of the life of a person with disabilities,

(i) to ensure that organisations providing services (whether specifically to persons with disabilities or generally to members of the community) are accountable to persons with disabilities who use them, the advocates of those persons, the State and the community generally for the provision of information from which the quality of those services can be judged,

(j) 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 chronological age,

(k) to ensure that persons with disabilities participate in the decisions that affect their lives,

(l) 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,

(m) to recognise the importance of preserving the family relationships and the cultural and linguistic environments of persons with disabilities,

(n) to ensure that appropriate avenues exist for persons with disabilities to raise and have resolved any grievances about services, and to ensure that a person raising any such grievance does not suffer any reprisal,

(o) to provide persons with disabilities with, and encourage them to make use of, avenues for participating in the planning and operation of services and programs which they receive and to provide opportunities for consultation in relation to the development of major policy and program changes,

(p) to respect the rights of persons with disabilities to privacy and confidentiality.

2.33 Submissions show that there is very strong support for the principles and applications of principles in the DSA.[29] They say they are a statement of the citizenship rights of people with a disability. Although they are not necessarily enforceable, they have created an environment which has led to a considerable improvement in the observance of the human rights of people with a disability and in the nature and quality of services they have received.

ISSUE 11

How important are the principles and applications of principles set out in the DSA to:

- **enabling people with a disability to achieve what they seek from the support services they receive;**
- **enabling people with a disability to maximise their potential as members of the community;**
- **protecting the human rights of people with a disability?**

Can the principles and applications be improved?

2.34 Some submissions received by the Commission say that, in some situations, principles may come into conflict. For example, the choice of a resident to remain in a large residential institution may conflict with a right to participate and be more integrated into the community.[30] The right to have independence may conflict with the right to protection from abuse and neglect. Other

29. See, for example, NSW Council for Intellectual Disability, *Submission*; ACROD, *Submission*; Citizen Advocacy NSW, *Submission*; Disability Safeguards Coalition, *Submission*; Australian Quadriplegic Association, *Submission*; Institute for Family Advocacy and Leadership Development, *Submission*.
30. People with Disabilities (NSW) Inc, *Submission*.

submissions were concerned that the meaning of some principles is not clear and is open to interpretation by service providers. For example, the practical meaning of integration and participation is not clear. A number of submissions say that there should be additional principles, for example, to cover children, or to cover the role of family and advocates in protecting the rights of adults with a decision-making impairment.[31] In these cases, there may be a need to clarify who has the right to participate in decision-making and in what circumstances. One submission is concerned that the applications of principles do not provide appropriate outcomes for people with a chronic and progressive disease or an acquired disability.[32] However, some submissions say that the problems of conflict are the result of the rigid and inflexible way in which the principles and applications have been interpreted in Departmental policy and standards, and that the problem is not with the principles and applications themselves.[33]

ISSUE 12

How, if at all, can the principles and applications be improved? Why?

Should there be specific principles and applications that apply to children with a disability? If so, what principles and applications should apply?

Should there be specific principles and applications that apply to people whose ability to make decisions about their lives is impaired? If so, what principles and applications should apply?

In what other circumstances, if any, may specific principles or applications be needed?

31. Disability Safeguards Coalition, *Submission*; NSW Council for Intellectual Disability, *Submission*.
32. Multiple Sclerosis Society of New South Wales, *Submission*.
33. ACROD, *Submission*.

Services provided and funded in conformity with the principles

2.35 The DSA requires the Minister to ensure that services are provided and funded in conformity with the objects of the DSA and its principles and applications.[34] Before approving funding for a service, the Minister must be satisfied that providing the funding would conform with the objects, principles and applications.[35] The terms and conditions on which funding is given to an organisation to provide services or conduct research and development activities must set out the extent to which the organisation must conform to the principles and applications of principles.[36]

Transition plans

2.36 When the DSA commenced, there were a number of services that did not conform with its objects, principles and applications of principles. The DSA set up a process of transition plans whereby, within three years, those services would conform to the objects, principles and applications. Under s 7(1) of the DSA, the Minister can require services that do not conform with the principles and applications to prepare a transition plan for how they will go about providing a service that conforms with the Act.

2.37 Approximately 1100 disability services in NSW have self-assessed against the Disability Services Standards, which the Ageing and Disability Department uses to assess whether services conform with the principles and applications. Two hundred and seventy-eight services were found to conform with the DSA. Eight hundred and thirteen services had some non-conforming practices and were required to prepare transition plans.[37] These plans contain strategies to be used by the service to achieve conformity with the DSA and the Disability Services Standards. The total transition funding pool of $39.4 million has been allocated over four funding rounds. $18.45 million was made available on a recurrent basis and $20.95 million was available as non-recurrent

34. s 6(1).
35. s 10(1).
36. s 12, 13.
37. Ageing and Disability Department, *Annual Report 1996-97* at 22.

funds. Four hundred and fifty-one services, which is 79% of the 572 services that requested funding, received full or partial transition funds. The Department of Community Services estimates that it needs an additional minimum of $54 million recurrent (ongoing) funds plus capital to enable it to transfer its large residential services to community based accommodation.[38]

Transition provisions in the DSA out of date

2.38 Five hundred and sixty services have achieved conformity (339 with the help of additional funding). Two hundred and fifty-three services are waiting to receive the funding necessary to enable them to achieve conformity, for example, by reconfiguring their buildings and to move more people into the community. Seventeen of these are large government services[39] and 30 are large non-government services.[40] The time frames set out in the transition provisions have not been achieved and so are out of date. New provisions are needed.

Transitional standards provisions inadequate

2.39 The Minister has a duty to ensure that non-conforming services comply "as closely as possible in conformity" with the objects, principles and applications.[41] But submissions say that the meaning of "as closely as possible" is unclear.[42] The 1997 audit of large residential centres for people with a disability in New South Wales found that some non-conforming residential centres did not meet even basic safety and protection standards. It said that there was no definition, nor measurable criteria for, "conforming as closely as possible", nor any criteria which establish the basic requirements for resident safety and protection from abuse.[43] This

38. Information provided by the Department of Community Services.
39. Involving 1825 people.
40. Involving 563 people: Community Services Commission, the Audit Office, *Performance Audit Report: Large Residential Centres for People with a Disability in New South Wales* (June 1997) at 12.
41. s 6(4).
42. See, for example, People with Disabilities (NSW) Inc, *Submission*.
43. Community Services Commission, the Audit Office, *Performance Audit Report: Large Residential Centres for People with a Disability in New South Wales* (June 1997) at iv.

audit recommended that the Government consider adopting a policy that no more people be placed in non-conforming institutions, even on a respite or crisis basis. Further, it recommended that a decision to place a person in a non-conforming service should only be made by the Guardianship Board,[44] in the case of adults, and by the Minister for Community Services,[45] in the case of children, and that, if necessary, the appropriate legislative amendments should be made to achieve this.[46] The Ageing and Disability Department says that it is moving to implement the recommendations of the report by producing a "Standards in Action" manual[47] which sets minimum standards for all services for people with a disability.

Preparation and approval of transition plans

2.40 When the DSA commenced, a lot of time and money went into evaluating services that did not conform and into preparing transition plans. Many people with a disability were told they would be moving into the community. However, in many cases, lack of funding has meant that services cannot carry out their plans. This has left both people with a disability and services in limbo. Plans became out of date. Services must amend or develop new ones to comply with the DSA, even though there is only a small chance that the plan will be implemented. Services are justifiably unwilling to spend too much on improving their facilities to meet standards when there is the possibility that, at some time in the future, they will be shutting down. Government and non-government agencies have spent considerable resources on disputes about the approval of plans that had little chance of ever being implemented. New provisions in the DSA are needed to prevent time and money being wasted on plans when funding is not immediately available. On the other hand, given the consensus that large residential centres must be closed, or dramatically transformed, it may be useful if there is a definite but realistic

44. As an independent substitute decision-maker.
45. It said that this decision-making authority should not be delegated.
46. Community Services Commission, the Audit Office, *Performance Audit Report: Large Residential Centres for People with a Disability in New South Wales* (June 1997) at xii.
47. Aging and Disability Department, *Standards in Action* (May 1998).

timetable for achieving conformity in all disability services. This may involve a staged process over a certain period. New time limits could be included in the DSA.

Enforcing compliance with principles and applications

2.41 The DSA requires the Minister to withdraw funding from services that do not conform to the principles. However, closing down a large institution is not realistic if there is nowhere else for the people with a disability living there to go. Under the DSA, there is no other action which the Minister can take and so there is no real incentive or method to bring about change if an institution is reluctant to take action to comply.

ISSUE 13

What new process should be in the DSA to ensure that non-conforming services reach conformity with the objects, principles and applications?

What are the resource implications of providing for a new transition process in the DSA which aims to achieve the full conformity of all DSA funded services?

Should the DSA set a new time frame for the process to occur? If so, what should the time frame realistically be?

What, if any, are the social costs (and attendant financial costs, if any) to the community of services failing to achieve full conformity?

How can the human rights of people with a disability be protected in non-conforming services?

What powers should the Minister have to ensure that services develop and implement transition plans and meet required standards?

Quality assurance process

2.42 The DSA sets out the rights of people with disabilities in the principles in the Schedule to the Act. The applications set out how those principles should be applied to services and programs of services.[48] It does not say how services should be checked to see if they are conforming to the principles and applications. The Ageing and Disability Department has developed a process for monitoring compliance. This involves standards which, as a condition of funding, services must comply with. It also includes policies about what is acceptable supported accommodation.[49] These are supplemented by "standards in action" which are more detailed and prescriptive. They focus on process (for example, they require services to have policies) rather than on outcomes for people with a disability. The Department monitors compliance mainly by carrying out an annual self-assessment process. Officers of the Department visit centres to check on safety standards. Community Visitors attached to the Community Services Commission also visit services to monitor the well-being of service users.

Concerns about the current quality assurance process

2.43 Some submissions to the Commission express concern about the Ageing and Disability Department's quality assurance process. Concerns about the policies and standards against which services are assessed include that they:

- do not adequately reflect the principles and applications;[50]

48. See para 1.33-1.35.
49. For example, NSW Department of Ageing and Disability, *Accommodation Support Program – Policy and Guidelines* (1996) state that transition plans for supported accommodation must provide for community based accommodation support services which: (1) are based on use of a single family dwelling, or other regular community dwelling, that is, a facility having the smallest residential grouping possible, with no more that six residents in any one dwelling; (2) do not cluster or co-locate a number of houses, flats or units in the same street or in close proximity with one another.
50. Intellectual Disability Rights Service Inc, *Submission*.

- are confusing and too prescriptive;[51]
- do not reflect the range of methods which organisations use to provide services and so create an impediment to innovative and flexible service provision;
- have no clear legal status;[52]
- conflict with standards governing non-DSA funded services that people with a disability use; and
- conflict with other service provider obligations such as occupational health and safety requirements.[53]

2.44 Submissions are also concerned that the self-assessment process is not an adequate method for monitoring whether services are complying with the principles and applications.[54] On the other hand, the Ageing and Disability Department says that services want more guidance about how to comply with the principles and applications.[55]

Improving the quality assurance processes

2.45 Concerns with the current quality assurance process relate to the way in which the provisions of the DSA, and, in particular, the principles and applications, have been interpreted and administered. Some of these problems might be overcome if the DSA had provisions which specifically provide for a quality assurance process and set out the principles that should govern it.

51. ACROD, *Submission.*
52. Institute for Family Advocacy and Leadership Development, *Submission.*
53. ACROD, *Submission.*
54. Intellectual Disability Rights Service Inc, *Submission*.
55. See Ageing and Disability Department, *Standards in Action* (May 1998) at v.

ISSUE 14

To what extent do the disability services standards reflect the principles and applications in the DSA?

What is the best way to ensure that services comply with the principles and applications in the DSA?

How should the DSA protect the rights of people with a disability who are in services that do not yet have funding to achieve full compliance with the principles and applications?

How can occupational health and safety concerns be taken into account?

What powers should the Minister have where a service fails to meet quality assurance requirements?

DO THE TERMS OF THE DSA ENABLE PEOPLE WITH A DISABILITY TO GET THE KINDS OF SERVICES THEY WANT?

Delivery of innovative services

2.46 An object or goal of the DSA is to encourage the delivery of innovative services. It is also to provide individual choice and flexible service delivery. In his second reading speech, the Minister said:

> The bill will provide also that individuals as well as organisations are eligible to receive funding. Such a provision is essential to the Government's commitment to eliminate arbitrary structural and systemic barriers to access and to ensure that services are truly responsive to the needs of consumers.

2.47 Section 10 of the DSA provides that the Minister may give funding to:

- a person in the target group, or a person caring for or supporting that person to enable the person to get designated services;
- to an eligible organisation, to enable it to provide designated services; or
- to a person or organisation for approved research and development activity.

No provisions about terms and conditions for individual funding

2.48 There are no provisions in the DSA about the terms and conditions on which the Minister may give funding to individuals. The terms and conditions which s 12 and 13 require the Minister to impose only apply to eligible organisations.[56]

Funding models provided in the DSA

2.49 In submissions and consultations, the Commission was told that some of the terms and conditions imposed on service providers, including the standards and financial accountability provisions, were not relevant or appropriate for the method of delivering services used by some organisations. They were considered to reduce flexibility and discourage innovative service provision. One way of addressing these problems might be to provide in the DSA for a number of different models with different terms and conditions, accountability and standards attached. However, unless the models and the provisions were themselves carefully developed and drafted, this might also reduce flexibility and innovation.

Provisions for loans, leasing arrangement etc as well as grants

2.50 In consultations for the review of the *Disability Service Act 1993* (WA), the issue was raised whether other kinds of financial help besides a grant might be of benefit to people with a disability. For example, it was suggested that the Act should provide for

56. These sections require the Minister to impose conditions dealing with the extent to which the organisation must conform to the objects, principles and applications.

loans, leasing arrangements, or capital grants with options for either full or part repayment.[57] This might enable people with a disability to pursue a range of accommodation, transport or other support options either separately or in self-chosen groups. It may enable the Government to provide more help knowing that some of the funds made available could be recovered in some circumstances. However, these options depend on people with a disability having adequate income.

ISSUE 15

How, if at all, could the DSA better promote flexibility and innovative service provision?

Should the DSA provide specifically for a number of funding models with specialised funding and terms and conditions and standards attached? Is so, what would these be? If not, why not?

DO THE TERMS OF THE DSA ENABLE PEOPLE WITH A DISABILITY TO GET THE MAINSTREAM SERVICES IN THE COMMUNITY THEY NEED OR WANT?

Disability services plans

2.51 An important measure in the DSA aimed at maximising participation of people with a disability in the community is the section which requires a number of public authorities to prepare a disability services plan. Section 9(1) provides that public authorities are to prepare and "make provision for the

57. *Review of the Disability Services Act 1993: Ministerial Report to Parliament in accordance with section 57(5) of the Act* (August 1998) at 18.

implementation of" a plan to provide services in a way that conforms with the objects and principles and applications of the Act". The plan must provide for reporting the authority's progress in implementing the plan[58] and be publicly available. One hundred and thirty five NSW government agencies are required to develop plans.[59]

Concerns about plans

2.52 Submissions are concerned that there are still a number of Government agencies that are not required to prepare a plan.[60] Some agencies that are required to prepare a plan have not.[61] Some plans are very vague and lack key features. For example, the majority do not build planning for people with a disability into their regular management systems and very few have done their planning and their delivery of services in cooperation with other agencies, even when the agency's services were linked or overlapped.[62] Neither the police service nor local government authorities are required to prepare a plan.

2.53 Submissions say that s 9 is too unclear. It is not clear whether the words "make provision for the implementation of" means that the authority must actually implement the plan. It is not specific enough about what must be in the plan. It does not say how often authorities must prepare or review the plan. It does not say who should monitor implementation. There are no legal consequences for failure to prepare or implement the plan.[63] Some submissions say that the requirement to prepare a plan should extend beyond government authorities to include organisations that occupy Crown land or receive State or local government assistance.[64] For example, sexual assault and domestic violence

58. s 9(2).
59. Ageing and Disability Department, *Annual Report 1996-97* at 63.
60. See, for example, ACROD, *Submission*; Anti-Discrimination Board of New South Wales, *Submission*.
61. Australian Quadriplegic Association, *Submission*.
62. See Ageing and Disability Department, *Annual Report 1996-97* at 63.
63. Department of Education and Training, *Submission*.
64. Anti-Discrimination Board of New South Wales, *Submission*.

services are often not accessible to people with a disability.[65] Because mainstream community services are involved, the DSA may not be the best place for measures promoting access.

ISSUE 16

What is the best way to ensure that mainstream services provide services to people with a disability in a way that conforms with the principles and applications?

What mainstream agencies should be required to comply with the principles and applications?

How should the compliance of mainstream services with the principles and applications be monitored and enforced?

ADVOCACY

2.54 The Community Visitors appointed under the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) play a role in advocating for the interests of people using disability services. There are also some funded advocacy services. A number of submissions emphasise the importance of advocacy to protecting the rights of people with a disability under the DSA. They say there should be increased provision for advocacy and that the DSA should specifically provide for it.[66]

65. Department for Women, *Submission*.
66. Intellectual Disability Rights Service Inc, *Submission*; Citizen Advocacy NSW, *Submission*; Institute for Family Advocacy and Leadership Development, *Submission*.

ISSUE 17

How, if at all, should the DSA provide for advocacy for people with a disability receiving disability services?

THE DISABILITY SERVICES REGULATION

The power to exclude a service by regulation

2.55 Under the DSA, the Minister has a duty to ensure that "designated services" are provided and funded in conformity with the DSA.[67] The *Disability Services Regulation 1993* provides for which services are and are not designated services.[68] It excludes Home and Community Care program services other than those provided through the Home Care Service.[69] It also excludes accommodation services provided at Lidcombe by the Multiple Sclerosis Society of New South Wales (ACN 000 320 632) for people affected by multiple sclerosis.[70] The Regulation gives the Minister the power to waive payment of fees for services in certain circumstances.[71]

2.56 Whether or not a disability service is covered by the DSA is very important to consumers. The main issue for the Regulation is whether it is necessary or desirable for the Minister to have the power to exclude services from the application of the DSA by excluding it in a Regulation. The DSA does not state any grounds on which the Minister might exclude some services from the operation of the DSA. It can therefore be exercised in an arbitrary

67. s 6.
68. cl 3.
69. cl 3 and Sch 1. The need for some of the provisions (for example, the provision excluding most HACC services and the waiver of fees) could be eliminated by amending the DSA itself. This paper discusses the issue of whether HACC services should be covered by the DSA at para 1.30.
70. See cl 3 and Sch 1.
71. cl 5.

way. It defeats the purpose of the DSA to use the Regulation to get around problems which a service has in conforming to the principles and applications, or problems with interpreting the principles and applications. If the problem is that the principles and applications (or the way they are interpreted) are inappropriate for some kinds of services, or that there is a conflict between principles that is difficult to resolve, then the solution should be to provide a mechanism or a way of resolving these issues or to provide for greater flexibility. This issue is discussed at paragraph 2.34.

ISSUE 18

Should the Minister have the power to exclude a service from the operation of the DSA? If so, in what circumstances?

Are there other ways besides giving the Minister the power to exclude services that would avoid these circumstances arising?

Should any power to exclude a service from the operation of the DSA be provided for in the DSA?

If so, should the DSA set out the circumstances in which the Minister may exclude a service from the operation of the DSA?

What would be the resource implications, if any, of removing the Minister's power to exclude services from the operation of the DSA?

ENFORCING THE PROVISIONS OF THE DSA

Action which can be taken if a service does not comply

2.57 If a service does not comply with the provisions of the DSA, the only power which the Minister has under the legislation is to suspend the payment of an instalment for no longer than 28 days or to terminate payments completely.[72] The Minister is unlikely to take either of these steps because this means either the standard of service will fall or the service will close. In most cases, there will be nowhere else for the people who use the service to go. The DSA does not require the Minister to provide alternative accommodation or other services if he or she defunds a service. The DSA could provide for other options, for example:

- varying the terms or conditions of funding;
- appointing an administrator;
- requiring the individual to seek help from a service to administer the funds;
- stopping a service from admitting any more clients;
- naming a service in Parliament; and
- more frequent monitoring.

ISSUE 19

What action should the Minister be able to take if a service or an individual does not comply with provisions of the DSA?

If the Minister defunds a service and it closes, should the DSA require the Minister to provide alternative services for the people affected by its closure?

72. s 16.

Emergency protection for people with a disability

2.58 There are no provisions in the DSA which enable the Ageing and Disability Department or other body or individual to take immediate and effective action where a service's breach of the principles and applications is causing immediate harm or high risk of harm to an individual or individuals. The DSA may need to provide a procedure and powers to require a service to take immediate action to remedy a breach or to enable the person or persons to be removed from the service and placed elsewhere.

ISSUE 20

What procedures and powers, if any, are needed to enable immediate action to be taken to protect people suffering immediate harm in a service?

Powers of search and entry

2.59 If the Ageing and Disability Department considers that a service or individual is not meeting standards, is not adequately accounting for funds, or is acting fraudulently, it needs to be able to check on the service or the individual. Officers of the Department need to be able to go to the service, or visit the individual, look at what is happening, ask questions and check on their records. If the service or individual is unwilling to co-operate, the officers need to have the power to make the service or the person do these things. They may be able to rely on some provisions in funding agreements. However, there is some doubt about the extent of entry powers in these agreements.

2.60 Unlike the *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW), the DSA does not have any provisions that enable officers of the Department to enter and search premises, or require relevant people to answer questions or provide papers. The Community Services Commissioner has the power to:

- enter any part of premises on which the functions of a service provider are exercised;
- inspect the premises and make notes in relation to the inspection;
- examine, seize, retain or remove any relevant equipment;
- require a person to produce records for examination;
- make copies of, or take extracts from, those records;
- take possession of, and remove, any of those records;
- require the owner or occupier of those premises to provide the assistance and facilities reasonably necessary; and
- ask any person on the premises to answer questions, or to produce records, relating to the delivery of services at or from the premises.[73]

2.61 The *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) spells out the circumstances in which the Commissioner can exercise these powers. These include provisions about when, and how much, notice is required, when a search warrant or the consent of the occupier is required, and what authority is needed.[74]

ISSUE 21

What powers should the DSA have to enable officers of the Ageing and Disability Department to check on services they suspect are acting dishonestly or not meeting standards?

73. *Community Services (Complaints, Appeals and Monitoring) Act 1993* (NSW) s 84.
74. s 84.

Review of funding for services

2.62 The DSA requires the Minister to review, at least every three years, the extent to which:

- an organisation receiving funding has complied with the terms and conditions of funding; and
- the outcomes required to be achieved by those terms and conditions have been achieved by people in the target group.[75]

ISSUE 22

What role does this review play in the administration of the DSA funding program?

How important is this review to achieving the policy objectives of the DSA?

How does it fit with the standards assessment process and other monitoring procedures which the Ageing and Disability Department undertakes?

How often should the Minister be required to review services? Should it be separate from, or part of other monitoring and accountability processes?

What action should the Minister take if outcomes have not been achieved?

Appeal of decisions

2.63 The DSA provides that an appeal may be made to the Community Services Appeals Tribunal on a number of grounds.[76] These are:

75. s 15.

- that the Minister should not have approved funding because giving the funding will not conform with the principles and applications of principles as required by s 10(2);
- that the terms and conditions on which funding is given do not comply with s 12 or 13 (which set out things that must be in the terms and conditions);
- that the Minister has not conducted a review as required by s 15 (which requires the Minister to review services at least every three years to check compliance with the DSA); and
- that the Minister has terminated funding without complying with the procedures set out in s 16 (which requires the Minister to give notice etc).

2.64 The *Community Services (Complaints, Monitoring and Appeals) Regulation 1996* also makes the Minister's decision to approve or not approve a transition plan and the Minister's decision to provide or continue to provide a service that does not comply with the principles and applications a ground for appeal.[77]

ISSUE 23

Are these appropriate decisions for appeal to the Community Services Appeals Tribunal? Why or why not?

Are there other decisions that should be reviewable by the Community Services Appeals Tribunal?

76. s 20.
77. See *Community Services (Complaints, Appeals and Monitoring) Regulation 1996* cl 6(1)(a),(b).

RESOURCE IMPLICATIONS

2.65 The terms of reference ask the Commission to consider the resource implications of the DSA and the DSA Regulation and of any proposed changes. The Commission seeks views on this.

ISSUE 24

What are the resource implications of the current DSA?

Can these costs be met? How?

If not, what should be changed?

OTHER ISSUES?

2.66 Are there any other issues about the DSA or the DSA Regulation which you would like raise?

Appendix A

SUBMISSIONS RECEIVED

Mr P Parkinson, Chair, Community Welfare Legislation Review, 2 July 1998

National Children's and Youth Law Centre, 7 July 1998

ACT Community Care, Disability Program, 8 July 1998

Disability Safeguards Coalition, 10 July 1998

Citizen Advocacy NSW, 12 July 1998

Carers' Taskforce Australia Inc, 13 July 1998

Intellectual Disability Rights Service, 14 July 1998

Council of Social Service of New South Wales, 15 July 1998

Multiple Sclerosis Society of New South Wales, 15 July 1998

ACROD, 16 July 1998

Northcott Society, 16 July 1998

Burnside, 16 July 1998

Spastic Centre, 16 July 1998

NSW Ombudsman, 17 July 1998

NSW Council for Intellectual Disability, 17 July 1998

People with Disabilities (NSW) Inc, 17 July 1998

Australian Association of Social Workers, 20 July 1998

Mr J Simpson, 20 July 1998

Autistic Association of New South Wales, 20 July 1998

Association of Childrens Welfare Agencies Inc, 21 July 1998

NSW Child Protection Council, 21 July 1998

NSW Department of Education and Training, 21 July 1998

NSW Department for Women, 22 July 1998

Ms H Meekosha, 27 July 1998

Australian Quadriplegic Association Ltd, 28 July 1998

NSW Department of Community Services, 31 July 1998

Anti-Discrimination Board of New South Wales, 31 July 1998

Institute for Family Advocacy and Leadership Development, 6 August 1998

Mental Health Co-ordinating Council Inc, 7 August 1998

NSW Department of Health, 13 August 1998

Community Services Commission, 18 August 1998

Mr R Fisher, Chief Executive Officer, Disability Services Commission of Western Australia, 20 August 1998

Mr A E Maher, 31 August 1998