



**PEOPLE WITH DISABILITY**  
**AUSTRALIA**

**A voice  
of our  
own**

# About PWDA

**People with Disability Australia (PWDA)** is a leading disability rights, advocacy and representative organisation of and for all people with disability. We are the only national, cross-disability organisation - we represent the interests of people with all kinds of disability. We are a non-profit, non-government organisation.

PWDA's primary membership is made up of people with disability and organisations primarily constituted by people with disability. PWDA also has a large associate membership of other individuals and organisations committed to the disability rights movement.

We have a vision of a socially just, accessible and inclusive community, in which the human rights, belonging, contribution, potential and diversity of all people with disability are recognised, respected and celebrated with pride. PWDA was founded in 1981, the International Year of Disabled Persons, to provide people with disability with a voice of our own.

PWDA is a national peak organisation and founding member of Disabled People's Organisations Australia (DPO Australia) along with Women With Disabilities Australia, First Peoples Disability Network Australia, and National Ethnic Disability Alliance. Disabled Peoples Organisations (DPOs) are organisations that are led by, and constituted of, people with disability. The key purpose of DPO Australia is to promote, protect and advance the human rights and freedoms of people with disability in Australia by working collaboratively on areas of shared interests, purposes, strategic priorities and opportunities.

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# Disability Services and other legislation (NDIS) Amendment Bill 2019

## Introduction

As a national peak body for people with disability and as a Disabled Person's Organisation (DPO), People with Disability Australia (PWDA) congratulates the Queensland Government for introducing the *Disability Services and other legislation (NDIS) Amendment Bill*.

It is anticipated that the introduction of this Bill will help facilitate the roll out of the National Disability Insurance Scheme (NDIS) across Queensland. PWDA hopes that the implementation of this omnibus Bill will support all people with disability in Queensland whether they are eligible for the NDIS or not; as per the National Disability Strategy (NDS)

One in five Queenslanders live with disability<sup>1</sup>, this amounts to approximately 890,000 people, yet only 90,000 will be eligible for the NDIS. The roll out of the NDIS across Queensland has seen a less than optimal uptake of plans, for a variety of reasons, including issues with access.

Whilst this Bill oversees some key areas to support the roll out of the NDIS, PWDA wishes to highlight that the overall roll out in Queensland has seen similar issues to those in other states implementing the NDIS. These issues are not necessarily covered by or addressed by this omnibus Bill.

PWDA also wishes to remind the Queensland Government that as a member of COAG and signatory to the National Disability Strategy, the Queensland Government is required to honour and implement the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD); a key element of which is the roll out of the NDIS.

We have outlined below the key areas of this omnibus Bill which we feel requires further consideration. PWDA wishes to thank the Queensland Government for the opportunity to make this submission regarding this important piece of legislation.

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<sup>1</sup> <https://www.qld.gov.au/disability/community/disability-statistics>

## Restrictive Practices – Amendment of the Disability Services Act 2006

### Clauses 21, 22, 23, 24, 25

PWDA notes that the clauses for amendment of the *Disability Services Act 2006*, are consistent with current Queensland legislation and practice regarding all forms of restrictive practices be they physical or chemical restraints. PWDA also notes that the use of said restrictive practices in this legislation and subsequent amendment is primarily directed to persons with intellectual or cognitive disability.

PWDA does not, nor have we ever, supported the use of restrictive practices on people with disability. The use of such practices is in complete contravention of the human rights of people with disability and does not comply with our obligations under the CRPD.

PWDA notes that the Queensland Government has recently implemented a Human Rights Act, and that the use of restrictive practices is inconsistent with the spirit of said Act.

### Recommendations

- That the Queensland Government supports the establishment of a CRPD<sup>2</sup> and OPCAT<sup>3</sup> compliant nationally consistent legislative and administrative framework for the protection of people with disability from behaviour modification and restrictive practices that cause harm and punishment, including the prohibition of and criminal sanctions for particular behaviour modification practices.
- That the Queensland Government supports the development of an evidence-based national plan that outlines actions for the development of human rights based positive behaviour support strategies that acknowledge and respect the physical and mental integrity of the person; and for the elimination of environments and treatment approaches that have been shown to exacerbate behaviour that leads to application of inappropriate levels of behaviour modification and restraint.
- That the Queensland Government supports the implementation of a national inquiry into the use of restrictive practices on children and young people with disability in mainstream and segregated schools and identifies and implements recommendations for the elimination of these practices.
- That Queensland ceases the use of seclusion, isolation and solitary confinement as a behaviour modification technique for people with cognitive impairment and psychosocial disability.<sup>4</sup>

<sup>2</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities.html>

<sup>3</sup> <https://www.humanrights.gov.au/our-work/rights-and-freedoms/projects/opcat-optional-protocol-convention-against-torture>

<sup>4</sup> Considerations Of The 4th And 5th Reports Of Australia By The Committee To The Convention Against Torture, PWDA, 2014, <https://pwd.org.au/our-work/submissions/submission-archive-2014/>

## Reportable Deaths in Care – Amendment of the Coroners Act 2003

### Clause 51 – amendment of s9 (death in care defined)

As noted by the Queensland Public Advocate, in Queensland, there is no specific process for systemically reviewing the deaths of people with disability apart from the coronial process for deaths in care. While all deaths in care must be reported to the Coroner and investigated, not all investigations will result in an inquest and/or published findings.<sup>5</sup>

Regarding the definition of death in care, Section 9 (1) (e) and (3 A) of the *Coroners Act 2003*, PWDA wishes to note that under these definitions it is implied that the deceased may only be a person considered to be “vulnerable” and or with possible impaired capacity (as defined by the *Guardianship Act 2014*) or a person who may have had a restrictive practice in place at the time of death.

It is noted that the nature of the dwelling of the deceased is clearly defined but limited as it does not cover any level of boarding house accommodation.

### Recommendation

- It is recommended that the definition of a death in care is expanded to include any person with a disability, in a dwelling of any nature or in any residence, whether they be an NDIS participant or not; and whether said dwelling be a private home, group home, boarding house or specialist disability accommodation.
  - This is consistent with the UNCRPD Article 4 – General Obligations of the CRPD<sup>6</sup>.
1. States Parties undertake to ensure and promote the full realization of all human rights and fundamental freedoms for all persons with disabilities without discrimination of any kind on the basis of disability. To this end, States Parties undertake:
    2. a) To adopt all appropriate legislative, administrative and other measures for the implementation of the rights recognized in the present Convention;
    3. b) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices that constitute discrimination against persons with disabilities;
    4. c) To take into account the protection and promotion of the human rights of persons with disabilities in all policies and programmes;
    5. d) To refrain from engaging in any act or practice that is inconsistent with the present Convention and to ensure that public authorities and institutions act in conformity with the present Convention;

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<sup>5</sup> <https://www.justice.qld.gov.au/public-advocate/activities/current/deaths-of-people-with-disability-in-care>

<sup>6</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-4-general-obligations.html>

## Conclusion

PWDA notes that the NDIS Quality and safeguards Commission in Queensland will not be operational until June 2019. In addition, the Quality and Safeguards Commission has limited powers at this stage to bring forward prosecutions for any wrongdoing against people with disability. This has been recently highlighted with the most recent report from the NSW and South Australian Commissions whereby incidences of violence and abuse, including sexual abuse of people with disability have been reported<sup>7</sup> but not necessarily enacted upon. To date the commission is a regulatory mechanism to monitor the reportable activities of service providers, thus excluding incidents that may occur in private dwellings.

People with disability have the right to live without fear, violence, abuse and neglect, regardless of where they reside<sup>8</sup>. Equally, people with disability also have the right to seek justice<sup>9</sup> for any wrongdoing against them within any given jurisdiction. Currently, the NDIS Quality and Safeguards Commission has limited capacity to facilitate access to justice for people with disability<sup>10</sup>. Thus, the Queensland government must ensure that people with disability in this state, can access justice and recourse where necessary. This means ensuring that current and new legislation includes people with disability and that said legislation is suitably informed by the United Nations Convention on the Rights of people with disability.

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<sup>7</sup> <https://www.abc.net.au/news/2019-04-10/ndis-abuse-neglect-watchdog-serious-incident-reports/10986370>

<sup>8</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-15-freedom-from-torture-or-cruel-inhuman-or-degrading-treatment-or-punishment.html>

<sup>9</sup> <https://www.un.org/development/desa/disabilities/convention-on-the-rights-of-persons-with-disabilities/article-13-access-to-justice.html>

<sup>10</sup> <https://www.ndiscommission.gov.au/providers/reportable-incidents>



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