The Disability Council of NSW

The Disability Council of NSW was established in 1984 to advise the NSW Government on issues affecting people with a disability and their families. The Council also functions as the advisory body to the Commonwealth, commenting on Commonwealth issues affecting people with disabilities and their families in NSW.

The Children and Young Persons (Care and Protection) Act 1998
Unproclaimed Sections 155-156 and 181(1)(a)(d)-184

The Disability Council of NSW ("Council") will restrict its comments to a summary of our position with respect to the relevance of the Children and Young Persons (Care and Protection) Act 1998 ("the Act") to children and young people with disability, and restatement of our advice in respect of certain unproclaimed sections of the Act. This is consistent with the primary focus of the current review, viz. to ascertain whether or not the policy objectives of the Act are still valid, and whether the terms of the Act remain appropriate for securing those objectives.

Council has been providing Ministerial advice in relation to the unproclaimed sections of the Act since May 2003. Council's views have been informed by
meeting with key stakeholders from both the disability and children’s sectors and participation in related discussions at meetings of the Ministerial Advisory Committee on Community Services.

Council’s position on children and young people with disability has always been that they are children and young people first, and that the rights and needs of all children should primarily be met by their families. Generic services, generalist children’s agencies and specialist disability services should be able to accommodate both their needs as children and young people and as children and young people with disability.

Under the Principles of the Act, the safety, welfare and well-being of the child or young person must be the paramount consideration in all decisions and actions. The Act offers significant protections to children and young people with disability, as it reinforces the fact that all children have the same rights and entitlements to having their needs met - and that their rights and interests take precedence over other interests, including those of parents, family or of services.

The Act proposes a single system of supported care, such that children with disabilities are entitled to the same standards of care, regardless of how they entered out-of-home care. A single system should prevent children with disabilities from falling through the gaps or “drifting” in care.

The Disability Council maintains that the longer a child “drifts” in care, the less likely it is that the child will be restored to his or her birth family and, when restoration is not possible, the less likely it is that alternative family-like options will be explored and found. This is particularly the case in the disability

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1 During 2003, consultations included: Robert Fitzgerald and Melissa Clements, NSW Ombudsman’s Office; Belinda Epstein-Frisch, Family Advocacy; Linda Frow, NSW Council of Social Services; Russell Freeburn, Aboriginal Child, Family & Community Care State Secretariat; Margaret Allison, Department of Ageing, Disability and Home Care; Gillian Calvert, Commission for Children and Young People; Glenn Gardner and Sue Brown, Northcott Society; Jane Woodruff, Uniting Care Burnside; Linda Mallett, Office of the Children’s Guardian; Nigel Spence, Association of Children’s Welfare Agencies; and Phillip French, People with Disability Australia.
service system, where there are still very few family-like models of care available. This problem was clearly pointed out in the 2004 Ombudsman’s report *DADHC – The Need to Improve Services for Children, Young People and Their Families*.

Section 155 and 156 of the Act were initially proposed to remedy the problem of drift in care for children and young people with disability. These sections are particularly significant for this group, because large numbers of children in voluntary out-of-home care have disability and, currently, many specialist disability services do not have the same protections as voluntary out-of-home care programs in children’s services. These sections provide for a mechanism to monitor and review the care of children; whether the care provided is in the best interests of the child; and whether restoration and permanency planning is to be put into place: they offer protection to children so that they will not be left to drift for years in unsatisfactory care.

The Act allows for the sharing of parental responsibility between parents, carers and other agencies. The application of this principle to the Children’s Guardian is detailed in the unproclaimed sections 181-184: protecting and promoting the rights of the child; removing responsibility of care; informally resolving disputes between parties; applying to the Children’s Court to vary or revoke orders; and conducting independent reviews.

The Act does not duplicate other statutory requirements or Authorities. Requirements under the Disability Services Act 1993 (DSA), have been found to be insufficient to meet the needs of children with a disability. Findings by the former Community Services Commission (ie that there were not enough safeguards for children with disabilities who had died in institutional care) demonstrate that the DSA does not offer children with disabilities sufficient protections. Nor does the Ombudsman does have the operational-level monitoring and review functions that the Act proposes for the Children’s Guardian.
The Children’s Guardian must be resourced to be able to monitor and review the care provided for all children in out-of-home care and, where appropriate, advocate for their rights and interests. The Children’s Guardian is relatively independent of other operational roles, and is more likely to intervene to protect the interests of children and young people where they are at risk.

All of the recent reports in NSW and Australia on child protection (consistent with the international literature) encourage the move away from a crisis-intervention model to a preventative-support model where parents are fully supported to cope with their parental responsibilities – including, of course, as parents of children who have disability. The Act should not be altered, or parts of the Act should not be withheld from proclamation, because the broader definition of child protection is considered to be the model of good practice. It is the long-held position of Council that the decision of the NSW Government not to proclaim all of the provisions of sections 155-156 and 181-184 will exclude children and young people with disability in out-of-home care from the protection that the Act guarantees for other children. We recommend that these sections be proclaimed immediately.

Andrew Buchanan,
Chairman, Disability Council of NSW