



Reshaping the *Disability Services Act 2006*: An inclusive and accessible Queensland

Submission to the Department of Communities, Disability Services and Seniors

November 2018

Introduction

The Public Advocate was established under the *Guardianship and Administration Act 2000* (Qld) to undertake systems advocacy on behalf of Queensland adults with impaired decision-making capacity. The primary role of the Public Advocate is to promote and protect the rights, autonomy and interests of Queensland adults with impaired decision-making capacity.

More specifically, the Public Advocate has the following functions:

- promoting and protecting the rights of adults with impaired capacity for a matter;
- promoting the protection of the adults from neglect, exploitation or abuse;
- encouraging the development of programs to help the adults reach the greatest practicable degree of autonomy;
- promoting the provision of services and facilities for the adults; and
- monitoring and reviewing the delivery of services and facilities to the adults.¹

The Public Advocate welcomes the opportunity to make this submission, responding to *Reshaping the Disability Services Act 2006: An inclusive and accessible Queensland* (the Options Paper) released by the Department of Communities, Disability Services and Seniors (DCDSS).

It is noted that the release of the Options Paper is the first stage of consultation associated with this review and that certain provisions of the *Disability Services Act 2006* (Qld), including the provisions relating to restrictive practices, and the community visitor program (conducted by the Office of the Public Guardian), are outside of the scope of this consultation. The Public Advocate looks forward to contributing to future stages of the consultation process, including more specific provisions of the *Disability Services Act*.

Overarching issues

The review of the *Disability Services Act* has been driven primarily by the Commonwealth Government assuming responsibility for the funding of direct services to eligible Australians with disability under the National Disability Insurance Scheme (NDIS). In terms of services, the introduction of the NDIS means that the Queensland Government will continue to have responsibility for:

- operating community visitor programs;
- operating worker screening systems; and
- authorising the use of restrictive practices.

More broadly, the Queensland Government will also maintain responsibility to ensure that appropriate mechanisms are in place to promote and safeguard the rights of Queenslanders with disability. The Options Paper consultation provides a real opportunity for the Queensland Government to consider:

- how future legislation about disability will interact with other legislation;
- how the rights of people with disability are defined and upheld;
- strategies that will achieve real outcomes for people with disability; and
- appropriate data collection mechanisms.

Articulating and upholding the rights of people with disability

DCDSS will need to consider whether future legislation will compel Queensland Government authorities to uphold specified rights and principles, require business and the community to promote or comply with the principles, or both. If it is proposed that business and the community

¹ *Guardianship and Administration Act 2000* (Qld) s 209.



will be required to uphold the rights and principles, they must be clearly expressed in legislation and supported by complaints processes and remedies in the event of a breach.

Options for a complaints and remedy process associated with the rights of people with disability could potentially include:

- the establishment and resourcing of a Disability Commissioner within DCDSS; or
- the referral of complaints made under the new legislation to the Queensland Human Rights Commissioner (which would require appropriate legislation and resourcing for the office to carry out those functions).

If the rights and principles in future disability legislation are only intended to apply to the operations and services provided by government authorities (as is the case in New South Wales), we suggest the legislation include a requirement for authorities to specify how they will have regard for the rights and principles. For example, the *Disability Inclusion Act 2014* (NSW) requires that a disability inclusion action plan must specify how a government agency will have regard for the disability principles in its dealings with matters relating to people with disability.²

An alternative approach may be to remove the rights section from the legislation as it applies to government authorities/public entities and incorporate these rights into Queensland's Human Rights Act (with appropriate funding being provided to the new Human Rights Commission to administer these provisions). Although the *Anti-Discrimination Act 1991* (Qld) would already protect many rights of people with disability and people from particular groups such as culturally and linguistically diverse backgrounds.

Planning to achieve real outcomes for people with disability

Future disability legislation should require the development of disability inclusion plans at a state and department/agency level. However, "planning for planning's sake" should be avoided because plans without adequate resourcing, practical initiatives, implementable actions, measureable outcomes and strong levels of accountability, simply do not work and are a waste of limited government resources.

Best practice in planning for access to mainstream services, as detailed by the Australian Network on Disability in relation to Accessibility Action Plans:

- demonstrates commitment to eliminating discrimination;
- shows clear evidence of effective consultation with stakeholders;
- has priorities which are appropriate and relevant;
- provides continuing consultation, evaluation and review;
- has clear timelines and implementation strategies; and
- is actually being implemented.³

The Australian Local Government Association recommends that the social model of disability should be adopted as a base for government operations, which recognises that "societal attitudes, policies and structures, rather than an individual's impairment, can restrict and prevent people with disability from economic, participation, social inclusion and equality".⁴

The Association also recommends that best practice planning also include:

- integration with other policies and strategic plans;
- recognising that inclusion is a process not a project; and

² *Disability Inclusion Act 2014* (NSW) s 12(3)(a).

³ Australian Network on Disability, *What is an Accessibility Action Plan?* (2018) Australian Network on Disability <<https://www.and.org.au/pages/what-is-an-accessibility-action-plan.html>>.

⁴ Australian Local Government Association, *Disability Inclusion Planning – A guide for local government* (2016) 3.



- aiming to go beyond legislative compliance and enable people with disability to fulfil their potential as equal citizens.⁵

The United Nations has explored the concept of best practice for including persons with disabilities in planning processes and noted that such processes must:

- be accountable to persons with disabilities, involving them actively in the decision-making process in projects/programmes and policies and creating accountability mechanisms for monitoring, complaint and feedback;
- increase awareness and understanding of disability at organisational, community and institutional levels so as to promote positive attitudes towards disability, since stigmatisation is considered one of the major causes of exclusion; and
- be results-based and produce a measurable change that contributes to the improvement of the quality of life of people with disability. This will also imply having a robust monitoring and evaluation system that includes the collection of data on people with disabilities.⁶

Future planning about disability-related issues should consider the above-mentioned factors and not be negatively impacted by insufficient resourcing and inadequate processes. The inclusion of a planning requirement for authorities in future legislation must consider these issues and ensure that legislative provisions clearly articulate expectations in these areas.

Compliance with the legislative requirements should also be enforceable. Accountability processes might include a requirement that a Parliamentary Committee review and report on the implementation of plans prior to the plans being tabled in the Queensland Parliament. This could be accompanied by the achievement of plan outcomes being included as a performance indicator in the employment contracts of Queensland Government executives.

The data collection dilemma

A requirement for Queensland Government agencies to collect data and report on how people with disability are using mainstream services has the potential to help measure the effectiveness of inclusion planning. However, the process of actually collecting data about people with disability accessing mainstream services is complex and resource intensive. In some cases it may not be feasible.

To assist with data collection, government authorities could be required to collect “disability status” information from all people who access government services, facilities and program. For this to occur, significant changes would be required to all government forms and processes associated with mainstream service access. Consultation with relevant government authorities should also occur to determine whether data collection is practical and achievable. The resourcing implications of such an initiative would require careful consideration and would need to be weighed against the potential uses and benefits of the data collected.

The way in which this information is collected is also likely to be problematic. There may be challenges in formulating agreed definitions of disability and people may chose not to disclose their disability.

The implementation of data collection requirements associated with the *Multicultural Recognition Act 2016* (Qld) could be used as a case study to determine whether the approach is successful, if data is being collected and, most importantly, if it is being used to assist with service planning and delivery.

⁵ Australian Local Government Association, *Disability Inclusion Planning – A guide for local government* (2016) 31-32.

⁶ United Nations, *Best practices for including persons with disability in all aspects of development efforts* (2011) 7-8.



It will also be important to determine what type of data is to be collected and how it will be used. The *Information Privacy Act 2009* (Qld) through the Information Privacy Principles (IPP) has certain requirements in relation to the collection of personal information:

IPP 2—Collection of personal information (requested from individual)

(3) The Agency must take all reasonable steps to ensure that the individual is generally aware of –

- a) the purpose of the collection; and
- b) if the collection of the personal information is authorised or required under a law –
 - i. The fact that the collection of the information is authorised or required under a law; and
 - ii. The law authorising or requiring the collection

and

IPP 3—Collection of personal information (relevance etc.)

(3) The Agency must take all reasonable steps to ensure that –

- a) The personal information collected is –
 - i. Relevant to the purpose for which it is collected; and
 - ii. Complete and up to date

If preliminary inquiries determine that disability data collection is impractical or unaffordable, at least in the short term, alternative approaches to data collection could be considered.

One possible option is to gather data related to accessing mainstream services as a component of the suite of statewide surveys (assessing community attitudes and satisfaction in relation to education, governance, health and wellbeing, the environment, livability and infrastructure) proposed in the Queensland Plan.⁷ Significant consultation with relevant agencies would be required to progress this option, as well as the identification of additional resourcing options. It is the Public Advocate's understanding that the Department of the Premier and Cabinet is developing a revised reporting framework to report on the Queensland Plan, which may create an opportunity for consideration of disability data collection via these processes.

Detailed comments

The remainder of this submission addresses the questions, suggestions and comments from the Options Paper under key themes. It should be read taking note of the overarching issues discussed above.

Legislation title

Other States (namely New South Wales and South Australia) who have amended disability-related Acts over the past few years have chosen to change the name of their legislation to the "Disability Inclusion Act" given that state government responsibilities no longer include direct service provision.

Consideration should be given to the name of any Queensland-based disability legislation during this review and amendment process to better reflect its prime purpose and objects.

Strengthening the focus on rights

The *Disability Services Act* includes a series of human rights principles affirming that people with disability have the same rights as other members of society and that they should be empowered to exercise these rights. All Queensland Government authorities are required to consider the human rights principles and design and provide services that address a number of factors and principles including:

- participation of people with disability in the planning and operation of services;

⁷ Queensland Government, *The Queensland Plan: Queenslanders' 30 year vision* (2014) 53.



- ensuring that services and the premises from which they are delivered are accessible;
- promoting the inclusion of people with disability in the life of the community; and
- providing services that are part of co-ordinated systems and integrated with mainstream services.

The introduction and implementation of the NDIS has removed a significant element of direct service provision for people with disability from the Queensland Government. This means that the specific principles for service providers included in the Disability Services Act may no longer be required, and a broader set of principles promoting the rights of people with disability could be included.

Objects of the Act

We support the suggestion that new Queensland disability legislation should recognise and align with the principles in the Convention on the Rights of Persons with Disabilities (CRPD). Specific consideration should be given to Australia's ratification of the CRPD and the implications of this on Queensland legislation.

The *Disability Inclusion Act 2018 (SA)* states that the operation, administration and enforcement of the Act is to support and further the principles and purposes of the CRPD, as well as any other relevant international human rights instruments affecting people with disability, as in force from time to time.⁸

The objects of the new legislation will need to be amended to recognise that while the Queensland Government is no longer responsible for direct disability service provision it retains responsibility to ensure that all mainstream services, facilities and programs are accessible to people with disability.

If future legislation also provides for the establishment of disability advisory committees, and the development of a state-wide disability plan and service plans by Queensland Government authorities (discussed in further detail below), then this should be reflected in the objects of the legislation.

There may be scope within the objects to include provisions that relate to promoting the independence and social and economic inclusion of people with disability, and safeguarding the delivery of all supports and services for people with disability (as in the South Australian legislation).

While outside of the scope of the Options Paper, we recommend that the objects of the new legislation should also make reference to the regulation of restrictive practices for people with disability.

Principles of the Act

Future disability legislation should reference the following rights (in addition to other rights and principles already proposed in the discussion paper):

- The right of people with disability to realise their sexual and reproductive capacities;
- The right of people with disability to make their own decisions, and recognising that where a person with disability wants or requires assistance to make decisions, support will be provided to enable the person to participate in decision-making about their life to the greatest extent possible;
- Recognising, acknowledging and respecting that the abilities, strengths goals and needs of people with disability change as they age; and
- The right of people with disability to pursue complaints and access justice.⁹

The South Australia *Disability Inclusion Act* includes recognition of the critical role that families, carers and other significant people play in the lives of people with disability and the need to

⁸ *Disability Inclusion Act 2018 (SA)* s 7.

⁹ *Disability Inclusion Act 2018 (SA)*; *Guardianship and Administration Act 2000 (Qld)* sch 1.



develop supports for this engagement to occur. The importance of developing and maintaining informal support networks was noted in the Public Advocate's report *Decision-making support and Queensland's guardianship system*. The report highlighted that family members, carers, service and support providers and others have an opportunity to positively support the decision-making of people who experience difficulty with aspects of making and actioning a decision.¹⁰ On this basis, the Public Advocate supports the inclusion of principles in future disability legislation that acknowledge, respect and support the engagement of people with disability with informal social and support networks including family members, carers and other significant persons.

The Public Advocate acknowledges that people with a disability who are from diverse cultural and linguistic backgrounds, are women, children, Aboriginal or Torres Strait Islander or LGBTQI+ people, face multiple disadvantages and particular vulnerabilities. Future legislation could include specific principles that recognise the needs of different groups of people with disability, however, as human rights are recognised as being enjoyed by every person irrespective of their political, social or personal characteristics, the statement of these principles would essentially fulfill a symbolic and educational function.

Charter of Disability Rights

It is anticipated that future legislation will continue to include a statement of principles related to the rights of people with disability as they relate to government and/or community (see overarching issues section above). If these principles remain, a Charter of Disability Rights may more appropriately be a communication tool associated with the promotion of the objects of the legislation, as opposed to being a component of the legislation itself. While the *Multicultural Recognition Act* does include a Multicultural Queensland Charter, it appears to be in lieu of a statement of guiding principles rather than an additional element.

There is also the risk with the creation of a Charter of Disability Rights that people will have expectations that those rights are enforceable which may lead to confusion and frustration within the disability community.

Increasing consistency, collaboration and accountability

This section of the Options Paper addresses provisions in the *Disability Services Act* to develop a framework for disability access and inclusion planning, monitoring and review. The Public Advocate supports the development of a coordinated framework to ensure that all government and public authorities are aware of, and actively plan to be responsive to people with disability, particularly adults with impaired decision-making capacity.

The development of a disability planning and monitoring framework is not an end in itself. As noted in the overarching issues section of this submission, to achieve meaningful change in the lives of people with disability, a disability planning, monitoring and reviewing framework needs to be adequately resourced, reflect best practice and include measures for which government can be held accountable. Future legislation must convey a commitment to this approach, including providing the necessary funding to make it happen and enforceable consequences if it does not.

Mandatory data collection to monitor access by people with disability to mainstream services also needs to be carefully considered. There is a need to ensure that any data collection methods and processes employed measure what is intended to be measured and provide a reliable indicator of accessibility that can be tracked over time.

¹⁰ Office of the Public Advocate, *Decision-making support and Queensland's guardianship system* (2016).



Strengthening government and community partnerships

Consultation, engagement, and involvement are pivotal to ensuring many of the key principles of the CRPD and the underlying framework of future legislation are upheld. The National Disability Strategy (NDS) also promotes the importance of stakeholder engagement and the need for all sectors of government, the community, and people with disability to work together to achieve improved outcomes.

Currently the *Disability Services Act* provides for the establishment, operation and membership of advisory committees however there are few requirements associated with the committees' composition or functions.

It is important that the Queensland Government maintain a link to the community that complements broader consultation mechanisms with more regular engagement with a more formalised representative group. The Public Advocate supports future legislation including the establishment and operation of disability advisory committees, along with more specific requirements about the appointment of members and functions of the committees. The Public Advocate is particularly supportive of the involvement of adults with impaired decision-making capacity (or their representatives) on committees, thereby increasing the diversity of persons with disability represented. Greater inclusion of people with lived experience of disability can only improve the quality of information and advice provided by these forums.

Functions of the committees could include:

- advising the Minister about barriers to full inclusion and participation in the community;
- monitoring the implementation of strategies for promoting inclusion and removing barriers (Victorian legislation); and
- advising the Minister and public authorities about the content and implementation of disability plans (New South Wales legislation).

Advisory committees will need to be adequately resourced to perform their role (particularly if it is expanded) under provisions of the new legislation. This should include reasonable remuneration of committee members in recognition of their skills and the contribution they are making to the development and improvement of government policy and services.

Worker Screening

The Public Advocate strongly supports a consistent, thorough and, as far as possible, simplified approach to worker screening that ensures that Queenslanders with disability are safeguarded as clients of NDIS (and other) services.

Consent

The Public Advocate consents to this response to the Options Paper being published.

Conclusion

The Public Advocate acknowledges the considerable investment by the DCDSS in developing and consulting on the Options Paper. It represents a valuable first stage of what we anticipate will be a comprehensive consultation process leading to significant legislative and service change in the disability sector in Queensland.

The Public Advocate is supportive of the proposal to amend the *Disability Services Act* to better reflect the roles and responsibilities of Queensland government agencies in relation to the provision of services to people with disability into the future. The process provides an opportunity to develop legislation that:



- articulates the rights of Queenslanders with disability;
- provides a mechanism for complaint and remedy when these rights are breached;
- is clear and easy to understand;
- is adequately resourced;
- can practically and realistically be implemented by government authorities; and
- will achieve real and measurable change in the lives of Queenslanders with disability.

Thank you for the opportunity to provide feedback on the Options Paper. Should the opportunity arise, I would be pleased to be part of further discussions in relation to the development of future legislation affecting the rights and interests of Queenslanders with disability or any other issues raised in this submission.

