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# Disability Services Review – The Disability Services Bill 2005 (Qld)

*The Disability Services Bill 2005 (Qld) was introduced into the Queensland Legislative Assembly by the Hon Warren Pitt MP, Minister for Communities, Disability Services and Seniors on 1 December 2005. The Bill will repeal the Disability Services Act 1992 (Qld) and will aim to –*

- *acknowledge the rights of people with a disability, particularly with the inclusion of a human rights principle;*
- *provide a contemporary regulatory framework for services provided by or funded by Disability Services Queensland (DSQ), including the incorporation of service delivery principles, and the recognition of the Disability Sector Quality System;*
- *ensure DSQ provided and funded services are safe, accountable and responsive to the needs of people with a disability through various measures such as criminal history checks of staff and through enhanced investigation and enforcement mechanisms; and*
- *provide greater clarity about the coverage of the legislation.*

Nicolee Dixon

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**Research Publications and Resources Section**

Ms Karen Sampford, Director	(07) 3406 7116
Mrs Nicolee Dixon, Senior Parliamentary Research Officer	(07) 3406 7409
Ms Renee Giskes, Parliamentary Research Officer	(07) 3406 7241

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Inquiries should be addressed to:

Director, Research Publications & Resources

Queensland Parliamentary Library

Parliament House

George Street, Brisbane QLD 4000

Ms Karen Sampford. (Tel: 07 3406 7116)

Email: [Karen.Sampford@parliament.qld.gov.au](mailto:Karen.Sampford@parliament.qld.gov.au)

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## **EXECUTIVE SUMMARY**

The **Disability Services Bill 2005 (Qld)** (the **Bill**) was introduced into the Queensland Legislative Assembly by the Hon Warren Pitt MP, Minister for Communities, Disability Services and Seniors on 1 December 2005. The Bill will repeal the *Disability Services Act 1992 (Qld)* and provide a new framework for protecting and promoting the rights of people with a disability.

Some brief **history** and **background** to the development of disability services in Australia is provided on **pages 1-3**. An overview of the Commonwealth *Disability Services Act 1986*, some Commonwealth Government programs and the *Commonwealth/State/Territory Disability Agreement (CSTDA)* is given on **pages 3-4**.

The major provisions of the *Disability Services Act 1992 (Qld) (DSA)* are discussed on **pages 5-6** and the various disability service policies and programs operating in Queensland on **pages 7-8**. The *DSA* is administered by **Disability Services Queensland (DSQ)**. From its 2004-2005 Budget of \$454.7 million, DSQ enabled around 15,500 Queenslanders with a disability to access services on more than 33,000 occasions during 2004-2005. Such services were funded under the CSTDA and were provided by DSQ, other agencies and non-government organisations. Grants of \$274.8 million were provided to other government and non-government bodies for supplying support services to clients. In 2004-2005, the largest client group of DSQ was people whose main disability is an intellectual disability (approximately 43%). This is followed by persons with a physical disability (around 18%). DSQ's budget for 2005-2006 increases by \$68.5 million over the 2004-2005 adjusted budget, bringing the total operational budget to \$520.4 million: **pages 8-9**.

The DSQ began its **review of the DSA** through a Legislative Reform Project in January 2002, seeking to update and modernise the *DSA* in line with current DSQ practices: **pages 9-10**. The various **deficiencies** and problems found in the 10 years of the *DSA*'s operation are outlined on **pages 10-12**.

Nine **Issues Papers** were released for public consultation and comment in May 2003 and extensive public consultation occurred during 2003 and 2004. In May 2005, the Government announced a package of reforms, including a new Disability Services Bill: **pages 12-14**.

The Disability Services Bill's **coverage, objects** and crucial **definitions** are discussed on **pages 14-15** and the modified **human rights principle** (with supporting rights) and **service delivery principles** on **pages 16-18**.

The administratively based quality assurance system operated by DSQ – the Disability Sector Quality System and the *Disability Service Standards* that underpin it – are considered on **pages 18-20**. **Part 3** and **Part 4** of the Bill recognise the Standards and the Disability Sector Quality System and establish a process for certification of whether standards are being met by service providers: **page 20**.

The process by which non-government service providers must obtain **pre-approval** under **Part 5** before they can apply for DSQ funding under **Part 6** is examined on **pages 20-22**. The process seeks to ensure that the service providers who receive recurrent funding have the organisational capacity and infrastructure to deliver accountable, sustainable and viable services. Before funding is provided under Part 6, the chief executive and the non-government service provider must enter into a **funding agreement: page 22**. Funded non-government service providers will have to comply with conditions of the funding agreement, any record keeping requirements that may be imposed on them, and any **prescribed requirements** authorised by **Part 7: pages 22-23**.

The **safety** of people with a disability and protecting them from abuse, exploitation and neglect is addressed by a number of provisions in the Bill. In addition to comprehensive **criminal history screening** for DSQ staff, volunteers, contractors and members of Ministerial Advisory Committees (**Part 8**), persons engaged by funded non-government service providers at a service outlet will also undergo criminal history checks (**Part 9**): **pages 23-27**. The Bill also contains (in **Part 10**) **investigative powers** to help authorised officers in dealing with possible abuse and neglect of recipients of disability services: **pages 27-29**.

Various **sanctions** and **remedial powers** are provided under the Bill to improve compliance. Those include the issue of a **compliance notice (cl 158)** to demand that a funded non-government service provider remedy its non-compliance with the Bill or a prescribed requirement within a certain timeframe; the ability for the chief executive to appoint an **interim manager (Part 11)** in urgent situations to protect clients of disability services and ensure continuity of those services; and the power to commence **proceedings for offences** against the Bill (**Part 12**): **pages 29-31**.

The Bill also provides legislative support for DSQ's **Complaints Management System** in **cls 212-214** and this is discussed briefly on **pages 31-32**. Various other matters addressed in the Bill, such as the establishment of **Ministerial Advisory Committees** and the protection of **privacy and confidentiality** are considered on **pages 32-35**.

## **1 INTRODUCTION**

The Disability Services Bill 2005 (Qld) was introduced into the Queensland Legislative Assembly by the Hon Warren Pitt MP, Minister for Communities, Disability Services and Seniors on 1 December 2005. The Bill will repeal the *Disability Services Act 1992 (Qld)* and will aim to –

- acknowledge the rights of people with a disability, particularly with the inclusion of a human rights principle;
- provide a contemporary regulatory framework for services funded or provided by Disability Services Queensland (DSQ), including the incorporation of service delivery principles, and the recognition of the Disability Sector Quality System and the *Disability Service Standards* that underpin it;
- ensure DSQ provided and funded services are safe, accountable and responsive to the needs of people with a disability through various measures such as criminal history checks of staff and through enhanced investigation and enforcement mechanisms; and
- provide greater clarity about the coverage of the legislation.

## **2 BACKGROUND**

It took a number of years of lobbying and effort by people with disabilities and their families, advocacy groups and others to achieve a legislative framework for the provision of funding for disability services at the national level. Responsibility for providing health services is, however, a State and Territory Government one. For much of the early 20<sup>th</sup> Century, relevant services were provided by voluntary or charitable organisations. By 1950, many people suffering disabilities were placed in State funded and operated general or mental hospitals, nursing homes, hospices or specialist institutions such as homes for the deaf or for the blind. Those who chose to remain in their own homes were cared for by family with limited assistance from domiciliary nursing services and there were few opportunities for respite.

Soon after the Second World War, the Commonwealth Government introduced allowances for dependants of invalid pensioners and the sickness benefit for incapacitated workers. Once the Commonwealth Government took over the field of income taxation, it embarked on a range of funding and legislative initiatives in the disability services area. Many people with disabilities then began to feel some sort of financial security. By the late 1970s, State and Commonwealth Governments began to focus on how education for children with disabilities should

be delivered, taking over the operation of many charity-run schools and establishing a range of special schools. State Governments also began to widen their efforts in service provision aimed at people with intellectual disabilities. By the early 1980s, the Commonwealth provided income support and some services but the States and Territories were the main providers of services for people with disabilities. In addition, non-government organisations provided many services backed by Government subsidies.<sup>1</sup>

In the 1980s, the time had come for a new approach to delivering disability services, particularly in terms of focus, coherency and accountability. The impetus came from a range of developments around the world including –<sup>2</sup>

- The United Nations Declaration on the Rights of Disabled Person (1976) which stated that persons with disabilities have the right to a decent life;
- Royal Commission<sup>3</sup> on Human Relationships, *Final Report* (Vol.5) (1977) which indicated the shortfalls of existing disability programs, particularly the focus of many of them on exclusion and segregation;
- The International Year of Disabled Persons (1981) which raised community awareness of disability issues and prompted disabled persons to advocate more vigorously for recognition of their rights;
- The Australian Bureau of Statistics (ABS) Survey of Handicapped Persons in 1981, which provided the first national data on the numbers of persons with disabilities, the nature of those disabilities, the types of services required by those persons, and the extent to which existing services met relevant needs.

These events encouraged the broader community to think less paternalistically about persons with disabilities. There was a growing attitude towards seeking to integrate people with a disability into the general community as much as practicable. Advances were made in enabling persons with disabilities to remain in their homes with adequate support services, rather than being placed in institutions. There was also a trend towards attempting to integrate children with disabilities into mainstream schooling and to allow adults to participate more effectively in the general workforce rather than in sheltered workshops.

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<sup>1</sup> Australian Parliamentary Library (APL), Mary Lindsay, 'Commonwealth Disability Policy 1983-1993', *Background Paper 2 1995-96*, [www.aph.gov.au/library/pubs/bp/1995-96/96bp06.htm](http://www.aph.gov.au/library/pubs/bp/1995-96/96bp06.htm).

<sup>2</sup> This information was drawn from the APL, *Background Paper 2 1995-96*.

<sup>3</sup> At the Commonwealth Government level.

## 2.1 OVERVIEW OF THE COMMONWEALTH *DISABILITY SERVICES ACT 1986* AND OTHER INITIATIVES

In 1983, the Hawke Labor Government came into Office with an agenda for reform of disability services and programs. The first initiative was a review of programs delivered under the *Handicapped Persons Assistance Act 1974* (Cth). That review also sought the views of persons with disabilities, their families and carers. The findings were reported in the Report of the Handicapped Programs Review, *New Directions*, in 1985.<sup>4</sup> This Report proposed improvements to disability services, including the passage of the *Disability Services Act 1986* (Cth) (Commonwealth DSA).

The Commonwealth Government also established the Office of Disability in 1985 to facilitate the new initiatives, to monitor links between Commonwealth funded or provided services and to make suggestions for change.

Commonwealth funded programs were reorganised and set out in s 13 of the Commonwealth DSA (including accommodation support, supported employment, independent living and training). Sometime after this, a number of services were established as ‘approved services’ that were eligible for funding under the Act if they accorded with the DSA principles of independence, choice, participation, and equality of rights and opportunities.<sup>5</sup>

The Commonwealth’s Home and Community Care (HACC) Program, under the *Home and Community Care Act 1985* (Cth), was also launched in 1985. Its aim is to provide comprehensive and integrated support services to older persons, people with disabilities, and their carers to allow them to live independently in their own homes. Examples of services include home help, domiciliary nursing and respite care. An HACC Agreement, signed by each State and Territory Government, allows for the Commonwealth, State and Territory Governments to jointly approve new services and funding allocations. The HACC Program is administered by both levels of Government.

A further step was the Commonwealth embarking on the first *Commonwealth/State Disability Agreement* (CSDA) with the States and Territories, signed in July 1991, now known as the *Commonwealth/State/Territory Disability Agreement* (CSTDA). Each CSTDA lasts for five years. Under the first Agreement, the States and Territories were obliged to enact complementary legislation to the Commonwealth DSA (leading to the *Queensland Disability Services Act 1992*). It also provided a

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<sup>4</sup> Commonwealth, Report of the Handicapped Programs Review, *New Directions*, AGPS, 1985.

<sup>5</sup> Commonwealth Department of Health, ‘Help Where Help Is Needed: Continuity Of Care For People With Chronic Mental Illness’, National Health Strategy, *Issues Paper No 5*, February 1993.

framework for the funding by the Commonwealth Government and delivery by the States and Territories of a range of disability services. The Commonwealth has administrative responsibility for employment services while the States and Territories conduct accommodation services, respite services, and community access and support. The responsibility for advocacy services, research and development is shared between each level of government.<sup>6</sup> Reporting on outcomes from the joint approach occurs through the annual CSTDA National Public Report.

## **2.2 COMMONWEALTH/STATE/TERRITORY DISABILITY AGREEMENT 2002-2007**

The third CSTDA 2002-2007 was signed by Queensland in June 2003. The overall implementation is managed through a Multilateral Agreement signed by all Ministers and bilateral agreements signed by the Commonwealth Minister for Family and Community Services and the relevant State Minister. For Queensland, the relevant Minister is the Hon Warren Pitt MP, Minister for Communities, Disability Services and Seniors.

The Queensland Bilateral Agreement sets out the work to be progressed by the Commonwealth and State Governments which includes –

- strengthening cross-government linkages, especially at critical life stages and transition points (e.g. movement of people with disabilities from school to employment and training services);
- strengthening support and services based on individual needs to enhance the well-being, contribution and capacity of individuals, their families and carers through more coordinated and effective advocacy approaches and advisory bodies (such as the Disability Council of Queensland);
- improving long-term strategies to respond to, and manage, demand for specialist disability support through exchanging information.

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<sup>6</sup> Disability Services Queensland (DSQ), *Review of the Disability Services Act 1992 – Coverage of the DSA Issues Paper 1*, May 2003 p 2, [www.disability.qld.gov.au/key\\_projects/disability\\_services\\_bill/](http://www.disability.qld.gov.au/key_projects/disability_services_bill/), downloaded May 2003. As explained later, the nine Issues Papers are grouped under four broad categories and they will be footnoted according to the headings to these categories.

### 3 DISABILITY SERVICES ACT 1992 (QLD)

The *Disability Services Act 1992* (Qld) (*DSA*) commenced on 1 June 1992 with the following purposes:<sup>7</sup>

- to affirm the principle that persons with disabilities have the same rights as other members of society;
- to set out the objectives to be promoted in the development and implementation of programs and services for persons with disabilities;
- to establish a funding mechanism so that services are provided to, and developed for, persons with disabilities in a way that assists them to achieve their maximum potential; and
- to encourage innovative programs and services for persons with disabilities.

The Queensland *DSA* recognises the role of the family and the importance of culturally appropriate services, meaning that input from families, carers and advocates is sought in designing programs and services.<sup>8</sup>

The *DSA* applies to a wide range of disabilities set out in s 5 and the definition of ‘disability’ in the new Disability Services Bill 2005 substantially retains those listed impairments.

It was envisaged that programs and services will be provided by public sector units; service providers (a person or organisation providing services either specifically to persons with disabilities or generally to the community, including people with a disability (s 6)); or service developers (defined in s 7) receiving funding under the *DSA*; and by other bodies (s 4).

The *DSA* then goes on to set out provisions aimed at achieving each of the above objectives.

**Part 3** sets out the principle of the *DSA* (s 9) – that people with disabilities have the same basic human rights as other members of society and should be empowered to exercise those rights. The principle is then supported by a number of rights then listed. These include matters such as –

- the right of people with a disability to respect for their human worth and dignity as individuals;

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<sup>7</sup> The *DSA* also intersects with the *Guardianship and Administration Act 2000* (Qld) and the *Mental Health Act 2000* (Qld).

<sup>8</sup> DSQ, Legislative Reform Project, *Review of the Disability Services Act 1992 – Coverage of the DSA*, p 3.

- the right of people with a disability to realise their capacities for physical, social, emotional and intellectual development;
- the right to services that support people with a disability attaining a reasonable quality of life in a way that supports their family unit and their full participation in society;
- the right to participate actively in decisions, disability policies, programs and services that affect their lives (including the right to any information and support to facilitate this);
- the right to receive services in a way that creates a minimum restriction of rights and opportunities; and
- the right to pursue grievances regarding services and support in doing so.

The principle seeks to address the disadvantage and discrimination faced by people with disabilities whether or not they receive specialist services.

**Part 4** deals with the objectives to be promoted by service developers and service providers in the development and implementation of programs and services for people with disabilities.

**Part 5** sets out the funding mechanism under the *Disability Services Act*. Persons with disabilities; service providers; and service developers are eligible for a grant of financial assistance from the Queensland Government. This Part, especially s 26, promotes the above objectives regarding DSQ funded services because grants of financial assistance must have Ministerial approval.<sup>9</sup> A grant will be approved if the abovementioned principles and objectives will be promoted using the grant and the eligible recipient must agree to conditions of the grant before it is paid.

The chief executive of DSQ has a range of powers under **Part 6** if he or she suspects non-compliance with a condition of the grant of financial assistance. The chief executive can ask for an explanation; suspend payments under the grant; request production of books, records etc. for examination; and/or ask the Auditor-General to conduct an audit of the accounts of the grantee.

### **3.1 DISABILITY SERVICES POLICIES AND PROGRAMS IN QUEENSLAND**

Since the enactment of the *Disability Services Act 1992*, there have been considerable changes in the ways in which services are delivered for persons with

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<sup>9</sup> *Review of the Disability Services Act 1992 – Coverage of the DSA*, p 8.

disabilities and the support they and their families or carers receive. Some main initiatives have included –

- the de-institutionalisation of many persons with disabilities – with 700 such persons moving from large residential settings to community based accommodation between 1995 and 2003;
- the establishment of the ‘stand-alone’ Government agency, Disability Services Queensland (DSQ) focusing on persons with disabilities. DSQ’s budget for 2004-2005 was \$454.7 million;
- the development of the *Queensland Government Strategic Framework for Disability 2002-2005* as a whole-of-Government framework to allow Government policies, programs, and services to be responsive to the needs of people with a disability, their families, carers and service providers. Examples include activities to improve access to services by people with a disability;<sup>10</sup>
- the launching of the *Disability Services Queensland Strategic Plan 2005-2009* which contains integrated objectives and performance measures to guide and indicate DSQ’s progress in achieving the objects of the abovementioned Framework;
- the entering into of a three-year Memorandum of Understanding with the Department of Communities to support DSQ, Disability Councils, and conduct community engagement and consultation on major issues;<sup>11</sup>
- the unveiling, in the 2003-2004 State Budget, of a \$290.5 million four-year funding package, aimed at providing extra respite services, in-home support and personal carers and other services for people with a disability. Non-government service providers were also allocated \$83 million over four years to enable them to continue operation;<sup>12</sup>
- DSQ has developed programs to support flexible and tailored approaches to lifestyle and fostered the development of stronger and more supportive communities through networks such as the Regional Disability Councils, the Disability Council of Queensland and the Local Area Coordination Program for

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<sup>10</sup> *Budget 2005-2006: Ministerial Portfolio Statement – Disability Services Queensland*, Departmental Overview, [www.disability.qld.gov.au/budget/05\\_06/mps/overview/strategic.html](http://www.disability.qld.gov.au/budget/05_06/mps/overview/strategic.html).

<sup>11</sup> *Budget 2005-2006: Ministerial Portfolio Statement*.

<sup>12</sup> Peter Beattie MP, Premier and Minister for Trade, ‘Historic \$290 million increase for disabilities’, *Media Statement*, 3 June 2003; Rosemary Odgers, ‘Disability groups welcome \$290m boost to services’, *Courier Mail*, 4 June 2003, p 21.

community based services. DSQ has also introduced the Disability Sector Quality System (see below) which aims to achieve better consistency in quality of service throughout the sector.<sup>13</sup>

DSQ's clients are not only persons with a disability but also their families, carers and other members of the disability sector. From its 2004-2005 Budget of \$454.7 million, DSQ enabled around 15,500 Queenslanders with a disability to access services on more than 33,000 occasions during 2004-2005. Such services were funded under the CSTDA and provided by DSQ, other agencies and non-government organisations. Grants of \$274.8 million were provided to other government and non-government bodies for supplying support services to clients.<sup>14</sup>

In 2004-2005, the largest client group of DSQ was people whose main disability is an intellectual disability (approximately 43%). This is followed by persons with a physical disability (around 18%).<sup>15</sup>

During 2004-2005, DSQ achieved the following –<sup>16</sup>

- the provision of an extra 177 recurrently funded packages and many one-off supplements under the Adult Lifestyle Support Program, a program offering a range of options to enable adults with a disability to maintain the living arrangements of their choice and to participate in community life;
- assistance to an additional 162 young people leaving school under the Post School Services Program and an extra 18 funding packages to young adults leaving the care of the State;
- assistance to an additional 250 families under the Family Support Program focusing on families whose needs have not been met by existing systems;
- expansion of the Local Area Coordination Program (which links people in remote and rural areas to community services) and assistance to 1716 people throughout the State;
- launching of the Disability Sector Quality System (discussed later), in partnership with the disability sector, and a range of initiatives for disability service providers to help them to meet the requirements of the system;

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<sup>13</sup> DSQ, *Annual Report 2004-2005*, pp 5-6.

<sup>14</sup> DSQ, *Annual Report 2004-2005*, p 13.

<sup>15</sup> DSQ, *Annual Report 2004-2005*, p 13.

<sup>16</sup> DSQ, *Annual Report 2004-2005*, pp 7-9.

- obtaining of Government approval for a legislative package of reforms, including the Disability Services Bill 2005; and
- launching a new consultation model with the disability sector through the Disability Council of Queensland and regional disability councils.

DSQ's budget for 2005-2006 increases by \$68.5 million (15.2%) over the 2004-2005 adjusted budget, bringing the total operational budget to \$520.4 million. This includes new funding of \$180 million over four years to improve the delivery of disability services. Funding provided in the 2005-2006 Budget focuses on strengthening the ability of non-government organisations to provide high quality services (\$10 million); implementation of early intervention strategies such as those provided for young children with autism where early treatment can be beneficial (\$5 million) as well as assistance to families caring for a person with a disability through the Family Support Program; and improvement of access to accommodation support and community services such as non-government respite services and hostels (\$15 million).<sup>17</sup>

The DSQ consumer satisfaction survey results for 2004 reveal that 85% of service users and 73% of carers across Queensland were satisfied with the disability services they received.<sup>18</sup>

#### **4 REVIEW OF THE *DISABILITY SERVICES ACT 1992***

After 10 years of operation, DSQ embarked on a review of the *DSA* through a Legislative Reform Project in January 2002. Impetus was provided by an election commitment given by the Beattie Government to undertake a review of the legislation.<sup>19</sup> The review aims to update the *DSA* to align with current practice and policy in the disability sector. DSQ has been concurrently engaged in a Funding Reform Project to review the viability of non-government services, demand for services and existing funding programs.<sup>20</sup>

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<sup>17</sup> Ministerial Portfolio Statement – DSQ, 2005-2006 Highlights, [www.disability.qld.gov.au/budget/05\\_06/mps/overview/highlights.html](http://www.disability.qld.gov.au/budget/05_06/mps/overview/highlights.html).

<sup>18</sup> DSQ, Consumer Satisfaction Survey Results, [www.disability.qld.gov.au/community\\_involv/survey\\_results.cfm](http://www.disability.qld.gov.au/community_involv/survey_results.cfm).

<sup>19</sup> Hon P D Beattie MP, Premier and Minister for Trade, 'Building on the foundations of reform', 8 February 2001.

<sup>20</sup> The Funding Reform Project will not be focussed on in this Brief. The Project is also developing carer recognition legislation as a separate matter and this will also not be discussed in this Brief.

#### 4.1 CRITICISMS OF THE *DISABILITY SERVICES ACT*

One of the criticisms of the *DSA* is that it has few mechanisms for accountability and enforcement regarding service provision.<sup>21</sup> Hence, one area of work was to clarify roles, rights and responsibilities of the participants in the system.

Indeed, the deficiencies in the *DSA* and matters in need of clarification which have been identified by the Government over the 10 years of its operation include –

- the *DSA* objectives and the s 9 principle appear to apply generally to *all* people in the disability service system, whether they receive Government funding or not but this is not clearly expressed;
- the *DSA* lacks practical application – setting out a key principle and objectives regarding service provision but not explaining how these are to be carried out and evaluated;
- there are no safeguards and/or protective mechanisms for people with a disability to prevent abuse or neglect;
- there are no requirements under the *DSA* for an internal complaints mechanism or provisions allowing the DSQ to investigate serious complaints. DSQ does have a Complaints Management System in place but it is not legislatively supported;
- there is no legislative backing for implementing minimum standards of care, quality assurance, or monitoring. The Disability Sector Quality System has an administrative basis;
- there are no sanctions or mechanisms to encourage good practice in service provision; and
- the assumption underlying the *DSA* – and which was actually the case at the time it was passed – is that the same department administering the *Family Services Act 1987* also oversees the *DSA*. This means that for administration purposes, there is reliance on both the *DSA* and the *Family Services Act* (e.g. criminal history checks of DSQ staff). It would seem that it is preferable to have discrete legislation defining the DSQ's area of operation and providing a framework and tools to administer and monitor grants given under the *DSA*.<sup>22</sup>

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<sup>21</sup> *Review of the Disability Services Act 1992 – Coverage of the DSA*, p 3.

<sup>22</sup> DSQ, *Guide to Review of the DSA*, May 2003, p 4.

In May 2005, the *'Papering Over the Cracks: The Veneer of Prevention' Report* was released by Queensland Parents for People with a Disability.<sup>23</sup> It details the effectiveness of the DSQ Policy, *Preventing and Responding to the Abuse, Assault and Neglect of People with a Disability* that was introduced in 2002. The findings were drawn from a survey of 120 people with a disability, their families and carers. The key findings include –

- that, despite the introduction of the above Policy, people with disabilities still suffer abuse, neglect and assault within disability services, the nature of which ranges from life-threatening, cruel and inhuman treatment to disrespectful and disdainful neglect;
- current trends and practices of disability service provision do not reflect knowledge gained from evidence about ongoing abuse, assault and neglect and the consequences;
- the DSQ Policy is ineffective to prevent abuse, neglect and assault and is a response mechanism at best;
- DSQ's Complaints Management System is unable to handle abuse complaints and has delays in its processes which expose people with a disability to further risks;
- people with a disability, their families and friends are denied significant decision making opportunities and their wishes are often overlooked or ignored.<sup>24</sup>

The Report made 21 recommendations. These recommendations included that people with a disability should be able to choose where and with whom they live and who will support them; better training of management personnel; greater involvement of people with a disability, families and advocates on boards of services; improved accountability for all service providers, whether funded or not; and legislative recognition of the Complaints Management System.<sup>25</sup>

The then Acting Minister for Disability Services, the Hon Henry Palaszczuk MP is reported to have welcomed the Report saying that the Government would look at the recommendations and make a whole-of-Government response, and noting that

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<sup>23</sup> A statewide systems advocacy organisation funded by the Commonwealth Government to undertake systems advocacy on behalf of people with a disability.

<sup>24</sup> Queensland Parents for People with a Disability Inc, *'Papering Over the Cracks: The Veneer of Prevention' Report*, May 2005, Executive Summary, [www.qldalliance.org.au/resources/items/2005/06/10182-upload-00001.pdf](http://www.qldalliance.org.au/resources/items/2005/06/10182-upload-00001.pdf).

<sup>25</sup> *'Papering Over the Cracks': The Veneer of Prevention' Report*, pp 5-6.

some issues raised by the report were being addressed through the reform of the *DSA*.<sup>26</sup>

## **4.2 ISSUES PAPERS AND DEVELOPMENT OF THE DISABILITY SERVICES BILL 2005**

A project team was established within DSQ to conduct the Review of the *DSA*, with input from a *DSA* Reference Group made up of persons with disabilities, their families, private service providers, statutory officers (Public Advocate, Adult Guardian) and DSQ officers. Advice was also provided by a *DSA* Government Working Party, comprising representatives from various Government agencies, regarding the implications of the reforms across Government.

In May 2003, nine *Issues Papers* were released by DSQ and were arranged under four themes – *Coverage of the DSA, Safety, Accountability and Monitoring, and Other Reform Issues* – and provide options for reform. Each considered key concepts and whether they needed to be addressed through legislative amendments, policy, practice, or a combination of all three. In announcing the release of the *Issues Papers*, the then Minister for Disability Services, the Hon Judy Spence MP, said that it was an ideal time for all Queenslanders to consider current community perspectives to ensure the revised Act mirrored contemporary disability policy and practice.

Extensive public consultation across the State took place during 2003 and 2004. Consultation occurred in a number of different forms including discussion forums and focus groups, the latter including representatives from peak bodies involved with persons with disabilities, unions, and statutory authorities such as the Anti-Discrimination Commission. After the second consultation phase, the Disability Studies and Research Institute<sup>27</sup> made a comprehensive submission to the Minister for Disability Services entitled *Bringing Life to Legislation* setting out recommendations for reform of the *DSA*.<sup>28</sup>

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<sup>26</sup> Margaret Wenham, 'Disabled still facing abuse', *Courier Mail*, 26 May 2005, p 16.

<sup>27</sup> The Disability Studies and Research Institute undertakes research into and education about disability issues from a social perspective and promotes public debate associated with the social dimensions of disability.

<sup>28</sup> Disability Studies and Research Institute, *Bringing Life to Legislation*, Submission to the Minister for Communities, Disability Services and Seniors regarding legislative changes to the Queensland *DSA*, September 2004.

At the end of the consultation period, DSQ presented the Minister with the outcomes of consultations to enable the Government to determine what reforms were necessary to improve the disability services framework.<sup>29</sup>

Key points emerging out of the consultation process were for reforms to –

- reaffirm the human rights of people with a disability;
- include objectives that reflect contemporary expectations for service design and delivery;
- promote the prevention of abuse and neglect;
- require pre-employment criminal history screening for employees of DSQ funded disability services to ensure persons receiving such services are safe;
- develop service standards that underpin the Disability Sector Quality System and require DSQ operated and funded service providers to comply with the system;
- ensure open and accountable decision making by DSQ;
- provide sanctions for non-compliance, supported by powers of investigation and monitoring of DSQ funded services;
- incorporate a complaints management system to respond effectively when the safety of people with a disability is compromised.<sup>30</sup>

In May 2005, the Government announced a package of reforms to address rights, safeguards and services to be embodied in the Disability Services Bill 2005.

Targeted consultation on the draft Disability Services Bill 2005 occurred during August-September 2005 with the purpose of providing the Government with feedback on how the Bill delivered on the reforms endorsed by Government; its technical accuracy; and issues regarding implementation.<sup>31</sup>

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<sup>29</sup> DSQ, 'Review of the DSA', [www.disability.qld.gov.au/key\\_projects/disability\\_services\\_bill/background/review\\_dsa.html](http://www.disability.qld.gov.au/key_projects/disability_services_bill/background/review_dsa.html).

<sup>30</sup> DSQ, 'Results of Consultation', [www.disability.qld.gov.au/key\\_projects/disability\\_services\\_bill/background/results\\_consultation.html](http://www.disability.qld.gov.au/key_projects/disability_services_bill/background/results_consultation.html), downloaded 16 January 2006.

<sup>31</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, pp 14-15.

## 5 DISABILITY SERVICES BILL 2005

The Disability Services Bill 2005 (the Bill) was introduced into the Queensland Legislative Assembly on 1 December 2005 by the Hon Warren Pitt MP, Minister for Communities, Disability Services and Seniors. It will repeal the *DSA* and provide a new framework for protecting and promoting the rights of people with a disability.

### 5.1 KEY DEFINITIONS AND OBJECTS

Under the Bill, a '**disability**' encompasses a range of impairments (intellectual, psychiatric, cognitive, neurological, sensory or physical, or a combination of any of the foregoing) that results in a substantial reduction in the capacity for communication, social interaction, learning, mobility, or self-care or management and in the person needing support. However, the disability must be permanent or likely to be permanent: **cl 11**. It is made clear, which is not the case under the *DSA*, that the impairment may result from an acquired brain injury. It also adds reduction in 'self-care or management' as an impact.

Unlike the *DSA*, the Bill defines '**disability services**' as one or more of accommodation support services, respite services; community support services; community access; advocacy or information services or services that provide alternative forms of communication; and research, training or development: **cl 12**. This is consistent with the range of disability services funded under the CSTDA and these are the only types of services that are eligible for government funding.

A '**service provider**' is a person providing services either specifically for people with a disability or generally to people in the community, including people with a disability. The services can be for profit or not-for-profit: **cl 13**. A '**funded service provider**' is one that receives DSQ funding and the DSQ itself. It does not include another government department that receives funds from DSQ: **cl 14**.

There are also '**non-government service providers**' which are non-State service providers (but can be a local government); '**approved non-government service providers**' which are corporations approved by the DSQ chief executive under Part 5 as eligible to receive funding; and '**funded non-government service providers**' which are non-government service providers receiving DSQ funding (one-off or recurrent) to provide disability services: **cls 16-18**.

The foregoing definitions regarding different types of service providers are necessary for the way in which the remainder of the Bill operates because different parts of the Bill apply to particular service providers.

*Issues Paper 1* noted that the purpose statement in the *DSA* seems to just refer to what is contained in the Act rather than what it is designed to achieve.<sup>32</sup> An issue for discussion was whether the purposes provision of the *DSA* should be amended so that it is clear what objects the legislation is trying to fulfil.

*Issues Paper 1* also set out, for consideration, a number of key concepts that could be included in the purposes/objects provision. For example, it could enshrine the idea of the legislation seeking to assist to enhance the lives of people with a disability.

The **objects** of the Bill are to acknowledge the rights of people with a disability, including promoting their inclusion in the life of the general community, and to ensure that DSQ funded disability services are safe, accountable and respond to the needs of people with a disability: **cl 6**. To achieve these objects, the Bill sets out –

- a human rights principle applying to people with a disability, supported by a number of rights of a personal and consumer nature;
- service delivery principles, to replace the service delivery objectives of the *DSA*, which Government agencies must have regard to when developing and implementing disability service plans;<sup>33</sup>
- provisions for regulating DSQ funded disability services to ensure the safety, quality, responsiveness and the accountability of the services; and
- measures to protect people with a disability using DSQ funded services from abuse, neglect and exploitation: **cl 7**.

Similarly to the Commonwealth *DSA*, **cl 8** contains a statement that the *DSA* must be administered having regard to the limited resources available to provide services and programs and to the need to distribute those resources equitably in accordance with Government priorities.<sup>34</sup>

## **5.2 DISABILITY RIGHTS AND SERVICE DELIVERY PRINCIPLES**

The principle enshrined in s 9 of the *DSA* – that people with disabilities have the same basic human rights as other members of society – applies to all persons with a disability, whether they receive disability services or not. The principle is to be

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<sup>32</sup> *Review of the Disability Services Act 1992 – Coverage of the DSA*, p 4.

<sup>33</sup> Disability Service Plans are described later in the Brief.

<sup>34</sup> *Review of the Disability Services Act 1992 – Coverage of the DSA*, p 5.

observed not only by government agencies and service providers but by all Queenslanders.<sup>35</sup> However, the Act's focus on service provision means that the principle is often overlooked. Thus, *Issues Paper 1* canvassed the option of amending the *DSA* to ensure that the principle and supporting rights are understood to apply to all persons with a disability, regardless of receipt of services. The Institute's submission to the Minister recommended that the new legislation make it clear that it relates to *all* Queenslanders with a disability not just those who receive DSQ operated or funded services.<sup>36</sup>

**Part 2** of the Bill sets out a **human rights principle** and **service delivery principles**.

**Clause 18** states that persons – that is, everybody in Queensland as well as service providers and Government departments – are encouraged to have regard to the human rights principle (set out in **cl 19**) in matters relating to people with a disability. The human rights principle is that people with a disability have the same human rights as other members of society and should be empowered to exercise them. This retains the essence of the main basic principle enshrined in s 9 of the *DSA*. As with s 9, the basic right is supported by other rights – some personal rights, some consumer rights – many of which replicate those in s 9 (set out earlier).

In *Issues Paper 1* it was noted that the eight supporting 'rights' in s 9 do not include the right to be protected from abuse and neglect yet persons with disabilities are among the most vulnerable members of the population. A matter for consultation was whether there should be a new supporting right stating that such persons have the right to live in an environment free of abuse and neglect. The question was also raised if there were any other 'rights' that needed to be included to give effect to the principle of people with disabilities having the same basic rights as anybody else in the community.

There are three new rights contained in **cl 19(2)**, additional to those found in s 9 of the *DSA* that were reproduced earlier in this Brief. Those additional rights are –

- the right to live life free from abuse, neglect or exploitation;
- the right to have confidentiality of information respected; and
- the right to receive services in a safe, accessible built environment appropriate to the person's needs.

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<sup>35</sup> *Review of the Disability Services Act 1992 – Coverage of the DSA*, p 7.

<sup>36</sup> Disability Studies and Research Institute, *Bringing Life to Legislation*, Recommendation 5.

The **service delivery principles** in **cls 20-33** are derived from, and are essentially the same as, the service delivery objectives in Part 4 of the *DSA*.

*Issues Paper 1* made the point that while stakeholders considered the service delivery objectives in the *DSA* to be beneficial in providing guidance on the design and delivery of services, it has been felt that the existing objectives could be updated by including ‘good practice’ concepts. Other objectives canvassed in this *Issues Paper* included that: service developers and providers and DSQ should encourage self-reliance and achievement of maximum potential of persons with a disability; should focus on consumer choice; should apply the least restrictive alternative where possible; should comply with service standards; should establish effective monitoring systems; and should promote community participation.<sup>37</sup>

The Bill only regulates delivery of services that are either provided or funded by DSQ. However, *all* service providers are encouraged to apply and promote the service delivery principles in the development and implementation of services for people with a disability. It is noted in **cl 20** that not every principle will apply to every type of service provider. The service delivery principles are that services should be designed and implemented to –

- focus on the development of the individual and on enhancing the individual’s opportunity to establish a quality life;
- encourage and enable people with a disability to participate in the planning and operation of the services they receive, including being consulted about major policy changes;
- ensure that the conditions of daily life of persons with disabilities are the same as (or as close as possible to) those valued by the general community and are appropriate to their age;
- be part of local coordinated service systems and integrated with services generally available to the community;
- meet individual needs and goals;
- meet the needs of those who may experience additional disadvantage because they are Aborigines or Torres Strait Islanders, or because of their sex, ethnic origin, or because of their location;
- promote the competency, positive image and self-esteem of people with a disability;
- promote the inclusion of people with a disability into community life;

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<sup>37</sup> *Review of the Disability Services Act 1992 – Coverage of the DSA*, pp 8-9.

- ensure that no single service provider organisation has control over all or most aspects of a person's life;
- have sufficient regard to the needs of families, carers and advocates of people with a disability; recognise the demands on families; and take into account the implications of such demands;
- ensure that appropriate means exist for people with a disability and their advocates to raise and resolve grievances about services (and service providers should make information available to allow the quality of their services to be judged); and
- ensure access to necessary independent advocacy support so that people with disabilities can participate adequately in decisions about the services they receive.

### 5.3 QUALITY ASSURANCE: DISABILITY SERVICE STANDARDS

DSQ seeks to ensure that Queenslanders with disabilities receive quality services from DSQ operated or funded services which are responsive to their needs and that there is ongoing improvement in the delivery of those services. Accordingly, DSQ has implemented a quality assurance system – the **Disability Sector Quality System** – which aims, among other things, to achieve a culture of quality and continuous improvement across the disability services sector and to establish consistent levels of quality and equity of services. The System operates independently of the Bill and is underpinned by the *Queensland Disability Service Standards* which were launched in March 2004. The System applies to all DSQ operated and DSQ funded disability services. To ensure continued funding, those service providers have to implement and maintain internal quality systems and processes to meet the Standards and to continually improve their performance. The Standards combine the National Disability Service Standards and the Australian Quality Council framework. Persons with a disability have the opportunity to provide input into planning, delivery and evaluation of their service providers' services.<sup>38</sup>

There are 10 *Disability Service Standards* –

- that each person with a disability has access to a service on the basis of relative need and within available resources;
- that individual needs and goals are met in the least restrictive way possible and within available resources;

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<sup>38</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, pp 2-3.

- that there is as full participation as possible by people with a disability in decisions regarding the services received;
- recognition and respect of each consumer's right to privacy, dignity and confidentiality in all aspects of life;
- support and encouragement of each person with a disability to participate and be involved in the life of the community;
- provision of opportunities for people with a disability to develop skills to participate in activities and develop and maintain skills to enable them to achieve valued roles in the community;
- provision of complaints and disputes management to safeguard clients from retributive action when raising grievances;
- adoption of good and sound management practices;
- protection of the legal and human rights of each person with a disability and taking action to prevent/respond to allegations of abuse and neglect;
- recruitment, employment and development of staff with the relevant skills, values, competencies and knowledge.<sup>39</sup>

From July 2004, service providers have been required to implement and maintain effective internal systems and processes that meet the relevant indicator for each Standard. Each of the Standards has a set of indicators to be used to measure how well the service provider is managing to achieve the particular standard. For example, in relation to the Standard regarding 'individual needs' one indicator is that the service provider has developed a personalised plan with each service user which contains a clear statement of what support is provided and how it will be delivered and that the plan is reviewed periodically as agreed. Using that indicator, the service provider must then engage in user assessment and self-assessment against the Standard which may show that improvements in delivery are required. This process must occur for each Standard. External validation through audit will then occur. The disability services sector has up to four years from 1 July 2004 to progress to external validation so that there is time to become familiar with the system.

An option put forward in *Issues Paper 4* was whether the DSA should incorporate a requirement for making Disability Service Standards (which would provide legislative backing to the current Standards) and mandate that they be complied with. This would conform to the approach taken in legislation such as the

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<sup>39</sup> DSQ, Disability Sector Quality System, [www.disability.qld.gov.au/quality/index.cfm](http://www.disability.qld.gov.au/quality/index.cfm).

Commonwealth *DSA* and the Queensland *Child Protection Act 1999*. The alternative approach would be to rely on grant and service agreements for the delivery of quality services.<sup>40</sup>

**Part 3** of the Bill incorporates Disability Service Standards requirements and **cl 239** deems the current *Disability Service Standards* to be made for the purposes of the Bill. The Minister has power to make such Standards applying to services provided by funded service providers. The Standards must detail the manner in which disability services must be provided and set out indicators to measure whether the Standards are being met. A Standard is a statutory instrument under the *Statutory Instruments Act 1992*.

**Part 4** sets out the process for **certifying** whether service providers meet the Standards and acknowledges the Disability Sector Quality System in doing so.<sup>41</sup> The Minister may approve a process of external certification and an entity as suitable to accredit another entity as an external certification body. The external certification body determines if a service provider is meeting the Standards. At present, external validation is conducted by an independent certification body accredited under the Joint Accreditation System of Australia and New Zealand.

#### 5.4 APPROVAL, FUNDING AND REGULATION OF SERVICE PROVIDERS

Under the new Bill, funded non-government service providers will be required to comply with the conditions of their funding agreement (see below), any prescribed requirements (see below) and any record keeping requirements (**cl 211**) under the Bill as well as achieve and maintain certification under the Disability Sector Quality System.<sup>42</sup>

At present, DSQ relies on its grant and service agreements with service providers to specify financial reporting obligations.<sup>43</sup> *Issues Paper 6* raised for discussion whether DSQ should have legislative powers to engage in the monitoring of DSQ funded service providers and require them to report on their operations, including the production of financial records.

**Part 5** of the Bill establishes a system under which the DSQ chief executive may **approve** non-government service providers that are corporations to be eligible to

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<sup>40</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, pp 2-3.

<sup>41</sup> **cl 240** provides statutory recognition of the existing Disability Sector Quality System.

<sup>42</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 4.

<sup>43</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, p 12.

receive recurrent funding for providing disability services. Thus, a corporation providing disability services has to gain approval before it can apply for recurrent DSQ funding. However, eligibility for funding does not mean that funding will be given. Provision is made for funding to be given without pre-approval in urgent cases.

The application for approval process is set out in **cl 43**. To be eligible, the service provider must be a corporation; certified, or seeking certification, under the Disability Sector Quality System; and provide disability services. The process seeks to ensure that the service providers who receive recurrent funding have the organisational capacity and infrastructure to deliver accountable, sustainable and viable services.<sup>44</sup> Accordingly, the chief executive may have regard to a number of criteria in deciding the application for approval. Those include consideration of the service provider's business plan and financial records; how it conducts its operations; how it will promote the human rights principle; its complaints handling mechanisms; and other operational and governance matters.

Provisions are included to enable the service provider to apply for cancellation of approval or for the chief executive to cancel approval in certain circumstances: **cls 44-47**.

The **funding** process is established by **Part 6** of the Bill. The purpose of funding – which can be recurrent or one-off – is to enable non-government service providers to provide disability services in ways that best achieve the objects of the Bill: **cl 48**. Funding can only be given for providing 'disability services' as defined in cl 12, which are the same as those agreed to in the CSTDA.

The funding procedure is a two-step one. The Minister first approves funding. Recurrent funding can only be approved if the non-government service provider has received approval under Part 5, except in urgent cases. However, one-off funding can be given without the pre-approval having been given, provided that the non-government service provider is a corporation. If approval has been given, the chief executive has to then enter into a **written funding agreement** with the non-government service provider before the funding is provided (unless it is an urgent case). The funding agreement must contain the matters stated in **cl 55** as are relevant to the funding. Those matters include the amount of funding; the period of the agreement and frequency of the funding; the type of disability service to be provided; performance measures; service delivery outcomes; complaints handling; as well as other important aspects of service provision.

**Part 7** of the Bill deals with **prescribed requirements for funded non-government service providers**. A Regulation may prescribe requirements for the

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<sup>44</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 27.

provision of services which funded non-government service providers must comply with. The types of requirements could, for example, include how a service provider conducts its operations relating to financial management and accountability, or its operations relating to compliance with the Disability Sector Quality System. A prescribed requirement could also be about provision of disability services. For example, there may be a requirement regarding how a funded service provider addresses individual needs and/or how it will protect people with a disability from abuse, neglect or exploitation. It could also relate to how a service provider must deal with resolving complaints and the giving of information. The prescribed requirements about which a Regulation can be made are set out in **cl 56**.

Funded non-government service providers are required to comply with the prescribed requirements. The consequences of non-compliance might be the issue of a compliance notice (see below) under **cl 158** demanding that the contravention be fixed. Non-compliance might mean that the next round of funding for the service provider could be jeopardised. It should also be noted that if certain prescribed requirements are not complied with, this could lead to the appointment of an interim manager (see below) under **cl 166**.

Funded non-government service providers are required to keep **prescribed records** such as financial records, client details, and complaint records: **cl 211**. In addition, **cl 223** allows the DSQ chief executive to require such a provider to give him or her, within a reasonable time, information or documents relating to the provision of disability services.

A non-government service provider that is currently receiving recurrent funding under the *DSA* will be deemed an 'approved service provider' and a funded non-government service provider for the purposes of the Bill. However, they will need to achieve certification by July 2008 in line with the timeframe for implementing the Disability Sector Quality System.<sup>45</sup> If recurrent funding is currently being received by the non-government service provider under a general service agreement under the *DSA*, it will continue to receive the funding until the agreement expires: **cls 237-238**.

## **5.5 SAFETY: PREVENTING ABUSE AND NEGLECT**

As noted above, people with disabilities are among our community's most vulnerable to exploitation, abuse and neglect. The instances of abuse and neglect by paid carers in government and private sectors have prompted the Government to seek better regulation of service providers in this area. An incident that sparked

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<sup>45</sup> DSQ, 'New disability legislation for Queensland', *Information Sheet*, p 2.

media attention in late 2004 and a report by the Adult Guardian was the sexual abuse of residents at a Bribie Island home for intellectually disabled people by their ‘carers’.<sup>46</sup>

Service providers need to have systems and procedures in place to minimise or remove the opportunity for abuse to occur. *Issues Paper 2* noted that the fact that there was no supporting ‘right’ or objective in the *DSA* about protection from abuse and neglect in service environments has been regarded as a deficiency in the system.<sup>47</sup> However, as seen earlier, such a supporting ‘right’ or objective is now incorporated in the Bill.

### 5.5.1 Screening

Another important aspect of safety in this context is ensuring adequate pre-employment screening of persons who provide services to people with a disability. Many pieces of Queensland legislation provide for criminal history checks – for example to screen persons who work with children under the *Commission for Children and Young People and Child Guardian Act 2000*. Currently, people who work in DSQ and in the Department of Families have to undergo screening, as do their agents and volunteers, under the *Family Services Act 1987*. However, there is potential for abuse and neglect by providers of services outside those provided by DSQ. There is no requirement in the *DSA* for other providers to have mechanisms, such as reporting procedures and pre-employment screening, to guard against abuse and neglect.

Thus, *Issues Paper 3* raised the question whether the *DSA* should consolidate powers and provisions for screening of DSQ staff within the *DSA* (rather than in the *Family Services Act 1987*) and whether these requirements should extend to employees of organisations providing services funded by DSQ.<sup>48</sup> The targeted consultation on the draft Bill indicated broad support for criminal history checks as did earlier feedback during the public consultation processes in 2002 and 2004.<sup>49</sup>

Screening and related issues are dealt with under **Parts 8** and **9** of the Bill. The paramount consideration in making a decision under each Part will be the right of people with a disability to live lives free from abuse, neglect or exploitation. The

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<sup>46</sup> Duncan McKimm, ‘Care Follow’, *Stateline Queensland Transcript*, 13 May 2005, [www.abc.net.au/stateline/qld](http://www.abc.net.au/stateline/qld), downloaded 27 May 2005.

<sup>47</sup> *Review of the Disability Services Act 1992 – Safety*, p 4.

<sup>48</sup> *Review of the Disability Services Act 1992 – Safety*, pp 7-8.

<sup>49</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 8.

requirements for the provision and obtaining of criminal history information, criminal history checks, controls on the use and disclosure of criminal history information, and the inclusion of other safeguards are similar to those found in mandatory criminal history checking schemes in legislation such as the *Commission for Children and Young People and Child Guardian Act 2000*. A number of procedural fairness provisions and review rights are incorporated in the Bill. For instance, there is a right to seek review by the Commercial and Consumer Tribunal on an adverse screening decision made by the chief executive in most cases and, as a general rule, a person can reapply after two years for reconsideration of an adverse screening decision made by the chief executive.

**Part 8** enables the DSQ chief executive to obtain the criminal history of, and related information about, **persons engaged, or to be engaged, by DSQ**. This will cover DSQ staff and volunteers (as is presently the case under the *Family Services Act 1987*) but will now extend to certain contractors providing disability services and to members of Ministerial Advisory Committees (which are described later). This Part also allows the chief executive and the Police Commissioner to enter into an administrative arrangement to determine how police information is provided to each agency (subject to safeguards). Screening of DSQ staff will commence in January 2006 under existing laws.<sup>50</sup>

**Part 9** applies to **persons engaged, or to be engaged, by funded non-government service providers** at a service outlet of the service provider under an agreement. It allows the chief executive to obtain criminal history and related information about such persons. It will not matter if the agreement with such a person is written or unwritten, whether the work is regular or irregular, the nature of the work, or what duration it has. The crucial factor is the potential risk that proximity and opportunity may present for the safety of a person with a disability.<sup>51</sup> Currently, there is no legislative requirement for criminal history screening of persons engaged by non-government service providers. Part 9 employs a process modelled on the scheme in the *Commission for Children and Young People and Child Guardian Act 2000*. The screening process is similar to that for those engaged by DSQ under Part 8 so that consistency is achieved between checking DSQ workers and non-government service provider workers.<sup>52</sup>

Because of the sheer number of applications and screening decisions that will need to be made concerning people currently engaged by funded non-government service providers, it is planned to have a staged approach to screening from 1 July

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<sup>50</sup> DSQ, 'New disability legislation for Queensland', *Information Sheet*, p 3.

<sup>51</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 39.

<sup>52</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 38.

to 31 December 2006. A Regulation will specify the order of the criminal history screening: **cl 236**.<sup>53</sup>

Under **Division 4** of **Part 9**, a funded non-government service provider may apply to the chief executive for a **prescribed notice** for a person whom they propose to engage or continue to engage at a service outlet. The application must contain all relevant information about the person and that the provider has sighted proof documents regarding the person's identity. The 'prescribed notice' is a positive notice (allowing the person to work and is current for two years) or negative notice (not allowing the person to work which is current until cancelled under Division 6) issued by the chief executive following the necessary criminal history and other information checks.

A table on p 45 of the *Explanatory Notes* to the Bill summarises the circumstances in which each type of notice must be issued. For example, a negative notice must be issued if a person has been convicted of an excluding offence and an imprisonment or a disqualification order is imposed. An 'excluding offence' is defined in **cl 78**. The offences identified are carefully selected to encompass only those that pose a grave risk to people with a disability and accord with the list of excluding offences under the *Commission for Children and Young People and Child Guardian Act 2000*.<sup>54</sup> A positive notice must be issued if there is no criminal history; or where there has been a charge for other than an excluding offence, unless it is an exceptional case in which it would not be in the best interests of people with a disability to issue a positive notice.

Rights of review are given where a negative notice is issued, the process varying depending upon whether the reasons for decision include investigative information<sup>55</sup> or not (see **cl 84**). While the funded non-government service provider has to be notified whether a positive or negative notice has been given, no criminal history or other related information is disclosed to it.

It will be an offence for a funded non-government service provider to engage, or continue to engage, a person without a current positive notice at a service outlet, unless there is an application for such in train: **cl 87**. The maximum penalty<sup>56</sup> for a

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<sup>53</sup> See also Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 108.

<sup>54</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 9.

<sup>55</sup> Investigative information is information gathered during a police investigation that does not result in the person being charged: **cl 106**.

<sup>56</sup> One 'penalty unit' is equivalent to \$75: *Penalties and Sentences Act 1992* (Qld), s 5.

funded non-government service provider will be \$18,750.<sup>57</sup> It will also be an offence to engage or continue to engage a person who has withdrawn their consent to screening, or who has been given a notice of deemed withdrawal, or where the service provider is aware that a negative notice has been issued: **cl 88**. Similarly, a person with a current negative notice cannot apply for work or continue to work for a funded non-government service provider at a service outlet and a maximum penalty of five years imprisonment or a \$37,500 fine applies: **cl 89**. A person with a positive notice who is subsequently convicted of a serious offence or charged with an excluding offence must not start or continue to be engaged at a service outlet or he or she is liable to a maximum penalty of five years imprisonment or a \$37,500 fine: **cl 91**. Offences against **cls 89** and **91** are indictable offences. All other offences against the Bill are summary offences.<sup>58</sup>

**Changes** in a person's criminal history are dealt with in **cls 90-93**. The situations in which a person can apply for the **cancellation** of a negative notice; or in which the chief executive can cancel a negative notice and substitute a positive notice; or in which a positive notice can be cancelled and a negative one substituted; or when a positive notice can be suspended are covered by **cls 97-102**.

A number of related miscellaneous matters are dealt with in **Part 9, Division 7** such as how the Police Commissioner decides (and appeals from this decision) if information is '**investigative information**' that may be forwarded to the chief executive as part of the screening process: **cl 106**. There is also provision about **restricting the use of information** obtained for screening purposes (**cl 117**) and about the keeping of an up-to-date **Register** of persons engaged by funded non-government service providers for whom an application for a prescribed notice is made (**cl 120**). A service provider may find it is a good risk management strategy to search the Register about potential persons it wishes to engage so it can ascertain if a positive or negative notice has been issued.

Under **Division 3** of **Part 9**, funded non-government service providers who engage persons at service outlets have to develop and implement a **risk management strategy** each year for persons engaged by them or else they commit an offence and are liable to a fine. The intention of the strategy is so that service providers adopt practices and procedures in relation to people with a disability to promote their well-being and to protect them from harm. Criminal history checks are just one means of ensuring the safety of people with a disability. A Regulation may prescribe what should be included in the strategy. For example, it might set out how a funded non-government service provider should manage a situation where a

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<sup>57</sup> An individual guilty under Ch 2 of the Criminal Code of an offence or for cl 203 can be fined up to \$3,750.

<sup>58</sup> Proceedings for offences are covered in **Part 12** of the Disability Services Bill 2005 (Qld).

person engaged by the service provider is facing a reassessment of a decision about his or her criminal history.<sup>59</sup>

## 5.6 MONITORING AND ENFORCEMENT

Unlike legislation such as the *Child Protection Act 1999* and the *Guardianship and Administration Act 2000*, the *DSA* has no provision for enabling DSQ to investigate possible abuse or neglect of persons with disabilities.<sup>60</sup> Powers of investigation tend to be limited to situations where the chief executive reasonably suspects that a condition of a grant has not been complied with. Yet DSQ might be asked to inquire into poor service delivery or a complaint about abuse or neglect. In respect of abuse and neglect, the police may be able to investigate and, where DSQ staff are involved, serious misconduct may be referred to the Crime and Misconduct Commission. The *Guardianship and Administration Act 2000* gives extensive investigative powers to the Adult Guardian and others but it only covers adults with impaired capacity not persons with other types of disabilities.<sup>61</sup> *Issues Paper 6* suggested that, because of the gaps across different Queensland legislation, it might be appropriate to incorporate in the *DSA* powers of investigation for all the types of complaints that can arise in the provision of disability services.

Further, the *DSA* does not contain any penalties or sanctions for service providers that do not take the necessary precautions to prevent abuse and neglect of recipients of disability services. The means by which DSQ has dealt with possible abuse and neglect occurring within the system of service provision is through a Complaints Management System, its *Preventing and Responding to the Abuse, Assault and Neglect of People with a Disability Policy* introduced in 2002, and the development of the Disability Sector Quality System.<sup>62</sup> These administrative arrangements tend to limit DSQ's ability to investigate complaints if the service provider or manager or staff member is uncooperative.

In relation to financial matters, DSQ must currently comply with requirements under the *Financial Administration and Audit Act 1977 (Qld)* and the *Financial Management Standard 1997*, particularly regarding the administration and management of grants and subsidies. However, DSQ's powers to make inquiries to

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<sup>59</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 42.

<sup>60</sup> Note also that the *Domestic and Family Violence Protection Act 1989* was amended in 2002 to extend protection to people suffering abuse from family members or informal carers.

<sup>61</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, p 9.

<sup>62</sup> *Review of the Disability Services Act 1992 – Safety*, p 3.

assist it in ensuring that those requirements are being adhered to are restricted to the somewhat vague powers set out in Part 6 of the *DSA*. A need for more general powers of investigation to assist DSQ where it is reasonably suspected that a DSQ funded provider is not complying with the funding agreement and financial requirements has been recognised. The powers suggested in *Issues Paper 6* are comparable to those in other legislation that give authorised officers certain enforcement and compliance powers (e.g. powers of entry, searches, examination of persons). The Western Australian *DSA* 1993 confers powers of this type as does the Commonwealth *Aged Care Act* 1997.<sup>63</sup>

### 5.6.1 Powers of Authorised Officers

**Part 10** of the Bill incorporates legislative provisions allowing **authorised officers** appointed by the chief executive to monitor and enforce the Bill, undertake investigations and require information. This assists DSQ in being able to respond to problems of abuse, neglect and exploitation or the misuse of funds which may arise in extreme cases.<sup>64</sup>

The powers of these authorised officers are similar to those given to persons with similar status under other contemporary legislation dealing with public health and safety matters and child protection. These include powers of entry of places; power to seize evidence (e.g. of an offence against the Bill and where there is danger of it being destroyed etc.); and power to obtain information and documents. For example, under **Division 2** of **Part 10**, an authorised officer can enter the premises of a funded non-government service provider, even in the absence of the occupier's consent or a warrant (which is usually obtained to effect entry where there is no consent to entry by the occupier) if it is necessary to protect a person with a disability from immediate risk of harm because of abuse, neglect or exploitation, or there is an imminent risk that evidence of misuse of funds will be destroyed. A place can also be entered without a warrant or consent to follow up a compliance notice (discussed below) to ensure that the steps required by it have been taken. The power also extends to homes because some funded non-government service providers operate within homes, such as supported accommodation. In all situations safeguards are provided such as the need to attempt to gain consent to entry first and, if entering a home, to make reasonable attempts to preserve the privacy and dignity of those living there.

A right to **compensation** is provided in **cl 160** if a person incurs loss or expense because of their compliance with a requirement under Part 10, apart from

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<sup>63</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, pp 10-11.

<sup>64</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 11.

implementing the requirements of a compliance notice (see below). The claim is brought in the court with relevant monetary jurisdiction or during the hearing of an offence charge and compensation will be ordered if the court believes it is just to do so.

### 5.6.2 Compliance Notice

The *DSA* does not contain any powers to impose sanctions for poor service delivery and non-compliance with conditions of funding. Currently, the only mechanism for enforcing compliance is through further assistance being reliant on compliance with the agreement and efficient service provision. *Issues Paper 6* suggested some sanctions/remedies that could be incorporated in amendments to the *DSA*. These included that the service provider enter into a rectification program; DSQ engage in close monitoring of the provider's operations; or disqualification of a provider from further funding if there is continued bad performance or mismanagement.<sup>65</sup>

**Clause 158** introduces the concept of a **compliance notice** which can be issued by the DSQ chief executive in specified circumstances as a means of securing compliance with the Bill. The compliance notice identifies and notifies the funded non-government service provider that part of their operations or the manner in which they are providing their service is not complying with the Bill, or a prescribed requirement under a Regulation. It then requires the service provider to remedy the non-compliance within a specified reasonable time. It will be an offence to fail to comply with the notice without reasonable excuse and the penalty for the funded non-government service provider is either the maximum penalty applying to the relevant offence identified in the notice or up to \$7,500.<sup>66</sup> Other sanctions for non-compliance with the notice include suspension or cancellation of the service provider's funding. The chief executive will also be able to pursue any remedies stated in the funding agreement or exercise other powers under the Bill.

### 5.6.3 Interim Manager

An **interim manager** can be appointed for a funded non-government service provider under **Part 11**. The appointment may apply to all service outlets or to stated outlets. Such appointments will occur only in exceptional circumstances

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<sup>65</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, p 13.

<sup>66</sup> An individual guilty under Ch 2 of the Criminal Code of an offence or for cl 203 can be fined up to \$1,500.

where no other actions are viable and will be for three months unless extended for a maximum of six months.

The only grounds upon which the chief executive can appoint an interim manager are if the chief executive is satisfied that the appointment is reasonably necessary (having regard to factors set out in **cl 167**) to protect consumers of the funded non-government service provider from abuse, neglect or exploitation, or to ensure the proper and efficient use of funds under the funding agreement with the service provider. For example, the chief executive may be satisfied that a service provider is unwilling to provide certain services and these are important for the welfare of the persons receiving the services such that they may be severely impacted upon if the service is not provided. The service provider and consumers have to be consulted before the appointment is made.

The interim manager's functions are to ensure the protection of consumers; ensure the proper and efficient use of funds; and provide services to consumers that the funded non-government service provider had agreed to provide. The interim manager will have a range of powers to enable the carrying out of those functions such as seeking the assistance of the service provider and using the facilities at the relevant premises. The interim manager must maintain confidentiality of any confidential information obtained during the course of appointment (apart from certain narrow exceptions) and provide accounts and reports about the service provider to the chief executive such as reports about the well-being of the consumers.

The intention of these provisions is to enable the interim manager to work with the service provider to keep the service operational and functional.<sup>67</sup>

#### **5.6.4 Proceedings for Offences**

**Proceedings for offences** against the Bill are covered in **Part 12**. All, apart from the two indictable offences outlined earlier (see **cls 89** and **91**) are summary offences and proceedings will be taken in accordance with the *Justices Act 1886*.

### **5.7 REVIEW AND APPEALS**

**Clause 204** states that **Schedule 2** states what decisions made by the DSQ chief executive are reviewable and who can apply for **review**. These decisions relate to

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<sup>67</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 87. Compensation for loss or damage incurred from the exercise of the interim manager's powers can be claimed in certain cases: **cl 188**.

refusal and cancellation of pre-approval of non-government service providers; refusal to cancel an approval; cancellation or suspension of funding for not complying with a compliance notice; and the appointment of an interim manager. The process is that there will be firstly, an internal review then, if the applicant is dissatisfied with the outcome, an external review by the Commercial and Consumer Tribunal. In addition, **Part 9** provides for a person to apply to the Tribunal for a review of criminal history screening related decisions (see above).

The review will be merits-based, meaning that all the circumstances of the case will be considered and a fresh decision can be substituted if the original decision is overturned.

## 5.8 COMPLAINTS

*Issues Paper 5* considered the importance of an effective **complaints** resolution system as integral to maintaining and enhancing quality in the provision of disability services. A complaints mechanism allows consumer feedback about what they like and what needs to be improved in service delivery. In January 2001, DSQ put in place a **Complaints Management System** for both DSQ operated services and for services funded by DSQ. DSQ requires each service provider to implement the Complaints Management System as a condition of its grant and the service agreement. DSQ has also implemented policies and procedures for responding to and addressing complaints and concerns about disability services.<sup>68</sup> The Complaints Management System embodies a principle of seeking to resolve a complaint at the local level in the first instance.<sup>69</sup>

However, the *DSA* does not currently provide legislative support for complaints systems, so DSQ currently relies on making it a condition of funding that a complaints procedure is put in place by service providers. Thus, an issue raised for consideration by *Issues Paper 5* was whether the *DSA* should recognise the Complaints Management System and require compliance from DSQ operated and DSQ funded services.<sup>70</sup>

**Clause 212** makes it clear that the consumer of the disability services, family members, carers, advocates, and anyone on behalf of the consumer can make a complaint to the chief executive about the delivery of services by a funded service provider, including a service provided by DSQ itself. The provision also gives

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<sup>68</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, pp 6-7.

<sup>69</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 99.

<sup>70</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, pp 6-7.

legislative backing to the Complaints Management System presently existing within DSQ.

On receiving a complaint, the chief executive can refer, liaise with, or enter into an arrangement with a complaints agency such as the Ombudsman, the Crime and Misconduct Commission, the Adult Guardian, and any other such agency that may have an interest in the complaint. This can facilitate a coordinated investigation of the matter. The issue may end up as one that is investigated and monitored and action taken to enforce compliance under Part 10 (including all the powers available to authorised officers to enter premises, seek information and ask questions): **cls 213-214**.

## **5.9 OTHER MATTERS**

### **5.9.1 Disability Service Plans**

Every Government Department will be required, under **cl 215**, to prepare, publish and implement a **disability service plan** which must be renewed every three years. The purpose of the plan is to improve access to government services by people with a disability, having regard to the service delivery principles and the human rights principle. This acknowledges that people with disabilities also need to access other government services such as obtaining a driver's licence or a training allowance, just like every other member of the community. Each department's plans will have to identify the issues relating to service delivery to people with a disability, how the issues will be addressed and the way in which chief executives of other departments will be consulted to obtain a whole-of-Government approach to people with a disability.

### **5.9.2 Ministerial Advisory Committees**

**Clauses 216-219** provide the Minister with power to establish and dissolve **Ministerial Advisory Committees** which will have a role of ensuring community involvement about disability services and issues. A committee can be created to advise on the Complaints Management System (e.g. a Complaints Management Quality Committee). The Minister can also establish as many other committees as considered appropriate to advise on disability issues and disability services. The *Explanatory Notes* state that **cl 216** also provides recognition to the Disability Council Queensland and Regional Disability Councils which are an important means of facilitating partnerships between Government and local communities and

are currently involved in advising the Minister on disability issues.<sup>71</sup> The advisory committees will have a membership as determined by the Minister and can include a person with a disability, a family member or carer, or another person with relevant expertise or experience.

### 5.9.3 Notification of Compensation

Sometimes, persons who suffer a permanent disability may be entitled to recover damages or other form of compensation if the disability arose through another person's negligence. Civil procedures may take some time to result in any damages payouts and other compensatory arrangements may take time to process, during which period the person suffering from the disability may need to access disability services provided or funded by DSQ. DSQ has a policy of recovery of some costs in cases where the person has received compensation and the compensation amount includes provision for disability services. However, without legislative backing and enforcement powers, there are limitations on the ability of DSQ to recover the amounts concerned. Thus, *Issues Paper 8* discussed whether the *DSA* should incorporate a power for recovery of past and future costs of services where persons receive compensation.<sup>72</sup>

**Clause 220** of the Bill will require a person applying for, or receiving, funded disability services from DSQ or a funded service provider to **notify** DSQ if they have taken action to recover an amount related to the disability, through a court action, a statutory workers' compensation scheme or an insurance claim; the amount paid (if already paid); and the amount relating to future care. Failure to notify the chief executive will constitute an offence, with the maximum penalty being \$15,000. An administrative decision will be made in each individual case to determine whether the person should contribute to the cost of the disability services they receive.<sup>73</sup>

### 5.9.4 Confidentiality

Given that DSQ holds, and has access to, a large amount of personal information about clients of disability services (e.g. details of doctors, family contact details,

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<sup>71</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 100; Hon F W Pitt MP, Minister for Communities, Disability Services and Seniors, Disability Services Bill 2005 (Qld), Second Reading Speech, *Queensland Parliamentary Debates*, pp 4601-4603, p 4603.

<sup>72</sup> *Review of the Disability Services Act 1992 – Compensation*, p 3.

<sup>73</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, p 5.

medical information, care plans) and information necessary for the purpose of funding non-government service providers (financial arrangements and details), the issue of privacy and confidentiality is an important one. The matter is currently governed by the *Freedom of Information Act 1992* (Qld) and *Evidence Act 1997* (Qld), and the administratively based Information Standard (IS42) imposed on Queensland Government agencies regarding collecting, storing and disclosing personal information. Confidentiality and privacy is also a standard within the Disability Service Standards (see above) and covered in DSQ's internal policies and Code of Conduct.

However, the *DSA* imposes no specific obligation for maintaining privacy and confidentiality of such information, unlike the Commonwealth and Western Australian *DSA*. It is also unclear whether the Commonwealth *Privacy Amendment (Private Sector) Act 2000*, which applies to non-government providers of health services, also applies to non-government providers of disability services as the two may be regarded different types of services. Thus, *Issues Paper 7* proposed that the difficulties and gaps created by DSQ complying with IS42 (which applies to Queensland Government agencies) while DSQ funded non-government disability services comply with the Commonwealth *Privacy Act* could be overcome by amending the *DSA* to ensure that both types of services comply with the same privacy scheme.<sup>74</sup>

**Confidentiality** provisions are included in the Bill. **Clause 221** protects the confidentiality of criminal history and investigative information obtained by the chief executive, a public service employee or a selection panel member for criminal history screening purposes. The provision applies to present and past employees. It will be an offence to disclose that information or provide access to anyone else, apart from in the limited circumstances set out in the provision. The maximum penalty will be a fine of \$7,500 or two years in prison. Certain circumstances are then set out in which it will not be an offence to disclose or give access to such information. Those include access to such information for screening decisions or where the person to whom the information relates consents to disclosure.

**Clause 222** protects the confidentiality, and restricts the disclosure, of other information acquired by a person involved in the administration of the Bill, such as a chief executive, authorised officer, employee, contractor, interim manager, or a member of a Ministerial Advisory Committee. An offence against this provision will attract a fine of up to \$7,500. The purposes for which access can be given to confidential information are specified and include disclosure for administration, monitoring and enforcement functions and giving access to the information to another government department or DSQ funded service provider if it will enable

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<sup>74</sup> *Review of the Disability Services Act 1992 – Accountability and Monitoring*, pp 24-25.

the needs of the person to whom the information relates to be met. Sometimes a collaborative approach between multiple service providers is required.<sup>75</sup>

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<sup>75</sup> Disability Services Bill 2005 (Qld), *Explanatory Notes*, pp 103-104.

### **List of Acronyms**

<b>ABS</b>	Australian Bureau of Statistics
<b>DSA</b>	<i>Disability Services Act 1992 (Qld)</i>
<b>DSQ</b>	Disability Services Queensland
<b>CSTDA</b>	<i>Commonwealth/State/Territory Disability Agreement</i>
<b>HACC</b>	Home and Community Care Program

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