

## Property Law Bill 2023

**Submission No:** 6  
**Submitted by:** Wide Bay Burnett Community Legal Service  
**Publication:**  
**See attached:**



# Wide Bay Burnett Community Legal Service

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8 March 2023

Committee Secretary  
Legal Affairs and Safety Committee  
Parliament House  
George Street  
Brisbane Qld 4000  
By email: [lasc@parliament.qld.gov.au](mailto:lasc@parliament.qld.gov.au)

Dear Committee Secretary,

**Re: Property Law Bill 2023 – Clause 68 – Contract containing promise for benefit of third parties.**

We act for clients who have funding packages through NDIS and Aged Care.

Under these schemes clients are funded to obtain the supply of medical aids or other products. The relevant supply contract is generally made between the relevant Service Provider/Plan Manager and the Supplier, although the contract is for the benefit of the client, to the knowledge of all parties. The client becomes the owner of the property.

Section 42 of the National Disability Insurance Scheme Act (set out below) makes it clear the entity that is managing the funding for the client's disability support plan is the entity that will enter into the relevant contractual arrangements. This will not necessarily be the client.

#### **42 Meaning of *managing the funding for supports* under a participant's plan**

- (1) For the purposes of this Act, ***managing the funding for supports*** under a participant's plan means:
  - (a) purchasing the supports identified in the plan (including paying any applicable indirect costs, such as taxes, associated with the supports); and
  - (b) receiving and managing any funding provided by the Agency; and
  - (c) acquitting any funding provided by the Agency
- (2) For the purposes of the statement of participant supports in a participant's plan, in specifying the management of the funding for supports under the plan as mentioned in paragraph 33(2)(d), the plan must specify that such funding is to be managed wholly, or to a specified extent, by:
  - (a) the participant; or
  - (b) a registered plan management provider; or
  - (c) the Agency; or
  - (d) the plan nominee.



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Last updated 12 August 2021

Under section 55(3) of the existing Property Law Act (Qld)1974 the client has the right to take action against the relevant Supplier in their own name and without joining the Plan Manager as a party. Under the proposed clause 68, the Plan Manager would be required to be joined as a party to any action taken by the client. The effect of this is that the Plan Manager would incur their own legal costs and time in defending/supporting the relevant action. In all likelihood these costs, being a cost of managing the plan, would be deducted from the client's funds, leaving less available for actual disability support to the client.

This involves unnecessary legal costs for disabled clients in consumer disputes. For example, suppose a mobility scooter needed by a client, is purchased or modified through NDIS funding, under a contract between the Supplier and the Plan Manager. If, at a later date, the client finds the scooter is defective or unsafe to use, the client's cost of exercising their consumer rights would be substantially increased just because of the manner in which the purchase was funded.

We suggest, therefore, that instead of the third party being obliged to join the other party to the contract to the proceedings, the requirement be that they be notified of the proceedings, and given the option to be joined if they have any interest in the outcome.

Yours faithfully,

[Redacted signature]

Solicitor

