



Fact Sheet

Tasmanian *Disability Services Act 2011* - Definition of 'disability'

Background

As you may be aware the new Disability Services Bill 2011 was passed by both Houses of Parliament in September 2011. The Bill now becomes the *Disability Services Act 2011*.

One of the main features of the new legislation includes a broader human rights perspective in line with Australia's ratification of the United Nations Conventions on the Rights of Persons with Disabilities.

The new legislation has a revised definition of 'disability' with specific changes in relation to the current definition in the *Disability Services Act 1992*, these being:

1) section (a) has been altered to include 'cognitive' disability as a type of disability covered by the legislation.

2) section (c) (i) has been changed to "a substantial restriction in the capacity of the person to carry on a profession, business or occupation, or to participate in social or cultural life"

This replaces reference in the current legislation to "a substantially reduced capacity of a person for communication, learning or mobility"

3) section (c) (ii) has been changed to "the need for continuing **significant** support services". The current legislation does not refer to 'significant'.

The likely impacts of these changes are discussed below.

Cognitive impairment

The inclusion of 'cognitive impairment' as a type of impairment under the definition of disability should not have any impact on the target group eligible for specialist disability support services.

Previous legal advice obtained by the Department indicated that 'intellectual' impairment actually encompasses 'cognitive' impairment, but that irrespective of the type of impairment attributed to a person, each individual must be assessed separately against **all** the criteria set out in the definition.

The criteria to be met in the definition are *cumulative* and therefore meeting the 'type' criterion in isolation will not guarantee eligibility for services.

Each individual must have an impairment of a certain type, or combination of types **and** this impairment must be permanent **and** result in a substantial restriction in certain areas **and** require continuing support services.

It should also be remembered that eligibility for services does not guarantee access to services which will continue to be determined on relative need.

Capacity to carry on a profession, business or occupation, or to participate in social or cultural life

There has been some concern that the changes to section (c) (i) entail changes to the assessment processes for eligibility which in turn may change the target group.

This is not the case; the reference to 'substantial restriction in the capacity of the person to carry on a profession, business or occupation, or to participate in social or cultural life' simply reflects the contemporary human rights perspective of placing the emphasis on the *impact* of the impairment on the individual.

The assessment of how substantial the restriction is will still be basically made on determining the individual's capacity for communication, learning or mobility.

The need for continuing 'significant' support services

The need for 'continuing support services' has been narrowed in the new definition to the need for 'continuing *significant* support services'.

This reflects that eligibility does not entail priority access to services. Prioritisation of support services for people with disability will continue to be necessary given that demand exceeds supply. The definition of disability attempts to ensure that prioritisation is based on a consistent, fair and transparent basis.

Summary

The new legislation has a definition of 'disability' which places a greater emphasis on the impact of the impairment. While the target group for specialist disability services will remain the same, the changes will entail amendments to

the current policy on eligibility and access to services, as well as other policies and guidelines to reflect the contemporary human rights perspective and language of the new legislation.

