

18 January 2016

Ms Leanne Donaldson MP  
Chair  
Communities, Disability Services and Domestic and Family Violence Prevention Committee  
Via email to: [cdsdfvpc@parliament.qld.gov.au](mailto:cdsdfvpc@parliament.qld.gov.au)

Dear Ms Donaldson,

Thank you for your letter of 3 December 2015 inviting me to make a submission to assist the Committee in its examination of the *Disability Services and Other Legislation Amendment Bill 2015*.

In my role as Public Advocate, I am responsible for protecting and promoting the rights, autonomy and participation of Queensland adults with impaired decision-making capacity through statutory systems advocacy. My role is given authority by the *Guardianship and Administration Act 2000*.

The issue of ensuring adequate safeguards for people with impaired decision-making capacity is the foundation upon which much of the work of my Office is premised, and has become even more relevant with the progressive implementation of the NDIS. The submissions that I tabled in response to the *Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework*<sup>1</sup> highlighted many of the shortcomings of current quality and safeguarding mechanisms for people with impaired decision-making capacity and outlined recommendations for further development and improvement of certain elements of the proposed Framework.

The *Disability Services and Other Legislation Amendment Bill 2015* (the Bill) seeks to ensure that, as the National Disability Insurance Scheme (NDIS) is progressively rolled out in Queensland, NDIS participants are afforded adequate protections, akin to those available to individuals accessing state-funded disability services.

Of relevance to the issue of quality and safeguarding is data from the quarterly NDIS report for September 2015, which confirms that 87% of NDIS participants may have some form of cognitive impairment.<sup>2</sup> Many people with cognitive impairment experience difficulty in identifying and assessing the appropriateness of available options, making decisions, communicating their wishes, and/or in navigating the very systems that are designed to afford them necessary protections.

While I support the amendments proposed by the Bill in principle, they raise questions in respect of executing the expansion of Queensland's current quality and safeguarding framework to the NDIS. The Bill's extension of Queensland's quality and safeguarding framework presents an opportunity to consider and explore further improvements to the framework, ensuring that these changes are properly implemented, accessible, and appropriately resourced to enable effective outcomes for all people with disability, including those with impaired decision-making capacity.

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<sup>1</sup> Office of the Public Advocate, Submission to the National Disability Insurance Scheme *Proposal for a National Disability Insurance Scheme Quality and Safeguarding Framework* (April 2015) [http://www.justice.qld.gov.au/data/assets/pdf\\_file/0010/369397/submission-to-ndis-quality-safeguard-frmrwk.pdf](http://www.justice.qld.gov.au/data/assets/pdf_file/0010/369397/submission-to-ndis-quality-safeguard-frmrwk.pdf).

<sup>2</sup> National Disability Insurance Agency, Quarterly Report to COAG Disability Reform Council 30 September 2015 (2015) National Disability Insurance Scheme, 57 <<http://www.ndis.gov.au/sites/default/files/documents/Quarterly-Reports/9th-Quarterly-Report.pdf>>. Data excludes NDIS participants from South Australia (as they are under 18 years of age) and includes NDIS participants with a primary disability of autism and related disorders, cerebral palsy, developmental delay, down syndrome, global developmental delay, intellectual disability, psychosocial disability, 'other intellectual/learning' and 'other neurological'. Deafness/hearing loss, multiple sclerosis, 'other physical' and 'other sensory/speech' were not included in the group of primary disabilities which may lead to cognitive impairment.

### **Amendment of *Disability Services Act 2006***

The proposed amendments that expand the jurisdiction of the Department of Communities, Child Safety and Disability Services (DCCSDS) to NDIS non-government service providers are strongly supported. The proposed changes enable DCCSDS, an entity independent of the National Disability Insurance Agency (NDIA), to monitor the compliance of NDIS non-government service providers and to undertake investigations as required, while also ensuring the availability of complaints mechanisms for NDIS participants and their supporters. Having this independence in executing such functions is of significant value to an effective and accountable system.

Further, the proposed amendments that ensure a role for DCCSDS in screening and other such activities for persons engaged, or proposed to be engaged, by NDIS non-government service providers are welcomed in view of the preventative safeguards that they offer for NDIS participants. The extension of the restrictive practices framework to NDIS non-government service providers is also welcomed, ensuring that the system will continue to protect those individuals with intellectual or cognitive disabilities who are subject to such practices and who become NDIS participants.

Integral to the adequacy of Queensland's quality and safeguarding framework, however, is the need to improve its accessibility and ensure reasonable accommodation in the course of developing, implementing and reviewing the policies and systems supporting the framework. This will be particularly important in ensuring that people who may experience difficulty in navigating these systems are provided with the support and assistance they require to achieve necessary outcomes.

For example, there is likely to be an increase in complaints given the largely uncharted territory of the NDIS in Queensland, the changing dynamic that will come as people with disability take control of their service provision, and the likelihood that new providers (some of which may lack knowledge and experience in the provision of disability support) are likely to enter the disability services marketplace. Without a properly managed and resourced complaints management system, poor outcomes are likely to have a compounding impact on the quality of the services provided.

Similarly, while I support the proposals relating to screening and other such activities of employees of NDIS non-government service providers, this needs to be complemented by training, policies and guidelines in relation to selecting staff and building organisational cultures that uphold a 'zero tolerance' approach to abuse, neglect and exploitation. DCCSDS may be well placed to provide such guidance to providers, given the information likely to emerge as a result of the proposed monitoring and investigation role for the Department, as well as through complaints management systems.

### **Amendment of *Coroners Act 2003***

The expansion of the definition of 'deaths in care' to cover NDIS participants under the *Coroners Act 2003* is welcomed. The proposed legislative changes will allow the Coroner to continue receiving necessary information to enable the monitoring of all deaths in care in Queensland.

In theory, doing so provides the opportunity to identify and analyse emerging issues and/or trends, assist with the development of initiatives to ensure that re-occurrences of similar incidents are avoided, and encourage the continuous improvement of current systems.

However, in Queensland, there is unfortunately no specific process for systemic reviews of the deaths of people with disability in care. Although such deaths are reported to the Coroner and investigated, the investigations do not necessarily result in an inquest, finding or comment.

Consideration should be given to the implementation of a system of reporting and analysis of deaths in care by an appropriate agency in Queensland, which should also be properly resourced to carry out regular reviews. Such reviews are critical to ensuring a transparent system that uses available information relating to deaths in care to improve relevant systems for people with disability and thereby reduce the number of potentially avoidable deaths.

### **Amendment of *Guardianship and Administration Act 2000* and *Powers of Attorney Act 1998***

Amendments are proposed to both the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* to expand the definition of 'personal matter' to include 'services provided to the adult/principal' in relation to the types of decisions a substitute decision-maker may be appointed for. These amendments appear to be for the purpose of clarifying that making decisions about 'personal matters' may include making decisions regarding NDIS funded services.

Although such clarification is supported, the Public Advocate is concerned to ensure that substitute decision-makers have the necessary skills and knowledge to enable them to make such decisions in a manner that upholds their legislative obligations and benefits the adult/principal. Research undertaken by my Office has indicated that private guardians often lack awareness and understanding in respect of their obligations to apply the general principles of the *Guardianship and Administration Act*, for example.<sup>3</sup> There is also limited practical guidance, education or training provided to guardians, attorneys and administrators about their roles and obligations.<sup>4</sup>

Consideration should be given to further education and training for guardians, administrators and attorneys, inclusive of information about the NDIS to support substitute decision-makers in making decisions associated with negotiating NDIS funding and service arrangements.

### **Amendment of the *Public Guardian Regulation 2014***

The Bill expands the jurisdiction of the Community Visitor Program (CVP) to include places, other than a private dwelling, where a NDIS participant lives. The expanded definition is welcomed by the Public Advocate. The Public Advocate has recommended in the past that such a program is required under the NDIS as it provides a vital safeguard for people with disability, in particular people with impaired decision-making capacity.<sup>5</sup>

External visitors provide a level of scrutiny that would otherwise be absent in accommodation and support services for people with disability, and enable an important safeguard to mitigate abuse and neglect in such settings.<sup>6</sup> However, expanding the jurisdiction of the CVP must be accompanied by a commensurate increase in funding to ensure frequent, thorough and effective visits to properly inspect the inevitably increased number of visitable places that will arise under the NDIS. Infrequent and/or brief inquiries would reduce the effectiveness of the CVP and may allow for abuse, neglect or exploitation to go undetected for long periods of time.

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<sup>3</sup> Carers Queensland Inc., Submission No 5 to Office of the Public Advocate, *Decision-making support in Queensland's guardianship system: An Issues Paper*, 4 December 2014, 3; Queensland Advocacy Incorporated, Submission No 4 to Office of the Public Advocate, *Decision-making support in Queensland's guardianship system: An Issues Paper*, 4 December 2014, 4; Queensland Aged and Disability Advocacy Inc., Submission No 7 to Office of the Public Advocate, *Decision-making support in Queensland's guardianship system: An Issues Paper*, 5 December 2014, 1, 6; Professor Malcolm Parker, Submission No 2 to Office of the Public Advocate, *Decision-making support in Queensland's guardianship system: An Issues Paper*, 18 November 2014, 1.

<sup>4</sup> Queensland Advocacy Incorporated, Submission No 4 to Office of the Public Advocate, *Decision-making support in Queensland's guardianship system: An Issues Paper*, 4 December 2014, 3.

<sup>5</sup> Office of the Public Advocate, above n 1, 22.

<sup>6</sup> See Carolyn Frohmader (cited in Xavier Smerdon, 'Independent Inquiry Call Over Yooralla Abuse' (Pro Bono Australia News, 25 November 2014) [24] <<http://www.probonoaustralia.com.au/news/2014/11/independent-inquiry-call-over-yooralla-abuse#>>).

### Concluding comments

As Public Advocate, I am committed to supporting Queensland's transition to the NDIS and to ensuring a sustainable and effective quality and safeguarding framework. To this end, I am pleased to lend my support to the proposed legislative amendments and am available to provide advice in respect of progressing the necessary changes in Queensland.

In closing, thank you again for the opportunity to provide a submission in response to the *Disability Services and Other Legislation Amendment Bill 2015*. I would be pleased to make myself available to elaborate on the issues that I have raised should additional information be required.

Yours sincerely,



Jodie Griffiths-Cook  
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**Office of the Public Advocate**