



Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018

**Submission by Queensland Advocacy
Incorporated**

**Health, Communities, Disability Services and
Domestic and Family Violence Prevention
Committee**

April 2018

About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state. We have provided, for almost a decade, highly in-demand individual advocacy through our individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program and more recently the National Disability Insurance Scheme Appeals Support Program.

QAI has made submissions to the National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017. We provided feedback to the Department of Social Services (Department) on the DSS Worker Screening Consultation Paper.

Summary of QAI's recommendations:

1. QAI supports the proposed amendments to the *Police Services Administration Act 1990* and the *Disability Services Act 2006*.
2. We note that the fundamental human rights of people with disability, including their right to be treated with dignity and respect and to be protected from cruel, inhuman and degrading treatment, are of paramount importance and warrant the imposition of additional safeguards. While the right to privacy is also an important consideration, the vulnerability of people with disability is such that appropriate information sharing is justified provided appropriate safeguards are implemented.
3. QAI submits that the enhanced worker screening provisions should apply to all workers, irrespective of the way in which they are employed or engaged and so should apply to sole traders.
4. QAI submits that the worker screening requirements are compatible with the right for people with disability to elect to receive supports, including behavioural supports, from all service providers who are compliant with the legislation. We do not support differentiation of service providers into those licensed to provide Restrictive Practices and those who are not.

Background

The Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018 (the Bill) proposes to amend:

- the *Police Services Administration Act 1990* to enable Queensland to participate in national information sharing obligations for National Disability Insurance Scheme (NDIS) worker screening under the National Disability Insurance Scheme Quality and Safeguards Framework and the Intergovernmental Agreement on Nationally Consistent Worker Screening and the National Disability Insurance Scheme;
- the *Disability Services Act 2006* to clarify beyond doubt screening requirements for sole traders during the transition period until full scheme implementation of the NDIS in Queensland.

QAI's position

QAI supports the amendments proposed by the Bill. People with disability have enhanced vulnerabilities by virtue of their disability, which are often increased by other forms of vulnerability or disadvantage. We consider that this increased vulnerability warrants the provision of greater protections than those mandated for people without disability. Further, we consider that it justifies some limitations on the privacy considerations that would otherwise apply.

In October 2017, QAI provided feedback to the Department of Social Services (Department) on the DSS Worker Screening Consultation Paper. In that feedback, we agreed with the importance of a nationally consistent approach to worker screening. We supported rigorous and comprehensive requirements for self-disclosure by applicants as part of the application

process for consideration by NDIS Worker Screening Units. We proposed that, in addition to the information identified by DSS, applicants should also be required to disclose whether any complaints have been made against the applicant by or on behalf of a person with disability that relates to the applicant's fitness to work with people with disability. We noted that the weighting should be more heavily in the favour of protective, proactive action in this realm, having regard to:

- the particular vulnerability of many people with disability;
- the power imbalance between a person with disability and their support worker;
- the high rates of violence, abuse and neglect of people with disability;
- the low rates of conviction or disciplinary action against perpetrators of violence and abuse against people with disability; and
- the need for cultural change towards a zero tolerance approach to violence and abuse by those in positions of power towards people with disability.

QAI also submitted that the Department should show leadership by explicitly demonstrating that they will not be complicit in the perpetuation of the risk of abuse. For example, where one service provider knowingly employs a person in another sector (for example, from aged care to disabilities) with a history of inappropriate conduct, we recommended this should attract criminal sanctions.

Proposed amendments to the *Police Services Administration Act 1990*

The Bill proposes to amend the *Police Services Administration Act 1990* to enable Queensland to participate in national information sharing obligations for NDIS worker screening under the National Disability Insurance Scheme Quality and Safeguards Framework and the Intergovernmental Agreement on Nationally Consistent Worker Screening and the NDIS.

QAI notes that the right to privacy, including information privacy, is a fundamental human right that warrants respect and protection. However, we reiterate our earlier submissions regarding the vulnerability of people with disability and the consequent need for protective provisions to take precedence over privacy considerations in this regard, subject to stringent safeguards.

QAI supports the proposed amendments to the *Police Services Administration Act 1990*.

Proposed amendments to the *Disability Services Act 2006*

The Bill proposes to amend the *Disability Services Act 2006* to clarify beyond doubt screening requirements for sole traders during the transition period until full scheme implementation of the NDIS in Queensland.

QAI submits that, for the purposes of the imposition of safeguards to protect the fundamental rights and dignity of people with disability, sole traders should be subjected to the same screening requirements as other types of workers.

QAI supports the proposed amendments to the *Disability Services Act 2006*.

The NDIS and Restrictive Practices

As a separate but related issue, we note that there should be no requirement that a person living with Restrictive Practices only receive services from a service provider registered as a provider of 'positive behaviour supports', nor should a Participant living with Restrictive Practices be denied or excluded from the right to self-manage their supports or hire their own workers – including sole traders if that is their choice. QAI submits that the worker screening provisions should apply to all workers providing disability services, including sole traders operating as NDIS providers in Queensland during the transition to full scheme NDIS. However, these quality safeguards should not distinguish between those registered to provide behaviour supports and those who are not. We are concerned that any delineation could create incentives for service providers to 'specialist' in the provision of Restrictive Practices, given these packages can be more lucrative, and lead to an increase, rather than a reduction, in the use of Restrictive Practices. It would also necessarily disrupt many established, effective, support relationships.

The roll-out of the NDIS offers the opportunity for the development of a nationally consistent framework for Restrictive Practices. This framework should have the elimination of the use of Restrictive Practices as its core focus and should include appropriate human rights safeguards. We note that regulatory controls to implement a National Framework for Restrictive Practices were endorsed by CoAG in 2014, yet this has not occurred to date. QAI submits that Australia must develop a consistent national definition and approach to Restrictive Practices, which includes (non-differentiating and non-exclusive) practice standards for all service providers and a competency framework for practitioners providing positive behaviour support.

Conclusion

QAI thanks the Committee for the opportunity to make a submission to this important inquiry. We would welcome the opportunity to have further input into these issues as the inquiry progresses.



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018

ADDENDUM

to

Submission by Queensland Advocacy Incorporated

13th April, 2018

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

Queensland Advocacy Incorporated thanks the Committee for the invitation to appear at the hearing on Monday 16th April 2018. Unfortunately due to unforeseen circumstances neither Emma Phillips nor Michelle O'Flynn are in a position to attend on the day.

However, we are very pleased to offer one final word regarding this amendment in the spirit of cooperation and hope that our recommendation is received with a view toward improving and safeguarding the rights and lives of vulnerable people with disability.

It is QAI's opinion that support workers are an intrinsic and often crucial element in a range of supports and assistance to people with disability and as submitted previously it is imperative that the relationships between the person and their support workers be appropriate, and the kind of relationship that the person prefers, not how the support worker believes or is even accustomed with other potential clients.

Likewise it is therefore critical that the services that engage with people with disability are equally safe, respectful, in 'right relationship' with the client, and QAI acknowledges that there are a range of measures designed to ensure quality assurance about the service provider. However, QAI holds serious concerns about the seeming lack of scrutiny of some service providers. For example:- QAI is aware that an increasing number of hostels, boarding houses, nursing homes, and long-stay health facilities are now registered as providers for the NDIS. While there may have been some sort of oversight of the operations and staff of these and other congregate care settings in the past, we are unsure as to the type or intensity of checking on the owners and or managers of such facilities.

We are aware that it is not a difficult hurdle to overcome for some owners to register premises in the name of family members, to employ family members and other relatives or friends to avoid scrutiny of hidden but serious misconduct or criminal activity. Additionally we are aware that people residing in such facilities have been subjected to coercion, threats, control, abuse and potential eviction for even voicing a complaint.

QAI reiterates our past recommendations about provider registration for the NDIS. QAI recommends that any service provider that has been a source of serious and or ongoing complaints by service users should be investigated and complaints resolved to the satisfaction of the client and an independent body before certification and accreditation, thus putting service providers on equal status with support workers.

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