

Office of the Public Advocate Systems Advocacy

Submission to the Health and Community Services Committee

*Communities Legislation
(Funding Red-Tape Reduction)
Amendment Bill 2014*

February 2014

Interest of the Public Advocate

The Public Advocate was established by the *Guardianship and Administration Act 2000* to undertake systems advocacy on behalf of adults with impaired decision-making capacity in Queensland. The primary role of the Public Advocate is to promote and protect the rights, autonomy and participation of Queensland adults with impaired decision-making capacity in all aspects of community life.

Through our work, we estimate that there may be up to 114,000 people with impaired decision-making capacity in Queensland.

Approximately a quarter of these people have an intellectual disability, and a further 15% have a cognitive impairment. Our estimates also suggest that approximately 20% of the potential population access specialist disability services.

Position of the Public Advocate

In accordance with my responsibility to promote and protect the rights of adults with impaired capacity, I am writing to make a submission in response to the *Communities Legislation (Funding Red-Tape Reduction) Amendment Bill 2014* (the Red-Tape Reduction Bill).

The Red-Tape Reduction Bill is an important initiative in terms of streamlining and consolidating the legislative framework for non-government service providers who currently receive grants to deliver a variety of community services.

It is pleasing to note that safeguarding provisions such as the ability for Government to respond when service providers use government funds other than in accordance with their funding agreements are retained in the Red-Tape Reduction Bill.

In the consolidation of these provisions however, there are some safeguards that will be lost, particularly in relation to people with disability. I am therefore taking this opportunity to ensure that the Health and Community Services Committee (the Committee) is aware of the nature of some of the safeguards that have been removed, and the reasons why they were originally introduced by Parliament in 2006.

The Care Independent Living Association, Bribie Island (Care Bribie)

In 2004, the Adult Guardian provided a report detailing instances of serious abuse against people with disability at the Care Independent Living Association on Bribie Island to the then Minister for Communities, Disability Services and Seniors, the Honourable Warren Pitt MP.¹

A number of people were subsequently charged in relation to allegations of abuse that were both disturbing and shocking. The allegations that were subsequently proven included, for example, the following, as described by the Supreme Court in relation to a child with autism:

“..the applicant tied the young boy’s arms and legs to the railings on the side of a toilet and left him restrained on the toilet seat. She went to the kitchen in the care facility to get a camera and asked a co-employee to “come and have a look at this”. The co-employee did so, and saw that the complainant was trying unsuccessfully to free himself. He looked really distressed and was squealing, which was how he attempted to communicate. The applicant told her co-employee that the child would not be allowed off the toilet until he had defecated. She took a picture of him restrained on the toilet”.

¹ Statement by Honourable F.W.Pitt (member for Mulgrave, Minister for Communities, Disability Services and Seniors) Queensland Parliament, 31 August 2004.

“the applicant struck the same young boy on his arms and back, and the back of his head with a plastic fly swatter a number of times. The applicant hit him because he was not eating his dinner, but would do so when hit enough times with the fly swatter. He was upset and crying. He put his arms up to try to push the applicant away”

“the applicant held the complainant down whilst another rubbed chilli on to his mouth”.²

This conduct was found to have been supported by those managing the facility.³ The sentencing judge observed that this conduct “went beyond what could be regarded as reasonable in a civilised society and inflicted unjustifiable suffering on unfortunate and very vulnerable children.”⁴

Other allegations that were given in evidence to an Australian Parliamentary inquiry by a registered nurse who was employed at the facility included the following:

“The behavioural management was unreal. They were often denied food and had cold showers. They held someone down to cut their fingernails, using half-a-dozen people, until their fingers bled. Buckets of water were thrown over them. They had chillies put in their mouths. The Adult Guardian has also agreed with this. They were deprived of sleep. There was emotional and physical abuse. They were hitting residents with a broom handle and a fly swat. There was intimidation and harassment and there was extreme verbal abuse. Residents were often locked in their bedrooms and were often publicly humiliated in front of other people. The treatment for head lice was fly spray. The residents were often tied to chairs and toilet seats. One boy, who was an amputee who had been in a car accident and who was still going to school, often had his leg removed and he would have to crawl. The withholding of meals and food and water was a very common abuse. There was sexual abuse as well.”⁵

While some may argue that the inclusion of such statements in a submission is emotive, I consider that they are a necessary reminder of the risks confronting people with disability every day, particularly those who access funded support services. They must therefore be at the forefront of any consideration for legislative change that seeks to remove the very provisions that were deemed necessary to ensure the protection of these vulnerable Queenslanders

Instances of abuse, neglect and exploitation of people with disability are too often hidden away, and not spoken about in the public domain. As a community we must be willing to confront these issues so that we can also consider how best to prevent their reoccurrence. The incidents that were uncovered at the Care Bribie facility must serve as a constant reminder of the need for vigilance with respect to some of the most vulnerable members of our community.

Increasing safeguards for people with disability – Parliament’s response

Following the uncovering of the allegations of abuse at Care Bribie, the Government at the time committed to developing the Disability Service Quality System (which was introduced in 2004 as a direct response to the allegations of abuse at Care Bribie), and strengthening legislative protections for people with disability.

A review of the *Disability Services Act 1992* was also undertaken with a view to improving “mechanisms for preventing abuse of any kind against anyone”.⁶

² *R v Lister* [2009] QCA 368.

³ *R v Lister* [2009] QCA 368.

⁴ *R v Lister* [2009] QCA 368.

⁵ Mrs Kay McMullen, Transcript of Evidence to the Standing Committee on Legal and Constitutional Affairs, Inquiry into Crime in the Community: victims, offenders and fear of crime, (Australian House of Representatives, Canberra 18 June 2004) p1801.

⁶ Honourable F.W. Pitt, Member for Mulgrave and Minister for Communities, Disability Services and Seniors, Ministerial Statement to Queensland Parliament (31 August 2004) 2079.

When the new Disability Services Bill was introduced into the Queensland Parliament in December 2005, it was acknowledged that the reforms that this bill introduced:

“came about as a result of a commitment he [the minister] gave to strengthen protection for people with a disability after he received the Adult Guardian report into allegations of serious abuse and negligence at a Bribie Island facility. As I understand it, it became clear to the minister that the government needed more power to intervene to prevent such situations occurring again”.⁷

The reforms ultimately passed by Parliament in 2006 included:

- Mechanisms to ensure disability funded services meet standards that underpin the Disability Sector Quality System including:
 - Legislative recognition of the disability service standards;
 - A legislated pre-approval process before an organisation is eligible to receive funding;
 - A certification process that provides for an external/independent body to carry out regular audits of a service provider’s compliance with the disability service standards under the Disability Sector Quality System.
- The ability for a regulation to set out prescribed requirements in relation to the provision of disability services by funded providers including for example how an organisation protects people with disability from abuse, neglect and exploitation;
- A range of sanctions for non-compliance by funded disability service providers;
- Powers for investigating and monitoring funded disability service providers (including a power for authorised officers to apply for a warrant to enter a funded service to investigate non-compliance, or to enter without a warrant if there is an immediate risk of harm to a person with a disability);
- A complaints handling process; and
- Criminal history screening for employees of funded disability services.

Safeguards for people with disability that are retained

It is pleasing to see that many of these reforms will be substantively retained in the *Disability Services Act 2006* or form part of the consolidated provisions in the *Community Services Act 2007* including:

- A range of sanctions for non-compliance with funding agreements (*Community Services Act 2007*);
- A range of investigative powers, including the ability to apply for a warrant to enter a funded service to investigate non-compliance (*Community Services Act 2007*);
- A complaints handling process (*Disability Services Act 2006*);
- Criminal history screening for employees of funded disability services (*Disability Services Act 2006*).

Removal of certain safeguards for people with disability

It should be noted, however, that the Red-Tape Reduction Bill also removes some important safeguards with respect to people with disability in receipt of funded disability services.

⁷ Honourable Mr Shine MP, Member for Toowoomba North, Second Reading Disability Services Bill, Queensland Parliament (9 March 2006) 792.

The Disability Sector Quality System

On 1 February 2013, the Human Services Quality Framework replaced the Disability Sector Quality System. The Human Services Quality Standards currently operate as the Disability Service Standards under the Act by virtue of the *Disability Services (Disability Services Standards) Notice 2012*. While these generic standards address many of the same issues covered by the disability service standards such as responding to individual need, wellbeing and safety, they are not specific to people with disability so they do not necessarily address many of the necessary safeguards specific to people with disability, such as the requirement for a personalised plan,⁸ opportunities for inclusion in the community,⁹ and proactive policies to ensure the dignity of service users are protected.¹⁰

Further, the remainder of the legislative provisions that supported the Disability Sector Quality System, and that were central to underpinning what was referenced in the 2006 Bill as a “strengthened regulatory framework”¹¹ for guaranteeing the quality of non-government service providers, are removed by the Red-Tape Reduction Bill.

The pre-approval process, introduced in the 2006 Bill as a key strategy for improving the quality and safety of disability services, is removed to enable what is noted as a ‘one-step’ funding process.

The requirement to comply with the generic Human Services Quality Standards will now be dealt with ‘administratively’, not in legislation. The certification process, for ensuring services comply with the standards, is also removed from legislation.

Prescribed requirements

The *Disability Services Act 2006* currently allows for a regulation to prescribe a number of the requirements that must be met by disability service providers. Non-compliance can lead to a range of sanctions beginning with the issue of a compliance notice.

The current prescribed requirements include that a regulation can prescribe how a funded non-government service provider provides disability services to people with disability including:

- I. addressing individual needs; and
- II. protecting the people from abuse, neglect or exploitation; and
- III. deciding eligibility and priority in relation to the delivery of the services; and
- IV. giving information about the services; and
- V. providing opportunities for decision-making; and
- VI. resolving complaints and disputes; and
- VII. respecting privacy and confidentiality.¹²

Part 3, Division 2 of the *Disability Services Regulation 2006* deals with ‘Protecting people from abuse, neglect or exploitation’. There is a requirement for a funded service provider to keep and implement a policy about preventing abuse, neglect and exploitation, consistent with the Department’s policy. It also requires the Department to publish a policy about preventing abuse, neglect and exploitation.¹³

These legislative requirements will be removed by the omission of Part 8 from the *Disability Services Act 2006*. Presumably they will be dealt with administratively, however I would respectfully suggest that this is a poor substitute given the significance of such issues and the associated risks for people with disability.

⁸ Queensland Disability Service Standards, 2.1.

⁹ Queensland Disability Service Standards, 5.1.

¹⁰ Queensland Disability Service Standards, 4.2.

¹¹ Explanatory Memorandum, Disability Services Bill 2005 (tabled in Queensland Parliament 1 December 2005) 4.

¹² *Disability Services Act 2006* s59(2)(b).

¹³ *Disability Services Regulation 2006* s17.

Power to enter a place in certain circumstances without a warrant (s134 Disability Services Act 2006)

The current *Disability Services Act 2006* provides a power for an authorised officer to enter a place where disability services are being provided (without a warrant) by using necessary and reasonable help and force, if the authorised officer reasonably suspects that there is an immediate risk of harm to a person with disability at the place because of abuse, neglect or exploitation.¹⁴ This section will be removed with the omission of Part 11 from the *Disability Services Act 2006*, but it is not proposed to replicate this provision in either that Act or the amended *Community Services Act 2007*.

In the Minister's second reading speech to Parliament when the original provision was introduced it was stated that "the bill gives government the power to act swiftly when it needs to investigate instances of abuse, neglect or exploitation of people with a disability in non-government services".¹⁵

While it was acknowledged that entry to a place without a warrant could constitute a breach of fundamental legislative principles including the right of a funded disability service provider to conduct their business operations, the following explanation was given to Parliament when it was considering passing this provision as to why this provision was required:

"One of the main drivers for the review of the *Disability Services Act 1992* was the inability of DSQ to respond to allegations of abuse, neglect and exploitation. There is a real need for DSQ to have the capacity to respond to high risk instances of abuse, neglect and exploitation or where there is a real risk of misuse of funds. Whilst the overall DSQ philosophy is to support compliance through co-operation and education, there have been extreme circumstances where these approaches have proven unsuccessful."¹⁶

It is well known and understood that the abuse of vulnerable people, including many people with disability, is difficult to uncover. People with disability themselves may find it difficult to complain, or not know that they have a right to. It may be difficult to gather the evidence needed to support the application for a warrant or an immediate police response.

The importance of maintaining safeguards whilst reducing costs

It is important that the implementation of reforms that "slash red tape and reduce the cost of doing business for funded organisations"¹⁷ is undertaken cognisant of lessons from the past and in a manner that ensures that necessary safeguards are not lost.

Many of the safeguards that are proposed to be removed (such as the legislative provisions underpinning the Disability Sector Quality System and the prescribed requirements, including the requirement for departmental and funded service providers to keep and implement a policy on the prevention of abuse, neglect and exploitation) not only provide important protections, but also send a strong message – that being that funded disability services must meet acceptable standards.

The ability for an authorised officer to enter a service without delay should they suspect that a person with disability is at immediate risk of abuse, neglect or exploitation is an important investigative and compliance tool that provides government with the ability to act quickly and without delay; it also sends a strong message to funded service providers that abuse will not be tolerated.

¹⁴ *Disability Services Act 2006* s134.

¹⁵ Honourable F.W. Pitt, Member for Mulgrave and Minister for Communities, Disability Services and Seniors, Second Reading Disability Services Bill, Queensland Parliament (1 December 2005) 4602.

¹⁶ Explanatory Memorandum, Disability Services Bill 2005 (tabled in Queensland Parliament 1 December 2005) 10-11.

¹⁷ Honourable TE Davis MP, Minister for Communities, Child Safety and Disability Services, Communities Legislation (Funding Red Tape Reduction) Amendment Bill 2014, Explanatory Speech, 11 February 2014.

In summary, in deciding its recommendations in respect of this legislation, Committee members should be cognisant of the background to the inclusion of many of the provisions in the *Disability Services Act 2006* that will now be removed by the Red-Tape Reduction Bill.

Furthermore, should Parliament decide to pass this legislation, it must do so with full confidence and a considered determination that these safeguards are no longer required for people with disability in Queensland.

I would be pleased to further discuss the issues that I have noted in this submission should the Committee require additional information.

Yours sincerely



Jodie Cook
Public Advocate
Office of the Public Advocate

Office of the Public Advocate

Website	www.publicadvocate.qld.gov.au
Email	public.advocate@justice.qld.gov.au
Write to	GPO Box 149, BRISBANE QLD 4001
Telephone	(07) 3224 7424
Fax	(07) 3224 7364