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Miss Nikki Boyd MP
Acting Chair
Communities, Disability Services and Domestic and
Family Violence Prevention Committee
Parliament House
George Street
BRISBANE QLD 4000

By email: cdsdfvpc@parliament.qld.gov.au

Dear Miss Boyd

Thank you for the opportunity for the Department of Communities, Child Safety and Disability Services (the department) to respond to submissions received by the Communities, Disability Services and Domestic and Family Violence Prevention Committee (the Committee) in response to the Disability Services and Other Legislation Amendment Bill 2015 (the Bill).

I enclose the department's response to the written submissions to the Committee about the Bill for your consideration.

If you require any further information, please do not hesitate to contact Ms Megan Giles, Executive Director, Legislative Reforms, Department of Communities, Child Safety and Disability Services on [REDACTED].

Yours sincerely



Michael Hogan
Director-General

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Communities, Disability Services and Domestic and Family Violence Prevention Committee
Issues raised in written submissions on the Disability Services and Other Legislation Amendment Bill 2015

The majority of submissions were generally supportive of the Bill and its objectives. Some of the issues raised in the submissions relate to the design of the national NDIS quality and safeguards framework, which is being led by the Australian Government for full implementation of the NDIS from 1 July 2019. This has been reflected in the responses in the table below and the feedback of stakeholders will be addressed through Queensland's role in the development and implementation of the national NDIS quality and safeguards framework.

The response completed by the Department of Communities, Child Safety and Disability Services includes input from the Department of Justice and Attorney-General.

Submitter	Issue raised	Response
Office of the Public Advocate	The submission indicated that the Bill's extension of Queensland's quality and safeguards framework presented an opportunity to consider and explore further improvements to the quality and safeguards framework.	<p>The primary purpose of the Bill is to extend Queensland's existing quality and safeguards system throughout the transition period to a new category of persons and providers that need to be captured as a result of the new way that disability supports will be provided and funded under the NDIS. This will ensure Queenslanders who are receiving disability supports under the NDIS have the same level of safeguards as Queenslanders who are in receipt of disability supports funded by the department during the transition period. The Bill does not create new quality or safeguard measures.</p> <p>Queensland is contributing, with other jurisdictions, to the Australian Government's design of a national NDIS quality and safeguards framework for full scheme which has appropriate levels of protection for people with disability.</p>
	Whilst the submission indicated support for the proposals relating to screening and other such activities of employees of NDIS non-government service providers, it detailed the need for this to be complemented by training, policies and guidelines dedicated to selecting staff and building organisational cultures that uphold a 'zero tolerance' approach to abuse, neglect and exploitation.	<p>Service providers must keep and implement a policy for preventing and responding to abuse situations. A resource kit has also been developed by the Department of Communities Child Safety and Disability Services (the department) to support providers to meet this obligation, which includes best practice tools and strategies. This resource is already publicly available.</p> <p>Both the policy and resource kit embody a 'zero tolerance' approach to abuse, neglect and exploitation. This safeguard will continue to apply throughout the NDIS transition period.</p>

Submitter	Issue raised	Response
	<p>In relation to 'deaths in care', the submission suggested consideration should be given to the implementation of a system of reporting and analysis by an appropriate agency in Queensland, which should also be properly resourced to carry out regular reviews. It was suggested that such reviews were critical to ensuring a transparent system that uses available information relating to deaths in care to improve relevant systems for people with disability and thereby reduce the number of potentially avoidable deaths.</p>	<p>The Centre of Excellence for Clinical Innovation and Behaviour Support within the department monitors and analyses critical incident reports in relation to issues such as client deaths and deaths in care. The Centre also conducts practice reviews of deaths and serious incidents, including at the request of the department's Regional Executive Directors. The results of the analysis and reviews are used to guide practice and systems improvement actions.</p> <p>Under the <i>Coroners Act 2003</i>, when a matter proceeds to inquest a coroner may make recommendations aimed at preventing similar deaths in the future.</p>
Queensland Advocacy Incorporated (QAI)	<p>QAI highlighted a concern that one of the amendments implied that financial concerns for the Queensland Government may override the rights and liberty of people with disability and their families.</p> <p>In recent years people with disabilities have been denied fundamental supports for everyday life as successive governments have acted as 'governments- in-waiting' for NDIS funding.</p>	<p>Under the NDIS, people with disability will receive reasonable and necessary supports to enable them to exercise greater choice and control in the pursuit of their goals and the planning and delivery of the supports they need.</p> <p>During the transition period, people with disability and their families will continue to receive services in a way that respects the confidentiality of their information.</p> <p>The proposed amendment in the Bill to section 233 of the <i>Disability Services Act 2006</i> (clause 50) is for a discrete purpose. It will enable the department to request specific information about persons who may be eligible for the NDIS from other Queensland Government departments only for the purpose of financial reconciliation by the department. It will also ensure Queenslanders continue to receive their disability supports with minimal disruption by placing no additional strain on the service systems of Queensland Government departments.</p>
	<p>The proposed new definition of 'visitable site' is unwieldy and potentially unclear, and the submission cites the lack of definition of 'occupier' in particular.</p>	<p>The definition of 'visitable site' in the <i>Public Guardian Regulation 2014</i> (the Regulation) reflects the existing definition, with the addition of paragraph (1)(e) to incorporate visits to NDIS funded participants. The definition reflects that while the source of funding will change, the community visiting program will continue its existing practice.</p> <p>The Department of Justice and Attorney-General (DJAG) notes that the term 'occupier' is not used in the context of 'visitable site' under the <i>Public Guardian Act 2014</i> or the Regulation and as such amendments are not necessary.</p>

Submitter	Issue raised	Response
	<p>The submission recommends that 'visitable site' be amended to include any place where a person with disability is subject to the use of restrictive practices and include boarding houses and hostels.</p>	<p>Under existing arrangements, community visitors visit level 3 accredited residential services and people with disability subject to restrictive practices in departmentally funded and provided accommodation.</p> <p>The amendments in the Bill intend to reflect existing arrangements, with the addition of paragraph (1)(e) so that community visitors can visit adults with impaired capacity, irrespective of whether the service is funded by the department, or through an NDIS participant's plan, during the transition period.</p>
	<p>The submission recommends that where a person resides in a private dwelling and lives under the imposition of Restrictive Practices (particularly if the person employs and self-direct their own supports) there must be consent from the person (resident); and that visits are unannounced, ad hoc and only once per year, except where there is a reasonable degree of suspicion of abuse.</p>	<p>The Bill does not extend the CVP to private dwellings.</p>
	<p>Concern regarding the strength of the Community Visitor Program and indicated this was an opportunity to show its commitment to the program by legislating to strengthen it as outlined by the submission by the Australian Guardianship and Administration Council to the Quality and Safeguards Framework consultation.</p>	<p>The future role of the CVP in the context of the NDIS is subject to the Australian Government's decision on the national NDIS quality and safeguards framework for the full NDIS from 1 July 2019, which is currently under development.</p>
	<p>Considers the use of 'restrictive practices' to be cruel, inhuman and degrading treatment falling within the definition under the Convention Against Torture whilst acknowledging that it is also sometimes necessary.</p> <p>QAI's concerns focused on the deprivation of personal bodily integrity and freedom, and the concern for isolation of the person, and demonization that can occur to the person as a result of related ill-deserved reputation.</p>	<p>The introduction of Part 6 of the <i>Disability Services Act 2006</i> in 2014 highlighted the use of positive behaviour support and provides the strongest framework and safeguards around the use of restrictive practices in Australia. The framework is based on international evidence for eliminating or reducing restrictive practices for all people with disability across the state.</p> <p>The use of restrictive practice is only considered as a least restrictive alternative to protect the individual or others from harm. The Act requires that a positive behaviour support plan be developed and implemented to improve quality of life for the individual and actively increase the person's skills to reduce reliance on the use of problem behaviour. The goal of the legislation is to eliminate the use of restrictive practices.</p> <p>The Bill proposes no changes to the current positive behaviour support or restrictive practices framework.</p>

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	<p>The Bill and the transition to the NDIS legislation offer opportunity for the Department to evaluate and revise the current authorisation of orders and the use of restrictive practices as well as the reporting and data collection on the use and frequency of restrictive practices.</p>	<p>The amendments to the Disability Services Regulation which took effect from July 2015, compel service providers to report on every single instance of use of a restrictive practice.</p> <p>The department's Centre of Excellence for Clinical Innovation and Behaviour Support will continue to provide practice leadership, advice and training to increase the evidence based use of positive behaviour support and eliminate or reduce the use of restrictive practices.</p>
	<p>Insulting and incongruent with the intention of the NDIS to require people with disability who manage their own funds to be subjected to a Criminal History Check.</p> <p>This provision is unwarranted and denies the person the sense of autonomy, control and authority over their lives and sets a tone of mistrust at the outset.</p> <p>Remove the provision that requires criminal history check for a participant who receives direct payments and self manages their funds.</p>	<p>This requirement is not included in the Bill.</p> <p>Decisions in relation to self-management by NDIS participants is a matter for the risk assessment and planning undertaken by the National Disability Insurance Agency as part of preparing a participant's plan.</p>
	<p>In order to avoid contaminated practices following into the new scheme, service providers with numerous complaints must be investigated and complaints resolved to the satisfaction of people with disabilities and their supporters prior to NDIS Qld rollout.</p> <p>While this should not impede a participant from accessing supports and services under the NDIS, it is important to redress these complaints as an urgent priority.</p>	<p>The department will continue to receive and manage complaints about departmentally funded and provided service providers from the general public, including people with disability and their supporters. This arrangement will be extended to service providers operating under NDIS funds during transition years. In the event that numerous complaints are received and systemic issues are identified, the department will raise these concerns directly with the service provider and provide recommendations for their consideration, to ensure best practice.</p> <p>As part of this process, complainants and their supporters are kept informed on the progress of their issues, and feedback is sought prior to finalisation of a complaint.</p>
	<p>A briefing by Department staff with members of the Disability Services Partnership Forum does not and should not be interpreted as genuine consultation, not agreement or acquiescence from QAI given our concerns outlined in this submission.</p>	<p>An extraordinary meeting was held with members of the Disability Services Partnership Forum on 5 November 2015 to discuss an exposure draft of the Bill and to talk members through the proposals. This meeting also gave members the opportunity to raise any issues or ask questions.</p> <p>Following the meeting, members of the Forum had three days to provide feedback in writing or contact the department further with any queries. The department received no feedback directly on the Bill during this time.</p>

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	<p>Other jurisdictions do not have such tight constraints on people with disability as Queensland. More people in Queensland are subject to guardianship orders, and the Restrictive Practices legislation that is intended to protect people from abuse has become a “how to guide” for service providers.</p>	<p>The <i>Disability Services Act 2006</i> provides service providers with a framework of how to implement positive behaviour support to improve a person’s quality of life, balancing this with the risks of the behaviour to themselves or others. The aim is to protect the client and eliminate or reduce the use of restrictive practices.</p> <p>Best practice indicates the use of restrictive practice is considered as a least restrictive alternative while a positive behaviour support plan is developed and implemented to actively increase the person’s skills to reduce reliance on the use of problem behaviour. This subsequently reduces the need for staff to use a restrictive practice in response to behaviour that results in harm to the person or others.</p> <p>The <i>Disability Services Act 2006</i> provides protection to the person with a disability and their support workers by regulating the actions that support workers use.</p>
	<p>Coroner’s Act amendments should include investigations into deaths of people in aged care facilities, boarding houses and hostels, and any reportable death of an NDIS participant living in private residence.</p> <p>It is vital that the key factor for the investigation of deaths of people with disability is linking to the provision of paid supports and or the use of restrictive practices.</p>	<p>Any expansion to the coronial system to investigate the death of people in aged care facilities, boarding houses, hostels and any reportable death of an NDIS participant living in a private residence would require extensive policy considerations, including stakeholder consultation and significant additional cost to government.</p> <p>It should be noted that the aged care sector is already regulated by the Australian Government.</p> <p>In relation to hostels, the definition of ‘death in care’ under section 9(1)(a) currently covers hostels under the <i>Residential Services (Accreditation) Act 2002</i> that are level 3 accredited residential services (which incorporate the provision of personal care services such as administering medication). DJAG is not currently considering expanding the definition of ‘death in care’ to cover residents of the lower level service provision 1 and 2 facilities.</p> <p>DJAG also notes that the deaths of persons with a disability who reside in places other than those currently captured by the ‘death in care’ (disability) definition may still be reportable under any one of the other criteria under section 8(3) of the <i>Coroners Act 2003</i> and would be scrutinised in that context.</p>

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	<p>The Quality and Safeguards measures of other government departments will not necessarily have a significant disability focus. This is particularly important given the historical mistreatment that occurs when conflation of disability with mental health and the medical model predominates.</p>	<p>The <i>Disability Services Act 2006</i> does not regulate the delivery of disability services by other Queensland Government departments (see section 14 of the <i>Disability Services Act 2006</i>).</p> <p>As part of extending the existing disability services quality and safeguards system for the transition period, the department has sought to maintain the current position by exempting other departments (for example, Hospital and Health Services) that will provide disability services to an NDIS participant under the participant's plan (see clause 7 of the Bill).</p> <p>These agencies' quality and/or safeguarding systems continue to cover their services.</p>
	<p>QAI supports the requirement for vigorous safeguards for people with disability, but in relation to Category C and D offences, there may be a need for discretionary exceptions in the cases of people with disabilities and Indigenous people with disabilities living in remote areas or where the person with a criminal history may be the most appropriate or only available support.</p>	<p>The amendments to Part 5 of the <i>Disability Services Act 2006</i> will enable the chief executive of the department to obtain the criminal history of, and related information about, persons engaged or to be engaged at a service outlet by a NDIS non-government service provider.</p> <p>The Assessment Guidelines for criminal history screening under the <i>Disability Services Act 2006</i> list particular offences in Appendix 3 (Category C offences) and Appendix 4 (Category D offences).</p> <p>Under section 54 of the <i>Disability Services Act 2006</i>, criminal history screening applicants with convictions for the offences listed in Category C and Category D must be issued with a positive notice (yellow card) unless it is not in the best interests of people with a disability to do so. This would constitute an 'exceptional case' under the Act.</p> <p>In deciding if an 'exceptional case' exists, there are a number of factors taken into consideration, including:</p> <ul style="list-style-type: none"> • When the offence was committed; • The nature of the offence and its relevance to persons with a disability; • The penalty imposed by the court; • The personal circumstances of the applicant at the time of the offences and any changes to these circumstances since; • Any rehabilitation that the applicant has undergone since the offences occurred; • Employment and/or professional references; and • Anything else relevant to the application. <p>Consideration of these factors enables the decision maker to consider particular circumstances of Indigenous applicants.</p>

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	The Bill provides an opportunity to support a disability worker exclusion scheme, with appropriate safeguards, and which has potential application to any person who provides NDIS-funded supports.	<p>The purpose of this Bill is to extend Queensland's safeguarding system, including existing criminal history screening requirements, so that it applies in an NDIS context through the transition period.</p> <p>Queensland does not operate a disability worker exclusion scheme.</p> <p>The concept of a disability worker exclusion scheme is being considered by the Australian Government as part of the design and implementation of the national NDIS quality and safeguards framework.</p>
	The submission queries whether the amendments to section 49 of the DSA (clause 13) which ensure a NDIS non-government service provider must develop and implement a risk management strategy for persons engaged by the provider also applies to people who employ their own support staff.	The requirement to develop and implement a risk management strategy is a requirement imposed on the non-government service provider. Risk management strategy requirements will not apply to individuals who self-manage their disability funding and employ support staff in their own right.
	Queries whether the amendments to section 68 (clause 24) which ensure a NDIS non-government service provider does not engage a volunteer at a service outlet unless the volunteer has met criminal screening requirements will be applied to people with disability who self-manage their own funds and employ their own staff, including any volunteers.	<p>The criminal history screening requirements will not apply to people with self-manage their NDIS funding and employ support staff in their own right.</p> <p>The amendments to Part 5 of the <i>Disability Services Act 2006</i> will enable the chief executive of the department to obtain the criminal history of, and related information about, persons engaged or to be engaged at a service outlet by a NDIS non-government service provider.</p>
	Clarification regarding the extent of the power under the new section 200T (clause 44) in relation to other residents with disabilities and their rights to silence and not to self-incriminate.	Under clause 44 of the Bill, the new section 200U(2) recognises that it is a reasonable excuse for an individual to not comply with a help requirement under section 200T if complying with the request might tend to incriminate the individual or expose the individual to a penalty.
	Introduce a policy that guarantees that both the Qld Government and the National Disability Insurance Agency will seek consent before sharing personal information.	The Bill does not contain amendments in relation to the sharing of information between the Queensland Government and the National Disability Insurance Agency (NDIA). The department works collaboratively with the NDIA to ensure that the sharing and transfer of client information is carried out in a secure and lawful way that does not put the privacy rights of people with disability at risk.
Queensland Law Society	Proposed amendments do not allow for the establishment of an independent complaint and review mechanism	The Australian Government is designing a national NDIS quality and safeguards framework for full scheme. As part of this framework, consideration is being given to whether an independent complaint and review mechanism is to be established.

Submitter	Issue raised	Response
	The monopoly of the department in regards to the development of positive behaviour support plans for the use of containment and seclusion.	<p>The development of positive behaviour support plans that include containment and seclusion need a level of clinical expertise that is best met by service providers and the department working together. Some service providers may not employ staff with experience in behaviour support.</p> <p>Only the Queensland Civil and Administrative Tribunal can approve positive behaviour support plans that include containment and seclusion, thereby providing a strong level of safeguard.</p> <p>The Bill does not change these requirements.</p>
Queenslanders with Disability Network	There are many people with disability living in Level 1 and 2 Residential Services who may be eligible to receive NDIS funded services either onsite or in the community and at this stage Level 1 and 2 Residential Services will not be covered by the widening of visitable sites.	<p>The role of community visitors or their equivalents in other jurisdictions is being considered as part of development of the national NDIS quality and safeguards framework for full scheme.</p> <p>In the interim, the Office of the Public Guardian will maintain its current practice.</p>
	QDN believes that the introduction of this Bill makes it timely to review and evaluate other programs, particularly in light of how they sit within an NDIS framework and philosophy. QDN believes reviews could occur in the areas of: restrictive practices; decision-making; and complaints handling.	<p>All three areas identified by QDN are under review as part of the development of the national NDIS quality and safeguarding framework for full scheme.</p> <p>In Queensland, a review of restrictive practices occurred in 2013-14 resulting in amendments to the <i>Disability Services Act 2006</i> to maximise the opportunity for positive outcomes, and strengthen the protections for individuals subject to restrictive practices.</p>
National Disability Services (NDS)	Will disability support workers who operate as sole traders be captured under the proposed definition of "funded service provider"?	<p>Under section 13 of the <i>Disability Services Act 2006</i>, a service provider is defined as a person providing services for people with disability.</p> <p>The changes in the Bill to the meaning of a 'funded service provider' (clause 7) to recognise a service provider that provides disability services prescribed by regulation to an NDIS participant under their plan will capture sole traders delivering supports under the NDIS.</p>

Submitter	Issue raised	Response
	<p>Given that the national framework on quality and safeguarding has not been finalised at this point in time, it is unclear how the NDIS and state regulations will be rationalised in cases of self-management under the NDIS where a person is subject to restrictive practices. Further clarification is required on this matter.</p>	<p>Clause 7 of the Bill recognises that a funded service provider will now include a service provider that provides disability services prescribed by regulation to an NDIS participant under the participant's plan.</p> <p>In accordance with Part 6 of the <i>Disability Services Act 2006</i>, the restrictive practices framework applies to funded service providers who provide services to an adult with intellectual or cognitive disability. As a result, through the changes made in the Bill, the framework will apply irrespective of whether the NDIS participant is self-managing.</p> <p>In the design of the national NDIS quality and safeguards framework for full scheme, issues in relation to the appropriate level of safeguards for NDIS self-managing participants are being considered.</p>
	<p>Where a Plan Management Provider under the NDIS is managing the funds of a person subject to restrictive practices, further clarification is required regarding whom legal responsibilities reside with in relation to compliance with quality and safeguard regulations.</p>	<p>Providers who deliver supports to NDIS participants who are subject to restrictive practices will be required to comply with Part 6 of the <i>Disability Services Act 2006</i>.</p> <p>It is noted that plan management providers will be subject to the requirements of the <i>NDIS Act 2013</i>, <i>NDIS (Plan Management) Rules 2013</i> and <i>NDIS (Registered Providers of Supports) Rules 2013</i>.</p>
	<p>There will be challenges with the availability of suitably trained and skilled support workers and suitably qualified and experienced specialist behaviour staff or allied health professionals to provide Positive Behaviour Support Plans in timeframes provided under legislative requirements.</p>	<p>The department's Centre of Excellence for Clinical Innovation and Behaviour Support provides practice leadership, education and resources specific to the needs of service providers working with people with complex needs including challenging behaviour. The Centre will continue to provide practice leadership into the foreseeable future.</p> <p>Throughout 2015, the Centre worked with the University of Queensland to develop and deliver Australia-wide postgraduate training in positive behaviour support. Planning is for the first Graduate Certificate and Graduate Diploma in Positive Behaviour Support to commence in July 2016.</p> <p>The Centre of Excellence is working with the Australian Government to address issues in relation to building up the capacity of positive behaviour support practitioners.</p>

Submitter	Issue raised	Response
	Detail about the estimated costs of implementation and ongoing compliance with the Bill. Given there are foreseeable costs associated with the proposed changes for non-government service providers, NDS Qld request that information is made available about how the regulatory burden will be limited for providers. Providers require sound information about potential financial imposts to support their NDIS transition work.	<p>The amendments in the Bill are aimed at preventing the creation of a two tiered system where people with disability experience different safeguarding systems, depending on the source of funding for their supports.</p> <p>Existing providers funded by the department are already required to comply with Queensland's quality and safeguards system. New providers who register with the NDIS to deliver disability services will be required to meet these same standards.</p>
	As the relationship between disability providers and the department changes over the course of the transition, it may become less clear to both providers and participants of the NDIS who to contact and how complaints will be managed. Given that participants will build relationships with the NDIA and not the department, it is unclear how the proposed processes will be supportive of people with disability and/or their families to make complaints.	Throughout transition, the department will work with the NDIA to ensure that complaints processes remain accessible to both people with disability and service providers.
	Issues may arise in the provision of services and supports that may not meet a complaint threshold, but require the service to be working with the participant and/or family, the department in relation to state regulations, and the NDIA in relation to NDIS matters.	Matters that do not meet the threshold of a complaint are not addressed in the Bill. The department is working with the NDIA to develop guidelines and working arrangements which will operationalise how issues which arise in the provision of services and supports, will be addressed.
	Department of Communities, Child Safety and Disability Services are responsible for both the management of complaints and are a funded disability service provider; independent oversight in relation to complaints will be required to manage potential conflicts of interest.	The department takes the importance of independent complaints management seriously and, as such, has organised its Complaints Unit within the Corporate and Executive Services area of the department to operate separately to the department's service centres that directly provide disability services on behalf of the department.
	Proposed change to 'death in care' is very broad and provides insufficient detail with regard to how this will be applied over a range of diverse service settings. In particular, in circumstances where a provider is providing minimal supports or services under a participant's plan, providers expressed concern about the proposed change resulting in unclear demarcations related to risk and responsibility.	DJAG considers that the State Coroner's Guidelines are the more appropriate mechanism by which to articulate the finer detail of the underlying policy intent to assist in the practical interpretation and application of the amended definition of 'death in care'.