



PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

SIXTIETH REPORT TO THE PARLIAMENT

**Report on the review of the Auditor-General's
performance audit report -
Services for people with an intellectual
disability**

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Parliament of Victoria

Public Accounts and Estimates Committee

*Report on the review of the Auditor-General's performance audit report
– Services for people with an intellectual disability*

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PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE MEMBERSHIP – 55TH PARLIAMENT

Hon. C Campbell, MP (Chair)
Hon. B Forwood, MLC (Deputy Chair)
Hon. B Baxter, MLC
Mr R Clark, MP
Mr L Donnellan, MP
Ms D Green, MP
Mr J Merlino, MP
Hon. G Rich-Phillips, MLC
Ms G Romanes, MLC

This inquiry was undertaken by a Sub-Committee consisting of the following Members:

Hon. C Campbell, MP (Chair)
Hon. B Baxter, MLC
Mr R Clark, MP
Hon. B Forwood, MLC
Mr J Merlino, MP
Ms G Romanes, MLC

For this inquiry, the Committee was supported by a secretariat comprising:

Executive Officer: Ms M Cornwell
Research Officers: Ms F Spriggs (21 June to 31 August 2004)
Mr K Swoboda (from mid November to 13 December 2004)
Mr R Farrer (from mid November to 13 December 2004)
Specialist Advisor: Mr T Wood (from October to 13 December 2004)
Office Manager: Ms K Taylor

DUTIES OF THE COMMITTEE

The Public Accounts and Estimates Committee is a joint parliamentary committee constituted under the *Parliamentary Committees Act 2003*.

The Committee comprises nine Members of Parliament drawn from both Houses of Parliament and all political parties.

The Committee carries out investigations and reports to Parliament on matters associated with the financial management of the state. Its functions under the Act are to inquire into, consider and report to the Parliament on:

- any proposal, matter or thing concerned with public administration or public sector finances; and
- the annual estimates or receipts and payments and other Budget Papers and any supplementary estimates of receipts or payments presented to the Assembly and the Council.

The Committee also has a number of statutory responsibilities in relation to the Office of the Auditor-General. The Committee is required to:

- recommend the appointment of the Auditor-General and the independent performance and financial auditors to review the Victorian Auditor-General's Office;
- consider the budget estimates for the Victorian Auditor-General's Office;
- review the Auditor-General's draft annual plan and, if necessary, provide comments on the plan to the Auditor-General prior to its finalisation and tabling in Parliament;
- have a consultative role in determining the objectives and scope of performance audits by the Auditor-General and identifying any other particular issues that need to be addressed;
- have a consultative role in determining performance audit priorities; and
- exempt, if ever deemed necessary, the Auditor-General from legislative requirements applicable to Government agencies on staff employment conditions and financial reporting practices.

GLOSSARY

ACROD	ACROD is the National Industry Association for Disability Services with a membership of more than 550 organisations Australia-wide which are responsible for operating several thousand services to people with disabilities and their families. The Commonwealth Government recognises ACROD as the peak body.
Advocacy	Advocacy is the provision of support to people with a disability to assist them to assert and protect their rights as valued members of the community and to participate in decision making processes that impact on their lives.
Carer	A carer is someone who provides unpaid care to a relative or friend with a disability, chronic illness or who is frail aged.
Commonwealth State/Territory Disability Agreement	An agreement between the Commonwealth and States/Territory governments of Australia that covers funding and administration of specialist services for people with a disability.
Community Visitors	Community Visitors are volunteer community representatives of all ages, backgrounds and occupations, with a strong commitment to upholding the rights of people with a disability. They independently monitor residential supports and services provided to people with a disability. The Program is managed by the Office of the Public Advocate.
Disability	An impairment, which is permanent or likely to be permanent, and which results in a substantially reduced capacity of the person and the need for continuing support services.
Disability service providers	Service providers with contractual arrangements with the Department of Human Services to deliver specified services.

General Service Plan	General Service Plans (GSPs) are all about what services a person needs and how they will be linked into these services. The <i>Intellectually Disabled Persons' Services Act 1986</i> defines a General Service Plan as: 'a comprehensive plan prepared for an eligible person which specifies the areas of major life activity in which support is required and the strategies to be implemented to provide that support'.
Individual Program Plan	Individual Program Plans (IPPs) are concerned with identifying the skills and activities that will help the person function more independently in their current and future life settings as identified in their General Service Plan. The <i>Intellectually Disabled Persons' Services Act 1986</i> defines an Individual Program Plan as 'a plan prepared by a service provider which specifies activities and methods to achieve goals identified in the General Service Plan'.
Intellectual disability	Refers to substantial limitations in present functioning. It is characterised by significantly sub-average intellectual functioning, existing concurrently with related limitations in two or more of the following applicable adaptive skill areas: communication; self-care; home living; social skills; community use; self-direction; health and safety; functional academics; leisure; and work. Intellectual disability manifests itself in people under the age 18.
Intellectual Disability Review Panel	The Panel is an independent statutory body whose main purpose is to protect the rights of people who have an intellectual disability. The Panel is made up of psychologist members, departmental representatives and members who are appointed to represent the views and opinions of the community. The Panel makes recommendations and provides advice to the Secretary of the Department of Human Services and/or the Minister for Community Services about specific matters referred to the Panel. It does not have the power to make orders about what should happen.
Restraint	Restraint is the use of any chemical substance or mechanical means whereby movement of any part of the person's body is prevented, restricted or subdued.

Seclusion	Section 44 of the <i>Intellectually Disabled Persons' Services Act</i> 1986 states that: Seclusion is the sole confinement of an eligible person at any hour of the day or night in a room of which the doors and windows are locked from the outside. The Department of Human Services' policy adds: Seclusion includes any situation where a person is confined in a room on his/her own and the door is not able to be opened by the person from the inside.
Support needs	The supports a person may need to live and participate in the community, with the same rights, responsibilities and opportunities as other people. Supports may be informal (e.g. provided by a person's family, friends and acquaintances) or formal (e.g. paid disability or community supports).
Service agreement	A contract between the Department of Human Services and another entity, either a government or non-government service provider. Under this contract, the Department provides public funds to purchase direct services for individuals or groups in the community.
Unit price	Funding to the external sector for Disability Services, that is, non-government agencies. Unit price incorporates a provision for salary, allowances, WorkCover and superannuation, as well as an administrative overhead component.

CHAIR'S INTRODUCTION

Society can too readily overlook the intrinsic humanity and human rights of people with an intellectual disability.

In 2000, the Auditor-General's Report – Services for people with an intellectual disability – reported on the performance of the Department of Human Services in managing specialist services for people with an intellectual disability under the existing legislative framework. The report commented on the key areas of planning for individuals and protecting their rights, providing resources for services and service quality and monitoring.

Subsequent to the Auditor-General's report, the Department of Human Services acknowledged that improvements were required in providing some aspects of disability services and that, in addressing the report's recommendations, it intended to work in partnership with the non-government sector to provide the best possible outcomes for people with a disability.

The Committee undertook this follow-up review to determine what progress had been made in addressing the issues raised by the Auditor-General. The Committee was also cognisant of the release of the Victorian State Disability Plan 2002-2012, which reaffirmed the rights of people with a disability to live and participate in the community on an equal basis with other Victorian citizens.

This report builds on the Auditor-General's report and also acknowledges the improvements to service delivery from the Department of Human Services, particularly in respect to the development of new business systems, the move to individualised planning and support, and the substantial reductions in time achieved in commencing assessments of the eligibility of people with a disability for services from the Department. The Committee also recognised the substantial increase of approximately \$200 million in real terms in the disability services budget since 1999-2000.

While recognising the strong commitment of the Department of Human Services to the provision of disability services, the Committee also draws attention to various areas where further improvements are warranted. Of particular concern to the Committee is the doubling of the number of persons on the Service Needs Register urgently waiting access to supported residential services, predominately in community residential units.

The move to individualised planning and support is a positive initiative, but problems exist with its implementation. Further areas for improvement observed by the Committee include the need to complete eligibility assessments for disability services on a more timely basis, the inappropriate location of children and adults with a disability in respite care on a permanent basis, the absence of an independent, external complaints mechanism, inappropriate performance measures and the need to provide consolidated information on the Department of Human Services' performance in implementing the State Disability Plan.

The report builds on the Auditor-General's report and the Victorian State Disability Plan and its implementation plan. It builds on the social pathology formulation of disability rather than an individual pathology which sees the person with the disability as the problem rather than a society which fails to ensure all people are an integral part of society. People with an intellectual disability can contribute and do contribute best when their uniqueness is recognised and their diversity celebrated.

The report contains 43 recommendations directed at further improvements in the provision of disability services, including a need for additional funding at both the State and Commonwealth Government level if the vision outlined in the State Disability Plan is to be achieved.

I thank Members of the Sub-Committee for their work on this important Inquiry.

In compiling this report, we have drawn heavily on the material and views presented by individuals and organisations through submissions, public hearings and visits. That input has greatly assisted our understanding of the many issues we have considered.

Finally, I thank the secretariat for the high quality of its assistance and support throughout the Inquiry and in the preparation of this report. This group was led by Michele Cornwell and research work was undertaken by Trevor Wood, Fleur Spriggs, Kai Swoboda and Roger Farrer. Karen Taylor was responsible for the formatting of the report.

I commend the report for consideration and I look forward to the Government's response to the Committee's recommendations.



Hon. Christine Campbell, MP
Chair

EXECUTIVE SUMMARY

Chapter 1: Background to the review

The Auditor-General has no power to ensure departments implement the recommendations contained in his reports. Accordingly, it is an important function of the Public Accounts and Estimates Committee to follow-up outstanding issues raised in the Auditor-General's reports.

In November 2000, the Auditor-General tabled his performance audit report on *Services for people with an intellectual disability*, which found significant scope for improvements in services and processes within the Department of Human Services. A follow-up review by the Auditor-General in 2003 found the department had made progress in implementing his recommendations, but had been slow in some areas, including the legislative review process.¹

This report contains the findings of the Committee's review of the Auditor-General's performance audit report and the follow-up he undertook in 2003.

Since the release of the Auditor-General's report in 2000, the Government has released the *Victorian State Disability Plan 2002–2012* which states that:²

The Victorian Government believes that people with a disability should be able to live and participate in the life of the Victorian community, with the same rights, responsibilities and opportunities as all other citizens of Victoria.

Chapter 2: Planning for individuals and protecting their rights

The Auditor-General's audit established that the process for conducting eligibility assessments was lengthy and did not fulfil the intention of the Intellectually Disabled Persons' Services Act, which the Auditor-General interpreted as requiring the department to ensure people who request an assessment receive the assessment and its results in a timely manner.

Despite significant improvement in the amount of time taken to conduct assessments, the Committee has found that the Department of Human Services is still falling short of the legislative intention. The Committee is concerned about how some of the performance data relating to the timeliness of eligibility assessments has been publicly presented.

The Auditor-General found that the department's model of case management and implementation imposed substantial limitations on the effectiveness of case

¹ Victorian Auditor-General's Office, *Report on Public Sector Agencies*, June 2003, pp.76–85

² Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002

management. The Auditor-General also found that the demand for case management services exceeded the department's capacity to deliver.

The department has developed new strategies that emphasise developing services to suit an individual, rather than fitting individuals into existing services as previously occurred with the case management approach. The department has also developed new business systems that are likely to provide a more consistent understanding of people's support needs.

The Committee recognises that the move to individualised planning and support represents a positive effort to improve service delivery but it is concerned that implementation has fallen short of expectations, given limited staff training in undertaking planning, and also insufficient staff contact with people with an intellectual disability or their families. The Committee agrees in principle that the level and type of support provided to individuals should reflect their needs, as distinct from approaches that allocate people with a disability to services where they best fit.

The Auditor-General found that the department had limited capacity to support and plan for the future needs of people with an intellectual disability, and that the department's system did not fulfil the intended purpose and benefits of statutory life planning processes for all people with an intellectual disability. Despite action by the department to address these issues, the Committee heard evidence of continuing perceptions that the current system is response and crisis driven.

The Auditor-General highlighted significant unmet need in 2000 for services for people with a disability. The Government has since provided significant additional resources for supported accommodation services and alternative packages to enable people with a disability to continue to live in their own homes. Despite the additional resources provided, unmet need has increased. The number of people classified as 'urgent' awaiting access to supported residential services on the Service Needs Register has increased from 597 people in July 2000 to 1,178 people in December 2003, an increase of almost 100 per cent. Of significant concern to the Committee is the increasing number of intellectually disabled children occupying respite care beds on a permanent basis, as alternative accommodation options could not be found. This situation has resulted in difficulties as some carers have given up seeking respite care for people with an intellectual disability largely because there is no accommodation available because of permanent residents.

The Auditor-General found that the process of preparing individual program plans and the quality of the plans varied. The Auditor-General further found that the plans overall were not of an adequate standard to meet the requirements of the Intellectually Disabled Persons' Services Act. This legislation provides that plans are reviewed in a timely manner; that there is consultation with the person with a disability and their carers in the preparation of the plan; and that the activities and methods used to achieve goals in areas identified in the general service plan are specified.³

³ *Intellectually Disabled Persons' Services Act 1986, s.11*

The department has changed the planning guidelines for disability services staff and conducted forums with regional staff to discuss the review of the guidelines. The Committee is aware of the experiences of community visitors, who made 2,943 visits to 1,024 disability service providers in 2003-04, noting instances of high quality individual program plans but also cases needing improvement.

Chapter 3: Safeguarding individual rights

People with intellectual disabilities have the right to participate in decisions, make a complaint or have decisions reviewed if they are dissatisfied. Difficulties in communication, however, may mean that these rights are sometimes overlooked.

The Committee believes carers, parents and the community have a responsibility to be better informed on the rights of people with an intellectual disability and better educated to encourage and support such people to assert their rights.

The Auditor-General observed that service providers generally complied with the legislative provisions on the use and reporting of restraint and seclusion, except where they were not aware of the requirements or their applicability. The Committee heard that the definition of restraint and seclusion under the Intellectually Disabled Persons' Services Act is too narrow and that the monitoring role of the Intellectual Disability Review Panel is limited.

The Government has proposed amending legislation to address these issues, including establishing the Office of the Senior Clinician and a Disability Complaints Resolution Office. The Committee emphasises the importance of establishing a rights-based framework as part of the new legislation being developed by the department.

Regarding the mandatory incident reporting system, the Auditor-General found that the overall framework for the system was appropriate. Inconsistent implementation by service providers and poor monitoring by the department reduced its effectiveness in protecting the safety of people with a disability and staff.

The Committee noted that the department has introduced a revised departmental instruction on incident reporting, provided information sessions on the revised instruction and established an interim database system for managing and monitoring the response to individual incident reports and complaints.

The Auditor-General also raised concerns about the adequacy of advocacy arrangements to assist people to communicate, and found little evidence of people being informed of their rights. It is important that people with an intellectual disability and their carers are fully informed of their rights to enable them to participate in decisions that affect them.

Evidence was given to the Committee that there were no formal processes in the current legislation for the making of decisions affecting people with an intellectual disability in a way that is fully accountable and is free of conflict of interest. The

Intellectual Disability Review Panel suggested that the current legislation requires amendment to facilitate an appropriate appointment process for assistant decision makers.

The Auditor-General drew attention to the limitations of the role of the Intellectual Disability Review Panel, including the fact that the Panel does not have determinative powers.

The Committee was advised that the lack of an external and independent complaints body with the power to enforce standards for people with an intellectual disability is a significant failure of the system. The Government proposes that the new disability legislation provide for internal and external review of certain decisions made under the legislation.

Chapter 4: Providing resources for services

The Auditor-General estimated that in 1999-2000, expenditure on services to people with an intellectual disability was around \$405.3 million, or 70 per cent of the total disability services budget of \$572.1 million. Applying the same method used by the Auditor-General, the Committee estimates that the 2004-05 budgeted expenditure on services to people with an intellectual disability is \$669.3 million, which represents 74 per cent of the total disability services budget of \$910.4 million.

The Committee estimates that the increase in the disability services budget of \$338.4 million between 1999-2000 and 2004-05 is equivalent to an increase of approximately \$200 million (35 per cent), when inflation is taken into account.

To redress historical imbalances in funding between different regions in Victoria, the Department of Human Services developed a regional equity formula to adjust funding over the longer term towards equity shares that are consistent with each region's characteristics. The Auditor-General found that the impact of the regional budget adjustment process had been limited.

The Committee recognises that the department is limited to adjusting funding across regions in the short to medium term because a large share of existing funding is linked to people with a disability in very long-term support services, which in the past has been based around institutional care.

To speed up the rate of adjustment, the department implemented an accelerated equity formula that applies to growth funds allocated to shared supported accommodation and day services. The Committee is unable to determine whether the redistribution of growth funding under the accelerated formula is effective in bringing each region's funding closer to its equity share. The Committee considers that the publication of these figures and information on the number of people on waiting lists will improve awareness on how present funding is allocated across Victoria and assist people with an intellectual disability and their carers in planning for future support.

The Auditor-General found funding per client in government shared supported accommodation services was higher, on average, than in non-government services. The Auditor-General concluded that two factors were principally responsible: (1) clients in government shared supported accommodation have higher support needs, on average, than those in non-government services, and (2) awards for staff employed in government services cost more than awards for staff in the non-government sector, with the cost of this differential being around 16 per cent.

The Committee found that the cost differential between government and non-government shared supported accommodation service providers in 2004 remained, although recent pay rises awarded to the staff of non-government providers narrowed this gap.

The Auditor-General noted the effectiveness of the unit cost approach to funding non-government service providers depended on an accurate assessment of the hours required to meet client support and development needs, and in appropriate rostering of those hours. The Auditor-General found several weaknesses in these areas, including that assessment of client needs has been based on past experience and professional judgement, rather than on an assessment tool consistently applied to current residents.

The department has since implemented a revised version of the assessment tool used to determine resource allocation. The new version was subject to an independent review to confirm its validity and reliability. The department was considering the potential application of the tool in the shared supported accommodation program.

Except for adjusting unit prices to account for indexation, the department had not reviewed the appropriateness of unit prices for services delivered by non-government providers. A number of projects now being undertaken by the department and non-government agency peak bodies provide an opportunity to re-assess the costs of providing services under the framework established by the Victorian State Disability Plan.

Chapter 5: Quality and monitoring

The Victorian Standards for Disability Services provide a framework to assess the quality of services provided to people with a disability. The Auditor-General found that most service providers considered that they needed to improve their performance to fully comply with the Victorian Standards for Disability Services. The Auditor-General considered that the self assessment system used to judge performance against the standards required independent scrutiny.

The department has since implemented an integrated quality management system that places more emphasis on activities to improve service quality than on providers' self assessments against the standards. Reporting by the department mirrors this approach. As a result, the department did not request from service providers the results of self assessments against the standards in 2003, the year in which all providers were required to meet the service standards. Based on self assessments completed against

the standards in 2002, all service providers were unlikely to have met the required standard of service delivery in 2003.

The department is undertaking a review of the Victorian Standards for Disability Services and developing an independent quality monitoring mechanism. The Committee considers that the independent monitoring mechanism should incorporate features to strengthen that independence, including an obligation to report on the reasons recommendations are not acted on. Other features that the Committee considers would strengthen the independence of quality monitoring include having powers to enter service providers' premises to review a person's files and public reporting of the results of monitoring activities.

The department has also carried out more than 50 strategic reviews of service providers since 2002 to examine broader aspects of service delivery. The review program will undergo a formal evaluation to confirm its effectiveness and assist with future directions.

The Auditor-General noted in 2000 that there were no industry-wide competency standards for staff in shared supported accommodation services and day programs, and he recommended that the department introduce competency standards for all staff. A national training package was finalised in 2002 and a minimum competency level was mandated for government service providers. The department advised that 90 per cent of departmental staff at June 2004 would either have the equivalent minimum standard or be undertaking training. Non-government providers are encouraged to adopt this standard. If this standard is adopted as mandatory for non-government service providers, then this could be funded through service agreements.

The Committee is concerned that training and skills development for non-government staff has lagged behind the arrangements for workers in the government sector. Training and development opportunities for non-government staff need to take account of some of the factors that inhibit skills development, such as the high incidence of casual or part-time staff in some services, and the high incidence of staff who work in another field apart from the disability services sector.

Several of the performance measures included in the Budget Papers focus on process. These should be revised to provide information on the outcomes of service provision and the performance measures used should be verifiable.

The department continues to report publicly on disability services as a whole, without separating out budgets or performance targets for services for people with an intellectual disability. The inability to provide comprehensive data on these services makes it difficult to understand, analyse and improve service delivery in this area.

The Government indicated that it would, as part of the Victorian State Disability Plan, undertake a yearly review of the priority strategies and publish reports to show progress. The Committee considers, however, that none of the departmental publications on disability services provides, on its own, a report of progress against

the Disability Plan. The range of information collected on the provision of disability services should enable the department to provide a consolidated report to the community at the same time as tabling its annual report in Parliament.

Chapter 6: Review of Disability Legislation

The Auditor-General's report recommended that the department's review of legislation consider options for strengthening and clarifying the statutory provisions relating to restraint and seclusion, the monitoring role of the Intellectual Disability Review Panel, and the scope of reviewable decisions. The Auditor-General also recommended the use of mechanisms to support the operation of the protective framework, particularly mechanisms that better enable people with an intellectual disability to exercise their rights to participate in decisions being made about them, and to make a complaint or have decisions reviewed when they are dissatisfied.

The department flagged the legislative review in 2000, yet the Committee notes that the review only commenced with a discussion paper released in May 2003. A report of recommendations for legislative changes was released in October 2004 and the legislative review process is expected to be completed before June 2006.

The Committee received evidence of dissatisfaction with the time being taken to complete the review and with the lack of publicly available information on, and opportunity to provide input to, the review process.

The Committee notes that the Government has proposed 53 recommendations for legislative reform.

Regarding the use of restraint and seclusion, it is proposed that the legislation contain definitions of 'restraint' and 'seclusion', specify criteria for when they can be used, give powers to the Office of the Senior Clinician to monitor and impose conditions on the use of restraint and seclusion, and make a decision to use restraint and seclusion reviewable internally by the Office of the Senior Clinician and externally by the Victorian Civil and Administrative Tribunal.

While welcoming these proposed changes, the Committee considers the Office of the Senior Clinician may be overly medically focused, and would prefer a model that promotes a rights-based approach to people's needs as envisaged under the Victorian State Disability Plan.

The Committee has established that the effectiveness of the Intellectual Disability Review Panel is limited because it lacks determinative powers and has no authority to initiate investigations. The Government proposes that the new disability legislation provide for internal and external review of certain decisions made under the legislation. In addition to the Office of the Senior Clinician and the Victorian Civil and Administrative Tribunal, a Disability Complaints Resolution Office is proposed. The Committee noted that while the Office will be set up to receive complaints, it will not have the power to initiate its own investigations. The Committee considers that

any new statutory complaints body should have the power to initiate its own investigations to ensure the rights of people with an intellectual disability are protected. The Committee also believes that the department should be required to report in due course on instances where it decides not to implement recommendations made by the Disability Complaints Resolution Office.

The Government also proposes that the new legislation specify that people with an intellectual disability be provided with individual plans. The Committee is concerned however, that the proposals may represent the loss of the right to seek review, particularly external review, of individual plans which currently exists under the Intellectually Disabled Persons' Services Act for general service plans.

The Government has proposed roles for at least four different bodies within the review/regulation system with potential overlap and confusion among these roles. As a result, the Committee considers people with an intellectual disability and their families may become confused about the appropriate body to deal with their specific issues.

RECOMMENDATIONS

The Committee recommends that:

Chapter 2: Planning for individuals and protecting their rights

Recommendation 1: The Department of Human Services determine the underlying reasons for delays in completing eligibility assessments, as provided for in Part 3 section 7 (1-3) of the *Intellectually Disabled Persons' Services Act 1986*, and take action to reduce the time taken to complete assessments.
Page 40

Recommendation 2: The Department of Human Services disclose in its annual report the extent to which new strategies have been implemented and outcomes achieved in reducing the time taken to complete eligibility assessments.
Page 40

Recommendation 3: The Department of Human Services urgently obtain an opinion from the Victorian Government Solicitor as to the interpretation of section 7(3) of the *Intellectually Disabled Persons' Services Act 1986*.
Page 40

Recommendation 4: The Government further investigate and implement the most appropriate option for an independent external complaints mechanism to promote the concerns of and protect people with an intellectual disability.
Page 41

Recommendation 5: The Department of Human Services include in its annual report succinct explanations as to the relevance of each of the performance measures used to evaluate intake and assessment of services for people with an intellectual disability.
Page 43

- Recommendation 6:** The Department of Human Services, as part of its ongoing review of disability services legislation, obtain legal advice as to whether the existing legislation is unambiguous and clearly reflects the parliamentary intention that eligibility assessments for services provided to people with an intellectual disability are completed as soon as possible within specified timeframes. *Page 43*
- Recommendation 7:** The Department of Human Services report as a key performance measure, the median time taken to complete eligibility assessments for people with an intellectual disability. *Page 43*
- Recommendation 8:** The Department of Human Services give consideration to including a key performance indicator in the employment contracts of staff responsible for undertaking eligibility assessments, reflecting the extent to which assessments are completed within appropriate timeframes. *Page 44*
- Recommendation 9:** The Department of Human Services, after a reasonable period of time, evaluate and report on the effectiveness of the individualised planning and support approach, against the principles contained in the *Intellectually Disabled Persons' Services Act 1986* and the State Disability Plan. *Page 54*
- Recommendation 10:** The Department of Human Services investigate the potential benefits of providing specialist independent support workers with the capability of working individually with a person with an intellectual disability to help identify and communicate the individual's needs, desires and decisions. The trained support worker should be independent of family, the Department of Human Services and government decision making processes. *Page 54*

- Recommendation 11:** **The Department of Human Services analyse the options for improving its ability to predict the needs of people with an intellectual disability and prevent crisis situations from occurring.**
Page 59
- Recommendation 12:** **Data from the Client Relationship Information System be used to improve the Department of Human Services’ planning for improvements to services for people with an intellectual disability.**
Page 59
- Recommendation 13:** **The Department of Human Services take into account the significance of General Service Plans in the delivery of quality services to people with an intellectual disability.**
Page 60
- Recommendation 14:** **The Victorian Government seek to renegotiate the Commonwealth State/Territory Disability Agreement with a view to obtaining increased funding for reducing the waiting lists for shared supported accommodation.**
Page 67
- Recommendation 15:** **The Department of Human Services, for accountability purposes, record separately in its annual report the extent to which proceeds from the redevelopment of the Kew Residential Services (formerly Kew Cottages) site have been applied towards additional services for people with a disability, as distinct from other budget increases for disability services.**
Page 71
- Recommendation 16:** **The Government confirm its commitment to the State Disability Plan by providing sufficient capital and recurrent funding for additional community residential units.**
Page 73

Recommendation 17: Residents in community residential units be assessed by the Department of Human Services as to whether alternative supported accommodation options would better suit their needs.

Page 74

Recommendation 18: The Department of Human Services develop a policy and associated strategies to address the changed needs of ageing clients in community residential units.

Page 74

Recommendation 19: The Department of Human Services develop and implement a ten year plan for identifying the projected growth in demand for services for people with an intellectual disability, the level of financial and other resources the department will be expected to provide and the implications for the future if demand is not met.

Page 74

Recommendation 20: The Department of Human Services finalise and implement, where appropriate, the recommendations of the consultancy report commissioned in 2003 which includes addressing the future options for children with a disability presently in permanent respite care.

Page 74

Recommendation 21: The Department of Human Services examine the impact of resource constraints on the range of services needed in each region for people with an intellectual disability and their families.

Page 78

- Recommendation 22:** **The Department of Human Services:**
- (a) examine the reasons some service providers are not preparing and updating Individual Program Plans for people with an intellectual disability, in accordance with departmental guidelines; and**
 - (b) take action to redress this situation.**
- Page 79*

Chapter 3: Safeguarding individual rights

- Recommendation 23:** **The Department of Human Services put in place systems to ensure that community visitors have access to incident reports in all residential services provided for people with an intellectual disability.**
- Page 87*

- Recommendation 24:** **The Department of Human Services:**
- (a) emphasise to service providers the importance of:**
 - (i) reporting incidents; and**
 - (ii) keeping records of incidents which can be used to analyse service delivery and ultimately to make improvements; and**
 - (b) review the current policy instruction which makes reporting category 3 incidents to Departmental Agency Liaison Officers and case managers, optional.**
- Page 87*

- Recommendation 25:** **The Department of Human Services give consideration to introducing a formal assistant decision maker, where appropriate, for each person with an intellectual disability. The role of the assistant would be to facilitate communication and participation by a person with an intellectual disability in the decision making process to ensure the person’s rights are being advanced.**
- Page 91*

Chapter 4: Providing resources for services

Recommendation 26: The Department of Human Services include in its annual report information on the regional allocation of funding for disability services and the progress made towards achieving notional equity shares across the department's regions.
Page 99

Recommendation 27: The Department of Human Services publish information on a quarterly basis for each region on the number of people with an intellectual disability on the Service Needs Register and the expected waiting time for access to services.
Page 101

Recommendation 28: The Department of Human Services and non-government service providers undertake a review of the adequacy of unit costs, taking into consideration:

- (a) the cost of different services provided by government and non-government service providers; and**
- (b) the likely structural changes in service delivery over the life of the Victorian State Disability Plan and the standards of service required under the Victorian Disability Service Standards.**

Page 108

Chapter 5: Quality and monitoring

Recommendation 29: The Department of Human Services:

- (a) make available to non-government service providers the training resources developed for the staff of government service providers; and**

- (b) examine the effectiveness of current models of delivering and monitoring training provided to the staff of non-government service providers.

Page 119

Recommendation 30:

The Department of Human Services:

- (a) examine current approaches to ensuring service providers comply with requirements to annually submit Organisational Quality Plans and Improvement Activity Reports;
- (b) determine the reasons for non-compliance; and
- (c) develop options to encourage compliance.

Page 120

Recommendation 31:

Where government and non-government service providers need to dedicate specific resources to the new quality monitoring approaches that are in addition to current arrangements, the Department of Human Services make available the resources, training and the support required to implement them.

Page 121

Recommendation 32:

The Department of Human Services ensure that arrangements in place for independent monitoring of services provided for people with an intellectual disability, include provisions that strengthen independence such as:

- (a) an obligation on the department to report to the monitoring agency on instances where recommendations are not acted on within six months and publish the reasons recommendations were not accepted;
- (b) the monitoring agency having the power under legislation to enter service providers' premises and review client files; and
- (c) reports of the quality monitoring agency being publicly available.

Page 122

Recommendation 33: **The Department of Human Services revise performance measures in the Disability Services output group to ensure that they include quality and timeliness measures that focus on the outcomes of service delivery.**

Page 132

Recommendation 34: **The Department of Human Services provide a consolidated report on services for people with a disability and report on the outcomes of the Victorian State Disability Plan. This report should:**

- (a) include a range of objective performance measures that relate to the outcomes of services provided (or not provided) to the department’s potential clients; and**
- (b) be publicly released on an annual basis in conjunction with the tabling of the Department of Human Services’ annual report in Parliament.**

Page 133

Chapter 6: *Review of Disability Legislation*

Recommendation 35: **The Department of Human Services ensure that information provided to forums and focus groups as part of the review of the *Intellectually Disabled Persons’ Services Act 1986* and the *Disability Services Act 1991* are available in large print format and ‘easy English’ versions.**

Page 137

Recommendation 36: **The Department of Human Services ensure that the Office of the Senior Clinician is supported by multi-disciplinary staff which includes specialists from non-medical backgrounds who support a rights-based approach for people with an intellectual disability, as outlined in the Victorian State Disability Plan.**

Page 141

- Recommendation 37:** **The Government ensure that the external review body to evaluate and monitor the systemic use of restrictive practices across all disability services, such as VCAT, be appropriately resourced with staff and Panels that have suitable specialist skills, are accessible to all and are affordable to clients and their advocates.**
- Page 142*
-
- Recommendation 38:** **The Government ensure that the proposed Disability Complaints Resolution Office has the power to initiate its own investigations.**
- Page 144*
-
- Recommendation 39:** **The Government ensure that the complaints body, such as the proposed Disability Complaints Resolution Office, is independent of the Department of Human Services.**
- Page 144*
-
- Recommendation 40:** **The Department of Human Services work closely with the Intellectual Disability Review Panel to ensure that all of the Panel’s functions are transferred to other bodies and that a smooth transition process is established.**
- Page 145*
-
- Recommendation 41:** **The Department of Human Services ensure that the new disability legislation gives people with an intellectual disability the right to seek an external review of their individual plans.**
- Page 146*
-
- Recommendation 42:** **The Government ensure that the proposed Disability Complaints Resolution Office has the power to:**
- (a) examine the practices of service providers; and**

- (b) interview people with an intellectual disability, their parents, families and carers about their satisfaction with the complaints handling process.**

Page 147

Recommendation 43:

The Department of Human Services ensure that:

- (a) a proposal to establish a number of review and regulation bodies relating to services for people with an intellectual disability does not lead to fragmentation of the system; and**
- (b) service users and their families are provided with clear information as to the appropriate review or regulation body to deal with specific issues.**

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CHAPTER 1: BACKGROUND TO THE REVIEW

As citizens of Victoria, people with a disability have an important contribution to make to the life of this State. To maximise this contribution we must support communities so that they can be more inclusive.¹

1.1 Introduction

The Auditor-General has no power to ensure departments implement the recommendations contained in his reports. It is therefore an important function of the Public Accounts and Estimates Committee to follow-up the Auditor-General's reports on a systematic basis in order to enhance the audit process and, at the same time, provide Parliament with an update on actions taken by departments to improve accountability and resource management.

As part of this process, the Auditor-General agreed to provide the Committee with an update on reports selected by the Committee for follow-up review in terms of:

- any unresolved issues or audit recommendations that had not been implemented;
- changes that have occurred as a result of the reports; and
- any other matters of significance arising from the follow-up.

In November 2003, the Public Accounts and Estimates Committee advised the Auditor-General of its intention to undertake a follow-up inquiry in relation to *performance audit report on Services for people with an intellectual disability*.

1.2 Background to the Auditor-General's performance audit report – Services for people with an intellectual disability

The audit included an examination of the Department of Human Services' management of services for people with an intellectual disability, and addressed resource allocation processes in terms of equity and consistency with legislative requirements, safeguards in place to protect clients, the quality of services, adequacy of monitoring arrangements and accountability mechanisms.²

¹ Hon. S. Bracks, MP, Premier of Victoria, in Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002, p.i

² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000

1.3 Findings of the Auditor-General

The audit report included a number of findings and 18 recommendations. The recommendations were directed at three key areas:

- planning for individuals and protecting their rights;
- providing resources for services; and
- service quality, monitoring and public accountability.

1.4 Responses to the Auditor-General's report

The audit report contained responses from the:

- Department of Human Services; and
- Intellectual Disability Review Panel (IDRP).

The Department of Human Services was positive about its ability to address recommendations made by the Auditor-General and advised at the time that they were already pursuing initiatives that would address some of the recommendations outlined in the audit report. The department advised that '*several of the report's recommendations would require legislative change*'.³

Similarly the IDRP supported the Auditor-General's recommendations and made some additional suggestions for improvements.

1.4.1 Follow-up by the Auditor-General

In his foreword to the audit report, the Auditor-General said he was:⁴

pleased that the department has taken a positive approach to the Report's findings and intends to work in partnership with the non-government sector to address the issues raised.

Later, in his follow-up report on the status of recommendations made in performance audit reports tabled in 2000-01, the Auditor-General provided the following summary of the department's progress:⁵

³ *ibid.*, p.10

⁴ *ibid.*, p.vii

⁵ Victorian Auditor-General's Office, *Report on Public Sector Agencies*, June 2003, part 4, p.84

The department has made progress in:

- reducing the time taken to determine eligibility for service access;
- establishing common minimum competency standards for government and non-government support staff;
- revising the case management framework;
- addressing a number of planning and client safety issues;
- adopting an accelerated equity funding formula; and
- enhancing quality monitoring and improvement processes.

The Auditor-General advised that progress has been slow in:

- achieving equity in funding for regional services;
- refining the Support Needs Assessment tool; and
- completing the reviews of the *Intellectually Disabled Persons' Services Act* 1986 and the *Disability Services Act* 1991. These reviews have the potential to provide for an integrated approach to disability in Victoria.

1.5 Review undertaken by the Committee

This inquiry was undertaken by a Sub-Committee consisting of the following Members of the Public Accounts and Estimates Committee:

Hon. C Campbell, MP (Chair)

Hon. B Baxter, MLC

Mr R Clark, MP

Mr J Merlino, MP

Ms G Romanes, MLC

The Hon. Bill Forwood, the Deputy Chair, who has had a long-standing interest in services for people with a disability, also participated in this inquiry.

Since the release of the Auditor-General's report in November 2000, the Victorian State Disability Plan 2002–2012 was released outlining the government's vision for the future and some strategies for realising this vision.⁶

⁶ Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002, p.iii

In considering the Department of Human Services' progress in implementing the Auditor-General's recommendations, the Committee has been mindful of the guiding principles and strategies included in the plan and proposed amendments to legislation covering people with an intellectual disability. Where relevant, the Committee has highlighted appropriate sections of the Victorian State Disability Plan to draw attention to the direction that the government intends to pursue.

In February 2004, the Sub-Committee received a status report from the Auditor-General on what action had been taken as a result of the findings and recommendations contained in his report.

The Auditor-General reported that the Department of Human Services had responded to all 18 recommendations and action was either complete, or had been significantly progressed (with a planned commencement or completion date) and, in many instances, additional work was also being undertaken as part of continuous improvement within the department.

Nevertheless, the Committee noted that continuing delays in the review of the *Intellectually Disabled Persons' Services Act 1986* and the *Disability Services Act 1991* as being of particular concern given the department had planned to respond to several of the report's recommendations through legislative change.⁷

Two public hearings were held during June 2004 at which those organisations responsible for administering legislation and developing policy for people with a disability, along with peak bodies representing the intellectual disability sector, service providers and concerned individuals, provided information to the Sub-Committee. In addition, the Sub-Committee received ten submissions between April and August 2004. Details of individuals and organisations providing evidence and submissions to the Sub-Committee are detailed at Appendix 2.

The following chapters discuss the Committee's findings on key issues relating to the government's provision of services to people with an intellectual disability.

⁷ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.10

CHAPTER 2: PLANNING FOR INDIVIDUALS AND PROTECTING THEIR RIGHTS

*The Victorian Government believes that people with a disability should be able to live and participate in the life of the Victorian community, with the same rights, responsibilities and opportunities as all other citizens of Victoria.*¹

2.1 Eligibility assessment

In Victoria, in 2003 approximately 42,400 people had an intellectual disability, of whom approximately 52 per cent, or 21,967 people, were registered under the Intellectually Disabled Persons' Services Act (IDPSA) as eligible for services.² Not all of the people registered receive government support.

All people aged over five years have the right to an assessment (through a parent, guardian or primary carer), or if aged over 16 may initiate an assessment of their eligibility for services under the IDPSA.³

The Act states:⁴

The secretary [of the Department of Human Services] must ensure that an assessment of the eligibility of a person for services is undertaken within 30 days after receiving a request.

However, the legislation provides for the Secretary to defer the undertaking of an eligibility assessment for up to three months if the:⁵

... secretary believes on reasonable grounds that any assessment completed before then is unlikely to establish reliably whether or not the person is intellectually disabled.

This section focuses on compliance with statutory time frames for eligibility assessment.

¹ Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002, p.1

² Advice from the Department of Human Services, 10 December 2004

³ Persons aged between 5 and 16 may only have an eligibility assessment requested by their parent, guardian or primary carer; persons aged over 16 may initiate the assessment process

⁴ *Intellectually Disabled Persons' Services Act* 1986, Part 3 s.7(1-3)

⁵ *ibid.*, s.7(4)

2.1.1 Auditor-General's findings and recommendations

The Auditor-General found the Department of Human Services interpreted the word 'undertaken' to mean 'allocated to a worker for assessment and commenced'.⁶ For the majority of applicants (68 per cent in 1999-2000) this allocation/commencement process took more than four weeks.⁷ The time taken to complete an assessment was significantly longer.⁸ The average time to process and complete an assessment was 27 weeks in 1999-2000.⁹

Despite the department's interpretation of the word 'undertaken', the Auditor-General considered that a better interpretation of the word, more in keeping with the intent of the legislation, was the completion and determination of an assessment. The Auditor-General's recommendation therefore focused on the need to reduce the amount of time taken to *complete* eligibility assessments.

The Auditor-General recommended the department measure its performance in completing eligibility assessments and develop strategies to reduce the length of time taken to determine eligibility.¹⁰

2.1.2 Response by the Department of Human Services

The department pointed out that individuals can gain access to specialist services under the *Disability Services Act* 1991 without, or prior to, having their eligibility determined.¹¹

The department nevertheless acknowledged it needed to significantly reduce the length of time taken to determine eligibility and suggested '*in the longer term, the way eligibility for services is determined needs to be examined in the context of developments that have occurred in the delivery of disability services as a whole*'.¹² The department also advised that from 1 January 2001 it would commence measuring its performance in *completing* eligibility assessments.¹³

⁶ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.33

⁷ *ibid.*

⁸ *ibid.*, p.34

⁹ *ibid.*

¹⁰ *ibid.*

¹¹ *ibid.*, p.35

¹² *ibid.*

¹³ *ibid.*

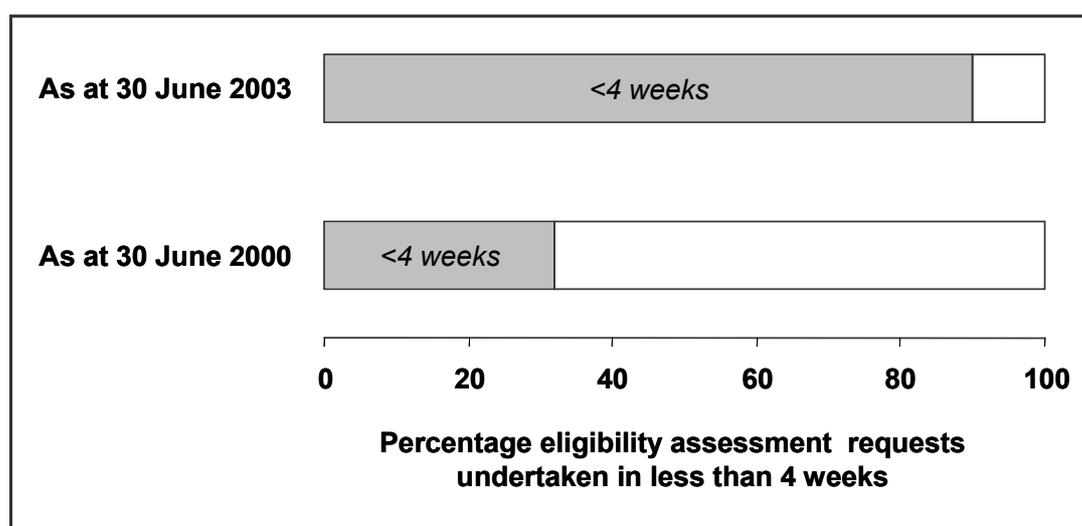
2.1.3 Subsequent developments

The Auditor-General advised the Committee that the department had revised its assessment for eligibility report pro forma and had implemented new operational guidelines in an effort to streamline eligibility assessment processes.¹⁴

(a) Time taken to commence eligibility assessment

Exhibit 2.1 shows the improvement (from 2000 to 2003) in the time taken for applications to be allocated to a worker for assessment and commenced. At the time of the audit in 2000, only 32 per cent of assessments were ‘undertaken’ in less than four weeks (or 30 days). Three years later this percentage had risen to 90 per cent and the department advised the Auditor-General that further work was continuing to ‘better the target’.¹⁵

Exhibit 2.1: Waiting time for commencement of eligibility assessment



Sources: For 30 June 2000 – Victorian Auditor-General’s Office, 2000, *Report on services for people with an intellectual disability, performance audit report*, p.33

For 30 June 2003 – Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of performance audit report on services for people with an intellectual disability

¹⁴ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: *Services for people with an intellectual disability*, p.3

¹⁵ *ibid.*

This improvement has been accompanied by funding increases. In February 2001, to assist with processing a backlog of eligibility assessments, the department provided additional recurrent funding of \$2 million to its regional intake and response teams. Additional non-recurrent funds were provided in 2001-02 and in 2002-03.¹⁶

(b) Transparency

Since 2001-02, the department has reported on the *number* of eligibility assessments completed each year. The number was 1,205 in 2001-02, 1,107 in 2002-03 and 955 in 2003-04. The target in all three years was 1,000.¹⁷ The Committee noted there had been a decrease in the number of assessments completed, which is in contrast to the steady increase in persons with a disability seeking assistance.

However, the Committee noted the department had not publicly reported the time taken to *complete* eligibility assessments, despite providing a response to the Auditor-General in 2000 that '*the department will measure its performance in completing eligibility assessments*'. The time taken to complete eligibility assessments, as pointed out by the Auditor-General, is an important statistic to both measure and report as the intention of the Act is clearly to ensure that people requesting an assessment are assessed within a reasonable time frame.¹⁸ Statistical data on the number of assessments taken does not reflect the performance of the department in completing assessments within the 30 day timeframe contained in legislation. The Committee is concerned that the Department of Human Services did not comply with the response it provided to the Auditor-General.

2.1.4 Issues of concern

(a) Time taken to complete eligibility assessment

The Auditor-General found that in 2000, the average time taken to process and complete an assessment was 27 weeks.¹⁹

Although the department had not reported publicly on the time taken to complete assessments, the department was able to furnish the Committee with statistics that show significant improvement since the audit report and a further gradual improvement between 2002-03 and 2003-04.²⁰

¹⁶ *ibid.*

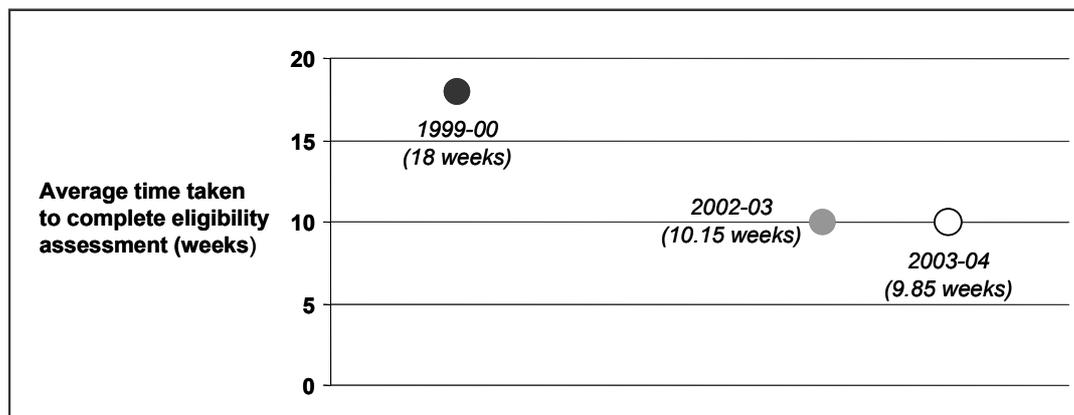
¹⁷ Department of Human Services, Annual Report 2003-04, p.56; Budget Paper No. 3, *2003-04 Budget Estimates*, p.85; Budget Paper No. 3, *2004-05 Service Delivery*, p.93

¹⁸ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.33

¹⁹ *ibid.*, p.34

²⁰ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.7

Exhibit 2.2: **Average time taken to complete an eligibility assessment**



Sources: For 1999-00 data – Victorian Auditor-General’s Office, 2000, *Report on services for people with an intellectual disability, performance audit report*, p.35

For 2002-03 and 2003-04 data - Minister for Community Services’ response, received 10 August 2004, to the Committee’s request for additional information

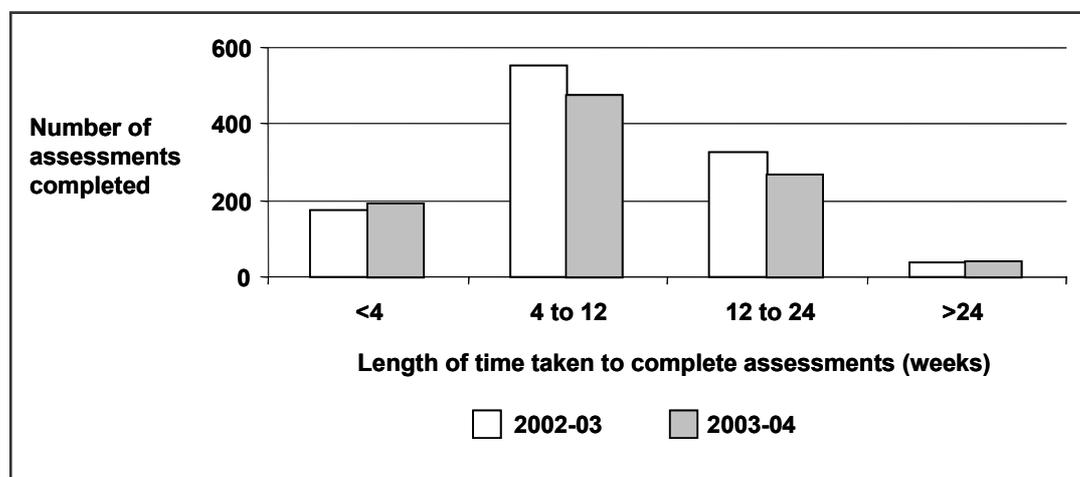
Despite improvement in the time taken to perform assessments (exhibit 2.2), data provided to the Committee demonstrates that, as was the case at the time of the audit, most assessments take between four and 12 weeks to complete (exhibit 2.3).²¹ This indicates the department is not fulfilling the legislative intention for people requesting an assessment to receive the results of that assessment within 30 days, unless there are reasonable grounds to defer the assessment for up to three months.

The Minister advised the Committee that of the 989 assessments undertaken in 2003-04, only 196 assessments or 19.8 per cent were completed in less than four weeks (30 days).²² The Committee does not accept that the remaining 793 assessments (80.2 per cent) were all of a nature whereby final assessments had to be deferred for up to three months, due to difficulties in determining reliably whether people were intellectually disabled to the degree that they were eligible for services. Even after allowing for the three month deferral provided under the legislation, the Committee confirmed that 31.7 per cent of assessments took longer than three months, with 43 assessments unable to be finalised within 24 weeks.

²¹ Victorian Auditor-General’s Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.34

²² Minister for Community Services’ response to the Committee’s follow-up questions, received 10 August 2004, p.7

Exhibit 2.3: Time taken to complete an eligibility assessment, from receipt of consent form to completion of assessment



Source: Minister for Community Services' response, received 10 August 2004, to the Committee's request for additional information

The Committee considers that the legislation is explicit in that unless special circumstances exist, the Secretary of the Department of Human Services:²³

*Must ensure that an **assessment** of the eligibility of a person for services is **undertaken** within 30 days after receiving the request.*

The Minister advised the Committee in August 2004 that the word 'undertake' is defined by the department as 'commenced' or 'begun'. This definition is premised on the department accepting a responsibility to undertake an assessment within 30 days, as distinct from completing an assessment within 30 days as was the Auditor-General's view in his 2000 report.

The Committee considers that the legislative intention of the Act should be clarified through obtaining an authoritative legal opinion. If the definition applied by the Auditor-General is deemed to be correct, the department could be exposed to a risk of legal action for failing to undertake assessments within the legislative timeframes, with some disabled people subsequently being exposed in the interim period to additional risks.

At the time of the audit, the President of the Intellectual Disability Review Panel (IDRP) expressed concern about the amount of time taken to assess an individual's eligibility:²⁴

²³ *Intellectually Disabled Persons' Services Act* 1986, Part 3, s.7(1-3)

²⁴ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.39

intellectually disabled persons have the same rights as other members of the community to services which support a reasonable quality of life.

This concern was also reiterated by the Office of the Public Advocate in its submission to the Committee:²⁵

There still appear to be delays in eligibility assessments for case management. These delays can have a significant impact upon the individuals awaiting assistance.

The Office of the Public Advocate was also concerned about delays that occur immediately after the eligibility assessment process:²⁶

In addition to the delays experienced in obtaining case management assistance, the reactive nature of the current model of case management provision, means that individuals continue to face delays and sometimes high levels of risk whilst awaiting a response.

The Committee is aware that the Review of Disability Legislation Report of Recommendations drew attention to the different definitions of disability that are used to determine who can access disability services and supports.²⁷ The various differences and inconsistencies between the definitions were seen as creating confusion about who could access disability support. The Committee acknowledges that this factor, which must be addressed, could contribute to the delays in finalising assessments, as well as allowing for inconsistencies in final assessments.

Notwithstanding the above issue, the intent of the current legislation to complete eligibility assessments within 30 days must be clarified beyond doubt. The October 2004 review of legislation did not address this matter.

The Committee considers the department must seek to minimise or eliminate any risks posed to clients through delays in obtaining a determination of eligibility for services and the subsequent access to case management services, where necessary. The Committee intends to monitor any actions taken by the department to address extended delays currently occurring in undertaking eligibility assessments.

²⁵ Office of the Public Advocate, submission no. 10, p.2

²⁶ *ibid.*

²⁷ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.29

The Committee recommends that:

Recommendation 1: **The Department of Human Services determine the underlying reasons for delays in completing eligibility assessments, as provided for in Part 3 section 7 (1-3) of the *Intellectually Disabled Persons' Services Act 1986*, and take action to reduce the time taken to complete assessments.**

Recommendation 2: **The Department of Human Services disclose in its annual report the extent to which new strategies have been implemented and outcomes achieved in reducing the time taken to complete eligibility assessments.**

Recommendation 3: **The Department of Human Services urgently obtain an opinion from the Victorian Government Solicitor as to the interpretation of section 7(3) of the *Intellectually Disabled Persons' Services Act 1986*.**

It is the Committee's opinion that lengthy delays of up to and in excess of 24 weeks in the undertaking and/or completion of eligibility assessments, except in the rare circumstances where such delays are justified, does not accord with the legislative intention to determine eligibility for assistance as soon as possible. This is a matter of great concern to the Committee.

The IDRPs suggested an independent external complaints mechanism, able to initiate investigations and respond to anonymous complaints, was needed to provide greater public accountability and a form of redress when provisions of the Act appear to be breached.²⁸ Similarly, the Office of the Public Advocate believes there should be a complaints mechanism for people with disabilities and that this mechanism should be independent, well resourced, accountable, transparent and responsive.²⁹ Other submissions supported the need for an independent complaints process. Suggestions included establishing a Disability Services Commission,³⁰ appointing a Disability Ombudsman,³¹ equipping the IDRPs with determinative powers, or introducing sanctions for non compliance with the legislation.³²

²⁸ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.39

²⁹ Office of the Public Advocate, submission no. 10, p.3

³⁰ Dr C. Bigby, submission no. 9, p.1; Gippsland Carers Association Inc, submission no. 2, p.4

³¹ Mr M. Jackson, submission no. 5, p.12

³² Action for More Independence and Dignity in Accommodation, submission no. 6, p.1; Victorian Advocacy League for Individuals with Disabilities Inc, submission no. 8, p.4

The Committee agrees that there is an urgent need for an independent external complaints mechanism with appropriate powers to underpin the principles contained in the Intellectually Disabled Persons Act.

The Review of Disability Legislation, Report of Recommendations, acknowledged the absence of an external complaints mechanism under the existing legislation and recommended that:³³

A Disability Complaints Resolution Office should be established, reporting directly to the Secretary of the Department of Human Services and overseen by the Ombudsman. (Recommendation 33)

The Committee considers that although this recommendation is an improvement on the existing system, the fact that the Office would report to the Department of Human Services, which is responsible for disability services, raises questions about its independence and ability to enforce its own recommendations as it would not have the status of a judicial body. Although its operations would be overseen by the Ombudsman, in turn the Ombudsman can only make recommendations to the government, which the government may choose to adopt or otherwise.

The Committee is aware that the legislative review further recommended that the Victorian Civil and Administrative Tribunal (VCAT) be empowered to adjudicate on decisions by the department in providing disability services where complaints have been made. At face value the recommendation would appear sound. However, the Committee points out that people with a severe intellectual disability and/or aged carers could be daunted by seeking this further avenue of appeal, particularly where recommendations of the proposed Disability Complaints Resolution Office are either not accepted by the department or the recommendations are regarded as inappropriate by carers and/or clients in the circumstances. These issues are discussed further in Chapter 6.

The Committee recommends that:

Recommendation 4: **The Government further investigate and implement the most appropriate option for an independent external complaints mechanism to promote the concerns of and protect people with an intellectual disability.**

³³ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.47

(b) Transparency and performance targets

The department's 2002-03 annual report contained two performance indicators under the Disability Services output relating to intake assessments, namely:³⁴

- the number of eligible assessments completed per annum (target 1,000 – actual 1,107 in 2002-03, 955 in 2003-04); and
- the percentage of eligibility assessments undertaken within 30 days (target 75 in 2002-03 and 90 in 2003-04 – actual 90 in 2002-03 and 94 in 2003-04).

No explanation was provided as to the department's definition of what constitutes an eligibility assessment undertaken. The Committee believes that the information presented clearly conveys the impression that of the 1,107 eligibility assessments undertaken in 2002-03, 90 per cent were completed within 30 days. As previously stated, only 19.8 per cent of assessments were completed within 30 days. Unless the department states in its annual report that the term '*eligibility assessments undertaken*' means that the department has accepted a responsibility to undertake an assessment – the completion of which may be many weeks or even months later – the Committee considers the performance information is misleading.

When asked by the Committee to clarify the performance measures, the Minister for Community Services indicated that:³⁵

The department's annual report contains two performance measures relating to eligibility assessments. The first a quantity measure, gives the number of eligibility assessments completed during the financial year. Completed is defined as finished or concluded. The second measure gives the percentage of eligibility assessments undertaken within 30 days. Undertaken is defined as commenced or begun.

If the department's interpretation of the word *undertaken* is to be accepted as commencing an eligibility assessment only, effectively the department is not subject to any time constraints as to when eligibility assessments are to be completed. The Committee believes such an approach is contrary to the intention of the legislation that eligibility assessments should be completed as soon as possible.

³⁴ Department of Human Services, Annual Report 2002-03, p.83; Annual Report 2003-04, p.56

³⁵ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.6

The Committee recommends that:

Recommendation 5: **The Department of Human Services include in its annual report succinct explanations as to the relevance of each of the performance measures used to evaluate intake and assessment of services for people with an intellectual disability.**

Recommendation 6: **The Department of Human Services, as part of its ongoing review of disability services legislation, obtain legal advice as to whether the existing legislation is unambiguous and clearly reflects the parliamentary intention that eligibility assessments for services provided to people with an intellectual disability are completed as soon as possible within specified timeframes.**

The Committee believes key stakeholders would be interested in knowing how long it takes for the department to complete an assessment. This information could be demonstrated in a performance measure that sets an annual target for the average median time to complete eligibility assessments.

The Minister informed the Committee that the average time taken in 2003-04 to complete eligibility assessments was 9.85 weeks.³⁶ In developing such a performance measure, the Committee considers it would be more appropriate for the department to report the median time taken to complete an assessment. The Committee believes that the median will provide a more accurate measure of overall performance than the average (arithmetic mean), given the large range of results (in the past year, assessments have been completed in the range of 1 day to 78 weeks).³⁷ There is potential for data to be skewed if cases occur where there are exceptionally lengthy delays.

The Committee recommends that:

Recommendation 7: **The Department of Human Services report as a key performance measure, the median time taken to complete eligibility assessments for people with an intellectual disability.**

³⁶ *ibid.*, p.7
³⁷ *ibid.*

Recommendation 8: **The Department of Human Services give consideration to including a key performance indicator in the employment contracts of staff responsible for undertaking eligibility assessments, reflecting the extent to which assessments are completed within appropriate timeframes.**

2.2 Case management

Case management refers to the process by the Department of Human Services of detailed assessment, identification of goals and strategies and joint development and implementation of an individual care plan.³⁸

In practice, case management includes: planning, referral and coordination activities; the provision of practical assistance, counselling and support for the individual and their family and carers; conflict resolution; and crisis management. These elements need to be managed in the light of individual requirements and personal approaches to care and support should incorporate the continually changing needs of individuals as they progress through life.

The objective of case management is to help people with disabilities become more independent and active in community life. This is done by providing support and help in accessing the services and resources suited to the individual and their family or carers.³⁹

2.2.1 Auditor-General's findings and recommendations

The Auditor-General found that, in 2000, the demand for case management services exceeded delivery capacity.⁴⁰ The department acknowledged this as a problem.⁴¹

The Auditor-General also found the department's model of case management and implementation imposed substantial limitations on the effectiveness of case management.⁴² The department's processes allowed little scope for preventative case management. Specifically the Auditor-General noted that:⁴³

³⁸ Department of Human Services website <http://hnb.dhs.vic.gov.au/ds/disabilitysite.nsf/pages/prog_case>

³⁹ *ibid.*

⁴⁰ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.37

⁴¹ *ibid.*, p.38

⁴² *ibid.*, pp.36–37

⁴³ *ibid.*

- cases were being prematurely closed before the needs of clients were fully met;⁴⁴
- clients with long term but episodic needs did not fit neatly into the service delivery model, resulting in the potential for higher levels of support and assistance than would be required otherwise;
- identification of clients likely to require repeat case management services was not occurring;
- case management services were not regularly provided to people with non urgent needs, representing lost opportunities to prevent crisis situations in the future;
- delays in the provision of services created a further risk, because the needs of clients and carers could escalate prior to services being eventually received; and
- clients re-entering the system due to their needs changing created inefficiencies within the department.

The Auditor-General recommended the department amend its case management model to better match services to the needs of people with an intellectual disability, including those people at risk of regularly returning for case management as a result of circumstances or personal characteristics.⁴⁵

2.2.2 Response by Department of Human Services

The department acknowledged that disability services should place greater emphasis on meeting the needs of those clients who do not benefit from short-term intervention and whose circumstances or personal characteristics mean they are at risk of returning regularly for case management. A return to case management may result from the premature closing of a case or lack of monitoring. The department planned to change its case management processes in order that clients whose needs are assessed as being likely to change significantly, or who have long-term but episodic needs, would be able to receive active monitoring and follow-up without making a new request for assistance.⁴⁶

The department advised it would develop quality improvement strategies, including instituting an extensive review of case management processes and standards, refining standards, developing a practice quality audit tool to cover several practice domains,

⁴⁴ The audit noted that almost 50 per cent of clients returning to the department in 1999-2000 for case management services were people whose cases had been closed within the previous 12 months, Victorian Auditor-General's Office, *Services for people with an intellectual disability*, November 2000, p.37

⁴⁵ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.37; Victorian Auditor-General's Office, *Report on Public Sector Agencies*, June 2003, p.4

⁴⁶ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.38

including case management, and conduct a practice quality audit of a sample of cases in each region.⁴⁷

2.2.3 Subsequent developments

(a) Individual planning and support

The Department of Human Services told the Committee the Auditor-General's findings in relation to case management indicated that the case management approach adopted by the department in the past did not focus on individual needs and did not lead to a review process.⁴⁸ The department's response has been to develop the Individualised Planning and Support (IP&S) Strategy, which is a different approach compared to case management. Under this approach, information gathered through the case management processes will be captured and used to enhance planning, monitoring and service provision for people with a disability.

The department emphasised that this was a new approach that involved working more closely with the individual and family to first develop a range of support options and then attach resources to specific support needs.⁴⁹ The individual planning and support approach was introduced in 2004 and will initially impact on about 900 clients. The new approach places emphasis on developing services to suit an individual, rather than fitting individuals into existing services as previously occurred with the case management approach.

One third of these packages were targeted to people being cared for by ageing carers (defined as over 65) with priority being given to: sole carers, those with associated medical conditions that impact on their ability to provide support to the person with a disability; and carers where the person with a disability has complex support needs.⁵⁰ Also a number of packages, approximately 50, were targeted at people who wanted to move out of shared supported accommodation for a variety of reasons, including incompatibility with other residents they were sharing accommodation with.⁵¹ The Committee noted that this will free up some accommodation places without actually creating new ones.

The Auditor-General advised the Committee the department's implementation of the Individual Planning and Support Strategy has included development and implementation of statewide guidelines, revision of the Good Practice statement (to be issued to Disability Client Services Teams and the funded non-government sector) and

⁴⁷ *ibid.*

⁴⁸ Mr A. Rogers, Executive Director, Disability Services, Department of Human Services, transcript of evidence, 28 June 2004, p.5

⁴⁹ *ibid.*

⁵⁰ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.3

⁵¹ Ms B. Boland, Director, Community and Individual Support, Department of Human Services, transcript of evidence, p.11

allocation of growth funding in 2003-04.⁵² The Auditor-General also confirmed the department's intention to conduct a strategic review of Disability Client Services' functions in 2004.

(b) Client relationship information system

The Committee was advised that ultimately the department intends to develop a new client relationship and management model that embeds, in business practice, the individual as the focus of all service delivery. The roll out of the department's client relationship information system (CRIS) is important in achieving this goal.

Currently, the department uses a system called DISCIS which generates the service needs register. The service needs register, or what is commonly called the waiting list, categorises people as urgent, medium and low priority and according to the department '*just queues people for services*'.⁵³

CRIS, which will replace DISCIS, promises an improved data system that will provide a more consistent understanding of people's support needs. CRIS will register the broad support needs of individual clients, as identified through the individual planning and support framework, and include informal as well as formal requirements.⁵⁴ CRIS will facilitate identification by the department of those clients whose needs are assessed as being likely to change significantly or who have long-term but episodic needs and enable the department to provide active monitoring and follow-up without the need for clients to make new requests for assistance.

As the CRIS system will be available to the non-government sector to use as a client support needs case management system, the department will have a more comprehensive and '*more consistent understanding of people's support needs*'.⁵⁵

The Committee was advised that the CRIS system was still being developed.⁵⁶ The need for people to undergo eligibility and service needs assessment, or to apply for accommodation support will not change under CRIS.⁵⁷

⁵² Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.4

⁵³ Mr A. Rogers, Executive Director, Disability Services, Department of Human Services, transcript of evidence, 28 June 2004, p.7

⁵⁴ Ms B. Boland, Director, Community and Individual Support, Department of Human Services, transcript of evidence, 28 June 2004, p.7

⁵⁵ Mr A. Rogers, Executive Director, Disability Services, Department of Human Services, transcript of evidence, 28 June 2004, p.6

⁵⁶ *ibid.*

⁵⁷ Ms B. Boland, Director, Community and Individual Support, Department of Human Services, transcript of evidence, 28 June 2004, p.7

(c) Training for carers and case managers

Providing quality training to staff is one way to increase the effectiveness of the department's Individual Planning and Support Strategy. Training is very important in achieving quality outcomes. Training enhances confidence and reduces the risk of inappropriate decisions resulting in harm or distress. Staff training in working with people from diverse cultural and linguistic backgrounds is also important to ensure pockets of the community are not inadvertently marginalised.

The department has commenced redevelopment of the induction program and case planning training has been commissioned through RMIT using the individual planning and support approach for each region for implementation in 2004.⁵⁸

Between February and April 2004, 33 Disability Client Services staff from across Victoria participated in cross cultural awareness training run by Action on Disability within Ethnic Communities. Training was accredited and aligned to a number of competencies in the Community Services Training Packages including CHCCS405A – Work effectively with culturally diverse clients and co workers.

Working with people from culturally and linguistically diverse backgrounds is currently included as part of the underpinning knowledge that must be covered for all the national competencies which are part of either: Certificate III, IV, Diploma, or Advanced Diploma which are the qualifications that may be used to train disability services staff in government or non-government services.⁵⁹

(d) Quality Improvement Strategies

In Victoria, 14.4 per cent (271 of 1886) of total service outlets had been independently reviewed (comprehensive and abridged) against the Commonwealth State/Territory Disability Agreement (CSTDA) service standards in 2002-03, whereas 88 per cent (1660 of 1886) of the total service outlets across both government and non-government providers had been quality assured in 2002-03 through self assessment against the Victorian Standards for Disability Services.⁶⁰

⁵⁸ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.4

⁵⁹ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, pp.3-4

⁶⁰ Productivity Commission, Report on Government Services, 2004, p.13.31

2.2.4 Issues of concern

(a) Individualised planning and support – implementation

Several submissions claimed that the department's move to the individualised planning and support model was little more than a name change, and that not much had changed in practice.⁶¹ For example, the need for clients to reapply for services, even for predictable developments, has not changed.⁶²

The Committee was informed that the department already has in place, through the Intellectually Disabled Person's Services Act, a set of very strong principles and it is not the department's approach to individual planning that needed changing, the problem involved the *implementation* of the existing principles:⁶³

It is not the principles that need reinventing, but their effective implementation that must be addressed. A case manager renamed a support and choice planner will not do the job of individualised planning any more effectively unless they have good professional skills, adequate supervision and work in a climate that supports the capacity and aspirations of people with intellectual disabilities.

The Committee was advised that the current Act contains sound principles for case management, but to date the department has not been able to achieve effective implementation.⁶⁴

The effective implementation of policy is one of the major shortcomings of the department. The directions for intellectual disability services in Victoria are similar to those found across all States and Territories. Like the other States, Victoria has encapsulated its visions in a disability plan, but unlike other states, particularly WA, it cannot report a long term history of consistent effective implementation of the plan nor significant progress towards its achievement.

The Committee believes that more needs to be done to ensure that the policy direction taken by the department and underpinned by the IDPS Act can be successfully implemented in Victoria as it apparently has been in other states.

The Committee's recommendations made throughout this report collectively seek to remove barriers to more effective, more efficient, implementation of the principles set out in the IDPS Act.

⁶¹ Dr C. Bigby, submission no. 9, pp.2–3; Victorian Advocacy League for Individuals with a Disability Inc., submission no. 8, p.2

⁶² Ms B. Boland, Director, Community and Individual Support, Department of Human Services, transcript of evidence, 28 June 2004, p.7

⁶³ Dr C. Bigby, submission no. 9, p.2

⁶⁴ *ibid.*, p.1

The Committee notes that the government proposes to repeal both the Intellectually Disabled Persons' Services Act and Disability Services Act, with new legislation to be enacted (see chapter 6).⁶⁵ The government proposes that the new legislation contain both broad principles and principles specific to the provision of disability services and supports drawn from the State Disability Plan, the *Intellectually Disabled Persons' Services Act* 1986 and the *Disability Services Act* 1991.⁶⁶ The need for effective planning has also been reinforced in the government's review of disability legislation, which recommended that the legislation be amended to include the principles which should underpin a framework for individual planning.⁶⁷

(b) Efficiency in individualised planning and support

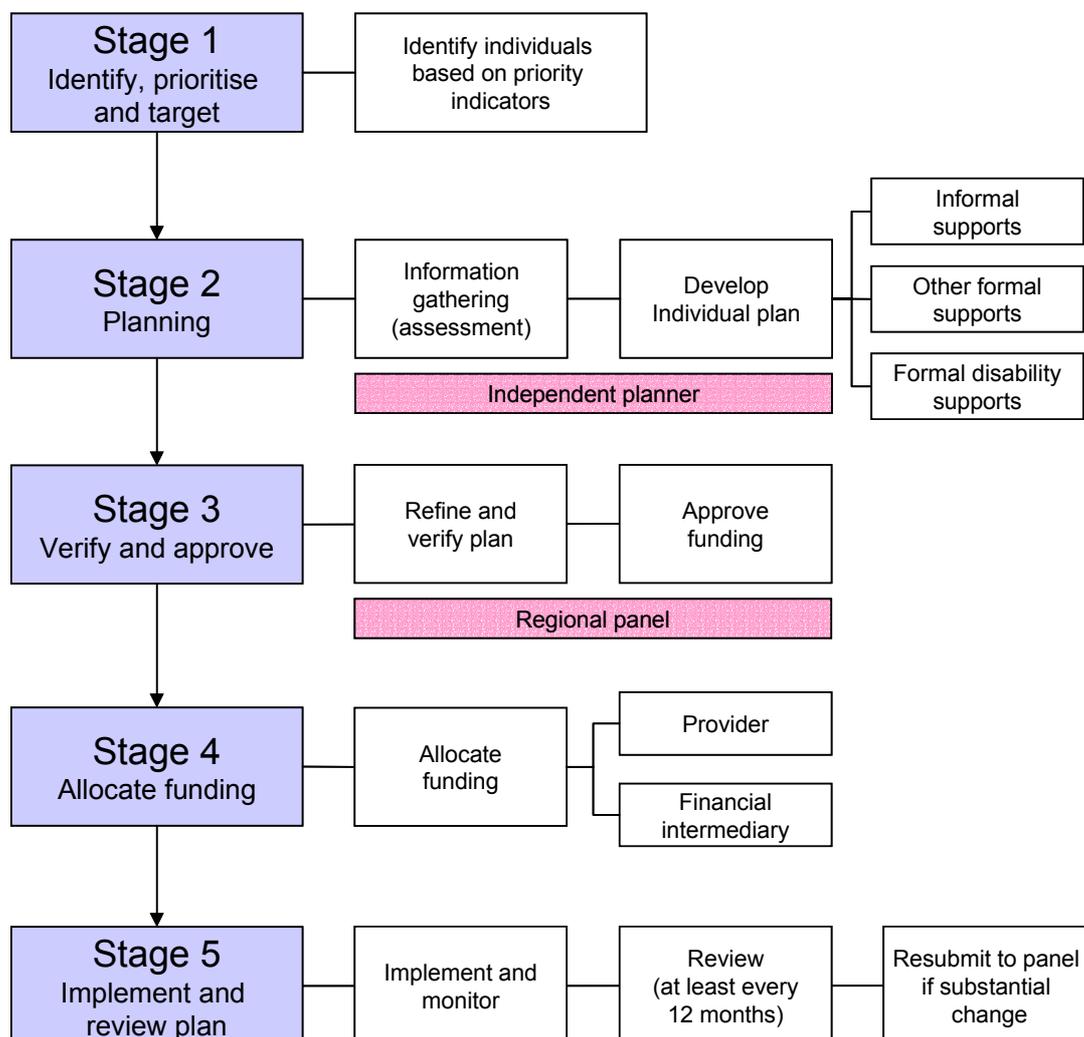
Exhibit 2.4 shows how the individualised planning and support approach is implemented:

⁶⁵ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.2

⁶⁶ *ibid.*

⁶⁷ *ibid.*, p.34

Exhibit 2.4: Individualised Planning and Support Approach – process diagram



Source: Minister for Community Services' response received 10 August 2004, to the Committee's request for additional information

The process comprises five stages and a number of different people are involved at each stage. The complexity of the process reflects the significance of decisions on people's lives and can be vindicated by the need to ensure accountability and provide review and check points within the process.

Nevertheless the Intellectual Disability Review Panel (IDRP) was critical of the number of people involved in the process, and highlighted the potential for key decisions to be made by people who are not acquainted with the individual about whom decisions are made.

The Committee was interested to learn that the process can be implemented slightly differently in different regions. The process in one region was outlined to the Committee.⁶⁸

There are identified planners for support and choice who go out and meet with the person and the people around that person and develop a plan about what should be happening to develop that person intellectually, emotionally, socially and with a skills base. They develop a comprehensive plan. (STAGE 2 of above diagram)

That plan then goes to a second employee whose job is to cost the plan. Once the plan has been costed there are three more people who sit as a panel. Their job is to look at the way the plan has been costed and to approve the funding in relation to the cost of the plan. (STAGE 3 of above diagram)

There is then a sixth person whose job is to broker the service if the plan has been approved. (STAGE 4 of above diagram)

In summary:⁶⁹

there are six people who look at an individual's plan, five of whom may never have met the person about whom they are making decisions and none of whom except the planner has done anything yet – the person has not received any services yet ... and it does not matter whether you are talking about a \$5000-a-year plan or a \$250 000-a-year plan.

The Committee recognises that the move to individualised planning and support represents a positive effort to improve service delivery; however it was concerned by the evidence given by the Intellectual Disability Review Panel and key advocacy groups and individuals indicating implementation of the strategy has fallen short of expectations.⁷⁰ The Committee's concerns were consolidated by evidence provided to the Committee of cases in which it was alleged departmental officers, who may have had limited training and little or even no contact with the client, have been responsible for decisions made during the individual planning and support process.⁷¹

The Committee is also concerned that where a system involves a large number of staff in the decision making process, especially where certain staff may be inexperienced, it can unnecessarily prolong ultimate decisions on a client's future to the potential detriment of the client.

⁶⁸ Ms S. Tait, President, Intellectual Disability Review Panel, transcript of evidence, 29 June 2004, pp.3–4

⁶⁹ *ibid.*, p.4

⁷⁰ Council of Intellectual Disability Agencies, Annual Report 2003-04, pp.10–11; Victorian Advocacy League for Individuals with a Disability, submission no. 8, p.3; Gippsland Carers Association Inc, submission no. 2, p.3

⁷¹ *ibid.*

Consequently, the Committee is not convinced that the current process is the only or necessarily the best way to deliver individual planning and support. Exploration of alternatives is required. However, the Committee also accepts that the move to individualised planning and support is a new strategy and it is probably premature to determine how effective it is overall, notwithstanding that some amendments will be likely, given the practical application of the new approach. The Committee agrees with the principle that the level and type of support provided to individuals should reflect their needs, as distinct from the previous approach by the department of allocating clients to departmental services where the clients best fitted. The implementation of the new approach appears to be the main concern.

It was suggested to the Committee that a more personalised approach could be achieved by maintaining continuity in client contact throughout the process and that this continuity could be achieved through formal introduction of assistant decision makers. They would have the authority and responsibility and be free of any conflict of interest to support individuals in making and monitoring decisions about their future. The (former) President of the Intellectual Disability Review Panel explained that:

The notion of being able to have probity and appropriate responsible money management is a clear thing, but if we are talking about having value for public money, should we not be talking about having one person who has a budget and is able to develop a plan, is able to, if you like, own the plan with the person who is affected by the decision and their family and their associates, who knows the area, who can broker it and do the whole job in one, and then that notion of there being corporate or collective responsibility for what has been decided?⁷²

This aspect is particularly important as it can involve a high degree of specialist skills to be able to communicate with, interpret and articulate the needs and preferences of persons with a severe intellectual disability. This process cannot necessarily be achieved by a panel.

The Committee has been advised that better practice would be for a person or organisation independent of both the department and the service provider to do the planning for a person with an intellectual disability. Under this model, the need for process checks is reduced because the planner is independent. However, formal guidelines and processes would be needed to ensure the person or organisation is accountable. Issues of decision making and advocacy are further discussed at section 3.3 of this report.

⁷² Ms S. Tait, President, Intellectual Disability Review Panel, transcript of evidence, 29 June 2004, p.4

The Committee recommends that:

Recommendation 9: **The Department of Human Services, after a reasonable period of time, evaluate and report on the effectiveness of the individualised planning and support approach, against the principles contained in the *Intellectually Disabled Persons' Services Act 1986* and the State Disability Plan.**

Recommendation 10: **The Department of Human Services investigate the potential benefits of providing specialist independent support workers with the capability of working individually with a person with an intellectual disability to help identify and communicate the individual's needs, desires and decisions. The trained support worker should be independent of family, the Department of Human Services and government decision making processes.**

2.3 Long term planning for individuals – general service plans

Once eligibility has been established, an individual is entitled to have a general service plan prepared. The *Intellectually Disabled Persons' Services Act* requires service plans to be prepared for individuals in shared supported accommodation, institutional care or day programs, or on request.⁷³ Preparation of a general service plan must be a consultative process with the eligible person, primary carer and any other persons the Secretary of the Department of Human Services considers appropriate.⁷⁴

These service plans must be prepared '*within a reasonable amount of time*' where a request has been made for a general service plan.⁷⁵ If a request has not been made and a person is seeking admission to or has been admitted in an emergency to specific services, the Secretary must ensure that a plan is prepared within 60 days.⁷⁶ These plans must be reviewed at least annually for people living in institutions, five-yearly for others and may be reviewed sooner if needed.⁷⁷

The purpose of the plan is to provide life long planning for an individual. Most of the issues within the service plan relate to accommodation and ageing.

⁷³ *Intellectually Disabled Persons' Services Act 1986* Part 3, s.9(1-3)

⁷⁴ *ibid.*, s.9(5-6)

⁷⁵ *ibid.*, s.9(1-3)

⁷⁶ *ibid.*

⁷⁷ *ibid.*, s.10, and Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.39

2.3.1 Auditor-General's findings and recommendations

The Auditor-General found that the department had limited capacity to support and plan for the future needs of people with an intellectual disability.⁷⁸ The department's system did not fulfil the intended purpose and benefits of a statutory life planning process for all people with an intellectual disability.⁷⁹

The Auditor-General also suggested that the general service plans of clients who had not had recent contact with case management services were likely to be substantially overdue for the statutory five year review.⁸⁰ The Auditor-General also observed that the processes for planning were crisis driven.⁸¹

The Auditor-General recommended the Department of Human Services review its assessment and planning processes as prescribed under the Intellectually Disabled Persons' Services Act.⁸²

The Auditor-General also recommended that the Department of Human Services adopt a risk-based approach to reviewing general service plans, which would enable greatest attention to be given to those people who, without early intervention and assistance with planning, may need crisis support later on.⁸³

2.3.2 Response by Department of Human Services

The department advised it would review the general service plan processes, including focusing review efforts on higher risk clients and implementing quality review strategies. The department also advised that assessment and planning processes outlined in the Act were in need of review given the significant policy and practice developments that had occurred over the last decade (i.e. 1990 – 2000).⁸⁴

The Intellectual Disability Review Panel considered that any amendments to the legislation could strengthen existing provisions to make the plans more effective as tools to deliver quality services to people consistent with the principles of the Act.⁸⁵

⁷⁸ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.40

⁷⁹ *ibid.*

⁸⁰ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.40

⁸¹ *ibid.*, p.4

⁸² *ibid.*, p.40

⁸³ *ibid.*

⁸⁴ *ibid.*, p.41

⁸⁵ *ibid.*

2.3.3 Subsequent developments

(a) Assessment and planning processes

In response to the Auditor-General's recommendation to introduce a risk based approach, the department has issued a revised disability client services manual emphasising the importance of reviewing general service plans at major life transition points.⁸⁶ The manual included revised practice instructions (from January 2002) on planning for services.⁸⁷

The Auditor-General advised the Committee the department was undertaking further work through the Client Service Model Project to strengthen worker capacity to undertake individual planning and early identification of needs.⁸⁸

(b) Support and choice

The Auditor-General reported in 2003 that the department had revised its case management framework to identify key transition points when people were likely to require additional support.⁸⁹

The Auditor-General reported anticipated benefits of the new framework were to:

- emphasise the importance of monitoring the implementation of the individual program plan and the conduct of timely reviews to ensure that crises are prevented and changed needs are addressed early;
- recognise and value the experience of people with a disability, their parents, families and carers as partners in developing and implementing their personal plans; and
- form a basis for quality improvement to case management services, including improved training and supervision, revision to information systems, and development of outcome measures and review systems.

The support and choice initiative was subsequently introduced as a trial for a new way of supporting people with a disability based on the individualised planning and support approach.⁹⁰

⁸⁶ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.5

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ Victorian Auditor-General's Office, *Report on Public Sector Agencies*, June 2003, p.78

⁹⁰ Hon. S. Garbutt, MP, Minister for Community Services, media release, *\$741,000 to support people with a disability in Gippsland*, 16 March 2004

The department advised the approach has a focus on planning with people to consider needs and priorities. Needs are determined after consideration of an individual's existing formal and informal levels of support and the availability of additional measures that may be required.

Support and choice packages include a mix of all, or some, of the following support elements:

- support to move from shared supported accommodation into homes and units;
- support to live at home more independently;
- respite for families with young children with a disability; and
- support for ageing people and respite for ageing carers.

2.3.4 Issues of concern

(a) Assessment and planning processes

It is very important for the department to achieve its vision of early identification of needs. The department should have in place systems that will allow it to anticipate the needs of people with an intellectual disability throughout their life. The Committee heard evidence that suggested the current system remains response and crisis driven.⁹¹

We do not have the same planning approach or the same rights approach [as we do for people without disabilities]. A young child with a disability is expected to go to kindergarten and to school, but when it comes to accommodation planning we do not build our system expecting that young people with a disability will have a right to a choice to access an independent home sometime towards the age of 25.

Our whole system is crisis driven.

We say let us try and provide some resources to families so they can hang on as long as possible, and when that breaks down, or when families give up or when families suffer real hell, then we will have a look at what resources we have for accommodation and prioritise who is at the top of the queue. My view is we have to get into a system that plans and funds in a way that as a community we say young people with a disability will have as a normal part of life – as normal as going to kinder and school – a genuine choice of moving to alternative accommodation by the time they turn 25.

⁹¹ Mr M. Gourlay, Chief Executive Officer, Association for Children with a Disability, transcript of evidence, 29 June 2004, p.4

The Committee also heard evidence suggesting that there has been little effective change at the community level in perceptions of the department's processes which the Auditor-General described in 2000, as tending to react to circumstances rather than being predictive or preventative.⁹²

When the Committee asked the department for their specific view on managing the development of crisis situations, the response was that the individual planning and support approach was seen as having the biggest impact in terms of avoiding or delaying crises or assisting people earlier.⁹³

[We are] aiming to help people earlier and understand the issues they have and the risks they face in terms of their support and build that information into planning.

The Committee is concerned that the well intentioned revised assessment and planning processes are not achieving all the benefits anticipated by the Auditor-General, the community or indeed the department.

(b) Client relationship information system

Implementation of a client relationship information system (CRIS) is an important element of improving planning for services within the Department of Human Services and has the potential to provide more efficient processing, more thorough monitoring, and more appropriate responses to clients' needs than in the past. If realised, these improvements could significantly reduce the severity and growing number of crisis situations. The Committee was told that the system is still being developed.⁹⁴

The Committee considers that once a child is assessed as being eligible for services, the department should assume, and endeavour to anticipate various needs such as access to schooling, home based assistance, aids and equipment, respite, accommodation support and other services. The Committee recognises that the department has intentions to plan for such events, but believes that most of these needs could still be more comprehensively planned.

The Committee supports offering these services at strategic points throughout a person's life. For example, when a young person is identified as needing a wheel chair while they are still growing, the department may reasonably assume that the child will eventually need a bigger wheelchair, or an updated one, a few years hence. Similarly, as the individual becomes older, their accommodation needs will change and this needs to be planned for. Currently, clients must apply and join a waiting list every time they require updated equipment or support. The Committee feels this situation is not entirely satisfactory.

⁹² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.4

⁹³ Mr A. Rogers, Executive Director, Disability Services, Department of Human Services, transcript of evidence, 28 June 2004, p.10

⁹⁴ *ibid.*, p.6

There are potentially two solutions: first, the department could anticipate the needs of people with an intellectual disability and after an appropriate time actively offer new equipment. The Committee considers the client relationship information system could play a role in providing the information and data to do this. Alternatively, an independent advisor/helper to the individual and family could assist in planning and navigation of the department's service and access processes.

For many parent carers, planning for away from home accommodation is a difficult concept to deal with and consequently, it is not until they need help urgently that they contact the department. At this stage the family needs a quick response, but instead they are put on a waiting list. This is obviously disheartening for many families and has the potential to develop into a crisis situation.

In order to minimise or prevent crisis situations, the Committee recommends:

Recommendation 11: **The Department of Human Services analyse the options for improving its ability to predict the needs of people with an intellectual disability and prevent crisis situations from occurring.**

Recommendation 12: **Data from the Client Relationship Information System be used to improve the Department of Human Services' planning for improvements to services for people with an intellectual disability.**

(c) *General service plans and legislation*

The Committee heard from witnesses and through submissions that although general service plans were under utilised, most thought they were a tool worth preserving.⁹⁵ The department's stated view in 2000 was that the legislation prescribing general service plans needed to be reviewed given the significant policy and practice developments that had occurred over the past decade.

The Intellectual Disability Review Panel advised the Committee that it wanted the legislation amended to strengthen the provisions relating to general service plans to make them more effective as tools to deliver quality services to people consistent with the principles of the Act.⁹⁶ General service plans are of a long term nature mapping out emerging needs in the future, whereas individual plans, which should underpin general service plans are of a short term nature, ie. annual plans.

⁹⁵ Parent Carers Support Network Inc, submission no. 4, p.2; Victorian Advocacy League for Individuals with Disability Inc, submission no. 8, p.3

⁹⁶ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.41

The Committee was informed that the department's processes and systems gave inadequate attention to good quality general service plans in both the government and non-government sector and the department was still a long way short of where it should be with the sort of benchmarks the Auditor-General would have expected in the year 2000.⁹⁷

The 2004 review of disability legislation did not make reference to general service plans. Instead the review recommended that individual plans be provided for people with an intellectual disability unless they requested otherwise. In addition, the report further recommended that people with other than an intellectual disability may request access to an individual plan which would form the basis of support provision.

The Committee strongly endorses the need for individual plans, but these plans should not be seen as a substitute for general service plans. Instead, individual plans should be seen as complementary. An analogy to this situation is the development of annual business plans to underpin an organisation's corporate plan.

The Committee recommends that:

Recommendation 13: **The Department of Human Services take into account the significance of General Service Plans in the delivery of quality services to people with an intellectual disability.**

2.4 Providing accommodation for people with an intellectual disability

Although most of the discussion in this section relates to services provided to people with all types of disabilities, people with an intellectual disability represent a large share of those receiving these services. For example, of those people receiving community based accommodation support in 2002, intellectual disability was the primary disability for 71 per cent of people.⁹⁸ For those in congregate care facilities, intellectual disability was the primary disability for 98 per cent of people receiving such services.⁹⁹

In 1991 the Commonwealth State/Territory Disability Agreement (CSTDA) resulted in all accommodation support services for people with a disability becoming the responsibility of the states and territories. In meeting this responsibility Victoria provides accommodation, mostly through shared supported accommodation in community residential units and through home and community based support. The Department of Human Services annual report for 2003-04, recorded there were 4,417

⁹⁷ Mr M. Gourlay, Chief Executive Officer, Association for Children with a Disability, transcript of evidence, 29 June 2004, p.6

⁹⁸ Department of Human Services, *Victorian Services for People with Disabilities 2002: Disability Support Services Provided under the Commonwealth/State Territory Disability Agreement*, August 2004, p.78

⁹⁹ *ibid.*

clients in shared supported accommodation and 668 clients in training centres as at 30 June 2004.¹⁰⁰ According to the Minister for Community Services, as at December 2003 there were a further 3,193 persons waiting for shared support accommodation, of which 1,178 persons were designated as being in urgent need of shared supported accommodation.¹⁰¹ As of April 2004, the average waiting time for a shared support accommodation position to become available was 146 weeks or nearly three years for persons classified as being in urgent need.¹⁰²

These statistics indicated to the Committee that there remains a large unmet demand for accommodation for intellectually disabled persons. In addition, to persons waiting for shared support accommodation there were also a further 1,285 disabled persons waiting for Home First (in-home) support, of which 919 persons were classified as being in urgent need of support.¹⁰³

The Committee acknowledges that the provision of accommodation services is a long term commitment for the government due to longer life expectancies of clients and the situation whereby children with serious disabilities will need a lifetime of care. This aspect is evidenced by the relatively low vacancy rates occurring coupled with the observation from the Auditor-General that twice as many government service clients needed continual support as compared to clients in the non-government sector.¹⁰⁴ These factors make the provision of accommodation costly for the government. Notwithstanding these factors, the demand for disability services continues to grow, especially in line with population growth and the increased life expectancy of aged persons with a disability.

In its report on the 2000-2001 Budget Estimates, the Committee reported that as at 1 July 2000, there were 597 clients in urgent need of shared supported accommodation, 215 clients in urgent need of accommodation support services and 473 clients in urgent need of day programs.¹⁰⁵ According to the Minister for Community Services as at December 2003 the equivalent figures for clients classified in urgent need were 1,178, 919 and 685 respectively.¹⁰⁶

In aggregate, the waiting list for clients in urgent need had expanded by 116.5 per cent in three years. The Committee is aware that the department maintains that most of the clients on the Service Needs Register are already receiving some services from the department and that some clients are on more than one waiting list.¹⁰⁷ The department

¹⁰⁰ Department of Human Services, Annual Report 2003-04, pp.57-58

¹⁰¹ Hon. S. Garbutt, MP, Minister for Community Services, media release, *Record funding on disability services tackles growth*, 23 December 2003

¹⁰² Victorian Council of Social Service, *State Budget 2004-05, Disability Analysis*, 5 May 2004, p.4

¹⁰³ Hon. S. Garbutt, MP, Minister for Community Services, media release, *Record funding on disability services tackles growth*, 23 December 2003

¹⁰⁴ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.58

¹⁰⁵ Public Accounts and Estimates Committee, *Report on the 2000-2001 Budget Estimates*, November 2000, p.285

¹⁰⁶ Hon. S. Garbutt, MP, Minister for Community Services, media release, *Record funding on disability services tackles growth*, 23 December 2003

¹⁰⁷ *ibid.*

also advised that a number of clients recorded on the urgent list are actually waiting to move to other community residential units for a variety of reasons.¹⁰⁸ Even after allowing for these factors, it is indisputable that the level of unmet demand has more than doubled. VCOSS in its 2003-04 State Budget submission described unmet need for disability services in Victoria as '*reaching crisis point*'.¹⁰⁹

The Committee did not evaluate the extent to which the natural growth in the level of persons with disabilities in the community is recognised by the Commonwealth Government in providing funding under the Commonwealth State/Territory Disability Agreement. Nevertheless, this factor is a major contributor to the increase in waiting lists, substantial reductions in which are reliant predominately on funding increases, at both a State and Commonwealth level.

2.4.1 Respite care

The Committee was informed that high levels of unmet demand for shared supported accommodation are impacting on respite care, which would tend to support the suggestion that unmet demand is in a crisis situation.

The Office of the Public Advocate observed that there is an increasing number of severely intellectually disabled persons, including children, currently occupying respite care beds on a permanent basis because they were not provided with any other accommodation options. Such a situation, which relates both to government and non-government respite care facilities, is totally inappropriate. Not only are respite beds, which are in short supply, being occupied to the detriment of carers, but high levels of ongoing support which these permanent occupants need, are not able to be provided. Also, some carers are leaving people with an intellectual disability in respite care for longer periods than agreed upon, as they either feel they cannot cope or are unable to get temporary relief when needed. Conversely, some carers have given up seeking respite care, largely because there is no accommodation available because of permanent residents.¹¹⁰

The Office of the Public Advocate also expressed concern where children permanently living in respite accommodation are being locked in their rooms at night for their own safety.¹¹¹ Anecdotal evidence also suggests there are a range of other problems with respite facilities, including under staffing, inexperienced staff (including issues associated with the medication of clients), behavioural problems, including sending clients with bad behaviour home and the absence of respite facilities for young children with severe disabilities. Other issues involved transport arrangements and inappropriate gender mix in some facilities.

¹⁰⁸ *ibid.*

¹⁰⁹ Victorian Council of Social Services, *Access, Disability Services, 2003-04 State Budget submission*, p.2

¹¹⁰ Community Visitors (Disability Services), Annual report 2002-03, pp.51, 65, 91, 99, 103, 119

¹¹¹ *ibid.*, p.94

The Committee is aware that the department commissioned a consultancy in October 2003 entitled ‘*Review and Redevelopment of Support for Children with a Disability and their Families*’. The scope of the consultancy was partly directed towards children/young people with a disability aged 0-18 years, who were living as long-term occupants in respite care facilities.

The commissioning of this consultancy indicates that the department is aware of the problem with children being placed long-term in respite facilities and for which they do not have a solution. The Committee is not aware of any report or other outcome from this consultancy, including a policy direction.

The Committee believes this is an area that requires urgent attention and service options developed.

2.4.2 Impact of support and choice packages

The support and choice packages, which are tailored to meet the individual needs of people with disabilities, brought together three previous programs, namely Making a Difference, HomeFirst and Older Years and Carer Support. The packages will include a mix of all or some of the following support for people with a disability:¹¹²

- support to move from shared accommodation into homes and units;
- support to live at home more independently;
- respite for families with young children with a disability; and
- support for ageing people with an intellectual disability and respite for ageing carers.

The Committee accepts that the provision of the support and choice packages as a temporary measure for persons waiting for shared supported accommodation is preferable to those persons receiving no assistance at all. However, the Committee also observed that the media release from the Minister for Community Services on 23 December 2003 recorded that 1,285 persons were on the Service Needs Register waiting for *HomeFirst* assistance. Of the 1,285 persons, 919 were classified as urgent. This situation illustrates that not only do disabled persons in urgent need of shared supported accommodation have to wait for long periods of up to three years for accommodation, but they may not receive support in the interim period due to long waiting lists for urgently needed support services. The Minister also referred to 854 persons on the waiting list for day programs, of which 685 persons were classified as being in urgent need.¹¹³

Current waiting list figures were not available to the Committee.

¹¹² Hon. S. Garbutt, MP, Minister for Community Services, media release, *\$741,000 to support people with disabilities in Gippsland*, 16 March 2004

¹¹³ Hon. S. Garbutt, MP, Minister for Community Services, media release, *Record funding on disability services tackles growth*, 23 December 2003

The Committee notes that the *HomeFirst* program which was consolidated with the *Home Accommodation Support* program on 1 July 2002 was intended to allow for persons with an intellectual disability or an acquired brain injury to receive an intensive support service at home.¹¹⁴ Consolidation of the programs was intended to facilitate access of these people to community-based services, including services provided through local government and community health services. The Committee acknowledges the benefit of this support, but it is not a substitute for in-house, shared accommodation whereby severely intellectually disabled people are provided with 24 hour care and attention.

It is of great concern to this Committee that the Auditor-General's finding in November 2000 that '*there continues to be a substantial level of unmet demand for services*'¹¹⁵ still remains relevant in 2004, with the situation deteriorating further as evidenced by the growth in the number of persons on the Service Needs Register.¹¹⁶

Information provided to the Committee on the impact of the level of unmet demand disclosed the following impacts:

(a) Aged carers

According to the Victorian Council of Social Service, approximately one in six persons on the waiting list for shared supported accommodation were cared for by parents aged 75 years or older.¹¹⁷ The Minister advised the Committee that the Department of Human Services does not maintain data on the age of carers.¹¹⁸ However, the Australian Institute of Health and Welfare in 2003 reported that there were 447,900 primary carers for people with a disability in 1998, with 96,700 or 21.6 per cent of carers aged over 65 years.¹¹⁹ Carers in this age group invariably face extreme difficulties in providing constant care to people with an intellectual disability.

Of the 900 support and choice packages allocated in 2003-04, 300 packages were targeted to people being cared for by ageing carers over 65, with priority given to:¹²⁰

- sole carers;
- carers with associated medical conditions that impact on their ability to provide support to a person with a disability; and

¹¹⁴ Hon. C. Campbell, MP, Minister for Community Services, media release, *\$50m new disability deal means one community for all*, 15 September 2000; Department of Human Services, Annual Report 2002-03, p.77

¹¹⁵ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.23

¹¹⁶ Hon. S. Garbutt, MP, Minister for Community Services, media release, *Record funding on disability services tackles growth*, 23 December 2003

¹¹⁷ Victorian Council of Social Service, *Access, Disability Services, 2003-04 State Budget submission*, p.2

¹¹⁸ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.2

¹¹⁹ Victorian Council of Social Service, *Access, Disability Services, 2003-04 State Budget submission*, p.2

¹²⁰ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.3

- carers where the person with a disability has complex support needs.

The Committee acknowledges that this assistance will benefit some aged carers, but will still leave a large proportion of aged carers with a very difficult task in caring for intellectually disabled persons at home, coupled with a significant unmet demand for respite care across the state. Carers in this position need respite care for people with a disability on a regular basis, if they are to continue in a carer's role pending other alternatives, if available.

(b) Housing options

The Committee was informed by the department of the strategy of shifting some people out of community residential units into 'alternative housing' options, usually HomeFirst packages and support and choice packages.¹²¹ The Committee is aware that while this option would enable a limited number of people on the Service Needs Register to obtain accommodation, the subsequent impact is to increase pressure on the 'waiting list' for HomeFirst packages. The strategy, which could have benefits for some individuals who are better suited in a home support environment, has minimal effect on the Service Needs Register.

The department anticipated that up to 100 people currently housed in community residential units would take up the alternative option.¹²² The Committee acknowledges that the government's focus on the 'support and choice' approach will be suitable for a small element of people on the Service Needs Register waiting for shared supported accommodation. However, this approach will not address the overall urgent level of demand for shared supported accommodation which for many people with disabilities is the only viable option. This is particularly the situation where many of these people are being cared for by ageing parents.

(c) State Disability Plan 2002–2012

The State Disability Plan states:¹²³

the Government believes that, as much as possible, people with a disability should be able to choose where they live, with whom and in what type of housing – just like most other members of the Victorian community. The Government is also committed to supporting people with a disability to live in settings that are best suited to their individual needs and wishes.

¹²¹ Mr. A. Rogers, Executive Director, Disability Services, Department of Human Services, transcript of evidence, 28 June 2004, p.11

¹²² *ibid.*

¹²³ Department of Human Services, *Victorian State Disability Plan 2002-2012*, September 2002, p.18

As previously stated, the only viable option for many people on the Service Needs Register waiting for shared supported accommodation is to be placed in a community residential unit. Given the long waiting lists, increasing demand commensurate with changing demographics and the minimal impact of existing strategies to provide alternate settings to shared supported accommodation, the vision contained in the State Disability Plan will continue to be unachievable without a substantial increase in community residential unit capacity for many people with a disability living with families who can no longer provide the level of care they need, even with support.

2.4.3 Commonwealth State/Territory Disability Agreement

The Commonwealth State/Territory Disability Agreement (CSTDA) funds specialist disability services and measures and reports progress on the national framework for people with a disability. The third five year agreement, 2002-03 to 2006-07 was signed off by Victoria in June 2003.¹²⁴

Under the agreement the Commonwealth Government will provide \$640.2 million to Victoria over the five year period, representing on average around 15 per cent of the total funding for disability services. Of the \$910.5 million to be provided for disability services within the Department of Human Services in 2004-05, the Commonwealth Government contribution will be \$128 million or around 14 per cent of the total funding.¹²⁵

The Committee noted advice from the Minister for Community Services in June 2002 which recorded that the funding received from the Commonwealth Government is not directed towards accommodation services for people with disabilities. The funding of accommodation services was seen as a state responsibility.¹²⁶ For 2004-05 the Department of Human Services anticipates spending \$380.9 million on shared supported accommodation, representing 41.9 per cent of the Disability Services budget.¹²⁷ This is \$16.2 million more than was spent on shared supported accommodation in 2003-04.¹²⁸ Notwithstanding this level of expenditure the number of clients in shared supported accommodation is only expected to increase very marginally by 30 clients from 4,435 clients in 2003-04 to 4,465 clients in 2004-05.¹²⁹ This increase will have no impact on the 1,178 clients waiting urgently for shared

¹²⁴ Hon. S. Garbutt, MP, Minister for Community Services and Hon. A. Vanstone, Minister for Family and Community Services, joint media release, *Commonwealth and Victoria sign disability agreement*, 13 June 2003

¹²⁵ Commonwealth State/Territory Disability Agreement 2002-03 to 2006-07, p.27

¹²⁶ Hon. B. Pike, MP, Minister for Community Services, media release, *State and Territory ministers to pressure Howard Government on disability funding*, 26 June 2002

¹²⁷ Budget Paper No. 3, *2004-05 Service Delivery*, pp.93-97

¹²⁸ Department of Human Services, Annual Report 2003-04, p.56; Budget Paper No. 3, *Service Delivery 2004-05*, p.95

¹²⁹ Budget Paper No. 3, *2004-05 Service Delivery*, p.95

supported accommodation as at December 2003, with demand increasing by up to five per cent per year.¹³⁰

It was apparent that existing funding levels for shared supported accommodation will not address unmet need. Under the current Commonwealth State/Territory Disability Agreement, funding for disability support services is highlighted as a shared responsibility of the Commonwealth, States and Territories. The increase in funding from the Victorian Government for disability services has not been matched by a similar increase from the Commonwealth Government, despite the shared responsibility. The Committee considers that some scope could exist to request the Commonwealth Government to provide additional funding to assist in reducing the number of persons on the Service Needs Register by providing more accommodation in community residential units.

The Committee recommends that:

Recommendation 14: **The Victorian Government seek to renegotiate the Commonwealth State/Territory Disability Agreement with a view to obtaining increased funding for reducing the waiting lists for shared supported accommodation.**

2.4.4 Action taken by the Department of Human Services to address accommodation demands

Actions taken by the department to address unmet demand for accommodation since the Auditor-General's report in November 2000 include:

(a) Increased funding

Since 1999, funding on disability services has increased by \$270 million, part of which has been diverted towards accommodation services. Between 2001-02 and 2004-05 funding for the Shared Support Accommodation output has increased from \$317.1 million actual to a budget of \$380.9 million in 2004-05, representing a 20.1 per cent increase.¹³¹ The extent to which this increase was absorbed in employee expenses as distinct from the provision of additional accommodation was unclear. However, the Committee noted that over the same period the number of clients in shared supported accommodation increased from 4,242 in 2001-02 to an anticipated 4,465 in 2004-05, representing an increase of 223 clients or 5.3 per cent.¹³² It was apparent to the Committee that the increase in beds has not kept pace with the number of clients on the urgent list for accommodation.

¹³⁰ Hon. S. Garbutt, MP, Minister for Community Services, media release, *Record funding on disability services tackles growth*, 23 December 2003

¹³¹ Budget Paper No. 3, *2002-03 Budget Estimates*, p.83; Budget Paper No. 3, *2004-05 Service Delivery*, p.95

¹³² *ibid.*

(b) Support and choice packages

In the past, government support for people with a severe disability consisted of only two options, namely placing people in congregate care in large institutions such as the Kew Cottages or others remained at home with minimal government assistance.

Since the change of government policy several years ago, which resulted in the closure or phasing out of congregate care in favour of community care, the department offers a range of packages designed to provide alternative options. Apart from the very important aspect of designing packages more suited to individual needs, the packages are also directed at reducing the level of unmet, urgent demand recorded on the Special Needs Register. Packages and strategies currently available include:

- **HomeFirst** – designed to provide a range of support to enable clients to continue living in their own home, which may be a family home, bungalow, caravan, rented or public housing. Support could include assistance with personal care needs, health care, household tasks including cooking, financial assistance, public transport and various other forms of assistance.¹³³

The Committee understands there was a two year waiting list for these packages at December 2003.¹³⁴

- **Making a Difference** – is a family focused program designed to assist family members in caring for persons with significant difficulties and high support needs. Case managers are assigned to each family receiving assistance which is provided in the form of information on available services and support options, co-ordination of services and resources to support the family, family counselling and support, future planning and advocacy. Discretionary funding is also provided for additional support, such as household aids and building modifications.¹³⁵ This program is funded by the department and is delivered by various non-government agencies and community health services across Victoria. Respite services can be provided by private sector agencies with funding from the program.¹³⁶
- **Day Programs** – which are usually delivered by community health services and non-government agencies, provide adults with a disability especially residents in community residential units, the opportunity to develop skills, access education, participate in leisure and recreation activities and generally

¹³³ Department of Human Services, HomeFirst Information Handbook, 2003, p.5

¹³⁴ Hon. S. Garbutt, MP, Minister for Community Services, media release, *Record funding on disability services tackles growth*, 23 December 2003

¹³⁵ Department of Human Services, Disability Services, Making a Difference program, on website, <http://hnb.dhs.vic.gov.au/ds/disabilitysite.nsf>

¹³⁶ *ibid.*

enhance their quality of life and independence.¹³⁷ There are waiting lists for such programs.¹³⁸

- **Signposts for Building Better Behaviours** – The 2004-05 budget contained \$1.43 million to introduce this program which is designed to help more parents manage the difficult behaviours of children with a disability. The Commonwealth Government will provide \$4 million over four years towards the program, which is designed to assist over 3,000 families to better manage problem behaviours at an early stage before such challenging behaviours escalate to the stage whereby such children and emerging adults require more intensive and costly support, including other accommodation options.¹³⁹ The Committee is aware that the department has initiated many programs over the years aimed at addressing challenging behaviour, such as the Behaviour Intervention Support Teams (BIST). While the Committee welcomes this new initiative, the success of any programs will depend on the skills of departmental staff, recognition of the environment in which people with an intellectual disability live, and the special circumstances of autistic young men.
- **Early Choices Program** – provision of flexible respite and tailored support to families who have a child with a severe disability and high support needs, from birth to school entry age.¹⁴⁰
- **Family Choice Program** – provides home based support to families of children and young people with high ongoing medical needs and/or dependence on medical technology. The program is designed to enable these children and young adults to continue living with their families and reduce hospital stays where possible.¹⁴¹
- **Continuity of Care Program** – aimed at supporting families through case management and discretionary funding in caring for children or young persons with sensory, intellectual disability or acquired brain injury as defined under the Disability Services Act. The capacity to provide case management under this program is limited. In practice, many families are provided with case management under the Making a Difference Program with the Continuity of Care Program providing the discretionary funding.¹⁴²

Apart from the above programs there are also a range of short-term intensive assistance and other specialist packages designed for specific circumstances.

¹³⁷ *ibid.*

¹³⁸ Hon. S. Garbutt, MP, Minister for Community Services, media release, *Record funding on disability services tackles growth*, 23 December 2004

¹³⁹ Hon. S. Garbutt, MP, Minister for Community Services, media release, *New parenting program helps children with disability*, 27 August 2004

¹⁴⁰ Department of Human Services, *Flexible Support Packages Guidelines, Disability Services*, September 2003, p.17

¹⁴¹ *ibid.*

¹⁴² *ibid.*

The offering of support and choice packages including *HomeFirst* packages, has enabled some people with an intellectual disability to move from shared supported accommodation into homes and units. Other clients who would have been on the Service Needs Register received support which enabled them to live independently at home or with the assistance of carers, predominately parents. However, this assistance has had a very marginal impact to date on the Service Needs Register for people needing urgent accommodation and for which support and choice packages do not adequately address their needs.

The Committee acknowledges that the support and choice packages are a relatively new strategy and the long-term impact of such a range of programs and packages on the Service Needs Register is yet to be determined.

(c) Disability Housing Trust

The 2004-05 Budget provided \$10 million over three years to establish a Disability Housing Trust. The trust will involve a partnership between not-for-profit non-government housing providers, local government and private investors. The department anticipates this initiative will deliver housing opportunities for at least 100 persons with a disability, some of whom are currently on the Service Needs Register.¹⁴³

(d) Improving disability support services – 2004-05 budget

The 2004-05 Budget provided an additional \$27.1 million over four years to assist people with disabilities, including those with an intellectual disability, to live more independently in the community.¹⁴⁴ Carers are to also receive greater assistance to maintain family members with a disability in their own homes. The Committee acknowledges that assistance of this nature will either delay or remove the need of some people to be placed on the Service Needs Register.

The Committee acknowledges the considerable benefits for clients arising from the redevelopment of Kew Residential Services. The Kew redevelopment which was announced in May 2001 will eventually over an eight year period relocate 380 residents into community housing with intensive 24 hour support.¹⁴⁵ The relocation of residents will effectively result in a shift from congregate care in an institution to community housing, predominately in community residential units. Changing the type of accommodation will have virtually no impact on the Service Needs Register, as the Committee notes that the projected increase of 30 beds in shared supported accommodation between 2003-04 and 2004-05 represents the effect of relocation of former Kew residents mostly to community residential units.

¹⁴³ Department of Human Services, *2004-05 Victorian Budget Information Kit*, 4 May 2004, p.25

¹⁴⁴ Budget Paper No. 3, *2004-05 Service Delivery*, pp.275–276

¹⁴⁵ Mr G. Jennings, MLC, Acting Minister for Community Services, media release, *Redevelopment of Kew Residential Services on track*, 5 August 2004

The Committee is aware of the government's commitment in 2001 that all proceeds from the redevelopment of the Kew site would be applied towards services for persons with a disability. It therefore remains in the government's interest to maximise the proceeds available from the redevelopment.

The Committee recommends that:

Recommendation 15: **The Department of Human Services, for accountability purposes, record separately in its annual report the extent to which proceeds from the redevelopment of the Kew Residential Services (formerly Kew Cottages) site have been applied towards additional services for people with a disability, as distinct from other budget increases for disability services.**

2.4.5 Meeting demand

The department recognises that meeting demand continues to be a significant pressure:¹⁴⁶

at the moment and in the past we have demand that is greater than our supply of resources. But within that we aim to apply the resources we have in a fair and equitable manner.

The pressures created by unmet demand, coupled with insufficient resources, risk affecting the quality and effectiveness of the individualised planning and support initiative. The department is conscious of the potential for inconsistent responses to resource and demand pressures to impact on the quality of its services. It has been noted in this report that a recent pricing review claimed there was no scope for efficiency gains with disability services.

The Committee commends the department on developing a range of programs and packages to provide alternative strategies to meet individual needs, irrespective of the shortcomings identified in this report. Nevertheless, it would appear that the impact of these strategies will only serve to stabilise the size of the Service Needs Register with a very large unmet demand remaining for shared supported accommodation, day programs and HomeFirst.

Addressing the unmet demand for shared supported accommodation in community residential units for up to five persons with a disability, presents a major challenge for the department. Staff employed in community residential units must provide a 24 hour service. The department estimates the recurrent cost of maintaining an individual person with severe disabilities in a community residential unit at \$85,000 per year. At

¹⁴⁶ Mr A. Rogers, Executive Director, Disability Services, Department of Human Services, transcript of evidence, 28 June 2004, p.7

the 2004-05 estimates hearing with the Minister for Community Services, reference was made to an annual cost of \$93,700 in maintaining a bed in government shared supported accommodation, as compared to \$63,700 in the non-government sector.¹⁴⁷ The government system provides for some of the most profoundly and severely disabled persons in the community and there is an additional cost associated with their high maintenance care.¹⁴⁸

Irrespective of the veracity of the figures, based on five residents in a community residential unit, the Committee estimated the annual recurrent costs borne by the department in maintaining such a unit would be in the vicinity of \$450,000. Even after allowing for the relocation of some persons on the waiting list for shared supported accommodation, the recurrent cost of eliminating a waiting list of 1,000 persons would be in the vicinity of \$90 million per year.¹⁴⁹ On top of this amount are the capital costs of acquiring at least another 200 community residential units. Another factor is that through providing more accommodation in community residential units, this would also place pressure on the department to provide more day programs for these residents. As stated previously, there is also a large urgent unmet demand for day programs.

Capital funding could potentially be available from the department's accumulated balance in the State Administration Unit and new asset initiatives provided in the State Budget. An approach could also be made to the Commonwealth Government to assist with funding to meet unmet demand.

The Committee is also aware that some community residential units are public housing stock owned by the Office of Housing within the Department of Human Services. There may be some scope to utilise more of this stock.

The Committee recognises that the provision of accommodation in community residential units is not the best outcome in all circumstances, a factor which is recognised by the department in its introduction of support and choice options. Notwithstanding this, the Committee also considers that the department needs to offer more accommodation in community residential units as this type of accommodation offers the best option for many people on the waiting list.

Another factor which needs to be addressed by the department is the number of aged persons in community residential units for which this accommodation has become inappropriate, but who are not eligible or suited for nursing home or hostel type care. These people may no longer be able to attend day programs. The Committee is unaware of a specific departmental policy for aged people with a severe disability who reside in community residential units. Given the departmental experience with

¹⁴⁷ Hon B. Forwood, MLC, transcript of evidence, 2004-05 Budget Estimates hearing for the Community Services portfolio, 21 May 2004, p.22

¹⁴⁸ Hon. S. Garbutt, MP, Minister for Community Services, transcript of evidence, 2004-05 Budget Estimates hearing for Community Services portfolio, 21 May 2004, p.22

¹⁴⁹ The Committee used a median cost of \$90,000 per bed. Assuming 5 persons per unit, the recurrent cost of staffing 200 more units at a cost of \$450,000 per unit would equate to an annual recurrent cost of \$90 million.

successful relocation of some former residents in Kew congregate care to community based accommodation and support, the Committee considers there is scope for the department to re-evaluate the circumstances of all aged residents in community residential units with a view to relocating into alternative care and providing intensive support suitable to their needs.

The Committee acknowledges that the department has recently commenced work on the design and implementation of a Disability Services Industry Development Plan, which was a priority strategy under the Victorian State Disability Plan. The intention of the plan is to strengthen disability services by '*identifying the key industry elements requiring development and subsequently generating a range of activities and strategies that will contribute to a sustainable and innovative (disability) service sector.*' Project consultants KPMG are to commence work from October 2004 on Stage 1 of the plan which will develop a profile of the disability sector.

The Committee fully endorses the action of the department in commencing this study, which will analyse waiting lists for shared supported accommodation and the strategies available. However, irrespective of this study, which will take some time to complete, the Committee considers that urgent action needs to be taken immediately to address this growing problem.

A key statement in the State Disability Plan 2002-2012 is:¹⁵⁰

The Government is also committed to supporting people with a disability to live in settings that are best suited to their individual needs and wishes.

For many people on the waiting list for shared supported accommodation, placement in a community residential unit is the best option, particularly where aged carers can no longer cope. If the government is to fulfil this commitment, then priority must be given to acquiring more community residential units, in conjunction with further development of other community based accommodation options.

In conjunction with addressing the need for more shared supported accommodation, action must also be taken to strengthen the planning processes to determine whether alternative accommodation options better suit some of the people already resident in community residential units, provided these options can be made available, such as *HomeFirst* packages, for which there is already a large waiting list.

The Committee recommends that:

Recommendation 16: **The Government confirm its commitment to the State Disability Plan by providing sufficient capital and recurrent funding for additional community residential units.**

¹⁵⁰ Department of Human Services, *Victorian State Disability Plan*, September 2002, p.18

- Recommendation 17:** Residents in community residential units be assessed by the Department of Human Services as to whether alternative supported accommodation options would better suit their needs.
- Recommendation 18:** The Department of Human Services develop a policy and associated strategies to address the changed needs of ageing clients in community residential units.
- Recommendation 19:** The Department of Human Services develop and implement a ten year plan for identifying the projected growth in demand for services for people with an intellectual disability, the level of financial and other resources the department will be expected to provide and the implications for the future if demand is not met.
- Recommendation 20:** The Department of Human Services finalise and implement, where appropriate, the recommendations of the consultancy report commissioned in 2003 which includes addressing the future options for children with a disability presently in permanent respite care.

2.5 Individual program planning

The *Intellectually Disabled Persons' Services Act* 1986 requires agencies to develop individual plans for each person using their services. The legislation provides that the preparation of these plans must be a consultative process.¹⁵¹

2.5.1 Auditor-General's findings and recommendations

The Auditor-General found that most providers visited by the audit team, had an Individual Program Plan for clients, but for some services the plans had not been reviewed for several years.¹⁵²

¹⁵¹ *Intellectually Disabled Persons' Services Act* 1986, Part 3 s.11

¹⁵² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.42

The Auditor-General noted that the quality of Individual Program Plans, and the processes for developing and reviewing them varied.¹⁵³ The Auditor-General concluded that overall the plans were not of a standard adequate to meet the legislative intent, with common problems identified as:¹⁵⁴

- absence of objectives and strategies for promoting the development and community integration of clients;
- plans written in a way that did not allow progress on developmental objectives to be assessed;
- plans that did not address identified needs of clients, or reflect a personalised approach;
- lack of documentation of progress and poor processes for reviewing plans; and
- absence of a link with broader goals established in the General Service Plan for each client, often because the current General Service Plan for the client was not held by the service provider.

The Auditor-General believed that there was scope for promoting an improved level of participation of clients and family members in the development and review of Individual Program Plans.¹⁵⁵ The Auditor-General found that there was a limited use of advocates and a scarcity of advocacy programs.¹⁵⁶ The Auditor-General noted that responsibility for funding advocacy programs is shared by the Commonwealth and the Victorian Government.¹⁵⁷

The Auditor-General recommended that the department establish quality improvement strategies to support providers in establishing Individual Program Planning practices as an integral and effective part of the service delivery process.¹⁵⁸

2.5.2 Response by the Department of Human Services

The department indicated that it would establish quality improvement strategies to support providers in ensuring that the Individual Program Planning (IPP) practices are an integral part of the service delivery process.¹⁵⁹

The department stated that it would adopt a partnership approach with the non-government sector to develop quality improvement strategies which will include reviewing and refining practice standards for IPPs, developing a resource kit for IPPs, developing a practice quality audit tool which will cover several practice domains

¹⁵³ *ibid.*
¹⁵⁴ *ibid.*
¹⁵⁵ *ibid.*
¹⁵⁶ *ibid.*
¹⁵⁷ *ibid.*
¹⁵⁸ *ibid.*
¹⁵⁹ *ibid.*

including IPPs, and conducting a practice quality audit of a sample of IPPs from agencies in each region.¹⁶⁰

The department indicated the participation of clients and family members in the development and review of IPPs and the use of advocates, where appropriate, would receive specific attention in the review of practice standards.¹⁶¹ To ensure integrated planning for people with an intellectual disability, a collaborative approach would be encouraged between accommodation and day program service delivery providers.¹⁶²

2.5.3 Subsequent developments

The Committee noted that the department had issued revised practice instructions on Planning for Services in January 2002 (which were incorporated into the Disability Services Client Manual).¹⁶³ The Auditor-General advised the Committee that the department also conducted forums with regional staff to discuss the review of practice instructions.¹⁶⁴

The Auditor-General also advised the Committee that as at January 2004, the department was undertaking further work through the Client Service Model Project to strengthen worker capacity to undertake individual planning and early identification of needs.¹⁶⁵ The Committee understands that as part of the Client Service Model project, the department intends to commence a pilot of a number of business systems by December 2004 and aims to complete the Front End Reception System by May 2005.¹⁶⁶

In line with directions of the Victorian State Disability Plan 2002-2012, the department has developed the Individualised Planning and Support approach (see section 2.2.3). The Auditor-General advised in his follow-up report this approach focuses on person directed planning and adapts both national and international experience to the Victorian context.¹⁶⁷ The first phase of the Individualised Planning and Support Strategy commenced in 2003-04. According to the department, the approach will drive system change in planning and service delivery through the requirement for regular client directed reviews of support provision.¹⁶⁸ The Committee also understands that an evaluation of the individual support and choice approach is currently underway.

¹⁶⁰ *ibid.*

¹⁶¹ *ibid.*, p.43

¹⁶² *ibid.*

¹⁶³ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.5

¹⁶⁴ *ibid.*

¹⁶⁵ *ibid.*

¹⁶⁶ Department of Human Services, *Departmental Plan 2004-05*, July 2004, p.32

¹⁶⁷ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.5

¹⁶⁸ *ibid.*

The Committee noted that the department in its individualised planning and support approach and guidelines (September 2003), has formally recognised the value of individuals, their family members and carers in developing personal plans.¹⁶⁹

2.5.4 Issues of concern

(a) Family and client involvement

Evidence given to the Committee indicated that the intent of choice was not being realised in the case of accommodation services.¹⁷⁰ The Concerned Individuals and Parents Action on Intellectual Disability stated that:¹⁷¹

at present the dominant policy framework in the department is compulsory deinstitutionalisation. This ethos ... compels intellectually disabled people to live as the Government decides, not according to their needs and wishes. At present families and parents are sidelined from this policy context.

The Director, Home and Community Services (MECWA) informed the Committee that:¹⁷²

There is a degree of lack of clarity about how individual planning and support will take place. We as service providers and I certainly feel families and people with intellectual disabilities await that direction and clarity around it. The notion of individualised funding should be well supported as a mechanism by which people can exercise a degree of choice and autonomy over what happens to them and how they live their lives. Some of the current funding mechanisms do not allow for that.

The Committee acknowledges that in many cases the department may be constrained in the options it can offer people with a disability and their families. However, the Committee believes that the reality of limited choices faced by people with disabilities and their families for some services is inconsistent with an approach to planning and service delivery that emphasises choice in the utilisation of services.

¹⁶⁹ *ibid.*

¹⁷⁰ Kew Cottages Parents' Association Inc., submission no. 7, p.2; Ms J. Tops, President, Gippsland Carers Association, transcript of evidence, 29 June 2004, p.29

¹⁷¹ Community and Institutional Parents' Action on Intellectual Disability, submission no. 3, p.1

¹⁷² Ms A. Lyon, Director, Home and Community Services MECWA, transcript of evidence, 29 June 2004, p.8

The Committee recommends:

Recommendation 21: **The Department of Human Services examine the impact of resource constraints on the range of services needed in each region for people with an intellectual disability and their families.**

(b) Quality of individual plans

The Committee noted comments by the Community Visitors in their 2003-04 annual report highlighting variations in the standard of Individual Program Plans across regions:

IPPs and care plans still require a great deal of work and further development to be meaningful and practical. Community Visitors still report inadequacies. [Eastern Metropolitan Region – non-government service providers]¹⁷³

Some improvements have been noted in a handful of houses with realistic and measurable goals evident. However, the majority of IPPs are distinctly pedestrian and written evidence of progress towards achievement of personal goals is hard to find. Community Visitors also report difficulty in accessing plans on some of their visits. [Northern Metropolitan Region – Government service providers]¹⁷⁴

Community Visitors have been impressed with improvements in IPPs and particularly in the key workers' reports in many houses visited. It is hoped that these improved practices will continue to apply in all houses. [Southern Metropolitan Region – Government service providers]¹⁷⁵

Many non-government agencies have implemented new systems for individualised plans (for example 'lifestyle plans' or 'personal outcome measures' – 'POMs') for their residents during the year and Community Visitors are observing changes and improvements. Recording of progress notes on a regular basis positively demonstrates how a person's goals are achieved and often provide meaning to a plan. However, there remain several instances where plans are out of date, overdue for review, or still in need of preparation. [Southern Metropolitan Region – non-government service providers]¹⁷⁶

Community visitors are pleased when they find detailed goals and progress notes, to commend one house on its best practice. Sadly it is

¹⁷³ Community Visitors (Disability Services), Annual Report, 2003-04, p.17

¹⁷⁴ *ibid.*, p.20

¹⁷⁵ *ibid.*, p.24

¹⁷⁶ *ibid.*, p.27

rare to find this quality across the region. [Western Metropolitan Region – Government service providers]¹⁷⁷

Often the IPPs, when viewed during a visit, are out of date. It is annoying to then be advised that they are up to date but that Community Visitors had been given the wrong ones by the staff on duty at the time. The quality varies from agency to agency, and at one house, the IPP for each resident was identical. [Western Metropolitan Region – non-government service providers]¹⁷⁸

Based on the comments of Community Visitors from their visits to service providers during 2003-04, the Committee finds it difficult to accept that Individual Program Plans are being implemented to a uniform high quality in all regions for both government and non-government service providers.

The Committee considers that the department needs to review the reasons why the requirements to prepare and update Individual Program Plans are not being met by some service providers.

The Committee recommends that:

Recommendation 22:

The Department of Human Services:

- (a) examine the reasons some service providers are not preparing and updating Individual Program Plans for people with an intellectual disability, in accordance with departmental guidelines; and**
- (b) take action to redress this situation.**

¹⁷⁷ *ibid.*, p.31
¹⁷⁸ *ibid.*, p.34

CHAPTER 3: SAFEGUARDING INDIVIDUAL RIGHTS

The Principle of Equality:

recognises that people with a disability are citizens who have the right to be respected and the right to have equal opportunities to participate in the social, economic, cultural, political and spiritual life of society.¹

3.1 Rights

People with intellectual disabilities have the right to participate in decisions, make a complaint or have decisions reviewed if dissatisfied. It is often difficult for people with an intellectual disability to exercise these rights without assistance, but it is almost always possible for people with an intellectual disability to communicate and participate in decision making to some extent. Every effort should be made to involve people with intellectual disabilities to the greatest extent possible in decision making affecting them.

The Committee believes carers, parents and the community have a responsibility to be better informed about the rights of people with an intellectual disability and better educated to encourage and support people with an intellectual disability to assert their rights.

A person's freedom is threatened when they are restrained or secluded. The Auditor-General observed that the *Intellectually Disabled Persons' Services Act* 1986 requires that restraint and seclusion can only be used if the strategy is documented in the person's Individual Program Plan and has been approved by an officer authorised by the Department of Human Services, known as Authorised Program Officers, to approve and report on the use of restraint and seclusion.²

Authorised Program Officers are required to provide monthly reports to the Intellectual Disability Review Panel detailing instances where restraint or seclusion has been used. A person with an intellectual disability can seek a review by the Panel of a decision to seclude or restrain them.³

3.1.1 Auditor-General's findings and recommendations

The Auditor-General found that service providers generally complied with the provisions of the Act in respect of the use and reporting of restraint and seclusion, except where they were not aware of the requirements or their applicability. However,

¹ Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002, p.9

² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.43

³ *ibid.*

the Auditor-General also observed that the rights of individuals were not always adequately protected and cited instances where practices created this risk including:⁴

- senior staff in some non-government services acting as Authorised Program Officers without formal authorisation of the department. In these circumstances, the department cannot be assured that the use of restraint and seclusion is approved by people who have an adequate understanding of behaviour management strategies;
- there is variation in the levels of information and justification required by Authorised Program Officers before they are prepared to approve the use of restraint and seclusion;
- regular renewal of Individual Program Plans specifying the use of restraint and seclusion, and the accompanying formal approvals, with little evidence of formal review of the effectiveness or continued appropriateness of the strategy, an absence of consultation with family members and, in some cases, little evidence of a review of the Individual Program Plan itself;
- a lack of awareness by service providers of their obligations to seek approval for, or report the use of, restraint and seclusion; and
- failure to advise clients or their families of their rights to seek an independent review of the decision to use restraint and seclusion. Even if advised, clients in particular, can face difficulties in pursuing the right to have a decision reviewed.

The audit's fieldwork also highlighted some gaps in the framework itself:

- the Act provides statutory authorisation (and protection) to service providers and staff for the use of restraint and seclusion, without the need for consent from the person with a disability or a legally appointed guardian;
- the safeguards offered by the provisions of the Act cover eligible persons only while in government and non-government service settings specified in the Act. This can lead to a situation where an individual is protected while living in a service for people with an intellectual disability, but if moved to another setting such as a nursing home, may no longer be entitled to the same protection;
- the statutory definitions, and accompanying approval and reporting mechanisms, for 'seclusion' and 'restraint' do not cover all forms of these restrictive practices, such as physical restraint or when a person has been placed in a room or other area in such a way that they are unable to leave;
- there is no limit to the amount of time that a person can be placed in seclusion, and the conditions under which seclusion can be used are much broader than those permissible for the use of restraint; and

⁴ *ibid.*, p.44

- although the use of restraint and seclusion must be reported to the Intellectual Disability Review Panel on a monthly basis, there is not a clear legislative mandate for the Panel to monitor or act on reports received.

The audit report recommended that the department's review of legislation consider options for strengthening and clarifying the statutory provisions relating to restraint and seclusion.⁵ The Auditor-General commented that *'the intention of the Act that the rights of people with an intellectual disability be safeguarded is not always realised'*.⁶

3.1.2 Response by the Department of Human Services

The department indicated that it would ensure that the issues in the implementation of statutory provisions in relation to restraint and seclusion are addressed by practice monitoring and quality assurance mechanisms. The department would also ensure that processes are in place so that all Authorised Program Officers are formally authorised, have adequate skills and follow consistent decision making processes.⁷

Regarding strengthening provisions relating to restraint and seclusion, the department indicated that these would be considered in the context of a broader review of the disability legislation.⁸

3.1.3 Subsequent developments

In October 2004, the government released the Review of Disability Legislation, Report of Recommendations. The government's stated view is that the provisions relating to restraint and seclusion in the Intellectually Disabled Persons' Services Act are inadequate and do not provide enough protection for the rights of people with a disability. The report included nine recommendations for amending legislation to address this issue, including the establishment of the Office of the Senior Clinician.⁹

A discussion of the adequacy of the proposed legislation relating to restraint and seclusion is set out in Chapter 6 of this report.

⁵ *ibid.*, p.49

⁶ *ibid.*, p.45

⁷ *ibid.*, p.49

⁸ *ibid.*, p.45

⁹ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.10

3.1.4 Issues of concern

The Sub-Committee's hearings and submission process took place prior to the release of the recommendations of the Review. Hence the views and concerns expressed by the witnesses and in submissions do not relate to the recommendations contained in the Review Report, but to concerns with the existing legislation and the earlier discussion paper released by the Department of Human Services.

In relation to restraint and seclusion, some of the main concerns were:

- the definition of restraint and seclusion under the Act was too narrow. For example, two people could be confined to a room and this would not be considered seclusion;
- the protective framework for individuals is very weak and particularly those living in shared supported accommodation who do not have strong external links with family or friends continue to be at risk of inappropriate restraint and seclusion; and
- the monitoring role of the Intellectual Disability Review Panel is limited. For example, there are no mechanisms for ensuring compliance or sanctioning Authorised Program Officers who fail to report or breach their legal obligations.

3.2 Safety

As noted in the Auditor-General's report, the safety of people with an intellectual disability depends on the adequacy of procedures established by service providers for dealing with the prevention and detection of abuse or neglect, the management of medication, fire safety, and the management and reporting of incidents which may have safety implications.¹⁰

3.2.1 Auditor-General's findings and recommendations

The Auditor-General found that there were two departmental policies on responding to abuse and neglect of people with an intellectual disability. It was observed that the most common response to such matters was to record them in case notes or in an incident report. However, these matters were rarely followed up.¹¹

¹⁰ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.45

¹¹ *ibid.*

Regarding the mandatory incident reporting system, the Auditor-General found that the overall framework for the system was appropriate. However, inconsistent implementation by service providers and poor monitoring by the department reduced its effectiveness in protecting the safety of clients and staff.¹²

The Auditor-General recommended that the department, in consultation with service providers, strengthen procedures in relation to the reporting and monitoring of incidents and the identification and response to indicators of possible abuse and neglect.¹³

3.2.2 Response by the Department of Human Services

The department indicated that its Critical Incident Reporting System was being comprehensively reviewed. The definitions of categories of incidents were to be refined in the context of current policy and practice requirements. A revised incident reporting departmental instruction was to be issued to all disability service providers and the department undertook to work with the non-government sector to ensure effective implementation.¹⁴

The department considered that it has in place effective policies and procedures to respond to instances of abuse and neglect. It believed that the critical incident reporting process, the departmental policy on reporting allegations of physical and sexual abuse to police, and the inclusion of a specific standard in the Victorian Standards for Disability Services has led to a strong and rigorous focus. In addition, the department advised that an agency monitoring framework was currently being considered to enable an independent review of services where required.¹⁵

3.2.3 Subsequent developments

The Committee noted that implementation of the revised departmental Instruction on Incident Reporting commenced in December 2002, to enhance the response to incidents across the department. Training and information sessions on the revised Instruction were held for both government and non-government service sectors across Victoria. The department has established an interim database system for managing and monitoring the response to individual incident reports and complaints, as well as notifications from the National Abuse and Neglect Hotline and is providing integrated reporting and feedback systems for all adverse events brought to the attention of the department. A framework for data analysis has been developed and trialled.¹⁶

¹² *ibid.*, p.46

¹³ *ibid.*

¹⁴ *ibid.*, p.49

¹⁵ *ibid.*

¹⁶ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.6

The Auditor-General was informed by the department that further work is being undertaken to improve data provided to consolidate benchmarks, standards and performance measures. External review of services is being implemented.¹⁷

At the hearing the department advised the Committee that:¹⁸

The review of the guidelines made the categories of incidents quite clear. Some of the reviews we have done have had a look at the processes about incident reporting, but we do not routinely check every agency around the category of reports.

The department further advised that:¹⁹

As part of that review, once the new guidelines were formulated all the agencies were invited to regional forums to go over the requirements and clarify for them what was required under their funding and service agreements.

The department believes that the revised Departmental Instruction has reinforced mandatory reporting of incidents from the non-government sector.²⁰ The Committee noted that since the revision of this instruction and information sessions for funded agencies, the combined number of category 1 and category 2 incidents being reported to the department involving the support of people with a disability in the disability services system increased by 24.8 per cent.²¹

The department has developed an improved data analysis model for monitoring adverse events.

3.2.4 Issues of concern

The Committee is aware that incident reports are not always available for viewing by community visitors. In 2003-04, it was *'very common for community visitors to have difficulty in accessing incident reports on their visits'*.²² Community visitors reported that in some cases incident reports were missing and were told by departmental management that it was due to poor administration practice.²³ In other cases the incident reports were sent to a regional or central office and no copy was kept at the facility.²⁴ The Committee believes that it should be standard practice for community

¹⁷ *ibid.*

¹⁸ Mr A. Rogers, Executive Director, Disability Services, Department of Human Services, transcript of evidence, 28 June 2004, p.12

¹⁹ Mr G. Roach, Executive Officer, Disability Services, Department of Human Services, transcript of evidence, 28 June 2004, p.12

²⁰ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.7

²¹ *ibid.*

²² Community Visitors (Disability Services), Annual Report 2003-04, p.7

²³ *ibid.*, p.45

²⁴ *ibid.*, p.7

visitors to have access to incident reports in all residential services for people with an intellectual disability.

The Committee recommends that:

Recommendation 23: **The Department of Human Services put in place systems to ensure that community visitors have access to incident reports in all residential services provided for people with an intellectual disability.**

In a submission, the Action for More Independence and Dignity in Accommodation (AMIDA) pointed out that the least serious incidents (so called category 3) are not reported outside the service provider.²⁵

The Office of the Public Advocate recognised that there appeared to have been some progress:²⁶

In one DHS region there is now an awareness that staff need education about what to report in detail when incidents occur. The Office of the Public Advocate is unable to say if incident reports are continuing to be under classified or indeed used by DHS for preventative action and monitoring of services.

The Committee recommends that:

Recommendation 24: **The Department of Human Services:**

- (a) emphasise to service providers the importance of:**
 - (i) reporting incidents; and**
 - (ii) keeping records of incidents which can be used to analyse service delivery and ultimately to make improvements; and**
- (b) review the current policy instruction which makes reporting category 3 incidents to Departmental Agency Liaison Officers and case managers, optional.**

²⁵ Action for More Independence and Dignity in Accommodation, submission no. 6, p.2

²⁶ Office of the Public Advocate, submission no. 10, p.3

3.3 Decision-making and advocacy

The statement of principles of the Intellectually Disabled Persons' Services Act provides that:

every intellectually disabled person ... is entitled to exercise maximum control over every aspect of his or her life²⁷ and, [they] have a legitimate and major role to play in planning and evaluating services.²⁸

3.3.1 Auditor-General's findings and recommendations

The Auditor-General found only limited evidence of adequate advocacy arrangements in place to assist people to communicate, and little evidence of people being informed of their rights, or of mechanisms to facilitate client participation in decisions about service delivery, weekly routines or service management.²⁹

The Auditor-General recommended the introduction of more effective mechanisms to better enable people with an intellectual disability to exercise their rights to participate in decisions being made about them, and to make a complaint or have decisions reviewed when they are dissatisfied.³⁰

3.3.2 Response by the Department of Human Services

The department did not comment specifically on the recommendation in the audit report.

3.3.3 Subsequent developments

The Auditor-General reported that the establishment of an independent review complaints process was included in the State Disability Plan. The department indicated that this recommendation appropriately falls within the ambit of the review of the disability legislative framework. In the interim the department has ensured that Authorised Program Officers are in place and trained.³¹

The Committee is aware that the recent report on the Review of Disability Legislation, recommended the establishment of a Disability Complaints Resolution Office. The department believes that this is the best way of ensuring that disability service complaints would receive the dedication and priority they warrant and real results and

²⁷ *Intellectually Disabled Persons' Services Act* 1986, Part 2, s.5(b)

²⁸ *ibid.*, s.5(m)

²⁹ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.47

³⁰ *ibid.*, p.49

³¹ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: *Services for people with an intellectual disability*, p.7

resolutions can be found.³² A discussion of the adequacy of the proposed legislation is set out in Chapter 6 of this report.

3.3.4 *Issues of concern*

The President of the Intellectual Disability Review Panel (IDRP) told the Committee that because some people with an intellectual disability are considered to have no effective communication, they are reliant on others to assert their individuality.³³ Communication is a two way process and requires an able and receptive listener as well as communicator.

*You cannot participate or complain if others think you cannot communicate.*³⁴

Evidence given to the Committee identified a number of issues with this level of reliability on another person; for example that there were no formal processes within the *Intellectually Disabled Persons' Services Act* 1986 for the making of decisions affecting people with an intellectual disability in a way that is fully accountable and free of conflict of interest. It was suggested at the time that the legislation required amendment to facilitate an appropriate appointment process for 'assistant decision makers'.³⁵ The Panel also suggested it could be useful for significant decisions (for example, the statutory service plan) to be automatically reviewed by an independent body and that conducting regular and independent audits could help ameliorate the risk of inappropriate decisions being made.³⁶

The Committee heard there had been limited progress in relation to ensuring people with an intellectual disability have access to an effective complaints mechanism and are encouraged to communicate, and putting processes in place to ensure their concerns are heard.

The Committee was reminded by witnesses that people with an intellectual disability have specific and special needs different to people with physical disabilities.

People with intellectual disability are not a homogenous part of the population. All they have in common might be that they have an intellectual disability, so the ability to which individuals might be able to assert their individuality may depend on their family and their environment and the sort of network they have around them, the sorts of

³² Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.8

³³ Ms S. Tait, President, Intellectual Disability Review Panel, transcript of evidence, 29 June 2004, p.5

³⁴ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.50

³⁵ *ibid.*

³⁶ *ibid.*

*people in their lives who are interested in wanting to, if you like, tap the potential of the person or help the person to tap their potential.*³⁷

*[People] with intellectual disability face specific issues in areas such as communication, exercising choice, decision making and protection. They also experience very different issues regarding access to community and civic life compared to those with a physical or sensory disability.*³⁸

The President of the Intellectual Disability Review Panel in evidence to the Sub-Committee reiterated the response she gave to the Auditor-General's report when it was published saying it was still relevant four years on; that there needs to be legislation that will support appointment of 'assistant decision makers' to facilitate the process of communication for intellectually disabled people.

*In our submission to the legislation [review] we introduced the notion of an assistant decision-maker, not a substitute decision-maker; not somebody whose job is to take over like a guardian or a parent, but somebody whose job is to bring, if you like, as much as possible a conflict-of-interest-free background.*³⁹

The Committee noted the role of assistant decision maker (associate) should not be undertaken by an employee of a service provider, with a range of people such as a family member, friend, advocate or possibly a community visitor performing the role.⁴⁰ The Intellectual Disability Review Panel suggested that key criteria for an associate would include: a knowledge of the person, or the ability to get knowledge about the person; knowledge of the rights of people who have a disability; a commitment to advancing those rights; and no perceived conflict of interest.

The President of the Panel described how this might work in practice and why it was important for this service to be available to people with an intellectual disability:⁴¹

At the coalface there needs to be someone in people's lives to assist decision making, and their key job must be to know the person, to know their environment, to work with the person to enhance their communication, enhance their experience of working out what they like and what they do not like, what risks to take and what not to do. I think some family members can do that really well, and some advocates can do that really well, but some people have neither of those. There needs to be a check and balance in relation to people's lives so that is, if you like, in-built as part of the service system. We say that if someone is receiving special services, then the service provider should have a responsibility to make sure that the person is assisted in decision making by someone who

³⁷ Ms S. Tait, President, Intellectual Disability Review Panel, transcript of evidence, 29 June 2004, p.5

³⁸ Dr C. Bigby, submission no. 9, p.1

³⁹ Ms S. Tait, President, Intellectual Disability Review Panel, transcript of evidence, 29 June 2004, p.5

⁴⁰ Intellectual Disability Review Panel, *Response to the Review of Disability Legislation in Victoria: Discussion Paper May 2003*, September 2003, pp.22–23

⁴¹ Ms S. Tait, President, Intellectual Disability Review Panel, transcript of evidence, 29 June 2004, p.5

will bring, if you like, the right framework and not a conflict of interest in relation to that. That is at that level in relation to them being, if you like, a negotiating partner with the person with the disability...

The Committee recommends that:

Recommendation 25: **The Department of Human Services give consideration to introducing a formal assistant decision maker, where appropriate, for each person with an intellectual disability. The role of the assistant would be to facilitate communication and participation by a person with an intellectual disability in the decision making process to ensure the person’s rights are being advanced.**

3.4 Effectiveness of the Intellectual Disability Review Panel

The purpose of the Intellectual Disability Review Panel, established under the *Intellectually Disabled Persons’ Services Act* 1986, is to strengthen protection and to provide an independent review mechanism.⁴² The functions of the Intellectual Disability Review Panel are discussed in Chapter 6.

3.4.1 Auditor-General’s findings and recommendations

The Auditor-General noted that the role of the Intellectual Disability Review Panel was limited because the Panel does not have determinative powers. The Panel can only make recommendations to the Secretary of the Department of Human Services in relation to issues raised about inadequate or inappropriate performance by the department.⁴³

The Auditor-General concluded that the independent review role envisaged in the Act for the Panel has not been effectively implemented because of:⁴⁴

- limited awareness by clients and carers of a client’s right to a review, leading to few decisions being referred to the Panel; and
- a lack of pro-active review, analysis and action by the Panel in relation to its monitoring of restraint and seclusion.

The Auditor-General’s report recommended that the department’s forthcoming review of legislation consider options for strengthening and clarifying the monitoring role of the Intellectual Disability Review Panel, and the scope of reviewable decisions.⁴⁵

⁴² *Intellectually Disabled Persons’ Service Act* 1986, Part 5, Division 1, ss.27-35A

⁴³ Victorian Auditor-General’s Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.49

⁴⁴ *ibid.*, p.49

3.4.2 Response by the Department of Human Services

The Department of Human Services supported the recommendation and agreed to consider options as part of the review of legislation. The Intellectual Disability Review Panel also agreed with the recommendation.⁴⁶

3.4.3 Subsequent developments

The government proposes that the new disability legislation provide for internal and external review of certain decisions made under the legislation.

A discussion of the role of the IDRP, as specified in the proposed legislation, is set out in Chapter 6. The report of the Review of disability legislation recommends the creation or expansion of a number of agencies for this purpose.

3.4.4 Issues of concern

The main thrust of a submission from AMIDA related to *'a lack of enforceable rights and standards for people with an intellectual disability in relation to the services they receive'*.⁴⁷ AMIDA told the Committee that in their view, *'until a body with determinative powers is established so that service users, their family and advocates can make complaints to an independent referee who can direct the department and Government to take action, there will be little progress and no accountability by services to individuals'*.⁴⁸ A similar view was presented by the Gippsland Carers Association Inc. who advised the Committee that *'the fact that there is no external and independent complaints commission which has the power to act is indefensible and a systemic failure of immense magnitude'*.⁴⁹

A discussion of how well the proposed legislation addresses these concerns and the issues raised by the Auditor-General is set out in Chapter 6.

⁴⁵ *ibid.*

⁴⁶ *ibid.*

⁴⁷ Action for More Independence and Dignity in Accommodation, submission no. 6, p.1

⁴⁸ *ibid.*

⁴⁹ Gippsland Carers Association Inc., submission no. 2 (supplementary), p.3

CHAPTER 4: PROVIDING RESOURCES FOR SERVICES

The Principle of Dignity and Self-Determination (Choice):

is about respecting and valuing the knowledge abilities and experiences that people with a disability possess, supporting them to make choices about their lives, and enabling each person to live the life they want to live.¹

The Committee notes that there had been a significant increase in funding to disability services, with the 2004-05 Budget allocation to disability services of \$910.4 million being \$338.4 million (59.2 per cent) higher in nominal terms than in 1990-2000.² After taking into account inflation, the Committee calculates that the increase in funding has been in the order of 35 per cent since 1999-2000.³

The Auditor-General noted that the department did not maintain a separate budget for services for people with an intellectual disability.⁴ The Auditor-General estimated expenditure on services for people with an intellectual disability based on the percentage of clients in each service area whose primary disability is an intellectual disability.⁵ The Auditor-General calculated that in 1999-2000 expenditure on services for people with an *intellectual* disability was in the order of \$405.3 million, or 70 per cent of the total disability services budget of \$572.1 million.⁶

Based on the methodology used by the Auditor-General, the Committee's broad estimate is that expenditure by the Department of Human Services in 2004-05 on services for people with an intellectual disability will be around \$669.3 million, representing around 74 per cent of the total budget for disability services (see exhibit 4.1).

The Committee noted that people with a disability accommodated by both government and non-government service providers are usually required to pay fees. Fees are usually based on a set share of income or allowances received by residents (such as a percentage of the Commonwealth Disability Support Pension and Rental Allowance). For residents of accommodation provided by government service providers during 2002-03, the Department of Human Services estimated that residents contributed

¹ Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002, p.9

² Department of Human Services, *Disability Services Policy and Funding Plan: 2004-05 Annual Update*, p.15; Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.19

³ Calculated using the All Groups (Melbourne) Consumer Price Index (Source: Australian Bureau of Statistics, *Consumer Price Index: Australia*, ABS Cat No. 6401.0, June Quarter 2004 and previous issues).

⁴ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.20

⁵ *ibid.*

⁶ *ibid.*

approximately 8 per cent (\$7,926) of the costs of providing services in residential institutions and community residential units (\$98,600 and \$97,100 respectively).⁷

In respect of people with a disability who reside in residential institutions or programs operated by the Department of Human Services, the Committee noted that the fees charged for accommodation increased by 12.5 per cent and 2.25 per cent for respite services in September 2004, the first increase since 1994.⁸ Over the same period there has been a 20 per cent increase in the consumer price index.⁹

⁷ Department of Human Services, Regulatory Impact Statement: Intellectually Disabled persons' Services (Fees) Regulations 2004, June 2004, p.9

⁸ *ibid.*

⁹ *ibid.*

Exhibit 4.1: Disability services 2004-05 budget and estimate of budget for services to people with an intellectual disability

Column 1	Column 2	Column 3	Column 2 * Column 3
	Total budget allocation 2004-05	Percentage of people with primarily an intellectual disability	Estimate of budget for people with primarily an intellectual disability 2004-05
Output	(\$ million)	May 2002	(\$ million)
Intake assessment (a)	15.9	48	7.6
Planning and coordination (b)	24.6	48	11.8
Primary support (c)	90.6	(k) 76	68.9
Community participation and inclusion (d)	172.1	73	125.6
Individual support (e)	105.8	71	75.1
Shared supported accommodation (f)	380.9	71	270.4
Specialist services (g)	14.1	81	11.4
Congregate care (h)	79.8	98	78.2
Quality (i)	19.4	(k) 76	14.7
Information and advocacy services (j)	7.2	(k) 76	5.5
Total	910.4	74	669.3

- Notes:*
- (a) *Includes assessments of eligibility, referrals and provision of advice regarding availability of services and service options*
 - (b) *Includes assessment of needs, development of plans, implementation and monitoring of goals*
 - (c) *Covers a range of programs and services including the provision of aids and equipment and supporting primary care given by providing respite for families and carers*
 - (d) *Includes services such as day programs and the Futures for Young Adults program*
 - (e) *Covers a range of individually tailored packages*
 - (f) *Accommodation for groups of people with a disability in community based settings*
 - (g) *Includes assessment, consultation and intervention services for people with highly complex and challenging behaviours*
 - (h) *Centre-based residential accommodation and training services*
 - (i) *Includes activities aimed at improving the quality of services, the provision of competency-based induction and in-service training, research and research funding*
 - (j) *Covers information, assistance and advocacy support to people with disabilities*
 - (k) *Services within this output apply across all disability services, so the overall average of 74 per cent of people with an intellectual disability is used*

Sources: Budget Paper No. 3, 2004-05 Service Delivery, pp.93-97; Department of Human Services, Victorian Services for people with a disability 2002, August 2004, pp.75, 78

While the Committee recognises that the resources allocated to disability services have increased considerably since the time of the Auditor-General's performance audit, there remains a significant number of people that cannot access services when assistance is required.

4.1 Resource allocation to regions

The Auditor-General noted that in 2000-01, the majority of services (70 per cent) were funded through the Department of Human Services' (then) ten regions.¹⁰

To redress historical imbalances and to move towards a needs driven funding model, in 1998 the department established a regional equity approach for the allocation of new and growth funds.¹¹ A regional equity formula calculates notional equity shares of the total budget for each region using information on regional characteristics in terms of population, socio-economic factors, rurality and Aboriginality.¹² The department then allocates new funding in proportion to those equity shares.¹³

4.1.1 Auditor-General's findings and recommendations

The Auditor-General found that the general design of the formula provides a stable and transparent mechanism for long-term adjustment.¹⁴ However, the Auditor-General noted that the impact of the regional equity adjustment process had been limited and that in some regions, total budgets had moved further away from long-run equity share over the three years to 2000-01 despite the use of the formula.¹⁵

The Auditor-General report recommended that higher proportions of new initiative funding be provided to regions whose budgets were substantially below equity share.¹⁶ The Auditor-General commented that the department '*should take into account the extent to which the costs of delivering services in particular regions are affected by the mix of Government and non-Government service provision, whether the region is rural or metropolitan and the need to provide culturally sensitive and appropriate services*'.¹⁷

¹⁰ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.55; In March 2004, the Northern Metropolitan region and Western Metropolitan region were amalgamated, resulting in the number of regions falling from nine to eight (Department of Human Services, Annual Report 2003-04, p.72).

¹¹ Department of Human Services, *Funding and Policy Plan: 2003-06*, p.4.5

¹² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.55

¹³ *ibid.*

¹⁴ *ibid.*

¹⁵ *ibid.*

¹⁶ *ibid.*; *Report on Public Sector Agencies*, June 2003, p.7

¹⁷ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.56

4.1.2 Response by the Department of Human Services

The department indicated that the allocation of a higher proportion of new initiatives funding to regions where budgets are substantially below equity share will be considered.¹⁸ The department also noted:¹⁹

the importance of all regions being able to introduce and consolidate new service initiatives and address needs of new clients are constraining factors in relation to this consideration, particularly given the extent of unmet demand [emphasis added].

4.1.3 Subsequent developments

The Committee noted that the department had adopted an accelerated equity formula in March 2001 which would be applied to shared supported accommodation and day programs.²⁰ Under the formula, those regions with more than 20 per cent above equity share receive half the growth funds for these services, with the other half of funds distributed to those regions with more than 10 per cent below equity share.²¹

The Committee noted that despite the implementation of the accelerated equity formula, it was unlikely that there had been a significant redistribution of resources between regions. The department advised the Committee that:²²

generally it has not had a huge impact in terms of a shift in overall resources, because ... we have not redistributed existing resources and we do not do that because mostly they are tied to people in very long-term support services. So it has had, I suppose, a marginal impact.

The Minister for Community Services advised the Committee of the following changes in funding rates that have occurred as a result of introducing the accelerated equity formula, which the Committee compared to base equity formula in 1999-2000 (see exhibit 4.2).²³

¹⁸ *ibid.*; *Report on Public Sector Agencies*, June 2003, p.7

¹⁹ *ibid.*, pp.55–57; *Report on Public Sector Agencies*, June 2003, p.7

²⁰ Victorian Auditor-General's Office, *Report on Public Sector Agencies*, June 2003, p.7

²¹ *ibid.*

²² Mr A. Rodgers, Executive Director, Disability Services Division, Department of Human Services, transcript of evidence, 28 June 2004, p.16

²³ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.4

Exhibit 4.2: Regional equity adjustment formula

Region	Accelerated equity formula 2003-04	Base equity formula 2003-04	Base equity formula 1999-2000
Barwon	9.12	7.72	7.18
Grampians	2.28	4.57	4.32
Loddon	8.17	6.77	6.37
Hume	2.79	5.58	5.21
Gippsland	7.11	5.71	5.29
Western	17.87	12.97	13.13
Northern	16.34	16.34	16.81
Eastern	8.93	17.86	19.88
Southern	27.83	22.48	21.81
Total	100.00	100.00	100.00

Source: Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.4

The Committee was interested to learn about the impact on service delivery of changes to regional resourcing. The department advised the Committee that each region had met all the standards set.²⁴

In terms of eligibility assessments and those other things, we have required each region to meet the standard we set, which was the time within 30 days, so they have all achieved those figures generally.

4.1.4 Issues of concern

The Committee was unable to determine from published budget information whether the accelerated equity formula had been successful in redistributing funding in a manner that moves the funding provided to each region towards the notional equity share of the total budget.

The Committee noted that while the department's annual policy and funding plans included budgets for each region, the budgets usually included a central component that included growth funding and indexation adjustments. In 2004-05, the central component accounted for 10.5 per cent of total funding.²⁵ The Committee noted that the actual allocation of funding to regions (which takes account of how the central component was distributed in the previous year) is not reported in the Department of Human Services' annual report for 2003-04.²⁶

²⁴ Mr A. Rodgers, Executive Director, Disability Services Division, Department of Human Services, transcript of evidence, 28 June 2004, p.16

²⁵ Department of Human Services, *Disability Services Policy and Funding Plan: 2004-05 Annual Update*, p.18

²⁶ Department of Human Services, Annual Report 2003-04

The Committee believes the department should report regularly on the effectiveness of the accelerated equity formula in meeting notional equity shares in its annual report.

The Committee recommends that:

Recommendation 26: **The Department of Human Services include in its annual report information on the regional allocation of funding for disability services and the progress made towards achieving notional equity shares across the department's regions.**

To further gauge the impact of changes in funding by region on people with a disability the Committee requested information from the Minister for Community Services on waiting lists for accommodation support in each of the regions. The Committee understands that this information is compiled on a regional basis.

The Minister did not provide this information, instead advising the Committee that the number of individuals requesting shared supported accommodation, as at December 2003 was 3,193 – approximately equal to the number in December 2002 of 3,191.²⁷ The Committee noted information provided to the Parliament that the number of people on the Service Needs Register awaiting shared supported accommodation, day programs and HomeFirst services had increased (see exhibit 4.3).

Exhibit 4.3: **Number of people classified on the Service Needs Register classified as urgent or high priority at 12 December 2003**

Service type	Urgent priority	High priority	Total	Variation to December 2002
Shared supported accommodation	1,178	687	1,865	+10.3% (+110)
Day programs	685	126	811	+11.7% (+72)
HomeFirst	919	241	1,160	+19.8% (+152)

Source: *Victorian Council of Social Services, Generating a Community Legacy: VCOSS State Budget Submission 2005-06 Disability Services, November 2004, p.52*

The Committee noted that unmet need as measured by the Service Needs Register may understate the true extent of the need for support services, with a recent survey of carers in Victoria finding that only a minority of people with severe disability were actually registered.²⁸

²⁷ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.4

²⁸ FCL Allen, *A report on the needs of carers for people receiving support from Scope*, February 2004, p.29

Given the limitations of the Support Needs Register as a measure of the demand for services, the Committee believes that the department needs to examine new approaches to measuring demand (including encouraging carers to register their current and future support needs) and providing information to people with an intellectual disability and their carers on the range of services available. This would also allow the department to make plans and decisions about the resources required to support people with an intellectual disability in the short, medium and long-term. For the families and carers of people with an intellectual disability, the provision of greater information about waiting lists assists with future planning and gives some certainty about the options available.

In response to a question by the Committee on whether the department considered there is a nexus between the changes in the numbers of people on waiting lists and changes in funding, the Minister advised the Committee that:²⁹

The personal circumstances of individuals and their reasons for making requests vary enormously and overall demand is influenced by a range of complex factors including demographic change, expectations, supply and the nature of disability and generic supports.

Given that the department acknowledged that there was unmet demand for services at the time of the Auditor-General's report (November 2000), the Committee recognises the limitation of using waiting lists for services as an indication of the impact of any redistribution of growth funds between regions. However, the Committee is unaware of the extent to which increases in waiting lists is a result of differences in need across regions.

The Committee noted that another measure of how the department is addressing this demand is based on the length of time that a person is on the waiting list for a service. The most recently available public information was that the average waiting time for shared supported accommodation was 146 weeks as at December 2003.³⁰ The Committee is unaware of any information relating to waiting time for shared supported accommodation in different regions that is publicly available.

The Committee acknowledges that the department faces significant challenges in allocating sufficient resources to regions that adequately meet current and emerging demands as identified by statistical analysis and the waiting lists for different services.

While the Committee recognises the limitations of using waiting lists as a sole proxy for assessing the department's performance in delivering services to people with an intellectual disability, the Committee believes there is merit in regularly publishing regional information on waiting lists/waiting times for key services. This approach would be consistent with the regular quarterly publication of information relating to services offered by public hospitals and applicants on the public housing waiting list.

²⁹ Minister for Community Services' response, received 10 August 2004, to the Committee's follow-up questions, p.4

³⁰ Council of Intellectual Disability Agencies, *2005-06 State Budget Submission*, November 2004, p.14

The Committee recommends that:

Recommendation 27: **The Department of Human Services publish information on a quarterly basis for each region on the number of people with an intellectual disability on the Service Needs Register and the expected waiting time for access to services.**

4.2 Resource allocation for shared supported accommodation

In 2003-04, the department allocated \$309 million towards shared supported accommodation, of which 46 per cent was assigned for non-government service providers.³¹

4.2.1 Auditor-General's findings and recommendations

The Auditor-General noted that the vacancy management system for allocating clients to vacancies on the basis of priorities works well, ensuring that when vacancies in shared support accommodation do arise, they are allocated in an equitable way.³²

The Auditor-General also noted that shared supported accommodation services in the government and non-government sectors are funded differently. Government services are funded from each region's global budget based on the cost of staff assigned to each house, plus operating costs such as maintenance and supplies. Non-government services are funded based on a decision regarding the total number of staff hours needed to support the particular clients in each house, plus an allowance for operating costs and administration. The department estimates the number of hours required at each non-government house and funds each service based on these hours using a fixed funding rate per hour statewide (the 'unit cost').³³

The Auditor-General found that, on average, funding per client in government shared supported accommodation services is higher than non-government services.³⁴ The Auditor-General concluded that two factors were principally responsible: clients in government shared supported accommodation have higher support needs on average than those in non-government services and pay awards for staff employed in government services are higher than awards for staff in the non-government sector.³⁵

³¹ Department of Human Services, *Disability Services: Policy and Funding Plan 2003-04 Annual Update*, pp.18–19

³² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.57

³³ *ibid.*

³⁴ *ibid.*, p.58

³⁵ *ibid.*

The Auditor-General noted that the cost of this differential amounted to around 16 per cent.³⁶

The Auditor-General noted that the effectiveness of the unit cost funding approach for non-government services depends on an accurate assessment of the hours required to meet client support and development needs, and appropriate rostering of those hours. The Auditor-General found several weaknesses in these areas including that assessment of client needs has been based on past experience and professional judgement rather than an assessment tool consistently applied to current residents. The translation of these perceived client needs into hours of staff support had been derived from rosters that were not explicitly based on the provision of client support provision principles of the Act and the Victorian Disability Service Standards.³⁷

The Auditor-General also expressed similar concerns about the lack of a standard method for assessing client needs as a basis for setting staffing levels and for adjusting as needs change in respect of government shared supported accommodation services.³⁸

The Auditor-General recommended that the implementation of the department's current efforts to develop a more consistent and rigorous approach to assessing client needs needed to be linked to funding levels that are based on a more explicit analysis of staffing needed to meet the levels of care required by the legislation and the standards.³⁹

The Auditor-General also recommended that the department consider how service providers in the non-government sector can improve the effectiveness of their rostering, for example through the application of rostering best practice guidelines like those used in the government sector, and through closer monitoring by regional staff of rosters in operation.⁴⁰

4.2.2 Response by the Department of Human Services

The department noted that the allocation of resources of individual shared supported accommodation services has been based on management assessment of resident need and that a complex range of factors contributes to funding allocated to each service.⁴¹ These include particular needs of residents, the mix of residents, and whether residents are attending day programs or not. In addition, factors such as staffing profiles and salary levels will impact on funding allocations.⁴²

The Committee noted that the Support Needs Assessment (SNA) tool had undergone significant developments since 1992. The department acknowledged that further

³⁶ *ibid.*

³⁷ *ibid.*

³⁸ *ibid.*

³⁹ *ibid.*, p.59

⁴⁰ *ibid.*

⁴¹ *ibid.*, p.60

⁴² *ibid.*

development of the SNA and some refinement of the implementation processes are needed. The department indicated that several developmental activities will be undertaken with this in mind and with a focus on meeting the needs of people with a disability and in involving them in the development of appropriate day activities.⁴³

4.2.3 Subsequent developments

(a) Service needs assessment tool

The Committee noted that the department commenced a project to confirm the validity and reliability of the SNA version 4.⁴⁴ The Auditor-General advised the Committee that the department had engaged RMIT University to confirm the validity and reliability of the SNA tool and that this review had been completed.⁴⁵ The Committee understands that the outcome of the review confirmed the validity and reliability of the SNA tool.

The Auditor-General advised the Committee that the potential application of the tool in the Shared Supported Accommodation program was being assessed, with completion expected in December 2004.⁴⁶ The Committee understands that this could lead to an appropriate unit cost methodology which takes into account support needs.⁴⁷

(b) Rostering arrangements

The Auditor-General advised the Committee that, as at January 2004, the department had sourced a roster tool that was currently being used by a number of agencies in addition to the one that was currently available.⁴⁸ The Auditor-General noted that the department would undertake a comparison of the tools to determine the most suitable.⁴⁹

The Committee was unable to verify whether non-government service providers have implemented changed rosters as a result of the adoption of rosters made available by the department.

⁴³ *ibid.*

⁴⁴ Victorian Auditor-General's Office, *Report on Public Sector Agencies*, June 2003, p.81

⁴⁵ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.8

⁴⁶ *ibid.*

⁴⁷ K. Kihl-Larsen, *NCAS Conference — Vermont Assessment tool*, presented at National Accommodation and Support Conference, 31 March – 1 April 2004, Hotel Sofitel Melbourne

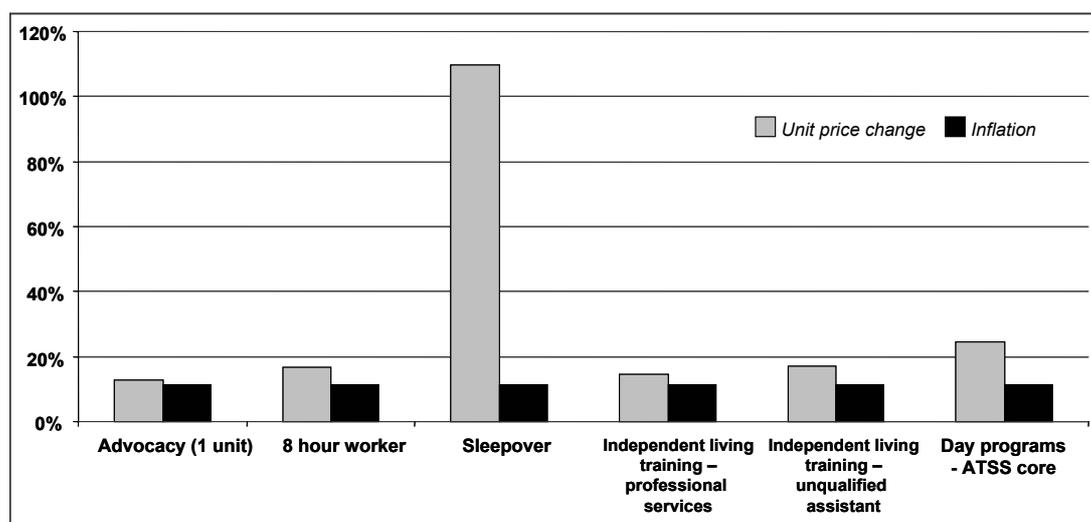
⁴⁸ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.8

⁴⁹ *ibid.*

(c) Unit costs

The Committee noted that since 2000-01 there had been an increase to the unit cost of many disability services (see exhibit 4.4), which in many cases had outstripped increases in the rate of inflation (as measured by the CPI all groups (Melbourne)). The most significant change over the last few years had been in the unit price for the sleepover allowance, which was increased from \$14,196 per facility in 2002-03 to \$27,060 in 2003-04.⁵⁰

Exhibit 4.4: Disability services unit price changes 2000-01 to 2004-05



Note: The rate of inflation was estimated using the Consumer Price Index (All Groups) for Melbourne

Sources: Department of Human Services, *Disability services policy and funding plan 2002-03 and 2004-05 Annual Update*, pp.21–24; Australian Bureau of Statistics, *Consumer Price Index: Australia*, ABS Cat No. 6401.0, June Quarter 2004

The Committee understands that adjustments to unit costs made by the department have been largely linked to wages outcomes determined by the Industrial Relations Commission, with adjustments taking account of the impact ‘safety net’ decisions and enterprise agreements negotiated in the non-government sector. In the case of the sleepover allowance, the Committee noted the increase in unit costs paid to service providers coincided with an adjustment to the sleepover allowance paid to staff by non-government service providers from \$29 to \$57.60.⁵¹

⁵⁰ Department of Human Services, *Disability Services: Policy and Funding Plan 2003-05 Annual Update*, p.21; *Disability Services: Policy and Funding Plan, 2003–2006*, p.5.6

⁵¹ See for example, Health Services Union of Australia and Melbourne City Mission – Disability, Early Intervention and Residential Sectors – Interim Award 2002-03 (AW827287, s.11.1.1) and the Residential and Support Services (Victoria) Award 1999 (AW795711, s.6.1.1)

The Committee noted a range of activities such as supporting research and evaluation; staff training and development; and sport and recreation activities that have continued to be funded via a block grant or by negotiation with the department.

The Committee is aware that these increases in unit costs need to be viewed in the context of a move to extend ‘productivity’ savings that were formerly absorbed by the department to non-government agencies as part of the indexation arrangements under three-year service agreements. As originally announced, the index provided for increases of 2.4 per cent in 2003-04, 2.2 per cent in 2004-05 and 2.0 per cent in 2005-06.⁵²

The Committee noted that the indexation arrangements were subsequently adjusted to 2.4 per cent in 2003-04, 2.6 per cent in 2004-05 and 2.25 per cent in 2005-06.⁵³ In addition, as part of the 2004-04 budget allocation, \$7 million was provided to establish a Community Services Investment Fund to support initiatives that enhance capacity and sustainability of the community services sector.⁵⁴

Notwithstanding the indexation arrangements that have been implemented by the department, the Committee noted that providers consider that they face a real reduction in funding, with the Council of Intellectual Disability Agencies estimating the amount foregone by non-government disability service providers as a result of the productivity component of the price index as \$13.1 million between 2003-04 and 2005-06.⁵⁵

(d) Wage differential between the staff of government and non-government service providers

The Committee is aware of a recent campaign by the staff in the non-government sector to improve pay and conditions for non-government disability service providers and address the issue of pay differentials between the government and non-government sector. The Committee understands that as a result of this campaign, the wage rates for the staff of non-government service providers were increased but not to the extent that the differential in pay rates between the government and non-government was fully addressed. The department advised the Committee that:⁵⁶

[A recent non-government wage decision] did not actually make the rates of pay between the Government and non-government sectors the same, but it did provide an increase in wages for staff in the non-government

⁵² Council of Intellectual Disability Agencies, Annual Report 2003-04, p.7

⁵³ Public Accounts and Estimates Committee, *Report on the 2004-2005 Budget Estimates*, November 2004, p.267

⁵⁴ Hon. S. Garbutt, MP, Minister for Community Services, transcript of evidence, budget estimates hearing, 21 May 2004, p.25

⁵⁵ Council of Intellectual Disability Agencies, *2005-06 State Budget Submission*, November 2004, p.24

⁵⁶ Mr A. Rodgers, Executive Director, Department of Human Services, transcript of evidence, 28 June 2004, p.14

sector. So there is still a difference between the wages and conditions for Government and community services organisations.

The Committee estimated that based on a similarly qualified residential services support worker the base pay in the non-government sector was about \$30,210 per annum compared to \$32,082 for similarly qualified staff in the government sector – a differential of 6.2 per cent.⁵⁷

The Committee noted that there remains a clear difference between the cost of delivering shared supported accommodation in the government and non-government sectors, with each bed costing \$93,700 in the government system and around \$63,700 in the non-government system.⁵⁸

In explaining the difference between the costs of provision in the government and non-government sectors, the Department of Human Services explained that the reasons for the differences were similar to those expressed by the Auditor-General:⁵⁹

we do not have a fixed measure of dependency of clients in Government services – but we do know that many of the more, I suppose, outlier costs of clients are in Government services. People with very high complex needs would be in Government services. They would be some of the Kew residents and a lot of ex-institutional residents in Government services as well. The second point would be that the costs in terms of industrial awards are higher in Government services than non-government services, so the actual input cost is different – different awards, pay rates and conditions. The third one – and I guess I am speculating – is there may be some difference in the treatment of costs between Government and non-government services. ... Primarily I would say it is around the dependency levels and the different input costs.

4.2.4 Issues of concern

While the Committee welcomes refinements to the use and application of the Service Needs Assessment tool and the provision of best practice rostering systems to non-government service providers, the Committee is aware that there are a number of developments that potentially affect the resourcing of current services and the future cost of services. The Committee's view is that these developments are likely to require specific analysis on the cost of current and future service delivery in both the government and non-government sector.

The Committee understands that despite the commencement of the State Disability Plan and its vision for an individual based approach to planning and funding

⁵⁷ Council of Intellectual Disability Agencies, *2005-06 State Budget Submission*, November 2004, p.24

⁵⁸ Hon. B. Forwood, MLC, Deputy Chair, Public Accounts and Estimates Committee, transcript of evidence, budget estimates hearing, 21 May 2004, p.22

⁵⁹ Mr A. Rogers, Executive Director, Department of Human Services, transcript of evidence, budget estimates hearing, 21 May 2004, p.22

development activities, there had not been a revision to the ‘price’ (as expressed in unit costs) for services delivered by non-government service providers under current service delivery models or the models of care envisaged under the State Plan.

The Committee considers that unit costs that are set too low may create a pressure on agencies to provide more aggregated or congregate programs, which constrains choice and individualised planning for service users. Conversely, unit costs that are set too high (or do not reflect the efficient delivery of services) may lead to an exacerbation of existing levels of unmet demand.

The Committee notes that two non-government service provider peak bodies, ACROD and VICRAID, are currently finalising a unit cost study of providing a range of accommodation and community support services.⁶⁰ The aims of the study include the development of a costing model which is consistent with the standard of service required by the department and the development of benchmark costs using information supplied by participating member organisations.⁶¹

The Committee noted comments made by the Auditor-General as part of his audit in relation to the initial calculation of unit costs for shared supported accommodation:⁶²

We have seen no evidence that the rosters used were based on best practice or an explicit analysis of staffing levels necessary to deliver services which satisfy the legislative principles and quality standards.

... The department cannot be assured that current resource allocation processes for shared supported accommodation ... allow the expectations of the Act and the Victorian Standards for Disability Services to be met, regarding opportunities for all clients to develop and maintain skills and to participate in the community.

The Committee therefore views the unit cost study as a positive development, especially given that the unit costs developed by the department for the provision of many disability services have remained largely unchanged (except for inflation and wage-related adjustments).

The Committee is aware the department was considering the use of a unit price for departmental providers of shared supported accommodation, which will enable the placement of these services on an internally competitive, best practice model.⁶³ The Committee would support this development, as it would enable the department to better understand the relative resourcing requirements of people with a disability in

⁶⁰ VICRAID and ACROD, Unit cost project brief, www.vicraid.org.au/library/public/unit_cost.html, accessed 2 December 2004

⁶¹ *ibid.*

⁶² Cited in Council of Intellectual Disability Agencies, *Response to the Auditor-General's Performance Audit of Intellectual Disability Services*, March 2001, p.12

⁶³ Department of Human Services, *Disability Services: Policy and Funding Plan 2003–06*, May 2003, p.7.107

the government and non-government sectors and develop appropriate benchmarks for the costs of different types of services.

A project is currently underway within the department to develop pricing principles for external disability support providers by April 2005.⁶⁴ The Committee understands that the development of pricing principles is being used by the department and service providers as a means of developing a framework to be used in future discussions over the pricing of services.

The Committee welcomes the development of pricing principles as a way of promoting a basis for determining appropriate prices for services provided by non-government service providers.

The Committee notes that the design and implementation of an Industry Development Plan is one of the actions derived from the priority strategies of the ten year Victorian State Disability Plan.⁶⁵ The department states that the plan '*will strengthen the sector providing support services to people with a disability by identifying the key industry elements requiring development and subsequently generating a range of activities and strategies that will contribute to a sustainable and innovative sector*'.⁶⁶

The Committee supports the development of an industry plan. The Committee believes it is important that the plan addresses the structural adjustments that may be required by service providers to provide the range and quality of services required to meet the aspirations of the State Plan. The Committee believes any changes in service provision that are considered under the plan should also take into account the possible resourcing requirements of changing models of service provision.

The Committee believes that the information gained and processes established as a result of efforts to better understand the pricing of services by the department provide an opportunity for both the Department of Human Services and non-government service providers to respond to the costs of providing services under the framework established by the State Plan.

The Committee recommends that:

Recommendation 28: **The Department of Human Services and non-government service providers undertake a review of the adequacy of unit costs, taking into consideration:**

(a) the cost of different services provided by government and non-government service providers; and

⁶⁴ Department of Human Services, *Departmental Plan 2004-05*, July 2004, p.30

⁶⁵ Department of Human Services, *Disability Services Industry Development Plan*, www.dhs.vic.gov.au/ds/disabilitysite.nsf/pages/prog_indplan, accessed 22 November 2004

⁶⁶ *ibid.*

- (b) **the likely structural changes in service delivery over the life of the Victorian State Disability Plan and the standards of service required under the Victorian Disability Service Standards.**

4.3 Resource allocation to day programs

In 2003-04, funding for the Community Participation and Inclusion output, which includes the provision of day programs, was expected to be \$161 million, of which 93 per cent was allocated to non-government service providers.⁶⁷

4.3.1 Auditor-General's findings and recommendations

The Auditor-General found that there was a risk of inconsistency in the inputs to the Support Needs Assessment tool, which is used to place a client in one of six categories for funding purposes.⁶⁸ Further, the Auditor-General noted there was a lack of confidence among practitioners in the tool's ability to represent both support and development needs and that funding assigned to each of the six need levels has not been based explicitly on the staffing required to meet the standards for clients with those needs.⁶⁹

The Auditor-General recommended the introduction of reliability testing in respect of assessment inputs and clarification of definitions to remove potential for misinterpretation.⁷⁰

4.3.2 Response by the Department of Human Services

The department acknowledged that further development of the SNA tool and some refinement of the implementation processes were needed.⁷¹ The department indicated that several developmental activities would be undertaken with this in mind and with a focus on meeting the needs of people with a disability and in involving them in the development of appropriate day care activities.⁷²

⁶⁷ Department of Human Services, *Disability Services: Policy and Funding Plan 2003-04 Annual Update*, pp.18–19

⁶⁸ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.60

⁶⁹ *ibid.*, p.60

⁷⁰ *ibid.*

⁷¹ *ibid.*

⁷² *ibid.*

The Committee noted that the pricing methodology had not been reviewed in the last five to ten years, although there had been adjustments to take into account inflation, amongst other items.⁷³

4.3.3 Subsequent developments

As previously discussed, the review of the service needs assessment tool version 4 confirmed its validity and reliability.⁷⁴

4.3.4 Issues of concern

The Committee is pleased that the assessment tool has been revised and independently assessed. However, as discussed in the previous section, the unit cost assigned to each of the six need levels has not been adjusted except to take account of indexation. As a result, the Committee believes the finding of the Auditor-General that *'funding assigned to each of the six need levels should be reassessed and based explicitly on the staffing required to fulfil the standards for clients with different support needs'* has not been addressed.

The review of unit pricing as recommended by the Committee should consider the adequacy of funding for the needs of people with a disability utilising day programs.

⁷³ Mr A. Rodgers, Executive Director, Department of Human Services, transcript of evidence, 28 June 2004, p.16

⁷⁴ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.8

CHAPTER 5: QUALITY AND MONITORING

As part of the Victorian Government's commitment to provide high quality services to the Victorian community, it is important to put mechanisms into place to monitor and continually improve the quality of support for people with an intellectual disability.¹

5.1 Service quality

In 1997 the department issued the Victorian Standards for Disability Services. The standards address access to services, individual need, decision-making and choice, participation and integration, service management, valued status, and freedom from abuse and neglect. The department describes the standards as '*...the minimum operating requirements for government and funded non-government disability service providers in Victoria*'. Compliance with the standards was required by 2003.²

Self assessment is used as the evaluation process to determine the level of service quality.³ Self assessment requires agencies to develop skills in self monitoring and evaluation of the services they deliver.

5.1.1 Auditor-General's findings and recommendations

The Auditor-General noted that defining and measuring quality in respect of services for people with a disability is a challenging task.⁴ The Auditor-General found that most service providers considered that they needed to improve their performance in most areas to fully comply with the standards.⁵

Overall, the Auditor-General concluded that the service sites that were visited as part of the audit had a satisfactory level of basic care, but beyond that, there were wide variations in the extent to which the legislative principles and standards were met in relation to the provision of developmental opportunities and integration into the community.⁶ The Auditor-General noted that these variations were not necessarily directly attributable to the level of staff resources but to the quality of strategies employed by staff to translate principles into practice.⁷

The Auditor-General noted that the design of the self-assessment system is comprehensive, including consultation with clients, families and staff regarding the

¹ Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002, p.9

² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.17

³ *ibid.*, p.70

⁴ *ibid.*, p.65

⁵ *ibid.*, p.65

⁶ *ibid.*, p.68

⁷ *ibid.*, p.68

quality of service in the areas covered by the standards.⁸ The Auditor-General saw scope for further development in two areas:⁹

- the use of more direct measures of achievement of the standards (for example, ‘the hours spent participating in activities in the community rather than ‘the service outlet is oriented to supporting consumers to participate’); and
- independent scrutiny of quality in both government services and non-government service should be considered.

In relation to the quality of staff, the Auditor-General noted that there are no industry-wide competency standards for staff in shared supported accommodation services and day programs.¹⁰ The Auditor-General also noted that induction training by both government and non-government service providers was not always provided in a timely fashion and that induction training in the non-government sector was shorter in duration and variable in content.¹¹

The Auditor-General recommended that the department introduce minimum competency standards for all staff (government and non-government services).¹²

The Auditor-General also recommended that the department should evaluate what form of independent scrutiny of quality in government services and non-government service providers would be most suitable to the needs of Victoria.¹³

5.1.2 Response by the Department of Human Services

The department noted that the achievement of community participation and integration for people with a disability is a very high priority.¹⁴ The department commented that achieving this priority depends significantly on appropriate culture and practice within services and on affording people with a disability the dignity to participate fully in community activities.¹⁵ The department noted that issues of community participation and integration will be included in service agreements with service providers and recognition of examples of good practice will be given.¹⁶

The department advised that it has begun to gather information about the level of community participation of clients in both accommodation services and day

⁸ *ibid.*, p.71

⁹ *ibid.*

¹⁰ *ibid.*, p.68

¹¹ *ibid.*, p.69

¹² *ibid.*, p.70

¹³ *ibid.*, p.71

¹⁴ *ibid.*, p.68

¹⁵ *ibid.*

¹⁶ *ibid.*

programs.¹⁷ The department indicated that preliminary results from more than 3,000 respondents indicate higher levels than those reported by the audit team.¹⁸

In relation to the quality of staff, the department advised the Auditor-General that it was undertaking several Workforce Planning and Development Reviews to address matters relating to career structures, classifications, supervision, training and workforce planning.¹⁹

The department noted that the first stage of a review of the Community Services Training Package will identify refinements needed to provide minimum competency standards across the disability sector. The department indicated that once the standards are finalised, it would consider the applicability of these for its own services and for those that it funds.²⁰

In relation to the design of the self assessment system, the department advised that it would implement a suitable approach, in consultation with the non-government sector, of supplementing the Disability Services Self Assessment System with a form of external review which is independent of the service provider and would commence in 2001-02.²¹

5.1.3 Subsequent developments

(a) Common minimum competency standards

The Committee noted that the Community Services Training Package had been finalised by the National Training Quality Council in 2002 on the condition that a review of the training package takes place prior to the end of 2005.²²

The department advised the Committee that a minimum competency level (Certificate 4) was required for government service providers and the department was encouraging, but not mandating, the adoption of this standard for non-government service providers.²³

Some non-government service providers also used the same minimum competency level as government providers. The Committee was informed that for one non-government provider:²⁴

¹⁷ *ibid.*

¹⁸ *ibid.*

¹⁹ *ibid.*, p.71

²⁰ *ibid.*

²¹ *ibid.*

²² Department of Human Services, Disability Trainers and Educators, www.dhs.vic.gov.au, accessed 1 December 2004

²³ Mr A. Rodgers, Executive Director, Department of Human Services, transcript of evidence, 28 June 2004, p.13

²⁴ Ms A. Lyon, Director Home and Community Services MECWA, transcript of evidence, 29 June 2004, p.11

We set a minimum qualification for our workers – they have to have some qualification [Certificate 4] in disability services.

The Committee understands that the size of the government sector disability services workforce is around 4,165.²⁵ The Committee noted that the number of staff undertaking Certificate 4 in Community Services (Disability Work) was 900 in 2002-03, 1,180 in 2003-04 and was projected to be 900 in 2004-05.²⁶ The department advised the Committee that about 90 per cent of staff would either have the equivalent certificate 4 or be in training for it.²⁷

The Committee noted the results of a project undertaken during 2003 which analysed the characteristics of the non-government disability services sector workforce.²⁸ Among the issues highlighted by the analysis were:²⁹

- 65 per cent of the workforce had completed some post school qualification, 16 per cent had partially completed some post school qualification and 19 per cent had no post school qualification.
- 24 per cent of staff claimed that they did not believe that they were adequately trained to perform effectively and efficiently in their current role; and
- 32 per cent of staff had received no staff development training within the previous 12 months although all employers claimed that they had spent more than their allocated training budget by an average of 36 per cent in the previous year.³⁰

(b) Quality self assessments

(i) Results from self assessments 2000 to 2003

The Committee noted that a summary and compilation of completion reports from self assessments undertaken by service providers in 2002 was published by the department in June 2003.³¹ The Committee noted that 12 per cent of funded providers had not submitted a completion report by the required date and that the department would be following up those support providers who failed to submit.³²

²⁵ Department of Human Services, Annual Report 2003-04, p.64

²⁶ *ibid.*, p.58; Budget Paper No.3, 2004-05 Service Delivery, p.96

²⁷ Mr A. Rodgers, Executive Director, Department of Human Services, transcript of evidence, 28 June 2004, p.4

²⁸ VICRAID, ACROD and CIDA, *Victorian Disability NGO Workforce Analysis Project*, July 2003

²⁹ *ibid.*

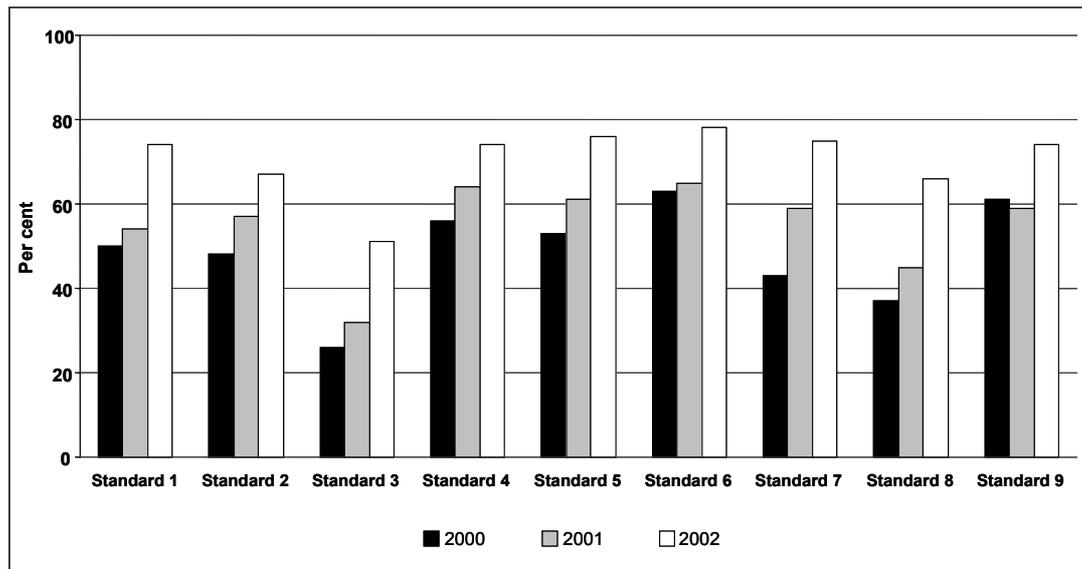
³⁰ The authors noted that one of the issues may be an unclear definition of training with staff not including in-house training, on the job training or conferences as 'training days'. No examination of how the training funds were spent by each agency was undertaken as part of the project's analysis.

³¹ Department of Human Services, *Disability Services Self-assessment System: Summary and compilation of completion Reports 2002*, June 2003

³² *ibid.*, p.13

The Committee noted that results from the self-assessment conducted in 2002 indicated that although there had been a statewide improvement in meeting each of the nine standards, the rate of improvement was not likely to be sufficient for all outlets to fully meet all standards by 2003 (see exhibit 5.1).

Exhibit 5.1: Statewide response to self assessment against the Victorian Standards for Disability Services 2000 to 2002



Note: The nine standards are: (1) Service access; (2) Individual needs; (3) Decision making and choice; (4) Privacy, dignity and confidentiality; (5) Participation and integration; (6) Valued status; (7) Complaints and disputes; (8) Service management; and (9) Freedom from abuse and neglect

Source: Department of Human Services, *Disability Services Self-assessment System: Summary and compilation of completion reports 2002, June 2003, p.14*

The Committee's examination of the percentage of outlets meeting the standards by region in 2002 indicated that there was significant variation across regions, with providers in the Western Region consistently reporting the lowest percentage of outlets meeting the standard across all nine standards.³³ The Committee also noted that against most standards, the percentage of government service providers meeting each standard in each region in 2002 was generally higher than the percentage of non-government providers meeting each standard.³⁴

The Committee noted suggestions made by service providers for improvement to the self-assessment process including the ambiguity of some questions (with the comment that some questions could be misinterpreted) and that the process was time consuming and repetitive.³⁵

³³ *ibid.*, pp.15–23

³⁴ *ibid.*, pp.24–41

³⁵ *ibid.*, p.42

Although self assessments were completed by service providers in 2003, the Committee noted that there was no summary information published by the department relating to the results of self assessments against each of the nine standards. This information was not able to be reported due to a shift in emphasis in the information collected by the department (see below). The Committee also noted that 12 per cent of funded providers failed to submit an Organisational Quality Plan and Improvement Activity Report by the required entry date.³⁶

(ii) Realignment of quality improvement and monitoring

The Committee noted that the processes for the annual organisational self assessment against the Victorian Standards for Disability Services included a move towards an integrated quality and management approach.³⁷ Reporting against the new approach includes information collected as part of the annual Organisational Quality Plan and Activity Report, the results of which are required to be reported to the department.

Information collected through the Organisational Quality Plan and Improvement Activity Report in 2004 included data relating to:³⁸

- organisational self-assessment against the Victorian Standards for Disability Services;
- the implementation of Quality Plans;
- the development and implementation of Quality Improvement Activities; and
- the participation of people with a disability in organisational quality management processes.

One of the main differences between the information collected under the integrated quality and management approach is that collection of information by the department to monitor the quality of service provision, whilst still emphasising the importance of reporting of self assessments against the Victorian Standards for Disability Services, now also requires the reporting of proposed quality improvement activities, how these activities relate to the goals of the State Disability Plan and how these activities are to be implemented by service providers.

As a result of this change, the department did not collect information from service providers on their achievements against the standards in 2003, the year in which service providers were expected to be fully compliant with the Victorian Standards for Disability Services.

³⁶ Department of Human Services, *Integrated Quality Management Approach: Summary and compilation of Organisational Quality Plan and Improvement Activity Reports 2003*, August 2004 draft, p.23

³⁷ Department of Family and Community Services (Commonwealth), *Commonwealth State/Territory Disability Agreement Annual Public Report 2002-03*, July 2004, p.54

³⁸ Department of Human Services, *IQMA Summary and compilation of Organisational Quality Plan and Improvement Activity Reports 2003*, August 2004 draft, p.4

The Committee noted that the most recent collection of information requested information from service providers in new areas, such as activities to support service delivery to culturally and linguistically diverse clients and proposed quality improvement activities against the Victorian Standards for Disability Services.

Since the department was unable to verify the actual achievement of providers against the Victorian Standards for Disability Services, the Committee supports this new approach, which is based on developing and encouraging improvements in the quality of services provided and monitoring proposed quality improvement activities.

The Committee noted the key findings that the department had established from its analysis of returns from 2000 to 2004:³⁹

- the percentage of outlets implementing quality plans has increased from 87 per cent in 2000 to 97 per cent in 2003;
- the percentage of people with a disability participating in the consumer assessment process was 13 per cent in 2000, 18 per cent in 2001, 14 per cent in 2002 and 12.5 per cent in 2003; and
- approximately 55 per cent of support providers reported providing access to interpreting services for sign and spoken languages for consumers in 2003.

The Committee understands that the next data collection survey (relating to activities in 2004) is currently being prepared by the department and will be required to be returned to the department by 1 March 2005.⁴⁰ The Committee is pleased that information requested from providers will include a summary of the outcomes of quality improvements that were planned to be implemented in 2004.

While the Committee recognises it is important that service providers report on the outcome of planned quality improvement activities, the Committee also believes that unless there is some independent verification to confirm that what was reported to the department actually occurred, a weakness remains in providing an assurance to the government and the community that quality improvements have been made.

The Committee is aware that the department is currently undertaking a number of activities that are likely to strengthen the monitoring and improvement of service quality. These activities include:⁴¹

- a review of the Victorian Standards for Disability Services;
- development of an independent quality monitoring mechanism;
- program of strategic reviews;
- a project to trial the assessment of personal outcomes measures against the standards; and

³⁹ *ibid.*, pp.3–4

⁴⁰ *ibid.*, p.40

⁴¹ *ibid.*, pp.35–38

- an active participation strategy to implement and promote the active participation of people with a disability and their family and friends in the planning, delivery, monitoring and review of support.

The department explained to the Committee that the program of strategic reviews examined broader aspects of service delivery by non-government service providers.⁴²

We introduced a program of quality monitoring and review. We engaged consultants or contractors independent of the department and the agency to conduct the reviews, and there are 47 completed and 8 under way. These are in addition to the normal monitoring that we undertake. It is a specific review of the agency and covers a range of areas – governance, quality of services, financial management and a range of other areas. That helps us, as well as I guess signalling to the non-government sector that there are independent reviews of what happens.

The Committee noted that since 2002 over 50 of these reviews had been conducted.⁴³ In 2004-05, the department expected the review program will consolidate outcomes and learning through monitoring implementation of recommendations from completed reviews and undergo a formal evaluation to confirm effectiveness and inform future directions. The Committee noted that until the evaluation was completed, a program of reviews will continue on a reduced scale and a more targeted basis, with nine agency reviews anticipated.⁴⁴

5.1.4 Issues of concern

(a) Competency standards and staff training

While the Committee welcomes the progress that has been made in developing the national competency standards for disability support workers and the implementation of training arrangements for the staff of government service providers, the Committee is concerned that training and skill development for non-government service providers has lagged behind those in place for workers in the government sector.

The Committee understands that funding arrangements for training non-government service providers is based on an allocation of 1.5 per cent of 80 per cent of salary costs.⁴⁵ However, actual expenditure by service providers on training and development is likely to vary widely. The Committee noted that one non-government service

⁴² Mr A. Rodgers, Executive Director, Department of Human Services, transcript of evidence, 28 June 2004, p.4

⁴³ Department of Human Services, *IQMA Summary and compilation of Organisational Quality Plan and Improvement Activity Reports 2003*, August 2004 draft, p.37

⁴⁴ *ibid.*, p.37

⁴⁵ Department of Human Services, *Disability Services Policy and Funding Plan: 2003–2006*, p.6.14

provider estimated that around 10 per cent of the staffing budget was allocated to training.⁴⁶

The Committee notes that the department, in conjunction with training providers, is currently undertaking a range of activities designed to promote training opportunities and enhance the learning culture in the disability services sector.⁴⁷ While the Committee supports efforts to improve the skill and knowledge of staff within the government and non-government sectors, the Committee believes that these efforts need to address some of the factors that inhibit skill development in the non-government sector such as high reliance on casual or part-time staff for some services and the incidence of staff that work in another field alongside their employment in the disability services sector.⁴⁸

The Committee recommends that:

Recommendation 29:

The Department of Human Services:

- (a) make available to non-government service providers the training resources developed for the staff of government service providers; and**
- (b) examine the effectiveness of current models of delivering and monitoring training provided to the staff of non-government service providers.**

(b) *Monitoring of service standards and improvements*

Several submissions to the Committee highlighted some of the issues that existed with self-assessments conducted by service providers. The Victorian Advocacy League for Individuals with Disability (VALID) commented that:⁴⁹

It is our view that the disability self assessment system – which was established as a framework to support the introduction of the Victorian Disability Service Standards – has been an essentially sound process, which has failed dismally to ensure service compliance largely because DHS and Government have neglected to establish an effective system of monitoring.

⁴⁶ Ms A. Lyon, Director Home and Community Services MECWA, transcript of evidence, 29 June 2004, p.11

⁴⁷ Department of Human Services, Professional Training and the Disability In-service Training Support Service, hnb.dhs.vic.gov.au/ds/disabilitysite.nsf/pages/prov_quality_distss, accessed 24 November 2004

⁴⁸ VICRAID, ACROD and CIDA, *Victorian Disability NGO Workforce Analysis Project*, July 2003, pp.11, 54

⁴⁹ Victorian Advocacy League for Individuals with Disability, submission no. 8, p.3

While some DHS regions have chosen to resource independent verification of client and family input into Disability Self Assessment System, engaging organisations such as our own to provide support, other regions have often ignored this requirement, and funded organisations have been simply unable to afford it.

Given the limitations on the Disability Self Assessment System's ability to verify to the department the real level of compliance with the Victorian Standards for Disability Services, the Committee supports the department's recent move away from reporting of self assessments by providers towards reporting quality improvement activities that service providers propose to implement.

As discussed previously, 12 per cent of providers failed to submit an Organisational Quality Plan and Improvement Activity Report on time.⁵⁰ The Committee noted that in the previous year 12 per cent of funded providers did not provide Completion Reports by the due date.⁵¹

The Committee is aware that completion of an Organisational Quality Plan and Improvement Activity Report is a mandatory reporting requirement of all government and funded non-government service providers receiving more than \$20,000 in disability funding.⁵² The Committee believes that consistent non-reporting by service providers can undermine efforts across the sector to improve service quality.

The Committee recommends that:

Recommendation 30:

The Department of Human Services:

- (a) examine current approaches to ensuring service providers comply with requirements to annually submit Organisational Quality Plans and Improvement Activity Reports;**
- (b) determine the reasons for non-compliance; and**
- (c) develop options to encourage compliance.**

The Committee notes the Report of the Review of Disability Legislation includes recommendations that appear to largely reflect current practice, such as setting of standards for disability services and supports; monitoring of disability support

⁵⁰ Department of Human Services, *Integrated Quality Management Approach: Summary and compilation of Organisational Quality Plan and Improvement Activity Reports 2003*, August 2004 draft, p.23

⁵¹ Department of Human Services, *Disability Services Assessment System: Summary and compilation of Completion Reports 2002*, June 2003, p.13

⁵² Department of Human Services, *Integrated Quality Management Approach: Summary and compilation of Organisational Quality Plan and Improvement Activity Reports 2003*, August 2004 draft, p.4

providers for compliance with the standards and the consequences of non-compliance.⁵³

The Committee broadly supports the direction that the department is taking to monitor and improve the quality of services. The development of an independent quality monitoring mechanism, and the trial and evaluation of personal outcomes measures against the standards, appear to address the Auditor-General's original recommendation about the need for independent verification of service provision against the standards.

However, the Committee has some concerns about the resourcing requirements of these proposed approaches. The Committee believes that if service providers need additional resources to comply with new requirements, this should be recognised in funding arrangements.

The Committee recommends that:

Recommendation 31: **Where government and non-government service providers need to dedicate specific resources to the new quality monitoring approaches that are in addition to current arrangements, the Department of Human Services make available the resources, training and the support required to implement them.**

The Office of the Public Advocate supported the development of an independent process to monitor the quality of services, arguing that it should be '*independent of service providers or the funding of services*'⁵⁴ The Office of the Public Advocate believed that this independence is important because:⁵⁵

As a provider of services it is important that the Government is not seen to be monitoring the performance of its own services in addition to non-government services.

Where it is decided that a service does not meet the required standards and has failed in its attempts to do so the decision to de-fund can be a difficult one if this increases the obligation on Government to find alternative services for those displaced by the closure of the service. This can make it difficult for Government to make the decision to close a service.

Some of the provisions considered important by the Office of the Public Advocate to strengthen the independence of a monitoring agency included:

⁵³ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.7

⁵⁴ Office of the Public Advocate, *Disability legislation review submission*, August 2003, p.11

⁵⁵ *ibid.*, pp.11–12

- an obligation on government to act on the recommendations of the independent monitoring agency;
- monitoring should not be undertaken by any agency funded by the department;
- the monitoring agency having the power under legislation to enter service providers' premises and review client files; and
- reports of the quality monitoring agency being publicly available.

The department's proposals for independent monitoring is briefly mentioned in the Report of Recommendations of the Review of Disability Legislation. It states that:⁵⁶

*The Government recognises the need for the legislation to support initiatives that address the quality of disability supports. It proposes to legislate for quality standards, to provide for **independent** monitoring of support providers, and to legislate consequences for non-compliance with the standards. [emphasis added]*

The Committee is unaware of the directions and form that the independent monitoring proposed by the department will take, and how it will incorporate activities currently underway to independently measure service quality. However, the Committee agrees with the Office of the Public Advocate on the provisions required to give an independent monitoring body *real* independence to do its work.

The Committee recommends that:

- Recommendation 32:** **The Department of Human Services ensure that arrangements in place for independent monitoring of services provided for people with an intellectual disability, include provisions that strengthen independence such as:**
- (a) an obligation on the department to report to the monitoring agency on instances where recommendations are not acted on within six months and publish the reasons recommendations were not accepted;**
 - (b) the monitoring agency having the power under legislation to enter service providers' premises and review client files; and**
 - (c) reports of the quality monitoring agency being publicly available.**

⁵⁶ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.7

5.2 Monitoring of service performance

The service delivery framework is based on funding the delivery of outputs to specific standards.⁵⁷ The department has an agreement in place with each region (Regional Service Agreement) and with each non-government agency (Service Agreement) outlining the number of outputs required to be delivered (clients to be supported, new places to be created) and the funding provided to achieve those outputs.⁵⁸

5.2.1 Auditor-General's findings and recommendations

The Auditor-General considered the general design of the regional and service agreement framework to be sound.⁵⁹ The Auditor-General found that annual reporting and monitoring of output targets and financial accountability was satisfactory in the regions that were visited for both government and non-government services.⁶⁰ However, the Auditor-General noted that there was insufficient attention to wider aspects of service performance in the annual review of non-government service agreements by regional staff and there was also no formal or comprehensive review of the performance of individual service sites in the government sector.⁶¹

The Auditor-General reviewed performance indicators and found that indicators of output and cost were satisfactory, but indicators of timeliness and quality failed to provide a clear assessment of how well outputs had been achieved.⁶² The Auditor-General supported a number of initiatives the department was undertaking to improve performance indicators by:⁶³

- trialling improved outcome and client satisfaction measures in the regional reporting framework for 2000-01 (for example, the percentage of recipients of respite services who are still living with their families after 12 months);
- improving the efficiency and reliability of information supporting these indicators by maximising the use of existing data collections, such as the client information system (DISCIS) and the national annual survey of all service outlets (the Minimum Data Set), rather than additional direct reporting;
- developing the use of client satisfaction measures; and
- developing an information strategy to improve and integrate information for management purposes at all levels.

⁵⁷ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.71

⁵⁸ *ibid.*, p.72

⁵⁹ *ibid.*

⁶⁰ *ibid.*

⁶¹ *ibid.*

⁶² *ibid.*, p.73

⁶³ *ibid.*, p.72

In relation to monitoring agency performance the Auditor-General recommended that:⁶⁴

- service agreement monitoring be strengthened with a more formal reported service review process, using a risk-based program, supported by audit tools and a wider range of monitoring information;
- the service agreement review process should incorporate the results of service quality self assessments by individual providers, independent verification and monitoring, and more direct measures of output and performance; and
- a service agreement framework similar to that for non-government agencies should be developed between regions and government service outlets.

The Auditor-General recommended that the department should seek to improve measures of service quality reported to government including the use of quality self-assessment results.⁶⁵ The Auditor-General also recommended further development of local performance information and indicators to assist regional and contract managers to monitor dimensions of service delivery not fully captured by the self-assessment process or by the current regional reporting framework, such as staffing, the extent to which client needs are met, and client safety and rights.⁶⁶

5.2.2 Response by the Department of Human Services

The department indicated that it would consider a proposal for agency performance monitoring, which will address both the corporate governance and service quality aspect of funded agencies in consultation with the non-government sector.⁶⁷ The department noted that comments contained in the Auditor-General's report would be considered in the proposal.⁶⁸

5.2.3 Subsequent developments

The department advised the Committee that the response to the Auditor-General's recommendations relating to compliance with service agreements was part of a broader strategy to improve monitoring arrangements.⁶⁹

⁶⁴ *ibid.*

⁶⁵ *ibid.*, p.73

⁶⁶ *ibid.*

⁶⁷ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.72

⁶⁸ *ibid.*

⁶⁹ Mr A. Rodgers, Executive Director Department of Human Services, transcript of evidence, 28 June 2004, p.4

We have not done anything specific in disability, but there is a department-wide agency continuous improvement and monitoring project which covers disability and all the community services organisations where we are looking at working with the peak bodies to develop a better framework for monitoring them, one based on risk management where agencies that have risk indicators at a higher level will get a greater degree of attention.

In February 2004, the Auditor-General advised the Committee that the Agency Continuous Improvement and Monitoring Project was underway. The Auditor-General also advised the Committee that, after extensive consultation with sector representatives, a proposed continuous improvement and monitoring framework had been developed.⁷⁰ The Committee noted that the aim of the framework is to produce a more consistent approach to agency performance monitoring and improvement with a strong emphasis on continuous improvement.⁷¹

The Auditor-General noted the framework provides a basis of standard (minimal) monitoring for all funded agencies for accountability purposes.⁷² The Committee noted an implementation phase was planned for 2004 encompassing the development of supporting tools and infrastructure.⁷³

The Auditor-General advised the Committee that the recommendations relating to the service agreement review process were being incorporated into the development of the agency performance monitoring and improvement framework.⁷⁴

In relation to the monitoring of service delivery across the department's eight regions, the Auditor-General advised the Committee that the Regional Service Agreement (RSA) provides a mechanism to monitor the performance of disability services directly managed by regions, which were subject to regular review by the department.⁷⁵ The Committee noted that work continued in 2003-04 to develop and initiate consistent performance monitoring approaches across the government and non-government sectors.⁷⁶

⁷⁰ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.11

⁷¹ *ibid.*

⁷² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.72

⁷³ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: Services for people with an intellectual disability, p.11

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*

5.2.4 Issues of concern

The importance of ongoing monitoring of performance against service agreements by the department has increased following the introduction of three year service agreements in 2003. The Committee welcomes efforts by the department to more closely monitor the performance by both government and non-government providers operating under service agreements. The Committee has several concerns relating to performance measures which are discussed in the following section.

5.3 Public accountability

5.3.1 Auditor-General's findings and recommendations

The Auditor-General noted that the *Intellectually Disabled Persons' Services Act 1986* requires that a State Plan be prepared at three yearly intervals for the development of services for people with an intellectual disability.⁷⁷ The Auditor-General found that there had been no published reviews of whether the objectives included in the previous State Plans have been achieved and the lack of a published review reduces the accountability of the department for the plan to people with an intellectual disability, to those organisations who contributed to its development, and to the Parliament and general community.⁷⁸

The Auditor-General pointed to an inconsistency between the legislative requirement to produce a state plan for services for people with an intellectual disability and the department's wider responsibility to provide quality and appropriate services for all people with any disability.⁷⁹ The Auditor-General noted that the ten year plan under preparation covered all disability client groups and was consistent with the department's responsibilities and its emphasis on support needs and urgency as determinants for allocating resources, rather than type of disability.⁸⁰ However, the Auditor-General found there is a risk that the legislative emphasis on provision of services to people with an intellectual disability will be muted in a combined plan.⁸¹

The Auditor-General found that the department's annual report included performance against output targets for major services, but that the links between these targets and strategic plans is not made explicit.⁸² Further, trend information provided is not linked to costs or performance measures over time.⁸³ The Auditor-General found that there was no breakdown of usage or demand for services by clients with an intellectual disability, or any other disability groups. Since this was the basis on which many of

⁷⁷ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.74

⁷⁸ *ibid.*

⁷⁹ *ibid.*

⁸⁰ *ibid.*

⁸¹ *ibid.*

⁸² *ibid.*, p.75

⁸³ *ibid.*

the support organisations were structured, the Auditor-General believed that the department's annual report did not make it accountable to the client group they represent.⁸⁴

The Auditor-General noted that the department had, since 1997, contributed to the development and annual publication of interstate comparisons of services provided to people with a disability and published an analysis of the Victorian results from an annual survey of clients of disability services.⁸⁵ The Auditor-General believed that the new information on Victoria from the annual national survey had not yet been brought together with other information on service cost and coverage and performance to provide a single accessible source of information for public accountability purposes.⁸⁶

The Auditor-General recommended the department:⁸⁷

- ensure that there was no inconsistency between its current responsibility to plan for services to all disability groups and the legislative requirement to produce a three year plan for intellectual disability services alone; and
- develop a capability to identify and report on all services provided to individual clients and to groups of clients with particular disabilities, as an aid to planning and accountability.

The Auditor-General recommended the department improve the information it publishes for public accountability purposes, which should include the annual publication of consolidated information on trends and interstate comparisons for performance in respect of all major service activities.⁸⁸ The Auditor-General also recommended that the department consider how its internet website should be developed to include more information to assist public accountability.⁸⁹

5.3.2 Response by the Department of Human Services

The department stated that although it believed the annual report met the accountability requirements of the *Financial Management Act 1994*, given the breadth of the department there was a practical limitation on the amount of information included in a single program area.⁹⁰

⁸⁴ *ibid.*

⁸⁵ *ibid.*

⁸⁶ *ibid.*

⁸⁷ *ibid.*

⁸⁸ *ibid.*

⁸⁹ *ibid.*

⁹⁰ *ibid.*, p.76

The department advised it published a separate report, *Victorian Services for People with Disability*, based on the department's Minimum Data Set collection.⁹¹ The report contains a wide array of information on disability support services, people with a disability and agencies and contains a breakdown of service usage by disability groups.⁹² The department indicated the report is provided to all interested parties and is also accessible via the department's internet site. The third such edition of the report was then being prepared.⁹³

5.3.3 Subsequent developments

(a) Victorian State Disability Plan 2002–2012

In September 2002, the government released the ten year plan that was under development at the time of the Auditor-General's report. The department advised the Auditor-General that the State Disability Plan meets the legislative requirements for a whole of government three year plan.⁹⁴

The Committee noted that as part of the Victorian State Disability Plan, the government indicated that it would undertake a yearly review of the priority strategies included in the plan and publish reports that show the government's progress.⁹⁵

(b) Annual reporting and output performance measures

The Committee noted that the department's 2003-04 annual report included six pages of discussion and information relating to the operations of the Disability Services Division. Of these, three were dedicated to reporting on the outcomes of the ten outputs delivered by the Division as part of the *Disability Services* output group.

Excluding performance measures that relate to output costs, the Committee noted that there are 31 performance measures that can be used to examine the effectiveness of services provided to people with a disability.⁹⁶ Although a restructure of the Disability Services output group as part of the 2003-04 Budget has affected the continuity of a number of performance measures, the Committee noted that performance since 2001-02 can be assessed for 25 performance measures.⁹⁷

⁹¹ Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.76

⁹² *ibid.*

⁹³ *ibid.*

⁹⁴ Letter, dated 20 February 2004, from the Auditor-General concerning the follow-up review of the performance audit report: *Services for people with an intellectual disability*, p.13

⁹⁵ Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002, p.47

⁹⁶ Budget Paper No. 3, *2004-05 Service Delivery*, pp.93–97

⁹⁷ *ibid.*; Budget Paper No. 3, *2003-04 Budget Estimates*, pp.85–89; Budget Paper No. 3, *2002-03 Budget Estimates*, pp.81–85; Budget Paper No. 3, *2001-02 Budget Estimates*, pp.79–83

The Committee considers that some of the measures included in the Budget Papers are informative and useful to the Parliament in assessing the effectiveness with which outputs are delivered. The department's performance against specific measures over the past few years is shown in exhibit 5.2.

**Exhibit 5.2: Disability services performance measures
2001-02 to 2004-05**

Performance measure	Unit		2001-02	2002-03	2003-04	2004-05
Eligibility Assessments undertaken within 30 days (a)	%	Target	70	75	90	90
		Actual	80	90	94	
Average case management waiting time	days	Target	70	60	55	50
		Actual	40	41	32	
General service plans reviewed within timelines	%	Target	83	83	83	83
		Actual	84	82	80	
Carer households satisfied with quality of respite service provided	%	Target	80	80	80	80
		Actual	91	91	88	
Day activity clients program plans reviewed within 60 days of end of each 12 month service period	%	Target	90	90	90	90
		Actual	92	90	74	
Shared supported accommodation client program plans reviewed within 60 days of the end of each 12 month service period	%	Target	90	90	95	95
		Actual	98	90	76	
Clients referred to the same service type more than once in an 18 month period	%	Target	10	10	5	5
		Actual	3	3	7	
Clients waiting less than one month for specialist services	%	Target	75	75	75	60
		Actual	45	49	47	
Staff obtaining induction training within 3 months of commencing employment	%	Target	100	100	100	100
		Actual	85	100	100	

Note (a) The Committee noted that it is unclear whether 'completed' means 'undertaken or finished' or 'completed and commenced' (this is discussed in section 2.1.4)

Sources: Budget Paper No. 3, 2004-05 Service Delivery, pp.93-97; Budget Paper No. 3, 2003-04 Budget Estimates, pp.85-91; Budget Paper No. 3, 2002-03 Budget Estimates, pp.81-85; Budget Paper No. 3, 2001-02 Budget Estimates, pp.79-83; Department of Human Services, Annual Report 2003-04, pp.53-58

(c) Improved data collection and reporting as part of the Commonwealth State/Territory Disability Agreement

The Commonwealth State/Territory Disability Agreement (CSTDA) includes provision for the collection of a national minimum data set (NMDS), which is used to gather information for a variety of purposes including reporting to the Productivity Commission, evaluating Commonwealth State service provision, and for planning and evaluation at an agency, regional, state and national level.⁹⁸

The Committee noted that new data collection arrangements under the CSTDA were implemented in October 2002.⁹⁹ Under the new arrangements, data is collected for the whole of the year, whereas previously information was collected on a single ‘snapshot’ day.¹⁰⁰

The Commonwealth Department of Family and Community Services published data from the revised data collection in July 2004, which presented information for the six months to June 2003.¹⁰¹

Another publication that uses data from the NMDS is compiled by the Productivity Commission as part of the annual *Report on Government Services*. The Committee noted that the latest report, published in January 2004, includes data from the 2001-02 NMDS collection.¹⁰²

The Department of Human Services is responsible for coordinating the collection of information for the NMDS from funded service providers in Victoria. The Committee is aware that the department collects information from agencies on a quarterly basis, alongside information collected for other purposes.¹⁰³

As previously discussed, the Department of Human Services publishes an annual summary of Victorian information from the NMDS. The latest publicly available report was published in August 2004 and relates to data collected in May 2002.¹⁰⁴ The Committee noted that in the past the department has provided information in this publication on the characteristics of agencies providing services under the agreement and the characteristics of people with a disability. The Committee was surprised that there is no information presented on the cost of services.

⁹⁸ Department of Human Services, *Victorian Services for People with Disabilities 2002: Disability Support Services Provided under the Commonwealth State/Territory Disability Agreement*, August 2004, p.2

⁹⁹ Department of Family and Community Services (Commonwealth), *Commonwealth State/Territory Disability Agreement Annual Public Report 2002-03*, July 2004, p.13

¹⁰⁰ *ibid.*

¹⁰¹ *ibid.*

¹⁰² Steering Committee for the Review of Government Service Provision, *Report on Government Services 2004*, January 2004, pp.13.1–13.48

¹⁰³ Department of Human Services, *Quarterly Data Collection: data guide version 1.2*, January 2004

¹⁰⁴ Department of Human Services, *Victorian Services for People with Disabilities 2002: Disability Support Services Provided under the Commonwealth State/Territory Disability Agreement*, August 2004

5.3.4 *Issues of concern*

The Committee noted that public reporting on services to people with a disability by the department does not specifically report on services provided to people with an *intellectual* disability.

The Committee notes that the approach currently favoured by the government in the review of the *Intellectually Disabled Persons Services Act 1986* and *Disability Services Act 1991* is to repeal these Acts and enact new legislation which defines disability as:¹⁰⁵

A disability that is attributable to an intellectual, sensory, physical or neurological impairment or acquired brain injury (or combination of these) which is permanent, and results in substantially reduced capacity in at least one of the following:

- *self-care or management;*
- *mobility;*
- *communication*

requiring significant ongoing or long term episodic support and which is unrelated to ageing.

Given the policy direction that the government has indicated in the Review of Disability Legislation – Report of Recommendations, the Committee believes that reporting on a whole-of-disability basis is generally appropriate. However, the Committee believes that where information is available on services delivered to people with disability according to the type of disability, this should be provided by the department.

(a) *Annual reporting*

The Committee acknowledges that the wide range of services that are delivered by the Department of Human Services limits the information that can be included in its annual report. The Committee believes that more detailed reporting on intellectual disability services can be readily accommodated by more comprehensive reporting against the Victorian State Disability Plan (see section 5.3.4(b)).

In line with the Auditor-General's finding on performance measures that some of the indicators measure process rather than outputs and outcomes and are not useful for long-term planning (discussed in section 5.2), the Committee noted that several of the performance measures included in the 2004-05 Budget Papers are carried over from 2001-02 and have the characteristics of focusing on *process* rather than outcomes.

¹⁰⁵ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.30

The Committee believes that several of the process oriented measures should be revised including:

- *Outlets reporting a minimum of two planned quality improvement activities in the forthcoming year* (used in several outputs) – the Committee understands that the data source for the measure is the annual quality self assessment undertaken by service providers. Although the Committee supports the department’s approach to monitoring service quality, the Committee believes that the department needs to ensure that the proposed quality initiatives are effectively implemented (not just planned to be implemented) by service providers. The Committee considers that the department should develop performance measures that relate to tangible improvements in service quality that arise from the initiatives;
- *Outlets with an annual Quality Plan*– the Committee understands that the completion of an annual quality plan is mandatory for funded service providers. As a result, this performance measure is largely a measure of agency compliance with service agreement requirements. As discussed above, the Committee believes the department needs to develop performance measures that relate to the effectiveness of *implemented* initiatives to improve service quality, which can also be verified by the department; and
- *Clients either in receipt of equipment or sent written acknowledgement of aids and equipment applications within 10 working days* – the Committee believes that the outcome of providing aids and equipment to people with a disability is the timely receipt of the appropriate aids and equipment.

The Committee recommends that:

Recommendation 33: **The Department of Human Services revise performance measures in the Disability Services output group to ensure that they include quality and timeliness measures that focus on the outcomes of service delivery.**

(b) *Reporting progress against the Victorian State Disability Plan*

The Committee believes that none of the separate departmental publications on disability services provides an adequate report of progress against the State Disability Plan to Parliament and the community. The Committee also notes that some of these reports are not available in a timely fashion. For example, the report *Victorian Services for People with Disabilities 2002* (covering data collected as part of the NMDS ‘snapshot day’) was published in August 2004, 27 months after the information was collected. Since much of this information is now collected quarterly, the department should be able to report on this information earlier than in previous years.

The Committee considers that the department should undertake to produce a single report from the range of information sources available (and take account of information sources that are currently under development) to provide more accessible information to the Parliament, service providers and the community on services delivered to people with a disability. Where possible, the Committee believes the department should provide information on services to people with an intellectual disability.

The Committee believes that a report on progress against the State Disability Plan should include a summary of activities undertaken to address each of the five priority strategies as well as progress against a range of objective key performance indicators that are related to the outcomes of services provided (or not provided) by the department. Some of the outcomes that the Committee believes should be addressed as part of such a report include measures related to unmet need (such as waiting lists and waiting times for key services), the inappropriate use of some services (such as long-term use of respite beds) and objective measures that relate to service quality improvements against the Victorian Disability Service Standards.

The Committee is of the view that the value of a progress report would be enhanced if it included information covering the full year that is available from the quarterly collection of the NMDS and the financial year data covering the same period. Ideally, the Committee believes that such a report should be published at a similar time as the department's annual report, which is usually tabled in Parliament in early November each year.

The Committee recommends that:

- Recommendation 34:** **The Department of Human Services provide a consolidated report on services for people with a disability and report on the outcomes of the Victorian State Disability Plan. This report should:**
- (a) include a range of objective performance measures that relate to the outcomes of services provided (or not provided) to the department's potential clients; and**
 - (b) be publicly released on an annual basis in conjunction with the tabling of the Department of Human Services' annual report in Parliament.**

CHAPTER 6: REVIEW OF DISABILITY LEGISLATION

*Underpinning all of these strategies is a review of legislation. ... This review will provide the basis for an integrated approach to disability in Victoria, and will also support the reorientation of the disability support system.*¹

6.1 Background

6.1.1 The review of disability legislation

In 2000, the Department of Human Services foreshadowed a review of disability legislation.² However, in that year the department commenced developing the Victorian State Disability Plan, which was released in September 2002.³ The plan outlined the government's vision for the future and five strategies for realising that vision.⁴ Underpinning these strategies was a review of the Intellectually Disabled Persons' Services Act 1986 and the Disability Services Act 1991. These Acts provide the framework for the planning, funding and delivery of supports and services to people with a disability in Victoria.

The department stated that any new legislation would be consistent with the Victorian State Disability Plan and would provide the basis for an integrated approach to disability services in Victoria.⁵ The implementation plan which accompanied the Victorian State Disability Plan stated that an options paper for new legislation would be developed by February 2003 and that a report on a new disability legislative framework would be completed by June 2003.⁶

As exhibit 6.1 shows, the two Acts are being reviewed in four phases.

The review of the two Acts is particularly important to the Committee's follow-up of the Auditor-General's report, because the department had indicated its intention to address many of the issues raised in, and recommendations of, the Audit report through such a review.

¹ Department of Human Services, *Victorian State Disability Plan 2002–2012*, September 2002, p.25

² Victorian Auditor-General's Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.49

³ Department of Human Services, *Victorian State Disability Plan 2002-2012*, September 2002, Appendix 1

⁴ *ibid.*, p.13

⁵ *ibid.*, p.25

⁶ Department of Human Services, *Victorian State Disability Plan, Implementation Plan, 2002-2005*, September 2002, p.50

**Exhibit 6.1: Review of Victorian Disability Legislation
– The process**

Phase 1 - Discussion paper and public consultation

A discussion paper was released in May 2003 as a basis for public consultation. The discussion paper identified issues that need to be considered in developing a legislative framework for disability, and asked questions that need to be addressed during the review.

The release of the discussion paper was followed by three months of public consultation about the issues and questions. The consultation process included:

- 25 joint community and support provider forums held across Victoria;
- 20 focus groups for people with a disability who may have needed additional support to contribute to the review; and
- written submissions.

More than 1,170 individuals and organisations participated in the consultations.

Phase 2 - Report of recommendations

In October 2004, the Department of Human Services released its Review of Disability Legislation – Report of Recommendations, outlining its proposals for changes to the Intellectually Disabled Persons' Services Act and the Disability Services Act.

The purpose of the report is to provide the basis for public feedback on the government's proposals. Comments on the report can be made until 17 December 2004.

Phase 3 - Finalising the legislation

Following feedback on the Report of Recommendations, a Bill will be prepared for introduction into Parliament in 2005.

Phase 4 - Implementation

The implementation timetable for the new legislation and any transitional arrangements will be finalised during drafting of the Bill.

Source: Department of Human Services, Disability Services, Review of disability legislation, the review process (website: <http://hnb.dhs.vic.gov.au/ds/disabilitysite.nsf/pages/legislation>)

6.1.2 **Issues identified with the review process**

The Committee received several submissions expressing concern about how the review was being undertaken and what it would achieve.⁷ The Committee was interested to learn if people with intellectual disabilities had been engaged in the legislative review process. The legislation and the state plan both emphasise the importance of engaging the person with a disability when it comes to the planning and evaluation of services and they should also be engaged in higher level policy. The Committee believes it is very important for people with an intellectual disability to be involved at all stages of developing and implementing policy that affects them. The Committee acknowledges that this is a difficult area and the intellectually disabled community is not a homogenous one and includes people from different cultural backgrounds and people with different ability and education. The Committee is also keen to see the policy documents written in different formats, to make it accessible to people with an intellectual disability and from different cultural backgrounds and with different levels of understanding, reading and writing skills. The need for such material is widely supported, here and overseas.⁸

A representative of the Disability Advisory Council of Victoria told the Sub-Committee that in one forum to get community feedback, the written material provided by the department was not in easy English. This was despite the fact that there were 30 people with an intellectual disability in attendance.⁹

The Committee welcomes the fact that the report on the review is available in large print format and easy English versions.¹⁰

The Committee believes that there is a need to improve the participation process for people with intellectual disability in the legislative review.

The Committee recommends that:

Recommendation 35: **The Department of Human Services ensure that information provided to forums and focus groups as part of the review of the *Intellectually Disabled Persons' Services Act 1986* and the *Disability Services Act 1991* are available in large print format and 'easy English' versions.**

⁷ Action for More Independence and Dignity in Accommodation, submission no. 6, p.3; Dr C. Bigby, submission no. 9, p.1

⁸ Rioux M. (editor), *Let the world know*, Report of a seminar on Human Rights and Disability held at Almasa Conference Centre, Stockholm, Sweden, November 5-9 2000, p.16-17

⁹ Ms H. Forsyth, member, Disability Advisory Council of Victoria, transcript of evidence, 29 June 2004, p.2

¹⁰ Department of Human Services, Disability Services, Victorian disability legislation, website <http://hnb.dhs.vic.gov.au/ds/disabilitysite.nsf/pages/legislation>

6.1.3 Key features of the proposed new legislation

In his follow-up report in 2003, the Auditor-General emphasised the need to review the two Acts to address matters raised in the original audit report.¹¹

In November 2003, the Victorian Law Reform Commission released its report, *People with intellectual disabilities at risk: a legal framework for compulsory care*. This report made approximately 140 recommendations relating to a broad range of issues, such as restraint and seclusion, locked doors, detention for compulsory treatment, prison transfers, diversion from the criminal justice system, community orders, and restrictive practices for people with cognitive impairment.¹²

The department's *Review of Disability Legislation – Report of Recommendations* proposed the main features of the new legislation include:¹³

- a clear statement of principles to underpin the way that all services and supports are provided for people with a disability;
- a stronger framework for ensuring the support of people with a disability is recognised across government and the community;
- a fairer system for access to specialist disability services and supports;
- a system of planning which recognises both the individuality of the person as well as specific needs that arise from their particular disability;
- more client-centred services and supports that offer people with a disability more choices;
- better methods of holding disability service and support providers accountable, and for ensuring the quality of services and supports;
- better protection of the rights of people with a disability, such as their tenancy, privacy and money management rights;
- an effective system for dealing with complaints about disability services and supports; and
- a more transparent and accountable system for regulating practices that restrict the liberties of people with a disability.

6.2 Addressing the issues raised by the Auditor-General

The following sub-section examines the department's recommendations in the recent Review of Disability Legislation in the context of the Auditor-General's recommendations in the 2000 audit report. It should be noted that the hearings and submissions to this inquiry took place prior to the release of the department's

¹¹ Victorian Auditor-General's Office, *Report on Public Sector Agencies*, June 2003, p.79

¹² Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.20

¹³ *ibid.*, p.1

recommendations. Consequently, comments made by agencies and individuals to the inquiry do not relate specifically to the latest recommendations.

6.2.1 Statutory provisions relating to restraint and seclusion

The Intellectually Disabled Persons' Services Act has provisions about the use of restraints and seclusion. There are no such provisions in the Disability Services Act.¹⁴

The Committee was told of a number of problems with restraint and seclusion. However, it was not always clear whether the problems were due to inadequate legislation, poorly written guidelines, staff not following proper procedures or insufficient resources to carry out proper procedures.

The Review found that the Intellectually Disabled Persons' Services Act has proved inadequate in a number of respects and does not provide enough protection for the rights of people with a disability.¹⁵

To address these shortcomings, the report made nine recommendations that establish a regulatory framework for the use of restraint and seclusion for people with a disability who receive services and support under the Act. These are:¹⁶

- the legislation should contain provisions about the use of restraint and seclusion for people with a disability who receive support under the Act (Recommendation 40);
- the legislation should define mechanical restraint, chemical restraint and seclusion (Recommendation 41);
- the legislation should state that mechanical and chemical restraint and seclusion only be used where:
 - necessary to prevent a person from physically harming themselves or any other person, or to prevent a person from destroying property in a way that will pose a risk of serious harm to themselves or others;
 - it is the least restrictive option; and
 - it is included in a person's behaviour management plan, which has been authorised by the authorised program officer (Recommendation 42);
- the legislation should continue to provide for the use of restraint and seclusion in an emergency (Recommendation 43);
- support providers should provide specified information about their use of restraint and seclusion to the Office of the Senior Clinician (Recommendation 44);

¹⁴ *ibid.*, p.54

¹⁵ *ibid.*

¹⁶ *ibid.*, pp.55–58

- the Office of the Senior Clinician should have powers to investigate, monitor and impose conditions on the use of restraint and seclusion (Recommendation 45);
- there should be penalties for using restraint and seclusion outside the requirements of the Act (Recommendation 46);
- the legislation should require that prior to a person being subject to restraint and seclusion, he or she must be provided with an independent person to assist them to understand and exercise their rights (Recommendation 47); and
- a decision to use restraint and seclusion should be reviewable internally by the Office of the Senior Clinician and externally by the Victorian Civil and Administrative Tribunal (Recommendation 48).

A key element of the regulation of restraint and seclusion is the proposed Office of the Senior Clinician (Recommendation 39).¹⁷ This office would have a number of functions, including:¹⁸

- developing clinical guidelines and standards;
- investigating complaints about the use of restrictive interventions;
- providing secondary consultation;
- developing links with, and aiding access to, other professionals, professional bodies and academic institutions to improve knowledge about clinical interventions for staff working with people with a disability and to influence the training of staff;
- undertaking research and providing information to staff about treatment options; and
- evaluating and monitoring the systemic use of restrictive practices across all disability services and supports and making recommendations to the Department of Human Services to improve practice.

The Office of the Senior Clinician would also have functions specific to the restrictive interventions on restraint and seclusion and compulsory treatment.¹⁹

It is proposed that the Office of the Senior Clinician would also have the powers to:²⁰

- obtain information from support providers about, and investigate, the use of seclusion and restraint; and
- impose conditions, limitations or prohibitions on the use of seclusion and restraint.

¹⁷ *ibid.*, pp.53–54

¹⁸ *ibid.*

¹⁹ *ibid.*

²⁰ *ibid.*, p.56

This is in contrast to the powers of the Intellectual Disability Review Panel. It receives monthly reports about the use of restraint and seclusion, but has no authority to respond to the reports.

The Committee welcomes the proposed legislative changes including the wider powers proposed for the Office of the Senior Clinician. If not already implied, the Committee believes that the power of the Office to investigate (Recommendation 45) should include the ability to visit services and audit them. The Office should also have the power to suspend or remove the licence to provide a service of any service provider that repeatedly fail an audit.

The Committee has two other concerns.

First, the Committee believes it is not appropriate for the proposed Office of the Senior Clinician to be overly focused on medical issues. As the department noted in the report of recommendations, *'many people during the ... consultation process expressed the view that disability is not a health issue'*.²¹ By its terminology the Office of the Senior Clinician has connotations of a medical role rather than a model that promotes a rights based approach to people's needs as envisaged under the Victorian State Disability Plan. To overcome this, the Committee believes that the department should ensure that the proposed Office of the Senior Clinician is supported by a multi-disciplinary team which includes specialists from non-medical backgrounds, such as experts who are conversant with communication impairment, a legal specialist and other professionals who are informed about current good practice in disability support.

The Committee recommends that:

Recommendation 36: **The Department of Human Services ensure that the Office of the Senior Clinician is supported by multi-disciplinary staff which includes specialists from non-medical backgrounds who support a rights-based approach for people with an intellectual disability, as outlined in the Victorian State Disability Plan.**

The Committee supports the recommendation that a decision to use restraint and seclusion should be reviewable externally by an independent body, such as the Victorian Civil and Administrative Tribunal (VCAT) (Recommendation 48). If VCAT is to be used as the external review body, the Committee believes that it should be appropriately resourced with staff and Panels that have suitable specialist skills, accessible to all and affordable to people with a disability and their advocates.

²¹ *ibid.*, p.47

The Committee recommends that:

Recommendation 37: **The Government ensure that the external review body to evaluate and monitor the systemic use of restrictive practices across all disability services, such as VCAT, be appropriately resourced with staff and Panels that have suitable specialist skills, are accessible to all and are affordable to clients and their advocates.**

6.2.2 *Intellectual Disability Review Panel and scope of reviewable decisions*

The need for an external review mechanism has been discussed in detail earlier in this report. A number of submissions to this inquiry suggested that the legislative review should include such a recommendation. For example, the Disability Advisory Council of Victoria suggested this mechanism be introduced as part of the legislative review in addition to, and to consolidate, existing independent bodies.²²

The Intellectually Disabled Persons' Services Act currently provides for both internal and external review of decisions about:²³

- a person's eligibility for services;
- the content of and amendments to a person's general service plan;
- the admission of a person to a residential institution;
- the detention and care of security residents; and
- the use of restraint and seclusion.

To have decisions about these matters reviewed, a person can apply internally to the Secretary of the Department of Human Services, or externally to the Intellectual Disability Review Panel. However, the review of disability legislation found limitations with these arrangements, mainly relating to arrangements for external reviews by the Intellectual Disability Review Panel.²⁴

The Intellectual Disability Review Panel is an independent statutory body whose main functions as set out under the Intellectually Disabled Persons' Services Act include:²⁵

²² Disability Advisory Council of Victoria, Annual Report, 2003, p.24

²³ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.50

²⁴ *ibid.*

²⁵ Intellectual Disability Review Panel, Annual Report 2003-04, p.12

- reviewing certain decisions, made by the department and funded agencies, that affect people who have an intellectual disability;
- monitoring the use of restraint and seclusion in services funded under the Act;
- reviewing cases of security residents every 12 months or earlier; and
- responding to requests for advice referred to it by the Minister for Community Services.

A number of submissions to this inquiry pointed out that the Panel's effectiveness was limited by its lack of determinative powers, and its lack of power to initiate investigations. The Committee was advised that people who receive intellectual disability services, and their families, find it very difficult to access a formal complaint process.²⁶ Despite a potential client base of 9,000 people, the Committee noted that there were only 13 applications for review by the Panel in 2003-04.²⁷

The government proposes that the new disability legislation will provide for internal and external review of certain decisions made under the legislation. It proposed that there should be internal review of administrative decisions about:²⁸

- whether a person has a disability within the meaning of the Act;
- the placement of a person in a residential institution;
- the use of restrictive practices; and
- certain decisions relating to security residents (Recommendation 37).

It also proposed that there should be external review of the above administrative decisions by the Victorian Civil and Administrative Tribunal (Recommendation 38).²⁹

As well, recommendation 13 is that any decision that a person does not have a disability within the meaning of the Act should be reviewable (Recommendation 13).³⁰

The report on recommendations also recommended that a decision to use restraint and seclusion should be reviewable internally by the Office of the Senior Clinician and externally by the Victorian Civil and Administrative Tribunal (Recommendation 48). The Committee has some reservations about the proposed use of the tribunal to conduct external reviews. These reservations were discussed in the previous subsection.

The government also proposes to establish a Disability Complaints Resolution Office. It will report directly to the Secretary of the Department of Human Services, and be

²⁶ Intellectual Disability Review Panel, *Response to the Review of Disability Legislation in Victoria, Discussion paper, May 2003*, September 2003, p.24

²⁷ Intellectual Disability Review Panel, *Annual Report 2003-04*, pp.2, 18

²⁸ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.51

²⁹ *ibid.*

³⁰ *ibid.*, p.31

independent of support services to people with a disability. The Office would be required to report regularly to the Ombudsman who can monitor the Office's handling of complaints (Recommendation 33).³¹

The Committee notes that, while the proposed Disability Complaints Resolution Office is set up to receive complaints, it does not have the power to initiate its own investigations. The Committee believes that any new statutory complaints body should have the power to initiate its own investigations to ensure that the rights of service users are protected.

The Committee recommends that:

Recommendation 38: The Government ensure that the proposed Disability Complaints Resolution Office has the power to initiate its own investigations.

The Committee supports the establishment of the Disability Complaints Resolution Office. For the Office to be effective, the Committee believes that it must be truly independent (not just an extension of the department). In setting up the Office, the Department of Human Services must ensure that it is separate from the department's operational areas.

The Committee recommends that:

Recommendation 39: The Government ensure that the complaints body, such as the proposed Disability Complaints Resolution Office, is independent of the Department of Human Services.

While the report of recommendations does not explicitly state it, it is implied that the Intellectual Disability Review Panel will be redundant after the proposed legislation is implemented because many or all of its functions would be transferred to other bodies. If this is the case, the Committee believes that the department must work closely with the Panel to ensure that all of its relevant functions are transferred to other bodies, and that there is a smooth transition process.

The Committee notes that there appears to be no provision in the proposals to address the Panel's current role and function in relation to referrals for advice such as review of plans of all residents in Kew Residential Services Redevelopment.³² This could mean the residents moving out of the remaining institutions may not be afforded the same benefits of an independent body receiving their relocation plans.

³¹ *ibid.*, p.47

³² Intellectual Disability Review Panel, Annual Report 2002-03, Appendix 1

The Committee recommends that:

Recommendation 40: **The Department of Human Services work closely with the Intellectual Disability Review Panel to ensure that all of the Panel’s functions are transferred to other bodies and that a smooth transition process is established.**

6.2.3 Support mechanisms for the protective framework

The Auditor-General recommended that there be mechanisms to support the operation of the protective framework, particularly mechanisms that can better enable people with an intellectual disability to exercise their rights to participate in decisions, make a complaint or have decisions reviewed if dissatisfied.³³

The Review of Disability Legislation – Report of Recommendations acknowledges that some people with a disability may find it difficult to make decisions, or provide consent, about some areas of their lives. Neither the Intellectually Disabled Persons’ Services Act nor the Disability Services Act has provisions about substitute decision making or consent. However, the government does not propose to include provisions about substitute decision making in the new legislation but ‘*acknowledges that further work is required on this issue*’.³⁴

The report makes other recommendations which could strengthen the ability of people with an intellectual disability to exercise their rights to participate in decisions. For example, it recommends that a person with an intellectual disability be provided with an individual plan. The report states that this approach will enable planning to focus on support based on choice and individual need (Recommendation 16).³⁵

However, the Committee is concerned that the proposals appear to represent the loss of the right to seek review of individual plans, particularly external review, which currently exists in the Intellectually Disabled Persons’ Services Act in respect of General Service Plans.

The report states:

*[The Government] believes the legislation should contain a mechanism for having the content of plans reconsidered if a person is unhappy. It also believes a person should be able to make a complaint about the content on their plan and have their complaint dealt with.*³⁶

³³ Victorian Auditor-General’s Office, performance audit on *Services for people with an intellectual disability*, November 2000, p.49

³⁴ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.40

³⁵ *ibid.*, p.34

³⁶ *ibid.*

However, there is no proposal to allow an individual to seek review of their plan. The Committee believes that this will particularly disadvantage those people with intellectual disabilities who are almost totally dependent on service providers and who have little or no effective communication.

The Committee notes that the Victorian State Disability Plan has established a principle of dignity and self determination (choice).³⁷ The Committee believes the review of individual plans should be consistent with the rights based principles in the State Plan and allow individuals to request a review of their plan.

The Committee recommends that:

Recommendation 41: The Department of Human Services ensure that the new disability legislation gives people with an intellectual disability the right to seek an external review of their individual plans.

With regard to the process for handling complaints, the Committee notes that Section 2 of the Australian Standard on Complaints Handling (AS 4269) lists the three essential elements for effective complaints handling as:³⁸

- **Visibility** — users need to know ‘where to complain’;
- **Accessibility** — users want to know ‘how to complain’, that is, it must be relatively easy to lodge a complaint; and
- **Responsiveness** — users want to feel that complaints are not only invited but are treated seriously.

The government proposes that the new legislation require disability support providers to provide information to support users about complaint processes in a manner which the person can understand. Disability support providers would also have to report annually on the number of complaints they have received and how they dealt with the complaints (Recommendation 32).³⁹

According to the department, these requirements in legislation make a clear statement to people with a disability and their parents, families and carers about the seriousness with which complaints are regarded. It also establishes an expectation that support providers will address complaints.⁴⁰

³⁷ Department of Human Services, *Victorian State Disability Plan, 2002-2012*, September 2002, p.9

³⁸ Dee, B. *The essential elements of complaints handling: A discussion of the Australian Standard on Complaints Handling (AS4269)*

³⁹ Department of Human Services, *Review of disability legislation, Report of recommendations*, October 2004, p.46

⁴⁰ *ibid.*

The Committee supports the recommendation to improve processes for handling complaints as it believes that it is better for all concerned if the service provider can deal with the matter effectively and to all stakeholders' satisfaction.

To encourage disability support providers to have an effective complaints handling mechanism (based on the Australian Standard outlined above), the Committee believes that the proposed Disability Complaints Resolution Office should have the power to examine these processes and interview people with an intellectual disability and their parents, families and carers about satisfaction with their providers' processes.

The Committee recommends that:

- Recommendation 42:** **The Government ensure that the proposed Disability Complaints Resolution Office has the power to:**
- (a) examine the practices of service providers; and**
 - (b) interview people with an intellectual disability, their parents, families and carers about their satisfaction with the complaints handling process.**

Where the matter cannot be resolved directly with the service provider, an external complaints mechanism needs to be in place. The Committee's views on the Disability Complaints Resolution Office and VCAT are discussed above.

The Committee notes that the report on recommendations sets out roles for at least four different bodies within the proposed review/regulation system with potential overlap and confusion between these roles. This has the potential to cause confusion for people with an intellectual disability and their families as to the appropriate body to deal with their issue. The proposed bodies include:⁴¹

- Office of the Senior Clinician;
- Disability Complaints Resolution Office;
- Victorian Civil and Administrative Tribunal; and
- an accreditation body to regulate quality of services.

Further, there may need to be another body to make compulsory orders and review compulsory orders.⁴²

⁴¹ *ibid.*, pp.42–46

⁴² *ibid.*, p.62

The Committee recommends that:

- Recommendation 43:** **The Department of Human Services ensure that:**
- (a) a proposal to establish a number of review and regulation bodies relating to services for people with an intellectual disability does not lead to fragmentation of the system; and**
 - (b) service users and their families are provided with clear information as to the appropriate review or regulation body to deal with specific issues.**

This report was adopted by the Public Accounts and Estimates Committee at its meeting held on 13 December 2004 in Meeting Room 4 at Parliament House, Melbourne.

APPENDIX 1: ACRONYMS AND ABBREVIATIONS

ADEC	Action of Disabilities with Ethnic Communities
AMIDA	Action for More Independence and Dignity in Accommodation
CPI	Consumer price index
CRIS	Client relationship information system
CRUs	Community residential units
CSTDA	Commonwealth State/Territory Disability Agreement
CSTP	Community Services Training Packages
DHS	Department of Human Services
DISCIS	Disability Services Client Information System
DSAS	Disability Self Assessment System
GSPs	General Service Plans
IDPS Act	Intellectually Disabled Persons' Services Act 1986
IDRP	Intellectual Disability Review Panel
IP&S	Individualised Planning and Support
IPP	Individual Program Plan
NMDS	National minimum data set
POMs	Personal outcome measures
RMIT	Royal Melbourne Institute of Technology
SNA	Service needs assessment
VALID	Victorian Advocacy League for Individuals with Disability
VCAT	Victorian Civil and Administrative Tribunal
VCOSS	Victorian Council of Social Services

APPENDIX 2: LIST OF INDIVIDUALS AND ORGANISATIONS PROVIDING EVIDENCE AND/OR SUBMISSIONS

Evidence

Monday, 28 June 2004 – Public Hearing

Ms B Boland, Director, Community and Individual Support, Department of Human Services
Mr G Roach, Executive Officer, Disability Services, Department of Human Services
Mr A Rogers, Executive Director, Department of Human Services

Tuesday, 29 June 2004 – Public Hearing

Ms H Forsyth, Member, Disability Advisory Council of Victoria
Mr M Gourlay, Chief Executive Officer, Association for Children with a Disability
Mr W Lawler, Rural Access Officer, City of Latrobe
Ms A Lyon, Director, Home and Community Services, MECWA
Ms M Ryan
Ms S Tait, President, Intellectual Disability Review Panel
Ms J Tops, President, Gippsland Carers Association
Mrs W Urch, Secretary, Parent Carers Support Network Inc

Submissions

Submissions were received from the following individuals and agencies:

Dr C Bigby, Senior Lecturer, School of Social Work and Social Policy, Latrobe University
(submission no. 9)
Mr J Gardner, Public Advocate (submission no. 10)
Ms L Godwin, Executive Officer, Kew Cottages Parents' Association (submission no. 7)
Mr M Jackson, former Chief Executive Officer, Kew Cottages (submission no. 5)
Mr R Riddiford, President, CIPAID (Community and Institutional Parents' Action on
Intellectual Disability) (submission no. 3)
Ms M Ryan (submission no. 1)
Mr K Stone, VALID, (Victorian Advocacy League for Individuals with Disability)
(submission no. 8)
Ms J Tops, President, Gippsland Carers Association (submission no. 2)
Ms W Urch, Secretary, Parent Carers Support Network (submission no.4)
Ms P Williams, Action for More Independence and Dignity in Accommodation
(submission no. 6)

