From:
To: Community Affairs, Committee (SEN)
Cc:
Subject: Further information from QAI as requested by Senators at Wed 31 Jan 2013 Senate Community Affairs Reference Committee public hearing in Brisbane
Date: Thursday, 31 January 2013 5:56:04 PM
Attachments: image001.png

Dear Committee,

during the course of our time with you at the public hearings in Brisbane yesterday, Ken Wade (QAI Director) and I undertook to provide you with some further information relevant to the discussion.

1. A copy of QAI's ***Human Rights Indicators*** (can be found here: http://humanrights.gov.au/disability_rights/convention/DC131207HumanRightsIndicatorsV2%20(2).zip)

2. **An example of the difference between 'reading down' the *Convention on the Rights of Persons with Disabilities* in the Bill and 'reading it up'.**

   (At the hearing Ken Wade put it to the Committee that the Bill ought to be strongly and substantively linked to Australia's human rights commitments per the ***Convention on the Rights of Persons with Disabilities*** . Senator Boyce asked Ken to provide an example of the difference between weak or strong endorsement of the CRPD.)

   A powerful example is this:

   Consider the difference between reading up or down the CRPD when deciding what might constitute 'reasonable and necessary supports' provided to a person with severe and profound disabilities residing in the Baillie Henderson Hospital in Toowoomba, where people with severe and profound disabilities currently live in barrack-style multi-bed wards, have no personal and private space and get limited hours of community access per week:

   'Read down', reasonable and necessary supports could mean that the NDIS would maintain the status quo and such people would continue living in congregate care as many of them have down for their entire lives.

   Read up, the question of reasonable and necessary supports would be read through the filter of:

   1. Article 12 of the *Convention on the Rights of Persons with Disabilities*, and
   2. Article 19 of the *Convention on the Rights of Persons with Disabilities*.

Article 12 provides that –

- All persons with disability are recognised at all times and in all situations as persons with legal rights and duties.

- Persons with disability are able to exercise legal capacity on an equal basis with others.

- Persons with disability receive any support they may require to exercise their legal capacity.

Read up, the implication of this Article would be that people with reduced capacity would be supported to make their own decisions (rather than deferring to the wishes of their relatives or the judgement of the Adult Guardian) about where they would live and where and when they would move around in their own communities.

Article 19 **'Living Independently and Living in the Community' recognizes the 'equal right of all persons with disabilities to live in the community, with choices equal to others ..'** and states that persons with disabilities should 'have the opportunity to choose […] and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement'.

Further interpretation is provided by Queensland Advocacy Incorporated's *Human Rights Indicators for People with Disability* developed by Queensland Advocacy Incorporated. The *Indicators* identify these principles:

1. Persons with disability live in the community with choices equal to others.
2. Persons with disability are included, and participate, in the community.
3. Persons with disability are able to choose their place of residence on an equal basis with others.
4. Persons with disability are able not obliged to live in any particular living arrangement.
5. Persons with disability have access to a range of in-home, residential and other community support services necessary to support living and inclusion in the community and to prevent isolation and segregation from the community.

The Indicators set out more explanatory detail:

> The article (*Article* 19) is directed to the **elimination of segregated, congregate and socially isolated environments in which persons with disability have historically been forced, or obliged, to live.** The article requires State Parties to ensure that persons with disability are able to live in the community with accommodation options equal to others, and that these options support the inclusion and participation of persons with disability in community life. The article also provides that persons with disability must be able to choose with whom they live on an equal basis with others. In order to realise these freedoms, State Parties are obliged to ensure that persons with disability have access to the support services they require in order to live freely in the community, and to avoid isolation and segregation from the community. These support services include in-home support, residential and community support services, and personal care. The article also seeks to ensure that mainstream community services and facilities are available and responsive to the needs of persons with disability so as to facilitate their freedom to live in and be a part of the community.

Conclusion: There is nothing in the Bill as drafted that would warrant this kind of reading up of 'reasonable and necessary supports'- one that would support independent community living for whomever desires it.

We commend the indicators as a reference. They and the *Convention on the Rights of Persons with*

Disabilities are useful guides for the substantive development of Plans.

3. re: the NDIS Engagement process/ consultation

Senator Moore asked Queensland Advocacy Incorporated to provide further details of our request to the NDIS Advisory Group responsible for examining issues of eligibility and assessment.

Here's a copy of the inquiry/submission, to which we had no response. Particularly unfortunate is the fact that despite raising it with both Disability Services Queensland staff (who had carriage of NDIS assessment development) and with Senator Boyce's office, we've had no access to either the Dyson Report or any of the deliberations on assessment.

Here is the request:

Dear [redacted],

re: our concern about the possible use of the ICAP disability assessment tool; concerns about NDIS consultation

I'm writing as a member of the Community Safeguards Coalition, a Queensland network of people with disabilities and supporters, and for Queensland Advocacy Incorporated, a Queensland disability advocacy NGO.

I'm writing to you because we are not aware of any other clear conduit for the kind of constructive grass roots input we believe will make for a better NDIS.

I was referred to you by Fran Vicary, CEO of Queenslanders with a Disability Network and a member of one of the 'Control and Choice' NDIS advisory group.

First, we commend you on the great work you're doing to realize the dream of an NDIS, a source of great comfort and hope for so many people with disabilities and their supporters.

But we have general concerns about the process so far, and particular concerns about the Taskforce's evaluation of potential assessment tools.

The Community Safeguards Coalition was part of the group of disability representatives that provided feedback to the Queensland State Government on its 'Growing Stronger' disability assessment and support program in 2011.

As a result of our and many other advocates' and consumers' feedback the Growing Stronger assessment process was substantially revised, and the problematic 'Understanding the Carer Role' assessment tool was withdrawn, although not before

> it had caused considerable media debate and public embarrassment to the relevant Minister for Disability Services. (We were not successful, however, in getting the state government to withdraw the use of the ICAP.) Had the state government consulted with people more widely the assessment process for supports would have been more effective and would likely have been accepted from the get-go.
>
> We are concerned that the very same assessment process is being considered for the NDIS, and that those responsible for the decisions regarding the development of NDIS assessment tools may make some of the same oversights.
>
> We are particularly concerned that once again the views of people with disabilities will not be canvassed- breaching both the *Convention on the Rights of Persons with Disabilities* provision that 'persons with disabilities .. effectively and fully participate in the conduct of public affairs' (Article 29) and the principle 'nothing about us, without us'.
>
> For example, 1. CSC member Queensland Advocacy Incorporated only belatedly received notice of Dyson Consulting's web consultation (see extract from the NDIS website below) about assessment tools that closed on 2 April 2012. We were not contacted directly about this consultation, and nor were many other disability organisations.
>
> 2. We (the CSC) met with representatives from Disability Services Queensland yesterday and discussed the development of the NDIS assessment tools, but were unable to get information about what tools are front-runners, whether the taskforce intends to go with a tool that is consistent with the domains of the ICF (International Classification of Functioning, and NB the ICAP is *not*, and how the preferred tool is to be tested) and whether assessment is about measuring disabilities, or about identifying support needs.
>
> We believe it is above all vitally important that the assessment focusses on support not function, and we ask you to open up the development of assessment to people with disabilities and the general public. We cannon stress enough that Assessment is an Intervention and the experience of assessment can have a profound effect on a person's self-perception.
>
> We would like to see the Dyson evaluation report on assessment tools, and we would like to contribute to the development of the assessment process. And we encourage the Taskforce to take a more consultative approach in all its work. We are aware of the inclusion of some people with disabilities in the composition of the various specialist councils, but this is not enough. And while we appreciate that the development of reliable and valid tools is a job for social scientists we would also point out that no tool will be of any use if not accepted by people with disabilities themselves.
>
> We would be happy to meet with you should you wish to discuss this further.
>
> Yours sincerely,

We hope this is useful to the Committee and we are happy to assist further in any way we can.

Yours sincerely
Nick

Dr Nick Collyer
Systems Advocacy Worker, **Queensland Advocacy Inc.**

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

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