

DISABILITY ACT

MEET THE DIRECTOR

Meeting Report

12 October 2009

This report is a summary of the major issues that were discussed at the last quarterly *Meet the Director* meeting which was held on 12 October 2009.

The meeting was attended by Disability ACT's Executive Director Ms Lois Ford.

A number of items were available for attendees to take home with them, these included information on Companion Card, information on implementing the updated Future Directions: Towards Challenge 2014 and information on CIT courses relevant to carers.

Address and Discussion – Disability Trusts

Doug Gillespie, Deputy Public Trustee from the Office of the Public Trustee for the ACT addressed the meeting in relation to Disability Trusts. His address and the questions and answers that followed are attached separately.

Forum Discussion – Decision Making Arrangements on Group Purchases / Maintenance in Accommodation Support Services Group Homes

Ms Ford invited Ms Proctor to recap the issues from the June meeting that led to the agenda item.

Ms Proctor explained that there had been a discussion on different ways of managing finances and it had been agreed that further discussion on decision making for expenditure would be appropriate. It had been obvious that everyone was different.

McBeath recently conducted a trial of a new scheme using photo identification for each client's banking. It was trialled for three

months. A number of issues including a breakin with money and the photo id's taken. As one client was in hospital they were unable to present to withdraw their money.

Ms Proctor indicated that she felt a number of houses were being run to the letter of the law requiring a lot of effort and it was not her preference.

Ms Crawford shared the financial arrangements in place at Alberga. They are happy with their arrangements - it require minimal involvement, auto payments, and twice yearly parent meetings. There was some discussion on pocket money arrangements.

Ms Crawford further advised that they had a Memorandum of Understanding (MOU) as it was felt that 'corporate memory' of agreed arrangements could not be relied on. The MOU sets out who is responsible for what and the arrangements in the event someone leaves the group home. Ms Crawford was happy for the MOU to be circulated.

The group requested that models of different financial arrangements currently being used and budgeting best practice be identified and distributed.

The question of replacement of white goods etc was raised leading into the next topic.

Forum Discussion - Service Agreements for Disability ACT group homes

There was discussion and suggestions that service agreements include issues such as preferred staff attributes; staff selection; lifestyle issues and medication as well as

what Disability ACT do and don't do for physical accommodation and finances.

Ms Crawford requested that any service agreements include a review mechanism which was supported.

Ms Ford put forward for discussion the question of whether service agreements should state a minimum level of service covering standard inclusion such as support, transport, finances and decision making. With the needs and resources to be individually negotiated.

She stressed that whatever model was adopted, equity, transparency and a balance against available resources would be key factors.

This question was met with lots of comments including that clients don't tend to 'get better', what would happen with changing family circumstances with responsibility shifting to families and what would happen when guardians die. Ms Ford gave examples demonstrating where agreed changes were made.

A concern was raised that Disability ACT was overlooking the need for services to be person centred, a key issue raised in the Gallop Inquiry and it sounded like Disability ACT were moving to a model based on administrative practices.

Ms Ford explained there have been long term discussions within Disability ACT and in some instances with families where they have asked for service agreements outlining what they can expect.

Issues such as equity, transparency and person centred approaches come from service not from minimum standards. To achieve that everyone needs to know what the minimum is and that above that needs to be negotiated.

Ms Ford reiterated that the discussion was not about what the benchmark would be but that if we set a minimum, how would we do it; what do we need to discuss with families.

Ms Ford stressed that whatever we do it needs to be transparent and requires a far bigger forum for consultation.

Mr Box asked what sort of role Disability ACT had in the accreditation of community service providers.

Ms Ford advised that services can opt to accredit themselves with ISO 9001:200, EQUIP, Business Excellence, JAZANZ, Australian Government Aged Care Accreditation Standards etc. and National Disability Advocacy Program (NDAP) Quality Assurance. Disability ACT does self assessments and audits and we were moving to third party audits. Ms Ford suggested that Disability ACT's support is in excess of that provided within the community. When tendering for services, the process has rules around levels of service and Ms Ford undertook to provide copies of tender documents related to accommodation support.

Mr Devenish asked if Disability ACT separated the cost per client between client and management.

Ms Ford advised that the budget allocations didn't actually work that way. Disability ACT has a budget of approximately 26 Million dollars for approximately 168 clients.

Client Guardian Forum

The previous Client/Guardian Forum was discussed. There were differing views on the reason behind it finishing. Whether it would have been able to contribute to topics such as financial management was flagged. Ms Ford concluded with recognition for the need for broad consultation and that the Meet the Director Forum was not sufficiently representative.

The group warmly thanked Mr Gillespie for attending and giving his time.

Meeting concluded at 7.30

Future Meeting Topics

Ideas or comments should be forwarded to andrew.whale@act.gov.au.

Address and Discussion – Disability Trusts

Doug Gillespie, Deputy Public Trustee from the Office of the Public Trustee for the ACT addressed the meeting.

Mr Gillespie advised that there is provision for families to create a 'Special Disability Trust' for their family member who is deemed to have a severe disability as never being able to return to work up to a maximum of \$500,000.00. The income and assets of the Trust are disregarded for the purposes of Centrelink means test.

The Public Trustee endorses the principle of the SD Trust e however, current limitations and restrictions make it difficult to maximise benefits to the person with a disability. One of the critical restrictions is that the funds can only be expended on care and accommodation requirements specifically related to the disability not 'normal' everyday things.

Mr Gillespie explained the Trust had been reviewed by a Senate Committee on Community Affairs in May this year resulting in 11 recommendations most of which were accepted in principle by government but with only two being acted upon.. Mr Gillespie advised that across Australia a total of 59 Trusts have been established suggesting the low take up rate was due to inflexibilities of the Trust structure. However he felt it was essentially a good idea as was anything that enabled financial independence for people with a disability so they were not reliant on Government.

Along those lines Mr Gillespie recommended that people think carefully about their wills and how they leave their money. He has been involved in advising people on wills since 1966 and the primary question he is asked is: What is the best way to provide in a will for a person with a disability? His suggestion was that consideration be given to a Testamentary Trust and suggested that

any Trusts be flexible and use Guidelines enabling future unforeseen issues to be met by the Trust. Trusts need to be set up with a choice of trustee who will ideally outlive the person with the disability they should have an alternative trustee and the Public Trustee is an attractive option as a fallback in the event there is not one to act on behalf on the Trust recipient. He also suggested that the will include the power to create a Disability Trust in the future if appropriate.

Trusts can be set up to ensure that capital and assets are returned to the family on the death of the Trust recipient. Mr Gillespie supports families providing the maximum possible financial assistance to support the person with a disability and not leave all financial assistance up to the Government. He also recommended using the Public Trustee to avoid conflicts of interest and so that family can be looked to as family by the disabled person rather than as financial managers.

Questions and Answers

A number of questions were put to Mr Gillespie:

Q: Can you have a Trust with less than 500K?

A: Yes but anything less than 296K may not be worthwhile in the context of the assets test

Q: Can grandparents set up Trusts?

A: Yes immediate family members can set up a Trust but there can be only 1 Trust per person with a severe disability.

Q: Who determines if expenditure is valid under the care/accommodation provisions?

A: There are guidelines set out under the Social Security 1991

Q: How does superannuation compare to the Trust?

A: Super is possibly the best solution, its good to get a co-contribution and funds can be accessed early if needed under hardship provisions. Super doesn't count under the Centrelink means test whilst it is not being accessed. From 1 July 2007 **it became possible to** contribute to super even if the person has never worked.

There was discussion on debt incurred by people with a mental or intellectual disability. It was explained that the Public Trustee has approximately 500 clients. Trust Officers are primarily financial people but due to the relationship built up with the managed person often find themselves defacto guardians. Mr Gillespie advised that, the Disability Pension is regarded by the Government as for current living expenses and therefore inalienable and it cannot be garnished for past debt.

Q: In administering funds, if a person with high needs is left sufficient money and wishes to travel for example Disneyland, who and how are decisions made by the Public Trustee?

A: Mr Gillespie advised that decisions of this nature were made on a merits basis considering the quantum of the trust and the needs and circumstances of the beneficiary, whether the person needed to be accompanied by a carer and how the carer's expenses would be funded. He explained that all requests were considered on an individual basis taking into account both the long term and short term wellbeing of the client. Under the Act, application can be made to the Tribunal for guidance but there is not definitive answer; all they can do is look at the circumstances and make a judgement call.

Q: A further question was asked as to whether the Public Trustee should be involved in developing IPs for clients to look up front at issues such as costs associated with life goals.

A: Mr Gillespie explained that often the Public Trustee is appointed as emergency managers, lifestyle information should be communicated to them however they have a minimal role as they are not lifestyle planners.

There was further general discussion on the topic of financial managers making decisions and it was noted that guardians

should be consulted on key financial issues.

NOTE: The principles by which both Financial Managers and Guardians should operate are the same. The following links are to Information for Guardians and Financial Managers provided by the Australian Capital Territory Civil and Administrative Tribunal:
<http://www.acat.act.gov.au/res/file/Information%20For%20Guardians.pdf>
<http://www.acat.act.gov.au/res/file/Information%20For%20Managers.pdf>

Q: Who holds the Disability Trust and does it accrue?

A: The Trustee appointed by the benefactor it was reiterated that monies can only be spent on care and accommodation? NO RECORD of RESPONSE TO ACCRUAL

Ms Ford advised the meeting that the Commonwealth Government is considering a National Disability Insurance Scheme. The link to the speech delivered by Mr Shorten, Parliamentary Secretary for Disabilities and Children's Services on 1 April 2009 is:
http://www.billshorten.com.au/more/index.cfm?Fuseaction=National_Press_§ion=more_46555