



## **Tensions between Disability Services Act & Occupational Health and Safety Act**

The NSW WorkCover Authority are providing no answers on how community services can manage the tensions between the Disability Services Act (DSA) and the absolute obligation of employers to guarantee safety in the workplace found in the Occupational Health and Safety (OH&S) Act and associated regulations.

The NSW WorkCover Authority are currently undertaking a project on client related violence in residential care services group homes and late last year surveyed approximately 50 non-government disability service organisations. Interviews took up to 2 hours or more of questioning into development and implementation of policies and safe work practices focusing on requirements for 24 hour supported accommodation. Surveyed organisations received a report suggesting perceived shortcomings and in some cases, Improvement Notices.

WorkCover advises us that the project is reviewing the OH&S management systems for client related violence in the community services sector. In particular, they are reassessing the Australian & New Zealand Standard Industrial Classification (ANZSIC), which is the system by which industries determine insurance tariffs. The project aims to improve compliance where there are no adequate systems in place and also provide information and assistance where needed. WorkCover hopes that the project will provide a better understanding of how client related violence is being managed.

Dealing with challenging behaviour has been on the OH&S agenda for some time and WorkCover's Health and Community Services (HADS) Industry Reference Group (IRG) is clearly responding to this issue in their own way. The HACS IRG has formed an NGO sub group working party to examine client-related violence which is recognised as the main form of occupational violence in the Community Services sector.

In December 2004, ACROD lead a delegation of disability service providers in a meeting with senior WorkCover officials, the Director-General of the Department of Ageing, Disability and Home Care (DADHC) and a number of other senior DADHC officers. The objective of the meeting was to articulate industry concerns about the tensions that exist between the DSA and the OH&S Act as well as the WorkCover approach to managing these tensions.

The delegation pointed out the counter-productive nature of implementation via prosecution but WorkCover were reportedly inflexible and remain heavily focused on an enforcement-compliance based approach with only the regulations of the OH&S Act in mind. It would be hard to blame community organisations for being nervous in coming forward with their difficulties as they strive to manage the demands of the DSA and the OH&S Act.

It is interesting to reflect on the Ombudsman's recommendations of May 2004 in which he attempted to address the gaps appearing in service provision. He was responding to reported

cases of homeless people being turned away from supported accommodation due to OH&S guidelines posing these people as a risk. HREOC are currently trying to address the issue of right of access to services in a climate where risk management is becoming such a challenge.

This kind of unyielding system could well result in community organisations finding it difficult in gaining suitable insurance to cover the increased risk. Employers are already at risk of prosecution for second time injuries in the workplace and with the reversal of onus of proof it will be up to the employer to demonstrate that they did absolutely everything they could rather than the prosecution proving otherwise.

We are however pleased to hear from ACROD that WorkCover have made a commitment to share outcomes from the client related violence project with the DADHC Director General which will at least hopefully provide a transparent process.

**Summary outline of tensions experienced by disability service providers between OH&S and DSA** *(as per discussion paper for the NSW ACROD Accommodation Sub-Committee)*

- A primary tension is the dichotomy between the clients' home in the community and the workplace environment. Typically the view is that when the residential care workers enter the client's home environment the home is also a workplace.
- OH&S legislation has significant sanctions as compared to the NSW DSA (93) so there may be a preference by disability services to comply with OH&S legislation in preference to the NSW DSA (93).
- It has been identified that safety and protection do not feature as primary concerns of the DSA. For example, the human rights principles embedded in the DSA such as the right to privacy may at times negate duty of care to vulnerable clients who may require increased monitoring and supervision.
- Compromises in safety and protection of clients lead to increased risks to clients and staff.
- Funding for disability service models may be inadequate for client needs such as due to client aggression, medical needs and incompatibility.
- Working in isolation increases risks as emergency care and other care may not be available immediately.
- Residential care workers are employed to work in clients' homes and the clients' ability to pay for home improvements to maximise safety for workers may be limited.