



**Office of the
Health Complaints
Commissioner
2007**

700-0410028 – Disability Services – allegations of assault of client by residential support worker – whether actions reasonable

Section 23(1)(c), (e) & (f) of the *Health Complaints Act 1995* – that a health service provider acted unreasonably in the manner of providing a health service, failed to treat a health service user in an appropriate professional manner and failed to respect a health service user's dignity.

Finalised March 2007

The complainant's brother was a resident at a Disability Services (DS) facility and, due to the resident's impairment, the Commissioner accepted the complaint pursuant to s 22(f) of the *Health Complaints Act 1995*. It was alleged that on 2 October 2004 a DS residential support worker witnessed a co-worker physically assault the resident and verbally abuse him. Tasmania Police investigated the alleged assault and charges were laid. The case went to trial and the charge was dismissed.

The issues raised involved the standard of care provided to the resident by DS and in particular their investigation into the alleged assault, the management of the hearing into the charges and actions taken in relation to reports of residential support workers behaviour and intimidation. During the course of the investigation under the *Health Complaints Act* the complainant alleged that the resident was subject to retaliatory conduct by other residential support workers and that the administrative actions of DS were inadequate. There were other incidents where the support given was inadequate and not in accord with the objectives, principles and standards of the *Disabilities Services Act 1992*. For example, the complainant's brother had *special witness* status but when he was taken to the court by taxi to determine whether he had the requisite capacity to give evidence he was accompanied by two witnesses for the defence and was observed to be crying when he alighted from the taxi. A vocal group of residential support workers who were supporters of the alleged perpetrator were present.

The conclusion reached was that while DS management acted on the report of the alleged assault once it came to their notice, at times that action was delayed. The ongoing reports of residential support worker behaviour at the resident's home and on attending the trial of the alleged assailant were illustrative of the poor work culture at the site and that they lacked insight and had little concept of their responsibilities as State employees and as carers of persons with disabilities. Competent and caring residential support workers would not have engaged in such conduct.

The ongoing problem with residential support workers behaviour was such that the complainant sought assistance from Members of Parliament. A trial transfer to another facility was arranged. The complainant reported an “*unbelievable*” improvement in the resident’s behaviour and he decided to remain at the new facility. It was concluded that the resident’s needs and interests were not managed appropriately and there was a breach in the standard of care, which ought to have been afforded to him having regard to his disability, and the standards set out in the *Disability Services Act*.

In April 2007 the Minister for Health commissioned KPMG to conduct an audit and report on the standard of care and level of client safety in department-run homes. The KPMG report released on 8 November 2005 identified significant systemic problems and recommended changes to the service delivery. This coincided with the release of “Living Independently”, a government initiative to implement the KPMG report recommendations including the transfer of DHHS group homes to non-government organisations.

DHHS will provide the Commissioner with evidence of the implementation of the KPMG recommendations in April 2008. A recommendation was made and accepted that DS establish closer links with the Court and Police to ensure that the interests and welfare of DS clients are supported and represented.

While the government is commended for implementing the recommendations of the KPMG report the privatisation of supported accommodation services for disabled persons does not obviate the need for accountability in DS and the DHHS with respect to service provision. A recommendation was made that, following the decision to move management of supported accommodation facilities to the private sector, DHHS ensure that appropriate funding, accreditation, evaluation and on-going assessment procedures for non-government supported accommodation facilities are in place, that service standards are periodically reviewed by DHHS, and that a system be established to address any breaches of service standards.

- Approved for website
- Approved for Annual Report [theme or case summary]

Health Complaints Commissioner / Ombudsman