



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

SUBMISSION

PARLIAMENTARY JOINT STANDING COMMITTEE ON THE NATIONAL DISABILITY INSURANCE SCHEME

QUEENSLAND NDIS READINESS 2016

Friday 13th March, 2015

We are trying to construct a more inclusive society. We are going to make a country in which no one is left out.

Franklin D. Roosevelt

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

About QAI – our values and beliefs

Queensland Advocacy Incorporated (QAI) is an independent community-based advocacy organisation that has for over twenty-five years campaigned for the rights of vulnerable people with disability in Queensland. With a focus on the fundamental needs of the most vulnerable people in our community, QAI has a history of avant-garde advocacy for people with disability to have supports to live an inclusive life in the community.

At QAI, we believe that all human beings are equally important, unique and of intrinsic value. Everyone should be seen and valued as a whole person, first and foremost. The human condition is such that societies tend to devalue those who do not fit within their models of perfection. These groups, including people with disability, are socially marginalised. As an organisation we seek to bring about a common vision where all human beings are equally valued.

QAI - ISSUES FOR QUEENSLAND NDIS READINESS 2016

Our organisation has been immersed for decades in advancing the agenda for people with disability to have support to live in a home in a community of their choice and with whom they wish to live. We believe that the spirit and intent of the NDIS is supportive and congruent with our vision and mission and therefore assert that the issues for Queensland readiness for the NDIS is evident in the lack of vision and commitment to **community inclusion** of and for people with disability.

Some of our concerns regarding 'readiness' are related to **practices and policies** by the Department of Communities, Child Safety and Disability Services (The Department) and the service sector. Despite several years' advance notice to address the cultural paradigm required to shift in mindset and approaches for NDIS readiness it is apparent that this is still on a distant horizon.

This is evident by the perpetuation of congregate care and living arrangements by The Department while simultaneously drafting and implementing the Your Life Your Choice framework over the past few years and still today. Furthermore the reluctance of the service sector to relinquish 'ownership and control' over the lives of people with disability that they purport to serve is equally problematic. Together the service sector and The Department have continued to flagrantly ignore the principle of the *Disability Services Act Qld* (2006) that states: "Services should be designed and implemented to ensure that no single service provider exercises control over all or most aspects of the life of a person with a disability".¹ In the last few years the Department has procured land and funds for the service sector to build yet more congregate and shared living and care arrangements that are not aligned with the NDIS legislation.²

The following list of issues are interrelated and indicate our areas of concern for Queensland 'readiness' that do not embrace the intent or the spirit of the NDIS, are not designed to offer 'choice and control' to people with disability, are more directed at supporting the service

¹ *Disability Services Act 2006* (Qld), s 28.

² GLASS – Government Land for Accommodation and Support Services.

sector, do not offer intentional efforts to increase community inclusion and continue to restrict and deny equitable opportunities to people with disability. Finally there are some issues that indicate the bureaucratic inclinations of the Department and some service providers to hinder smooth and equitable transition to the NDIS.

1. HOUSING/ACCOMMODATION

Joint Action Plan (JAP) – A cross government plan designed to address long term institutionalisation of about 280 people with disabilities who reside in long stay health facilities – numbers are not accurate as we are aware of others not captured in the demographics. The Plan to date has enabled 25 people to move one year and about 20 another year. This is grossly inadequate and as we all know housing is an enormous issue for the NDIS.

It has been reported that some individuals who expected that the JAP would enable them to move from their hospital residence have now been **ignored in the process** as hospital staff have instead consulted with distant family members who have not been close to the person/s for many years and who are electing for the person/s to be moved to group home/s.

The '**Provision of Accessible and Sustainable Accommodation for people with disability in Residential Aged Care or Public Health Facilities**' is yet another initiative that is preferencing **shared care arrangements**. Regardless of the softening of the sales pitch promoted by The Department the tender which closed on the 13th February clearly stated preference would be given to situations where two or more people are required to share care:-

"In terms of accommodation design, preference will be given to either two or three people sharing in one dwelling. This will enable the sharing of support at key times and as needed."

The sharing of accommodation is fraught with the issues of forced co-tenancies, lack of choice and control about one's life and where and with whom one lives, but the sharing of care is just as (if not more) problematic. Whether one resides in a 'duplex' or cluster housing, a person will be dependent upon the timing of delivery of supports and services to another or others. **It is incongruent to believe that anyone can live independently while having to share care.**

This initiative is directed to support 70 people to move from aged care facilities when it is estimated that 1340 people under the age of 65 reside in aged care facilities. This does not take into account the number of people with complex or high physical support needs who are at risk of being moved into these types of facilities.

Forced Co-Tenancies is a term advocacy organisations have applied to the practice of congregating people with disability in shared living arrangements. This practice exists to share supports in some instances and in others merely to manage the lack of appropriate and affordable public housing. The Department is purported to have a **policy and process of new tenants** being introduced (supposed to be a trial period

but not always the case), with the in-house resident to have some say about compatibility. This is not being followed and has resulted in people being abused by new tenants. This inevitably results in the imposition of a Restrictive Practice order(s).

2. RESTRICTIVE PRACTICES

People who are under the imposition of **Restrictive Practices** are excluded from being able to employ their own staff and self-direct or self-manage their supports and/or funding. While we recognise that this is currently the national position for the NDIA, QAI maintains that this discrimination is unfair and imposes severe limitations in the choice and control available to the most vulnerable people who are eligible for the NDIS supports. Furthermore, the legislation for the use of Restrictive Practices in Queensland is the most robust and longstanding yet it has been amended several times, with each amendment imposing more constraints on individuals while affording more ease for service providers. This would suggest that Queensland's Department of Disability Services and the service sector have not developed the mindset or embraced the culture to be ready for the NDIS.

We understand the need to safeguard people from inexperienced workers or those who may abuse or take advantage of vulnerable people. **However, the current system does not safeguard people from the same happening within traditional service responses.** Excluding these people from the same opportunities as others is discriminatory and will exacerbate the denial of autonomy and control for this vulnerable group.

An **alternative measure** is to support people who live under Restrictive Practices to train or direct their own staff (with their informal supporters as and when required) or to have their own selected staff be trained at the Centre of Excellence. QAI believes that a significant number of people who are supported to move towards this level of autonomy will then be enabled to emerge from under Restrictive Practices.

People who live under the imposition of Restrictive Practices are currently confined to the few choices of Service Providers available that are perceived by The Department to have expertise and knowledge of Positive Behaviour Support Plans and how to use Restrictive Practices. This is certainly exacerbated in **rural and remote** areas of Queensland with few if any choices of services. We point to the model of Kalpana – a small person-centred service geographically located and specifically designed to support 10 individuals deemed 'too difficult' for all other Service Providers. Those people no longer live under Restrictive Practices and self-direct their own supports. The service operates with a coordinator and a governance model.

The Department's own service provider **AS&RS** has expertise that need not be lost. People who wish could and should be able to hire AS&RS staff as independent contractors as they can any other staff. Clinging to the notion of department owned and run service providers is not conducive to the NDIS and not necessarily enhancing the lives of people with disability.

3. UNBLOCKING FUNDING

While the Department has begun the process of assisting Service Providers (SP) to unblock funding, so far it is dependent on agreement from the co-tenants and in some instances the SP has resisted this vigorously. The Department has not significantly advanced this agenda and will not be ready for the rollout in 2016. Furthermore some SPs are **relinquishing service** to people or moving them to other houses far from family or workplaces as they close down some group residences in this process. The rationale for this is that they cannot afford to support people adequately as they transition to unblocking funding and move people to larger shared arrangements. The Department has been reluctant to allocate additional funds to people who are supported in block arrangements where if the arrangement is individualised it would be not adequately supported. This seems to be largely a **“wait until the NDIS’ mindset**. Some people residing in group and block funded arrangements have endured abuse from co-tenants rather than be moved without adequate support.

4. FORENSIC DETENTION

The NDIA has deemed that people who are incarcerated will not be supported by the NDIS. This means that people who are in detention at forensic disability facilities and/or people who are held in psychiatric facilities such as The Park will be excluded from the supports of the NDIS. There will be **no habilitation, recovery and no way out for many people without adequate funded and tailored supports**. We are aware that current state funding for “Limited Community Treatment” (LCT) is inadequate and that some people are therefore denied the LCT that is part of their planned rehabilitation. The Forensic Disability Service Unit has been in existence for 5 years and no-one has moved out.

There is uncertainty whether the newly released Federal funding will support people with mental illness who reside in community care units or other psychiatric facilities that are transitional placements.

QAI has grave concerns that people held in forensic detention in psychiatric or disability support facilities will be denied the Disability Support Pension that is vital to the habilitation and/or recovery of these people before returning to community.

5. CRIMINAL HISTORY CHECKS FOR DIRECT PAYMENTS

There has been a recent development that is a barrier for **participants** to self-manage their funds within Your Life Your Choice. The Department of Disability Services Queensland (The Department) has introduced the requirement for people with disability to undergo a **Criminal History Check** in order to self-manage funds. While QAI understands the need for fiscal responsibility there is a concern that this requirement is inappropriate – criminal history checks have no bearing on financial responsibility unless major fraud has been committed.

A basic credit history check could unfairly exclude people from building their capacity to participate as fully in the scheme as other participants merely because of some errors made in the past. For example, people who have the administration of their finances managed by the Public Trustee or former bankrupts may fall within this category. We believe that these people should be **supported to build their capacity** to self-direct and self-manage their funds. An example of this would be a supportive host provider service to assist them to manage their funds and acquit them accordingly until such time as they are self-sufficient and able to manage on their own.

This requirement to undergo a criminal history check prima facie discriminates against people with disability by treating them less favourably as compared with others in a similar position and contravenes the provisions against discriminatory treatment on the basis of disability prescribed by the anti-discrimination legislation.

6. SERVICE PROVISION AND COMPLAINTS MECHANISM

The complaints mechanism currently does not provide timely or satisfactory responses when people are being abused in any form or not receiving their service for which they have paid. Issues or complaints against a service provider are taken by the Department, which then determines whether the service provider has breached or not complied with service standards. QAI asserts that these complaints should be investigated by an independent authority with due regard given to the complainants rather than merely ensuring the SP has been compliant with Quality Assurance. This investigation should take place first and foremost before the SP is accepted as an approved provider.

The current status of service providers is that provided they are “approved” by the state they will be deemed as suitable under the NDIS. QAI is aware of a number of service providers with significant unresolved serious complaints against them. Further to this is the concern that service providers are **not reporting incidents of abuse**.

It is deeply worrying that **Service Providers are relinquishing care** if a person or family member makes a complaint about the SP. At times this occurs if the SP is both the support provider as well as the landlord. This continues to proliferate in Queensland with the Department supporting the provision of funds to SPs to build accommodation for which they then also provide support.

AN INDEPENDENT AND TRANSPARENT COMPLAINTS MECHANISM IS URGENTLY REQUIRED:-

The onus should not be on the person to know or recognise what avenues for complaints are available. For any service or system that prides itself on excellence this should be offered at any reasonable expression of dissatisfaction.

If a person is experiencing dissatisfaction with either a service or system, this should automatically generate a prompt to the internal complaints system and once this is exhausted or rejected for whatever reason be escalated to the independent mechanism.

There should be penalties for any retribution against a person making a complaint - after all the complaint should be seen as an opportunity for quality improvement.

People with impaired capacity are not always treated fairly. Fairness can be improved by ensuring the person has support for decision making, and referrals to an advocacy organisation should be offered where no informal supports are available or effective. However, this can only be managed with a well-resourced and vibrant advocacy sector, which is very scant and in some areas non-existent at present.

Everything in the investigations of a complaint should be answerable to the person with disability and/or their supporter making the complaint. By this we mean that all the concerns are addressed, that the investigations and processes are timely, and that the person is included in the processes. All processes should be transparent and the investigating body held accountable to the person making the complaint but also engaging all parties and ensuring all communications are clear, open and honest.

The investigations must show due diligence, address the complaint and not merely look at governance or compliance of standards. This Mechanism must be funded as a statutory or Parliamentary body. All recommendations or orders are binding. If for whatever reason the person's complaint is not within the scope of the investigation or is deemed to be not completely relevant there should be redirection to mediation until some satisfaction or compromise is reached.

7. SERVICE PROVIDER MINDSET

There is a tendency for SPs to view the NDIS as a threat to their viability rather than an opportunity to change and be more responsive to need. We have witnessed this in interstate trial sites with SPs speaking about 'offering programs to new clients' and 'merging and amalgamating' to remain viable. This approach entrenches the **monopoly** that existing large SPs already have on the sector and will result in small innovative services struggling if they are not recognised for their excellent support in enabling people's autonomy.

Smaller responsive and innovative service models need to be supported and promoted as being geographically ideal and person centred. There is only one known service provider that is attempting to break down its large top heavy service model into smaller geographically located services. This seems an issue of particular importance in Queensland, given that it is documented that 80% of providers have an annual turnover of less than \$2 million and many operate in rural and remote areas. We need to support small responsive and individual targeted services, rather than increasing the power and coverage of the 20% who are wielding significant power and funds.

Some service providers are not reporting abuse – deeming it to be 'normal behaviour of siblings' even though this is hitting, punching, etc. This indicates a lack of understanding or valuing of people with disability.

8. Contractual Issues

Service Providers that are in control of the contractual arrangement rather than the participant may impose unreasonable penalties or fees for 'notice' to quit an arrangement (ie withhold funds, not deliver a service). We are aware of at least one instance of this occurring and to date the limited scope of NDIS Participant Readiness initiatives have not been able to outreach the population of potential participants who would therefore be unaware of these conceivable risks. The NDIA and The Department should have some clear guidelines and supports regarding contractual obligations and fairness.

9. PEOPLE SELF MANAGING – SELF DIRECTING

People who self-direct/manage are sometimes using contracted workers. Others are doing the PAYG and therefore are being deemed as small businesses even though they are not small businesses.

These people are potentially at risk of litigation and/or vexatious claims through Fair Work Australia. The NDIA and the state urgently need to address the misconception that people who are managing their own funds are not running a business!

Vigilance is required to ensure that the implementation of the NDIS has fidelity to the concept of autonomy, choice and control of participants. QAI strongly believes that supports, services and systems must be funded to promote and enable the full participation and inclusion of people with disability in everyday and ordinary life. While there may be some need for specific or specialised supports to facilitate this, we maintain that the location, style and method of delivery of those supports and services must as much as possible be at the direction of the person with disability and/or their informal supporters. Our submission indicates a dire need for the fortification of advocacy and advocacy services to not only ensure that Queensland is ready for the NDIS but also to ensure that it does not merely replicate the status quo.

Yours sincerely,



Michelle O'Flynn
DIRECTOR
Queensland Advocacy Incorporated