

# SECOND READING SPEECH

## Disability Services Bill 2011

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Mr Speaker, I move –

That the Bill now be read for a second time.

The purpose of this Bill is to inform the way that specialist support services are provided to people with disability. This Bill provides for the funding of specialist disability services and related research and development activities. The Bill establishes a requirement that all services provided under this Bill will respect the inherent dignity of people with disability, along with their individual autonomy, freedom to make their own choices and their right to independence. The Bill requires that care and support provided is person-centred and supports the universally adopted principle of “nothing about us without us”. New planning and reporting requirements have been developed. The Bill proposes a quality and safety framework for services which includes a statement of principles and requires that services meet specified standards. The Bill also provides for new protections, including the regulation of restrictive practices.

Mr Speaker I am proud to bring this Bill before the House. It represents a truly contemporary approach to the delivery of services to people with disability, an approach that puts the person at the centre of all that we do in service delivery and seeks to ensure the services that are delivered are of the highest standard. Before proceeding to consider the main features of the Bill I will outline the background to its development in some detail.

This Bill, when adopted, will replace the exiting *Disability Services Act 1992*. This Act was developed in response to the first Commonwealth State Disability Agreement in 1991, which transferred the responsibility for the administration of accommodation and support services from the Commonwealth Government to the States and Territory Governments. The scope of the Act was limited to specialist disability services that are funded or provided by the Department of Health and Human Services.

The *Disability Services Act 1992* does not cover services provided for people with disability that are the responsibility of other agencies, such as education or transport, or services that are governed by other legislation. This Bill has a similar scope.

The *Disability Services Act 1992* is not a “rights instrument”, in that it does not prescribe rights to individuals. However, the Act does place expectations on government and funded service providers to observe certain rights for people with disability. The Bill carries forward these expectations.

Mr Speaker, in recent years there have been a number of key developments that have redirected the focus of support services for people with disability and that have resulted in the need to develop new legislation. These include:

- Australia becoming a signature to the **United Nations Convention on the Rights of Persons with Disability**. This Convention sets out the legal obligations on States to promote and protect the rights of people with disability. It makes a shift from a world where people with disability were viewed as “objects” of charity, medical treatment and social protection to a world where they are viewed as “subjects” with rights, who are capable of claiming those rights and making decisions for their lives based on their free and informed consent, as well as being active members of society.
- The development of the **National Disability Strategy** setting out a ten year plan for improving the life for Australians with disability, their families and their carers. This Strategy focuses on achieving a society that is inclusive and enabling, providing equality and the opportunity for each person to fulfil their potential. Through this strategy Tasmania has committed to developing a sustainable specialist disability support system that is person centred and self directed , and which maximises opportunities for independence and participation in the economic, social and cultural life of the community.
- A new **National Disability Agreement** signed in November 2008

- The review and **reform of specialist Disability support services**. The implementation of the Operational Framework for Disability Services last year has already led to significant changes in the way Tasmania delivers services. This framework promotes a new way of working in partnership between government and services providers and the people that they support. It focuses on people centred and self directed approaches, ensuring that the individual or family is at the centre of the service delivery system. A key aspect of these changes is that all direct service delivery is moving across from Government provision to the community sector.
- The recognition that institutional care was not appropriate for people with disability, the **closure of Willow Court**, and an expectation that government would ensure that such institutional care could not happen again.

Mr Speaker, in my inaugural speech I spoke of the pain and suffering that resulted through the incarceration of people in Willow Court. At that time I pledged to use my position in Parliament to work towards the creation of a socially inclusive Tasmania; a Tasmania which respects the human rights of all its citizens and extends its care and support to vulnerable members of our community.

Willow Court provided institutionalised care for people with disability. Every-one aware of what was occurring within Willow Court was affected by the tragic stories emanating from that place.

Willow Court shut its doors in 2000. It was closed in recognition that practices such as the institutionalising of people with disabilities and the consequent damage and abuse are not acceptable. The former Health Minister, Judy Jackson, must be recognised for her courage and determination in pushing through the closure of Willow Court eleven years ago.

Government has formally recognised that institutional care is no longer appropriate for people living with disability. However the closure of Willow Court alone was not enough. More needed to be done to ensure that the approach of institutional care could not happen again. This included reviewing the *Disability Services Act 1992* and developing new legislation to prevent past mistakes being repeated.

In October 2008 full support was given by all members of this House to commence an investigation into the features of a new Disability Services Act.

The investigation was to be undertaken by the Joint Standing Committee on Community Development, looking at:

- the objectives, outcomes and principles that should form the basis of the new Disability Services Act to ensure the approach of institutional care as experienced in Willow Court could not happen again;
- whether the legislative outcomes reflect the Tasmanian Government's obligations to protect human rights under the United Nations Convention on the Rights of Persons with Disabilities; and
- whether the quality and safety framework governing specialist disability service provision is consistent with modern approaches to service provision.

Mr Speaker, in developing the new Bill consideration has been given to the original terms of reference of the Standing Committee. The issues contained within the terms of reference have also been considered through an extensive consultation process and I thank most sincerely all who contributed to that process and the development of this Bill.

Mr Speaker, before I detail the features of this Bill I would also like to acknowledge the enormous contribution parents and carers make to the lives of others and acknowledge and show appreciation of their role and the personal sacrifices they make to fulfil that role.

The Tasmanian Government has been working closely with people with disability, families, carers and community sector organisations to bring significant change and improvement to the delivery of services.

I would also like to acknowledge the contribution of members of the Steering Committee who have provided advice throughout the review of the Disability Services Act 2011 and the development of this Bill.

I will now deal in detail with the intent and operation of the main features of the Disability Services Bill.

## **Definition of Disability**

The definition of disability is important as it is used to determine eligibility for specialist support services. This definition has been expanded to include specific reference to disability resulting from cognitive impairment. This is consistent with amendments to the definition in the previous Commonwealth State Disability Agreement.

The definition also includes consideration of the impact that the impairment has on the person's capacity to participate in society. This allows for an increased focus on the supports needed to access and participate in society as so many of us take for granted.

## **Definition of Restrictive Intervention.**

Restrictive interventions are sometimes required to protect the person with disability, or another person from serious harm. Provisions within the *Disability Services Act 1992* are inadequate in that they do not afford the level of protection required. It is necessary to define restrictive intervention so as to be able to make provisions to protect people with disability from the inappropriate use of restrictive interventions. A significant feature of this Bill is that it requires approval for the use of restrictive interventions, and that approvals will only be given after an assessment that the intervention is in the best interest of the person with disability, and that, it is the least intrusive intervention possible. The Bill introduces a requirement that, where ever possible, government will work towards the elimination of the use of restrictive practices. The Bill also introduces penalties for the inappropriate use of restrictive interventions.

## **Principles**

This Bill requires that all activities under this Act will be provided in a manner that meets the expectations established within the Principles.

This means that any activity undertaken under this Act, whether it is by the Minister, the Secretary of the Department, departmental staff, researchers and funded service providers, must apply the Principles.

Mr Speaker, the Principles in this Act reflects the broader human rights perspective in line with Australian ratification of the United Nations Conventions on the Rights of Persons with Disability.

This means that

- the needs and best interest of persons with disability will be promoted;
- decisions and actions that may directly affect a person with disability should only be taken after the person has been consulted;
- decisions and actions should take into account the wishes of the person; and that
- the dignity of persons with disability and their individual autonomy , including the freedom to make their own choices and their right to independence will be respected.

In a significant improvement to the current act the Principles also include specific recognition of the specific needs of children with disability.

## **Standards**

The Bill requires that Standards be developed and incorporated into regulations. Services provided under this Act will be required to comply with the Standards. Given the new Standards which are being developed nationally have not yet been finalised; provision has been made to carry forward the existing standards in the *Disability Services Act 1992*.

## **Planning and Reporting.**

Mr Speaker, this part introduces requirements for Government, in consultation with service providers and people with disability, to develop three yearly strategic and operational plans. The Bill also requires annual reports against the plans. These provisions are intended to make clear the role of government in planning and reporting, increasing both accountability and transparency.

## **Individual Plans**

The Bill introduces a requirement that, where an individual is receiving direct funding and support services, individual plans are to be developed. The intent behind this requirement is to ensure that the needs of the person are central to any service provided, and that services are provided in a manner that is person-centred and self directed. The planning process will provide increased choice and control for people with disability, whilst encouraging service responses that are flexible, innovative and effective. Individual plans will be broader than the specialist support services that may be provided through the Department. If a person is unhappy with a decision taken by the Secretary in relation to an individual plan, they may seek review of that decision through the Administrative Appeals Division of the Magistrates Court.

## **Funding**

Mr Speaker, the provisions within this Bill will allow the Secretary to provide a grant to enable a person or organisation to provide specialist disability services, research and development activity, or, in some circumstances, purchase “other goods or services”. These provisions allow for a more flexible approach to the provision of funding. The Bill will allow for the provision of funds direct to an individual, allowing the person or their family to self manage the provision of services. This is a major step forward to the establishment of self directed services. This will allow for greater flexibility when developing the most appropriate suit of services to support a person. Provision has also been made to enable the use of funds to purchase other goods or services, where these are required to remediate the disadvantage or difficulty arising from the persons disability.

## **Review of Grants**

The Secretary is required to review grants at least every three years. The review is to consider compliance with the principles, standards and other terms and conditions. Importantly the review is also to consider the extent to which the grant has enabled the quality of life of the person receiving the service to be improved.

Grants provided to a private person will be reviewed at least once a year. The focus of the review includes the individual plans, ensuring that a persons needs and the appropriateness of services provided are considered. The review of the individual plans will also consider how well the obligations of other persons to provide services to the individual have been fulfilled, and whether there has been adequate coordination of the provision of services.

### **Monitoring of Grants**

Mr Speaker, this Bill establishes a process for the Secretary to follow in the case where services are not provided to the required standard. This process has been modelled on provisions within the Aged Care industry. It requires that in the first instance, the Secretary explore supporting the service provider to address the areas of concern, through to providing for the termination of funding agreements.

### **Entry of premises**

This Bill establishes the right of authorised officers to enter funded premises. Similar provisions are in place in most other jurisdictions across Australia.

It is intended that this right will only be used to determine the safety and well being of the persons receiving the specialist disability support services, the quality of services and whether the terms and conditions of the grant are being met. It is expected that this provision will only be used where there are reasonable grounds to be concerned for the safety and well being of the person receiving the services, and other steps have failed to ascertain this.

An authorised officer will be able to talk with the person receiving the services (or their nominee), talk with staff and examine documentation related to the concern.

Mr Speaker these are important new provisions which are part of a broader strategy to ensure the safety and well being of people receiving specialist support services.

## **Restrictive practices**

The current Disability Services Act provides for an Ethics Committee to monitor programs and services in respect to aversive, restrictive and intrusive treatment practices. This Bill proposes disbanding the Ethics Committee, replacing it with a more appropriate suit of initiatives. This will include establishing a Senior Practitioner, who will become the first point of contact for matters relating to restrictive practices. The Senior Practitioner will provide advice on requests for the approval of proposed restrictive practices, and have the authority to investigate the any inappropriate use of restrictive practice.

Currently the Ethics Committee has two main functions being:

- to monitor programs and services in regard to aversive, restrictive and intrusive treatment practices; and
- to report or give recommendations to the Minister in respect of such programs or services or in relation to specific treatment practices.

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

There has been concern expressed as to whether the current legislation adequately provides for the Ethics Committee to determine whether individual behaviour management plans developed by funded service providers, which include the use of restrictive and intrusive practices are appropriate.

The Ethics Committee has provided advice that the current legislation is insufficient to protect clients from inappropriate practices, and that the Committee should be replaced with a structure that better meets the needs of the sector. This view was widely supported throughout the consultation process.

This Bill replaces the Ethics Committee with:

- a requirement that, should the use of a restrictive intervention be considered, appropriate approvals must be in place,

- that responsibility for the approval of restrictive practices rest with either the Secretary of the Department for Health and Human Services or the Guardianship and Administration Board
- the establishment of a senior practitioner role with responsibility assess and provide advice on requests for approval;
- an increased capacity to provide practice advice to service providers on alternative behaviour management strategies;
- provisions for the capacity to enter, inspect and report on funded services and,
- additional requirements relating to a Quality and Safety framework.

Mr Speaker both the Ethics Committee and the President of the Guardianship and Administration Board have expressed support for the proposed arrangements outlined in this Bill.

### **Senior Practitioner**

Mr Speaker the establishment of the position of Senior Practitioner is an important initiative within this Bill. This position will have responsibility to provide a broad range of services that will contribute to the reduction and, where appropriate, the elimination of restrictive practices. This will include providing education and information on the use of behaviour management techniques and on the rights of people with disability that may be subject to the use of restrictive interventions.

The Senior Practitioner will also provide advice to the Secretary and the Guardianship and Administration Board to inform their decisions on whether to approve requests for the use of restrictive interventions.

This Bill establishes that the unauthorised use of restrictive interventions is prohibited. Penalties of up to 200 units may be imposed for breaches of this requirement. The Senior Practitioner will have authority to investigate where there are reasonable grounds to believe that an inappropriate restrictive intervention is being undertaken.

### **Requirement for the approval of restrictive interventions**

Mr Speaker two pathways for the approval of restrictive interventions are provided. The Secretary of the Department for Health and Human Services approves environmental restrictions. An example of this may be placing a lock on a fridge.

The Guardianship and Administration Board will have responsibility to consider applications for restrictive interventions that involve personal restrictions. Personal restrictions may include physical contact or an action that restricts the liberty of movement of a person. The Board can also approve environmental restrictions.

Where a person with disability, a disability provider or a funded private person is dissatisfied with a decision by either the Secretary or the Guardianship and Administration Board they may seek a review of the decision by the Magistrates Court.

Mr Speaker the approval of any restrictive practice will not be taken lightly. The Secretary may only grant an approval after they have consulted with the person that the intervention will apply to; any person with expertise in the carrying out of restrictive interventions of that type and the senior practitioner. The Secretary must also be satisfied that the restriction will be carried out to ensure the safety of the person or others; that the intervention is the least restrictive as is practicable in the circumstances and that the intervention is in the best interest of the person with disability.

An approval by the Secretary expires 90 days after it is granted.

Similar requirements are established for the Guardianship and Administration Board. Approval by the Board expires 90 days after it is granted, unless the approval was granted at the conclusion of a Hearing, in which case it may be in place for up to 6 months.

### **Review Process's**

Mr Speaker, there are many provisions within this Bill which provides authority to make decisions of great importance to individual lives.

People with disability have access to a number of independent complaints and dispute resolution bodies available to Tasmanians to protect their rights. However through the development of this Bill it became clear that there are a number of areas where additional review processes are required. This Bill identifies a number of circumstances where a person with disability, a disability services provider or a funded private person may seek to have a decision taken by the Secretary reviewed through the Administrative Appeals Division of the Magistrates Court. This includes decisions to approve or not approve individual plans, decisions to approve or not approve restrictive interventions.

### **Coordination of services and Information Sharing**

The provision of support services often involves a broad range of people across a number of disciplines working together. This can be difficult for people with disability and their families to navigate. The individual plans are intended to provide a way to document and coordinate the broad range of services that may be required to adequately support a person with disability. This Bill establishes a requirement that the Secretary will take reasonable steps to assist in the effective coordination of support services including health and psychiatric services, specialist education services and other specialist assistance provided by both the Tasmanian and Australian Government.

The coordination of services also requires effective communication between those working together to provide support whilst maintaining rights to privacy and the inherent dignity of the person with disability. . This Bill limits the right to share information to circumstances where the information is necessary or desirable for the assessment of need, to determine whether services provided are appropriate, and for the safety and welfare and wellbeing of the person or other persons. Wherever possible this is to be with the consent of the person with disability to whom the information relates.

I commend the Bill to the House.