

Office of Multicultural Interests

Response to “Review of the *Disability Services Act 1993*: discussion paper”

5 August 2008

1. INTRODUCTION

The Office of Multicultural Interests (OMI) welcomes the opportunity to provide input to “Review of the *Disability Services Act 1993*: discussion paper,” released by the Disability Services Commission (DSC) in June 2008. The discussion paper presents a comprehensive summary of the history of the *Disability Services Act 1993* (DSA), gives clear guidance on areas of the DSA that the DSC believes warrant revision, and serves as a useful framework for stakeholder input into the future of the DSA.

Of particular concern for OMI is the need for the DSA to be updated to:

- a. acknowledge the cultural and linguistic diversity of the Western Australian population
- b. reflect the *WA Charter of Multiculturalism* and the *Policy Framework for Substantive Equality* which were both endorsed in 2004, after the last review of the DSA (2001); and
- c. acknowledge Australia’s ratification of the *UN Convention on the Rights of Persons with Disabilities*.

A summary of OMI’s recommendations is included at Attachment A to this submission.

1.1. Cultural and Linguistic Diversity

The principles of Multiculturalism, as stated in the “WA Charter of Multiculturalism” (2004), are:

- Civic Values – the equality of respect, individual freedom and dignity for all members of society subject to the acceptance of the rule of law, social, political and legal institutions and constitutional structures.
- Fairness – the pursuit of public policies free of prejudice, discrimination and exclusion on the basis of characteristics such as origins, perceived ‘race’, culture, religion, ethnicity and nationality.
- Equality – Equality of opportunity for all members of society to achieve their full potential in a free and democratic society where every individual is equal before, and under, the law.
- Participation – the full and equitable participation in society of individuals and communities, irrespective of origins, culture, religion, ethnicity and nationality.¹

The *Policy Framework for Substantive Equality* operationalises the *WA Charter of Multiculturalism*. Its objective is to achieve substantive equality in the Western Australian public sector by:

- eliminating systemic racial discrimination in the provision of public sector services; and
- promoting sensitivity to the different needs of client groups.

The *Policy Framework for Substantive Equality* addresses systemic racism and is designed to ensure that all people have access to a public service that best meets the needs of WA’s diverse community. It states that public sector agencies will:

- Assess how policies, programs and practices affect Indigenous people and ethnic minorities
- Monitor the implementation of policies and programs and make sure they meet the diverse needs of the people of Western Australia

¹ Office of Multicultural Interests (2004). *WA Charter of Multiculturalism*, Government of Western Australia. http://www.omi.wa.gov.au/Publications/wa_charter_multiculturalism.pdf [accessed 27 July 2008].

- Ensure that staff are equipped with knowledge and skills to address issues of systemic racism
- Recognise and appraise organisational progress towards achieving substantive equality.

OMI recommends that:

1. *The DSA be examined in terms of its consistency with the Policy Framework for Substantive Equality, and amended accordingly.*

1.2 UN Convention on the Rights of Persons with Disabilities

On 17 July 2008, Australia ratified the 2006 *UN Convention on the Rights of Persons with Disabilities*.² This *Convention* elaborates the rights of persons with disabilities, and sets out a code of implementation to ensure that the rights recognised in the *Convention* are secured.

OMI recommends that:

2. *The DSA be examined in terms of its consistency with the UN Convention on the Rights of Persons with Disabilities, and amended accordingly.*

2. PART 2 DISABILITY SERVICES COMMISSION

2.1 Composition of the Disability Services Commission (DSC) Board

OMI believes that the Board of the DSC should reflect WA's cultural and linguistic diversity. According to the 2006 census, 21.9% of the population were born overseas and, of a total population of 1,855,288, 223,166 (or 11.4%) usual residents spoke a language other than English at home. Around 400,000 (or 20%) usual residents of the State had one or both parents born in a non-English speaking country.³

A significant proportion of Western Australians with a disability are from culturally and linguistically diverse (CaLD) backgrounds.⁴ Due to the way data on disability and cultural diversity is collected within Australia, it is difficult to obtain precise figures. However, based on the above figures, potentially up to 20% of Western Australians with a disability are from a CaLD background. The National Ethnic Disability Alliance (NEDA) has noted that:

people from [non-English speaking backgrounds] NESB comprise a significant proportion of the disability population. We are the second largest group after women with disability and larger than any diagnostic group.⁵

Schedule 2(5) of the DSA acknowledges that people with disabilities may face additional barriers as a result of their aboriginality, cultural and/or linguistic background.⁶ For example, it may be information about services is not provided in languages and formats suitable for

² UN (2008). Convention on the Rights of Persons with Disabilities. <http://www.un.org/disabilities/default.asp?id=259> [accessed 21 July 2008].

³ Australian Bureau of Statistics, 2006 Census.

⁴ OMI defines "culturally and linguistically diverse" as follows: "Culturally and linguistically diverse refers to the wide range of cultural groups and individuals that make up the Australian population. It includes groups and individuals who differ according to religion, race, language and ethnicity except those whose ancestry is Anglo-Saxon, Anglo Celtic, Aboriginal or Torres Strait Islander. For ease, CaLD is commonly used as an abbreviation for culturally and linguistically diverse." Office of Multicultural Interests (2008). "Working definition of terms." http://www.omi.wa.gov.au/omi_terminology.asp [accessed August 4 2008].

⁵ NEDA (2005) "CDS – ten years of rhetoric: a submission from the National Ethnic Disability Alliance on the evaluation of the Commonwealth Disability Strategy." http://www.neda.org.au/page/national_disability_strategy.html [accessed 24 July 2008].

⁶ Government of Western Australia (2007). *Disability Services Act 1993* (as at 21 September 2007, Version 03-00-01 p.53.

people from CaLD backgrounds, and service providers may not ensure that their staff are trained in cross-cultural awareness and cultural competence.⁷

Additionally, specific cohorts of the CaLD population may experience particular difficulties accessing services. In its recent report, "Lost in Transition: State Services for Humanitarian Entrants" (June 2008), the Auditor General found that humanitarian entrants, in particular, face difficulties because "agencies have not adequately addressed language and literacy obstacles and considered what is the most effective service delivery approach" and "the inflexible application of policies and criteria can prevent humanitarian entrants getting the most appropriate service".⁸

Importantly, the report also noted that:

Humanitarian entrants are small in number and consequently do not show-up in mainstream services as having significant problems or unmet needs. This presents the risk that they will not be identified as an 'at risk' group until other social problems become significant.⁹

Representation, advocacy and input into decision making processes by people from CaLD backgrounds is therefore critical.

The WA Government also seeks, through the Interested Persons Register (IPR) to: "have a greater diversity of people serving on boards and committees that advise the Government on issues affecting the community."¹⁰ Culturally and linguistically diverse people are among those especially encouraged to apply for inclusion on the register.

Accordingly, measures should be taken to ensure a CaLD presence on the DSC Board. One strategy would be to include in Clause 7 (2) of the DSA a requirement for the Board to be representative of the cultural and linguistic diversity of the WA population.

OMI recommends that:

3. *Clause 7 (2) of the DSA be amended to include an additional subclause stating that the composition of the Disability Services Board must reflect the cultural and linguistic diversity of the Western Australian population.*

3. PART 3 MINISTERIAL ADVISORY COUNCIL ON DISABILITY

3.1 Composition of the Ministerial Advisory Council

Consistent with 2.1 (above), Clause 44(4) of the DSA should require the Ministerial Advisory Council to reflect the cultural and linguistic diversity of the WA population.

OMI recommends that:

4. *Clause 44(4) of the DSA be amended to include an additional subclause stating that the composition of the Ministerial Advisory Council must reflect the cultural and linguistic diversity of the Western Australian population.*

4. PART 4 FINANCIAL ASSISTANCE TO PEOPLE WITH DISABILITIES

4.1 Service provision to CaLD clients

Objective 17(a) of Schedule 2 (Objectives for services and programs) states that:

⁷ Research highlighting similar concerns internationally is also available, for example from the UK in Molloy, D. Knight, T. and Woodfield, K. (2003). Diversity in disability: exploring the interactions between disability, ethnicity, age, gender and sexuality. Department for Work and Pensions Research Report 188.

⁸ Auditor General for Western Australia (June 2008) Performance Examination "Lost in Transition: State Services for Humanitarian Entrants" p.5

⁹ Ibid p. 19

¹⁰ Boards and Committees WA Incorporating the Interested Persons Register (n.d.) "About the Interested Persons Register (IPR)." <http://www.boards.dpc.wa.gov.au/index.cfm?fuseaction=home.aboutbcipr> [accessed 5 August 2008].

Programmes and services are to be designed and administered so as to provide people with disabilities with, and encourage them to make use of, ways of participating continually in the planning, operation and evaluation of services they receive.

However, as noted in 2.1 (above) participation of by people with disabilities from CaLD and Indigenous backgrounds may be limited. For example, OMI notes that no migrant or Indigenous service organisation is funded by the DSC to provide disability services.¹¹

Procurement policies and procedures may contribute to the inability of migrant and Indigenous service organisations to obtain DSC funding for provision of disability services. The efficiency benefits of contracting a small number of large organisations, rather than many small ones, may work to the disadvantage of CaLD and Indigenous service organisations, as these organisations are typically small in size. A focus on value for money in procurement may also work against the funding of migrant and Indigenous service organisations, for example by limiting the non-cost factors (such as provision of participation opportunities to people with disabilities) that may be taken into account in value-for-money assessments of tenders.¹²

OMI believes that further investigation of this issue is warranted, and that additional measures to assist such organisations to access DSC funding as lead organisations or in partnership with other agencies may be justified. Such measures may or may not be appropriately documented in the DSA, or in other DSC policies.

OMI recommends that:

5. *The DSC investigate the effectiveness of service delivery to people with a disability from CaLD (and Indigenous) backgrounds.*
6. *The DSC investigate opportunities for improvements to service delivery to people from CaLD (and Indigenous) backgrounds, giving consideration to:*
 - a. *the existence of potential barriers in current funding models that may discourage applications from Indigenous and migrant service delivery organisations;*
 - b. *providing opportunities to encourage collaborative relationships and/or partnerships between specialist disability agencies and Indigenous and migrant service delivery organisations; and*
 - c. *implementing the most appropriate steps to increase opportunities for Indigenous and migrant service delivery organisations to obtain DSC funding to provide disability services, whether through amendment of relevant clauses in the DSA or through other means.*

5. PART 5 DISABILITY ACCESS AND INCLUSION PLANS

5.1 Recognition of Disability Services Standards in the DSA

OMI considers that Disability Services Standards (DSS) should be included in both the Service Agreements between the DSC and service providers and, by reference, in the DSA. Recognition of the DSS in the DSA would give a stronger signal of the DSC's commitment to these standards, make explicit the scope of their application, and ensure that they have legislative as well as contractual force. The scope of the standards should cover all disability services, as this term is defined in the DSA.

OMI recommends that:

7. *The DSA be amended to make explicit reference to the DSS, and to clarify the scope of the DSS as covering disability services as defined in the DSA.*

5.1 Substantive equality considerations

¹¹ EDAC (2008). Submission to the Review of the *Disability Services Act 1993*. Unpublished.

¹² State Supply Commission (2008). "Supply policy: value for money." Gazetted 28 December 2007. <http://www.ssc.wa.gov.au/policies01.asp?id=40> [accessed 28 July 2008].

Those sections of the DSA that relate to disability access and inclusion plans should be amended to reflect the objective of the *Policy Framework for Substantive Equality*, that is:

to achieve substantive equality in the Western Australian public sector by eliminating systemic racial discrimination in the provision of public sector services; and promoting sensitivity to the different needs of client groups.

Disability access and inclusion plans are key documents in which substantive equality considerations should be addressed directly.

The principles of the *WA Charter of Multiculturalism* and the objectives of the *Policy Framework for Substantive Equality* objectives should also be referenced in relevant parts of the DSA, particularly Schedule 1 (Principles applicable to people with disabilities) and Schedule 2 (Objectives for services and programmes), which establish the framework within which disability access and inclusion plans are developed. Below are some recommendations regarding specific changes to Schedules 1 and 2 of the DSA.

Schedule 1 (Principles applicable to people with disabilities):

This part should include a clause specifically relating to CaLD and Indigenous people with disabilities; no such clause is included at present, although there is a clause relating to people with disabilities who reside in rural and regional areas. In addition, specific reference could be made to the principles in the *WA Charter of Multiculturalism* applying to people with disabilities.

Schedule 2 (Objectives for services and programs):

This part already includes a clause relating, inter alia, to people from CaLD backgrounds. However, this clause would be strengthened by removing the reference to CaLD status as a barrier, and by framing CaLD status as one of the many aspects of diversity in the community to which all disability service providers should be sensitive. Specific reference to the *Policy Framework for Substantive Equality* would be particularly relevant in this Schedule.

OMI recommends that:

8. *Schedule 1 (Principles applicable to people with disabilities) be amended to include an additional principle stating that “People with disabilities who are Indigenous or from culturally or linguistically diverse backgrounds have a right to services that meet their diverse needs, consistent with the principles set out in the WA Charter of Multiculturalism.”*
9. *Schedule 2 (Objectives for services and programs) Objective 5 be amended to read “Programmes and services are to be designed and administered so as to meet the needs of all people with disabilities, taking account of their age, gender, aboriginality, origins, culture, religion, ethnicity, nationality or geographic location.”*

6. PART 6 COMPLAINTS ABOUT SOME DISABILITY SERVICES

6.1 Support for advocacy as a means of pre-empting complaints

OMI agrees with the proposal to further strengthen the complaints handling system, and to harmonise the process for disability complaints with that developed for health complaints by the Office of Health Review. OMI supports the recommended changes to the complaints handling system listed in section 3.3.1 (Proposed changes to the complaints provisions).

OMI believes that a commitment to additional support for advocacy and self-advocacy by people with disabilities may also be worth considering, as a means of empowering people with disabilities to raise concerns (and have them addressed) well before the point at which a formal complaint is warranted.

The Ethnic Disability Advocacy Centre (EDAC) has developed a positive model of advocacy for people with disabilities, including those from a CaLD background. EDAC has provided training in self-advocacy to the carers of some CaLD people with a disability, that carers can in turn teach those skills to the person they care for.¹³ OMI supports EDAC's call for "a proactive positive model of advocacy, prioritising constructive individual self-advocacy and systemic advocacy"¹⁴ and considers that it is most appropriately included in the DSA's Objective 11 of Schedule 2 (Objectives for services and programmes). Objective 11 should refer specifically to self-advocacy and systemic advocacy, as well as advocacy support.

OMI recommends that:

10. *Schedule 2 (Objectives for services and programs) Objective 11 be amended to read "Programmes and services are to be designed and administered so as to ensure that people with disabilities have access to advocacy support, including access to long-term capacity building in self-advocacy and systemic advocacy, to ensure adequate participation in decision making about the services they receive or are seeking."*

¹³ EDAC (2007). "'Speak up' project: enabling CaLD family carers to learn about self-advocacy and teach those skills to the person they care for (focusing on carers from African and Muslim communities)." <http://www.edac.org.au/pdf/1208speak.pdf> [accessed 28 July 2008].

¹⁴ EDAC and the Aboriginal Disability Network (2008). "Considerations for the 2008 review of the *Disability Services Act*."

List of recommendations

OMI recommends that:

1. *The DSA be examined in terms of its consistency with the Policy Framework for Substantive Equality, and amended accordingly.*
2. *The DSA be examined in terms of its consistency with the UN Convention on the Rights of Persons with Disabilities, and amended accordingly.*
3. *Clause 7 (2) of the DSA be amended to include an additional subclause stating that the composition of the Disability Services Board must reflect the cultural and linguistic diversity of the Western Australian population.*
4. *Clause 44(4) of the DSA be amended to include an additional subclause stating that the composition of the Ministerial Advisory Council must reflect the cultural and linguistic diversity of the Western Australian population.*
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 - a. *the existence of potential barriers in current funding models that may discourage applications from Indigenous and migrant service delivery organisations;*
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 - c. *implementing the most appropriate steps to increase opportunities for Indigenous and migrant service delivery organisations to obtain DSC funding to provide disability services, whether through amendment of relevant clauses in the DSA or through other means.*
7. *The DSA be amended to make explicit reference to the DSS, and to clarify the scope of the DSS as covering disability services as defined in the DSA.*
8. *Schedule 1 (Principles applicable to people with disabilities) be amended to include an additional principle stating that “People with disabilities who are Indigenous or from culturally or linguistically diverse backgrounds have a right to services that meet their diverse needs, consistent with the principles set out in the WA Charter of Multiculturalism.”*
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