



HEALTH, COMMUNITIES, DISABILITY SERVICES AND DOMESTIC AND FAMILY VIOLENCE PREVENTION SUBCOMMITTEE

Members present:

Mr AD Harper MP (Chair)
Mr MA Hunt MP
Mr MF McArdle MP
Ms JE Pease MP

Staff present:

Mr R Hansen (Committee Secretary)
Mr J Gilchrist (Assistant Committee Secretary)

PUBLIC BRIEFING—INQUIRY INTO THE DISABILITY SERVICES AND OTHER LEGISLATION (WORKER SCREENING) AMENDMENT BILL 2018

TRANSCRIPT OF PROCEEDINGS

FRIDAY, 23 MARCH 2018

Brisbane

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The subcommittee met at 12.13 pm.

CHAIR: Welcome, ladies and gentlemen. Before we start, I ask that all phones be switched off or turned to silent mode. I declare open this meeting of the Health, Communities, Disability Services and Domestic and Family Violence Prevention Committee. I start by acknowledging the traditional owners of the land upon which we are meeting today. I am Aaron Harper, the chair of the committee and member for Thuringowa. This is a subcommittee, as some members have other committee business to attend to. Present with me today are Mark McArdle, the member for Caloundra and deputy chair, and Mr Marty Hunt, the member for Nicklin. Also present are Rob Hansen and James Gilchrist from our secretariat, as well as Hansard. We have apologies from the members for Lytton and Maiwar, who may join us later.

The purpose of today's meeting is to receive a briefing from officers from the Department of Communities, Disability Services and Seniors to assist us in our examination of the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018. On 20 March the bill was referred to the committee for examination. I remind all those present that the proceedings are similar to the parliament and are subject to the Legislative Assembly's standing rules and orders. I remind members of the public that under standing orders the public may not participate in proceedings and may be admitted to or excluded from the briefing at the discretion of the committee. Hansard is making a transcript of the proceedings, which we intend to make available on our web page. Those here today should know that the media may be present, so it is possible that you might be filmed or photographed.

BIANCHI, Ms Elizabeth, Acting Director, Legal Policy and Legislation Strategy, Department of Communities, Disability Services and Seniors

FERGUSON, Ms Helen, Senior Executive Director, Policy and Legislation, Department of Communities, Disability Services and Seniors

CHAIR: I welcome officers of the department. Thank you very much for coming to provide information at very short notice. It is much appreciated. Would you like to start with an opening statement?

Ms Ferguson: Yes, thank you. Also present with us are colleagues from the department and the Queensland Police Service. I thank them for making their time available to be with us today to answer any queries that the committee may have. I, too, would like to begin by acknowledging the traditional custodians of the land on which we meet and pay my respects to elders past, present and emerging.

Thank you very much for the opportunity to brief you today on the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2018. I will provide you with an overview of the bill and then ask Liz to provide you with a more detailed outline of the provisions. Of course, we are very happy to take any questions that committee members might have. I will start by providing some context relevant to the introduction of the bill.

The National Disability Insurance Scheme, which I will refer to as the NDIS from this point, is one of the most significant social policy reforms undertaken in Australia. The NDIS is the new way of providing support for Australians with disability, their families and their carers. That includes people whose disability is an intellectual, sensory or physical impairment or a psychiatric condition. The NDIS supports people with a permanent and significant disability to participate in all aspects of life. Under the NDIS, people who meet the eligibility criteria will have access to reasonable and necessary supports that enable them to achieve their goals and aspirations, including for social and economic participation. Disability services will be provided over a person's lifetime where they need it.

A key tenet of the NDIS is that participants will have choice and control over their disability supports, including being able to choose who provides that support, how that support is delivered and managed and, importantly, paying for those supports. Participants purchase those supports and pay for those supports themselves through their package. Therefore, it is imperative that there is a robust and consistent quality and safeguards arrangement under the scheme.

All jurisdictions in Australia commenced transition to the NDIS on 1 July 2016. Each jurisdiction's transition is in accordance with their bilateral agreement, which means that jurisdictions will complete their transition at various times. For example, New South Wales and South Australia will commence full scheme from 1 July 2018; Queensland and a number of other jurisdictions will commence full scheme from 1 July 2019. All states and territories have agreed to maintain their existing quality and safeguarding systems during their transition period. During Queensland's transition period, its existing robust quality and safeguarding system under the Disability Services Act 2006 continues to operate.

The Council of Australian Governments, COAG, committed to the NDIS Quality and Safeguarding Framework on 9 December 2016. This framework will apply in all jurisdictions, including Queensland, from the time of their commencement of full scheme. Under the framework, all jurisdictions agree to a nationally consistent approach to worker screening, including the assessment of an expanded range of criminal history information. An intergovernmental agreement on nationally consistent worker screening and the NDIS has been developed to support the implementation of nationally consistent worker screening, including to support the commitment made under the framework to provide for the exchange of an expanded range of criminal history information.

The Minister for Communities and Minister for Disability Services and Seniors has provided in-principle support for the intergovernmental agreement on Queensland's behalf. Under the NDIS, at full scheme the administration of worker screening and criminal history monitoring will remain the primary responsibility of states and territories, with nationally consistent policies and principles agreed under the intergovernmental agreement to be adopted in each jurisdiction through appropriate legislation, policy and practice. The bill represents the first stage of legislative amendments necessary to support Queensland's participation in a nationally consistent NDIS worker-screening system.

The bill proposes amendments to the Police Service Administration Act 1990 to ensure that Queensland meets the commitments under the NDIS Quality and Safeguarding Framework to share expanded criminal history information with other states and territories to ensure that consistent and robust worker-screening checks can be undertaken across all jurisdictions as full scheme operation of the NDIS is achieved. This is important to ensure that Queensland can share that information with those jurisdictions commencing full scheme operations from 1 July this year. In addition, the bill clarifies screening arrangements for sole traders during the transition period. We will talk about that a little later.

A comprehensive whole-of-government legislation review is also being undertaken in preparation for full scheme. This will include further amendments to operationalise a nationally consistent worker-screening system. I will now hand over to Liz to provide you with a more detailed overview of the bill.

Ms Bianchi: As Helen mentioned, this is the first stage of legislative amendments that are necessary to prepare Queensland for full scheme operation of NDIS. The bill proposes amendments to meet the obligations under the NDIS Quality and Safeguarding Framework to share an expanded range of criminal history information as part of a nationally consistent worker-screening system. This is similar to the existing COAG intergovernmental arrangement for the exchange of criminal history information for people working with children, otherwise known as the ECHIPWC agreement. That agreement allows law enforcement agencies to share expanded criminal history information, such as spent convictions, non-convictions and pending charge information, which would generally not be shared.

Part 3 of the bill, at clauses 35 to 40, expands the existing legislative framework that is in place in Queensland that allows the sharing of this range of information for working with children checks. The proposed amendments will enable the Queensland Police Commissioner to also share expanded criminal history information with other jurisdictions for the purpose of disability or NDIS employment screening. The entities with which information will be shared will be prescribed by regulation that is consistent with the current approach.

I will now move on to talk about the specific amendments in relation to sole traders. Sole traders are individuals who are NDIS registered providers who personally provide disability services. In other words, often they are self-employed individuals. Sole traders have been an emerging cohort in the NDIS market. While the current provisions under the Disability Services Act are sufficient to require them to be screened under the existing yellow card system, some changes are necessary to ensure that the current framework for screening under the DSA works appropriately for the particular circumstances of the sole trader. The bill proposes amendments to the Disability Services Act to

clarify that sole traders registered to deliver prescribed disability services on a participant's plan are required to undergo criminal history screening under the existing yellow card system. It will also ensure that the requirements for sole traders operate appropriately.

Clauses 4 and 5 clarify that application provisions in the DSA apply to sole traders and remove any doubt that when they are delivering prescribed disability services they are required to be screened. The bill also proposes a no-card no-start approach for sole traders.

Clause 13 of the bill inserts new sections 67A and 67B to prohibit a sole trader from providing disability services unless they have a current yellow card, they have a current blue card that has not been suspended and they have made application for a yellow card exemption, or they have applied for the renewal of their yellow card 30 days prior to expiry but the application has not been decided at that time. A maximum penalty of up to 250 penalty units applies if a sole trader breaches this obligation. This is consistent with the existing offence and penalty regime that applies to service providers who engage an individual in contravention of the DSA. This offence and penalty ensures that the safety of people with disability is safeguarded and prioritised.

The bill also recognises that transitional arrangements are necessary for existing sole traders who are providing disability services under the NDIS in Queensland. Clause 33 of the bill will enable sole traders who have been providing disability services and have made an application for a card prior to commencement that has not been decided to continue operating for a period of four months. This will enable sufficient time for pending applications to be processed. An individual's criminal history will be continuously monitored during that time. The bill also ensures that the basis for obtaining an exemption from screening under part 5 of the Disability Services Act is the same for all funded non-government service providers and NDIS non-government service providers, including sole traders. This means that current exemptions continue to apply for sole traders, for example, for health practitioners.

The bill also amends the current identification verification requirements under the Disability Services Act so that they apply appropriately for sole traders. Under the DSA, service providers are required to certify the identity of an employee on the yellow card application form. This approach is not suitable for sole traders as they may not have an employer. Clauses 6 and 8 enable the sole trader to have his or her identity certified by a prescribed person—that is, a justice of the peace, commissioner for declarations, lawyer or police officer—for the purpose of a yellow card application or an exemption application.

The bill also expands change in criminal history disclosure requirements under the DSA so that they apply appropriately for sole traders. The DSA requires an employee to immediately disclose any change in his or her police information to their employer. It is an offence if the person does not disclose that information. This disclosure framework is not suitable for individual sole traders as they may not have an employer. The bill requires a sole trader to disclose a change in police information to the chief executive of the department. A failure to do so will amount to an offence.

Clauses 16 and 17 amend existing sections 75 and 77 of the DSA to require sole traders to disclose any changes to the chief executive. The bill also makes it an offence for a sole trader to breach this disclosure obligation. The offences and penalties that attach are consistent with the existing penalties that apply underneath the DSA to engage persons who fail to disclose a change in their police information to their employer or the service provider.

The development of this bill built upon consultation undertaken by the Commonwealth in relation to the NDIS Quality and Safeguarding Framework. Between February and April 2015, the Commonwealth undertook an extensive consultation process on the framework, including face-to-face consultation, 16 public meetings in capital cities and regional locations in each state and territory, written submissions and an online discussion forum. The Commonwealth also took specific targeted consultation on a consultation paper relating only to worker screening. The Queensland Disability Advisory Council was also consulted on the changes in this bill by the department.

That concludes an outline of the more specific provisions of the bill. We would be happy to take any questions that the committee might have.

CHAIR: Thank you, Helen and Elizabeth, for those opening statements. I know there is a national approach to worker screening, but do other states and territories have similar arrangements in terms of the yellow card process? Through the previous health committee we heard some concerns around the blue card process. Is there any interaction between the two? You mentioned that if you have a blue card you can become exempt for a yellow card. Is the application process similar?

Ms Ferguson: Within other jurisdictions, yes. Liz will answer the question.

Ms Bianchi: Thank you for the question. In terms of whether or not other jurisdictions have existing screening systems for people with disability, New South Wales, Western Australia and the Northern Territory do not currently have existing screening systems for working with people with disability. That is one of the reasons that this agreement under the national framework is so important in terms of achieving a nationally consistent approach to safeguards for people who are working with people with disability. Some of the jurisdictions have working with children checks or vulnerable person checks, but in Queensland we have our existing yellow card system, which relates to individuals who are working with people with disability. Then we have our working with children check process and there is an interaction between the two of those, as you have noted, Chair, in terms of being able to apply for an exemption if you already have received a check in the blue card space.

CHAIR: What is the criteria for actually applying for a yellow card? Is it being expanded under this approach with the NDIS arrangement?

Ms Bianchi: In order to apply for a yellow card you need to have a current positive notice under the blue card system that is not suspended. It is not being expanded in this bill other than to ensure that sole traders also fit within the existing framework. They would also be able to apply for an exemption in the same way.

CHAIR: I note that you said the Commonwealth did some consultation in terms of holding 16 public meetings including regional meetings. Do you anticipate there might be some issues around disability service providers applying through this yellow card process, particularly in rural and remote areas?

Ms Bianchi: We obviously have our existing quality and safeguards in place in Queensland and they apply during the transition process to the NDIS. This bill relates to screening mainly for sole traders. We have engaged or contracted National Disability Services Queensland to provide support to service providers in the transition period, including for individuals who may be in remote or rural communities. That service is available and we are able to make referrals on a case-by-case basis if they need assistance in working their way through the registration process. We also have an existing dedicated email address and telephone hotline that any person who is needing to apply for a yellow card can utilise to help them to work through the process including the application or if submissions are required on their criminal history. There are existing mechanisms in place to be able to offer support.

Obviously, these arrangements only apply during the transition period. That will only be until 1 July 2019, when it is envisaged that the new NDIS worker-screening system will commence, and that is the nationally consistent scheme. These arrangements and this bill in relation to the sole trader aspect only relate to this transitional period, until July 2019.

CHAIR: As I understand it, the trial site—and coming from Townsville, we have 15,000 people under that system to date, but you are going to 50,000 or 70,000 people? It is a bit of a blockbuster year for the department.

Ms Ferguson: It is a larger year, yes, in the third year.

CHAIR: Can a family member who is a carer of someone who has a disability apply to be a sole trader?

Ms Bianchi: I might have to take that on notice. There are existing exemptions underneath the Disability Services Act for relatives of people with disability. Is your question about whether they are providing those services to their family member or to somebody else?

CHAIR: To their family member in the first instance.

Ms Bianchi: There are existing exemptions under the Disability Services Act which apply to relatives working with people with disability and that exemption framework would continue to apply to sole traders. They would not be required to have a yellow card under this scheme. Does that answer your question?

CHAIR: I think it does.

Mr HUNT: Thanks for that briefing. If somebody sets up as a sole trader and commences working with people with disabilities and is subsequently convicted of a disqualifying offence, they have a requirement then to notify. If they do not, is there another mechanism? Is the QPS able to identify and report? Is there another mechanism other than relying on someone who might be a criminal, for example, self-reporting?

Ms Bianchi: Yes, there is, and it would happen prior to conviction stage. At the point that an individual was charged with a disqualifying offence, the Queensland Police Service would notify within a 24-hour period the chief executive. If it is a disqualifying offence, action is taken within a 24-period

to immediately suspend that person's yellow card. The monitoring system in place between QPS and the department operates on a continual basis. Immediately as changes are occurring, that is coming through to the department, particularly for those disqualifying offences—straightaway.

Mr HUNT: Does that still make it necessary, though, for the sole trader to disclose as well?

Ms Bianchi: That is the existing framework under the DSA. There is an obligation on both sides, which is an additional safeguard, to ensure that it is obviously coming through the Queensland Policelink. Also there is a responsibility on that individual at the point that there is a charge to notify their employer that there has been a change in their criminal history and to enable that employer to take action immediately. It is a double safeguard.

Mr HUNT: Does the QPS have to be aware that they are the holder of a yellow card, or do all disqualifying offenders come through daily and it is matched against your system?

Ms Bianchi: The Queensland Police Service are aware of the yellow card holders and blue card holders to undertake that monitoring.

Mr HUNT: That is checked as a part of the process? Part of the arrest and prosecution process is to check that?

Ms Bianchi: It is managed through the existing database linkages between the Queensland Police Service and the department.

Mr McARDLE: Thank you, ladies, for your time here today and your very succinct statement to the committee. You made the comment that this was the first set of measures to be put in place and there are more coming. What are those next stages?

Ms Bianchi: Thank you for the question. We will be looking at a comprehensive whole-of-government legislative review to support full scheme NDIS. We envisage that there are probably three components to that review. The first one is around what the Disability Services Act is going to look like moving into the future. Obviously the shape of disability services is changing in Queensland, so what kind of legislative framework will we need moving forward to ensure that there is appropriate inclusion and support for people with disability?

The second component of that review will be looking at the NDIS Quality and Safeguarding Framework and thinking about what legislative amendments we might need in Queensland to operationalise that framework. This bill that we are discussing today obviously has a component part of that which relates to worker screening; that is one specific aspect of it. We will be undertaking a review of the other aspects of that quality and safeguarding framework and thinking about what legislation we might need to support that.

Then the third component of that is looking across the statute book at all of the provisions we currently have in place that are relevant to the Disability Services Act and ensuring that we pick up any changes that are required to prepare us for the full scheme.

Mr McARDLE: Is that required to be done by 1 July 2019 from your point of view?

Ms Bianchi: Yes.

Mr McARDLE: Can you give me a stepped-out time line at this point in time for the consultation process, draft documentation et cetera?

Ms Bianchi: I think we would have to take that on notice, just to ensure that we are able to provide—I cannot give it all off the top of my head. We might take that on notice and come back to you with it. I will say that obviously there is a range of issues that are then worked through at the national level. Some of that impacts on when we need to come with different pieces of the puzzle. In terms of this bill that we are talking about today, that component is obviously coming early because we need to make sure that we are able to meet our commitments under the framework to share information when other jurisdictions transition to full scheme. There is going to be a number of factors that influence those time frames.

Mr McARDLE: Could you give me a flavour of what those discussion points are at this point in time?

Ms Bianchi: There is a whole range, really, across the quality and safeguarding framework. It might be helpful if I get Helen to run through the critical aspects of that framework, which might give you a bit of a flavour for the things on which we are still working and negotiating.

Ms Ferguson: The national framework that we have been talking about has a number of elements in it. One is the establishment of the NDIS Quality and Safeguards Commission, which is set up under the National Disability Insurance Scheme legislation—the act—which is federal
Brisbane

legislation. That commission will commence operations from 1 July this year in line with the commencement of full scheme in a couple of jurisdictions, as we noted before. That commission is being set up. Under the act there will be a number of rules around that commission that we will need to be considering. That is one of the elements that we need to have a look at, to see how those rules intersect with the Disability Services Act and with other legislation across the statute book, as Liz was saying. That is one element only.

Then we go on to other elements like capacity-building supports, which is really about making sure that consumers are informed participants in the scheme and that when they are purchasing their supports they know what they are purchasing and they have really good information about that. That would happen through positions in the NDIS system called local area coordinators, or LACs, which are being put in place through the NDIA right across Australia as we speak. Thirdly, a code of conduct will be in place to apply to all workers delivering NDIS funded supports, all LACs—those local area coordinators—and providers of Commonwealth programs that are in scope here.

Fourthly, there is an element around reducing and eliminating the use of restrictive practices. You are aware that the Disability Services Act has a very strong section around making sure that restrictive practices are not used unless they are absolutely needed to be used. This is a really important element of the framework nationally. The use of restrictive practices nationally lines up very nicely with Queensland's provisions in that if it is used, it needs a positive behaviour support plan first and foremost, and that plan needs to be developed by a registered positive behaviour support practitioner. In the quality and safeguards commission there is a position called a senior practitioner, who will have oversight of a range of these clinical matters and the matters around positive behaviour support and the application of restrictive practices.

Another element is the one we are talking about now, which is that nationally consistent approach to worker screening. Then the last element is on the community visitors programs where they exist in various jurisdictions. There is a review that is about to get underway nationally to have a look at the place of community visitors in an NDIS world. That is underway. That is the extent of all the various elements under that framework.

Mr McARDLE: Thank you very kindly for that. What is the time line to roll out this particular plan that is contained in the bill? What sort of time do you have, as far as you are concerned, to get everybody on board, processed, history checks done and checked nationally?

Ms Ferguson: We really do need the bill to be ready for those jurisdictions that are starting from 1 July this year so that they can be assured that criminal history screening information of any worker that comes forward in those jurisdictions can be accessed from all other jurisdictions.

Mr McARDLE: What number would that be? You must have an idea, talking at a COAG level, of the number of queries you could receive.

Ms Ferguson: Do you mean in terms of the workforce that will be requiring—

Mr McARDLE: Requiring the history check.

Ms Ferguson: It will be the workforce that is coming forward with the providers that are registered with the NDIA and eventually with the commission to provide those services. It is a difficult question to quantify the answer to—

Mr McARDLE: Yes, indeed. That is why the time line question becomes fairly important, too.

Ms Ferguson: I was referring to the time frame in which we have to put this in place. In terms of the time frame for people to be criminal history screened—is that your question?

Mr McARDLE: How many people will be screened through this process in Queensland?

Ms Ferguson: In Queensland, because the yellow card system has been in place for quite a long time now, the majority of people have been screened. As new providers come forward and new workers come forward, those applications come forward to the criminal history screening unit within the agencies, and that work continues. I am not quite sure whether we might have any advice about numbers now coming forward. If we do, we will get a little note up.

Mr McARDLE: If I am in New South Wales and I am going to come online on 1 July 2018 and I need a criminal history check nationally, how many people from New South Wales and South Australia will be seeking clarification of a criminal history clearance in Queensland?

Ms Bianchi: I think it might be helpful to clarify that the provisions of this bill will not expand the number of history checks undertaken. It expands the range of information that can be provided pursuant to those checks. Jurisdictions that are already operating screening systems that we talked
Brisbane

about originally are already running national criminal history checks. They already receive a range of information across all of the jurisdictions. This is about how much information is given. We are already processing checks across jurisdictions operating screening units.

Mr McARDLE: Am I right to assume that at this point in time in a history check you would get A, B, C and D but under this model you get A, B, C, D and E?

Ms Bianchi: Correct.

Mr McARDLE: If I have A, B, C and D now, I do not need to get E checked?

Ms Bianchi: This is about the range of information.

Mr McARDLE: That is right—E is a new range.

Ms Bianchi: It is a new range of information. Maybe if I give a practical example that might help. If you were in a jurisdiction currently operating a screening system and you made your application, that would go in through the ACIC database and then be disseminated to each of the jurisdictions to check what criminal history exists in each state and territory. States and territories would then, at the present time, look at the criminal history and decide what could be released from their jurisdiction and what could not. This bill will enable them to release more in terms of not having to filter as much out.

Mr McARDLE: For new applications, as I understand it—not existing holders of a card. I am trying to clarify this in my mind. If I hold a yellow card in New South Wales, I do not have to come back to Queensland to clarify spent convictions.

Ms Bianchi: The intent of the agreement at this stage under the quality and safeguarding framework is that this sharing of information is for NDIS full scheme operation in each jurisdiction. As you transition to full scheme, each jurisdiction commences their NDIS worker-screening process.

Mr McARDLE: It is a new screening process. That was my point.

Ms Bianchi: Yes. It is a new screening process. The agreement is that existing safeguards in jurisdictions will apply during transition. New South Wales and South Australia will commence full scheme operation this year. They will commence worker-screening processes when they are ready to do so and they will start to access the expanded range.

Mr McARDLE: I think we are getting to the nub of it to a certain extent. What I want to clarify is this: come 1 July, if I am in New South Wales do I need to seek a further criminal history check because of the new requirements under the terms of the NDIS or NDA?

Ms Bianchi: That will depend on the transitional arrangements that New South Wales determine they need in place at full scheme operation.

Mr McARDLE: They could say, 'I don't need to check for spent convictions.'

Ms Bianchi: No. New South Wales does not have an existing screening system. If you were in New South Wales—hopefully I am not speaking out of school for New South Wales—you would be subject to this new check at the point that they commence their checking process and it would check for the expanded range of information.

Mr McARDLE: Each state has the power to either adopt it or not; is that what you are saying?

Ms Bianchi: No. At NDIS full scheme transition for each jurisdiction which, as Helen outlined, is happening at different dates—

Mr McARDLE: At 1 July in New South Wales.

Ms Bianchi: Yes, but it is not for us until 1 July 2019—they will commence the new screening check. They will commence it when they are ready to commence it, but it could be from as early as 1 July.

Mr McARDLE: If I have a card and they commence it, I have to go through it again?

Ms Bianchi: That is for jurisdictions to determine in relation to their individual transitional provisions.

Mr McARDLE: New South Wales might say, 'No, you don't need it.'

Ms Bianchi: No.

Ms Ferguson: New South Wales is probably not a great example because they do not have a screening system now.

Mr McARDLE: What does South Australia have?

Ms Bianchi: To be honest, we would have to seek that information from South Australia around their transitional arrangements.

Mr McARDLE: If you put this in place in Queensland to try to capture those people who should not be operating in the field, who will it capture requiring to get a new history check done, because it is expanding the scope of information to be provided? Is it a state-by-state call as to when they do it and what they are seeking? Taking that on notice might be a better way to do it.

Ms Bianchi: I am happy to take it on notice. At the end of the day it is really a matter of those transitional arrangements, as I said, in each jurisdiction.

Mr McARDLE: I think we need to understand a bit more about that.

Ms Bianchi: I am sure that will be discussed through the ongoing conversations that are occurring in relation to finalising the intergovernmental agreement and a range of policy documents that sit underneath those to support it.

Mr McARDLE: In relation to a yellow card, is there a current right of appeal in relation to an application being rejected?

Ms Bianchi: In certain circumstances, yes.

Mr McARDLE: Is that contained in the current act?

Ms Bianchi: Yes, it is.

Mr McARDLE: Will that be amended because of the terms of the bill before the House in any way, shape or form?

Ms Bianchi: No, it will not.

Mr McARDLE: What has often occurred is the security of data passing between jurisdictions. There have been instances in departments—not your department; I should make that quite clear—where data is passed between offices of state bodies, state instrumentalities, and people who are not qualified or not permitted to get that data accessing it. What security arrangements are in place or will be put in place in relation to this new regime between the governments of different states and territories?

Ms Bianchi: As we spoke about a little earlier, this is really an expansion of an existing regime that is in place for working with children checks. States and territories are already exchanging this expanded range of information and have processes and policies in place. In terms of the safeguards within our own Queensland system, I think I may have mentioned previously that the units or entities that we will share the information with must be prescribed by regulation. They need to be entities that we are satisfied meet the participation requirements in order for them to access this expanded range of information. Under both the ECHIPWC Agreement and the intergovernmental agreement for NDIS workers screening, there are participation requirements for people to participate in the scheme and to access the expanded range of information.

Mr McARDLE: We talk about sole traders—and I accept the term as defined under the terms of the bill. If a person is in a nursing home or in a hospital setting with an acquired brain injury, shall we say, and they are in receipt of NDIS funding, there is no yellow card required in those circumstances, is there? The treatment is being provided by a state government such as a hospital or an aged-care facility under the term of the federal legislation; is that right?

Ms Bianchi: If you are providing funded disability services in Queensland or you are an NDIS registered provider then a yellow card is required if you are providing services at a service outlet, which is a place where disability services are provided.

Mr McARDLE: If a patient is in a hospital—and it can happen; they can be there for weeks and months at a time—a yellow card is required by that particular body. It might well be the Caloundra Hospital. It might well be the Nambour Hospital. When you say that a yellow card is to be held, does it apply in those circumstances and does it apply to a patient who might be in a nursing home as well? Is the nursing home required to hold a card or are individuals within the nursing home who are supplying the services or an employee of either the hospital or the service required to hold a card?

Ms Bianchi: The screening requirements under the DSA as they currently exist relate to a service provider not allowing an individual to provide disability services as prescribed under the act without having a yellow card. Similarly, this will require a sole trader providing disability services to be screened in that circumstance.

Ms Ferguson: In terms of a person being in hospital for healthcare reasons, if they are not receiving disability support in that hospital but are there for acute health reasons—they are there for their health benefit—people supporting them such as nurses et cetera would not need a yellow card.

Mr McARDLE: They are providing medical treatment. I accept that. If they are providing services of a disability nature—a nursing home might be a better example.

Ms Ferguson: The hospital, I think, is probably fairly straightforward in terms of—

Mr McARDLE: You could have both, couldn't you? You could still be getting disability services in hospital and medical services.

Ms Ferguson: Sorry to interrupt you. If the person is receiving disability support from a provider that comes in to provide them with disability support within a hospital setting, that disability support worker or workers would need to be screened and have a yellow card. The hospital staff providing acute medical care for them would not need to have that screening for a yellow card because they are not providing the disability support.

Mr McARDLE: What about the nursing home example?

Ms Ferguson: The nursing home example, as Liz was saying—

Ms Bianchi: I think it is the same answer, Helen, in terms of if they are being provided with disability support. If I am a sole trader who is going in to provide specified disability supports for that individual then, yes, I need a yellow card. If I am in a nursing home to receive nursing care more generally, not specific disability supports, then, no, a yellow card would not be required.

Mr McARDLE: What if you were receiving both in the nursing home?

Ms Bianchi: I think it then comes down to if the individual is coming in to provide disability services then yes. If I am a sole trader and I go into the nursing facility to provide specified disability services, yes.

Mr McARDLE: What if the nursing home provides those services itself?

Ms Bianchi: If the nursing home is providing disability services then yes, but not if it is just providing general nursing.

Mr McARDLE: Break off the two entirely—nursing home medical and disability services.

Ms Ferguson: If in the future or now those nursing homes or aged-care facilities are registered with the NDIA as a registered provider, they would need to come under the quality and safeguards system.

Ms Bianchi: That is the other important thing. Screening is required under the DSA if they are a funded non-government service provider—they are receiving funding from the department to provide disability services or they are registered under the NDIS. They are probably two important caveats to wrap around that thinking.

Mr HUNT: Is there an age restriction on access to the NDIS?

Ms Ferguson: Yes, that is right. There is no younger age restriction. From birth, if they meet the access requirements—the eligibility criteria, if you like—they would become participants. The upper age level is 65 years of age. I will just explain that a little bit because it is not just a cut and dried 65. If the person has been receiving disability support through the state or territory and/or through the NDIS scheme before they reach 65, they can opt to continue that support through the NDIS or through the state system, and there is a way of the Commonwealth paying for that across the aged-care system and the disability system. If the person only comes forward for disability support at 65 years of age or over for the first time and they have not been receiving anything earlier than that, then they would be referred to the My Aged Care system.

Mr HUNT: That is to exclude people who become disabled due to age or age related conditions? It is a separate thing?

Ms Ferguson: Or after that age. That is right.

Mr HUNT: In relation to the automatic notifications with the systems, does that also work interstate if someone is convicted whilst they are interstate? For example, if someone is in Victoria and they are charged and convicted of a disqualifying offence, return to Queensland and decide not to tell anyone about it, is that going to get captured?

Ms Bianchi: Currently national monitoring is not available. Under the NDIS worker-screening system, national monitoring will be available. That is another reason it is a very important step forward in terms of safeguards.

Ms Ferguson: And that nationally consistent approach in all those layers of the system.

CHAIR: The explanatory notes on page 4 discuss consultation with the Queensland Disability Advisory Council. Can you tell us when and how that consultation was conducted and how the bill has changed from the version provided to the council?

Ms Bianchi: We undertook some consultation with the Queensland Disability Advisory Council as one of the regular departmental meetings with that council. We spoke to them more generally about the proposals in the bill as opposed to providing the specific bill to them to go through word for word. I probably cannot answer that second component around how it has changed. I can say, though, that there has not been any change in the policy positions that we discussed with the council.

CHAIR: Further, the explanatory notes state that members of the council were broadly supportive of the policy objectives but cautioned the need to ensure there are appropriate risk assessment frameworks in place to ensure that worker screening is focused on individuals delivering care to those with a disability. What other concerns did the council raise and does the bill before the committee address those concerns?

Ms Bianchi: I think there were some views by some members that we need to be careful in undertaking screening processes, particularly where we start to look at a broad range of information—that the risk assessments are really targeted at excluding individuals who pose a risk of harm to people with disability, that it does not become arbitrary in any way or become too focused on excluding a large group of people. We spoke to the council about the fact that under this NDIS nationally consistent worker-screening process there will be development of a risk assessment framework that sits underneath the intergovernmental agreement which will provide the opportunity to ensure that those assessments are targeted at risk. That is to be developed under a policy document to sit underneath the IGA and is currently underway and under development. The other aspect of that is that, as we have spoken about briefly, only prescribed entities will be receiving this expanded range of information under the Queensland framework. They will be specialist risk assessment units who have the relevant expertise in assessing whether or not the individual, based on the information before them, may pose a risk of harm.

CHAIR: Do you anticipate that there will be a review of the yellow card system at a point in time after this is implemented?

Ms Bianchi: There is absolutely a review of the NDIS worker-screening system envisaged under the intergovernmental agreement within 12 months of operation.

CHAIR: Thank you very much for coming in. It has been very informative. Were any questions taken on notice?

Mr McARDLE: Yes.

CHAIR: Can we have the answers to those questions back by next Tuesday? That would be appreciated. I thank the officers who have come before the committee today. The proof transcript and the video of this briefing will be available on our web page. I remind stakeholders who are following this briefing that we are taking written submissions on the bill. The closing date for the submissions is Monday, 9 April. That brings our public proceedings to a close. Thank you to everybody for your contribution.

The subcommittee adjourned at 1.02 pm.