



# Queensland Advocacy Incorporated

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

*Systems and Individual Advocacy for vulnerable People with Disability*

## SUBMISSION TO JOINT STANDING COMMITTEE ON THE NATIONAL DISABILITY INSURANCE SCHEME

July 2020

The Hon Kevin Andrews MP (Chair)  
Senator Carol Brown (Deputy Chair)  
Senator Wendy Askew  
Senator Anthony Chisholm  
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Senator Hollie Hughes  
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Ms Alicia Payne MP  
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Mr. Andrew Wallace MP

## INQUIRY IN TO THE NATIONAL DISABILITY INSURANCE QUALITY AND SAFEGUARDS COMMISSION

‘**quality** noun (EXCELLENCE) the degree of excellence of something, often a high degree of it’  
Cambridge English Dictionary

‘**safeguards** plural noun: a measure taken to protect someone or something or to prevent something undesirable’

‘**safeguards** verb 3rd person present: protect from harm or damage with an appropriate measure.’  
Oxford English Dictionary

“The supreme quality for leadership is unquestionably integrity. Without it, no real success is possible, no matter whether it is on a section gang, a football field, in an army, or in an office.”  
Dwight D. Eisenhower

‘Quality means doing it right when no one is looking.’  
Henry Ford

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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

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy organisation for people with disability. Our mission is to promote, protect and defend, through advocacy, the fundamental needs, rights, and lives of the most vulnerable people with disability in Queensland.

QAI is an association of persons with concern for the needs of people with disabilities with a constitutionally designated committee comprising a majority of people with disability; their wisdom and lived experience of disability is our foundation and guide.

QAI undertakes systems advocacy aimed at changing policies, laws and attitudes in ways that will benefit groups of people with disability rather than individuals alone.

QAI strives to maintain its complete independence as an organisation and to restrict its function solely to advocacy.

QAI has an exemplary track record of effective systems advocacy, with over thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state.

We have provided, for over a decade, highly in-demand individual advocacy through our individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service, the Justice Support Program, the National Disability Insurance Scheme Appeals Support Program and Decision Support Pilot Program and most recently the Disability Royal Commission Advocacy Program and the Education Advocacy Service.

Our Human Rights and Mental Health services offer legal advice and representation on guardianship, administration, and mental health matters. Our Justice Support provide non-legal advice and support to people with disability engaged with the criminal justice system. QAI's NDIS Appeals and Decision Support Pilot provide advocacy and support to individuals and families to engage with and access the NDIS (including assisting with internal review and appeals to the Administrative Appeals Tribunal). QAI is also a member of the Combined Advocacy Groups of Queensland. QAI's individual advocacy assists us to understand the challenges, needs and concerns of people with disability and informs our campaigns at state and federal levels for changes in attitudes, laws and policies.

QAI's constitution holds that every person is unique and valuable, and that diversity is intrinsic to community.



## Background

People with disability and their families, advocates, supporters and allies were overjoyed at the instigation of the National Disability Insurance Scheme (NDIS), and QAI also eagerly awaited the much-anticipated independent complaints and monitoring mechanism that would complement the Scheme.

Like our allies, QAI wrote submissions and papers about the history lessons of failed and overly complex, burdensome and dissatisfactory processes commonly experienced in the state systems.

The following account demonstrates a non-exhaustive list of relevant submissions and papers that QAI has made in earnest advocacy towards establishing and improving the safeguarding and raising of standards for quality service delivery for people with disability. Please note that QAI has made more than one submission to some of the inquiries below as various committees or subsequent inquiries have eventuated.

In 2015 QAI offered a submission to the Department of Social Services regarding the NDIS Quality and Safeguarding Framework, a submission to the Joint Standing Committee on the NDIS and Queensland NDIS Readiness, and QAI witnesses appeared before the Joint Standing Committee that same year in which a need for an independent and transparent complaints mechanism was raised as urgently required. QAI also tendered a submission to the Ernst and Young review of the operation of the NDIS Act. Later that year QAI made a submission to the Senate Inquiry into violence, abuse and neglect against people with disability in institutional and residential settings. All of these actions are related.

In 2016, the *Disability Services Act 2006* (Qld) was amended: “The measures of Queensland’s interpretation of Transition to the National Disability Insurance Scheme” and QAI again offered in our submission key messages regarding necessary ways of handling complaints prior to rollout in Queensland. Later in this year, as a partner of the Civil Society, a joint statement was issued to the Council of Australian Governments (COAG) and the National Disability Insurance Agency (NDIA) calling for stronger engagement with people with disability in the NDIS.

Following our 2015 submission to the Department of Social Services (the Department), in 2017 QAI consulted the Department regarding the NDIS Code of Conduct which was to be central to the Quality and Safeguards Framework. Relevantly, we noted:

*We are concerned about the translation of the Principles of the Code into practice, as the power imbalance between individuals, particularly individuals with recognised vulnerabilities including a disability, and service providers is significant, and can silence the making of complaints.*

Additionally, QAI offered a detailed submission to the Senate Economics Legislation Committee Inquiry into the National Disability Insurance Scheme Amendment (Quality and Safeguards Commission and Other Measures) Bill 2017. A further submission to the Joint Standing Committee on the NDIS regarding General Implementation explained additional concerns about complaints handling.



In June 2018, the Department brought Advocates from across Australia to meet with the newly formed Quality and Safeguards Commission (the Commission) at a forum. There was a great consensus from all the advocates and not a lot of confidence in the Commission at that stage. In August 2018, QAI tendered a submission (attached) to the Department on Advocacy and the NDIS Quality and Safeguards Commission that summarised the forum, offered suggestions and raised concerns.

In November 2018 QAI wrote to the state Department of Communities, Disability Services and Seniors on Reshaping the Disability Services Act 2006 about worker screening as a safeguard to mitigate abuse and resultant complaints. In 2019 a subsequent submission to the state government Education, Employment and Small Business Committee on Disability Services and Other Legislation Amendment Bill 2019 (Qld) also examined worker screening and complaints about specific workers as a safeguarding measure. Further submissions regarding worker screening have been made this year (all are attached).

QAI's response of August 2019 to the Department's consultation into NDIS Thin Markets Project provided an opportunity for our organisation to address safeguards as a proactive measure and to raise concerns about the lack of prevention (attached).

COVID19 raised significant concerns for QAI regarding the safety and wellbeing for people with disability and we promptly wrote to the Commission, the NDIA, and National Disability Services to urge that disability supports be declared essential services. This was followed up again later in the same month (March 2020) and we raised additional concerns regarding reported withdrawal of supports, denial of access to supports and services and advocates by some hostel owners. The response from the Commission included their fact sheet regarding Coronavirus (COVID19) Behaviour Support and Restrictive Practices.<sup>1</sup>

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<sup>1</sup> NDIS Quality and Safeguards Commission March 2020, *Fact sheet: Coronavirus (COVID-19) – Behaviour support and restrictive practice*, <https://www.ndiscommission.gov.au/document/1991>



## Terms of Reference

- a. The monitoring, investigation and enforcement powers available to the Commission, and how those powers are exercised in practice;
- b. The effectiveness of the Commission in responding to concerns, complaints and reportable incidents – including allegations of abuse and neglect of NDIS participants;
- c. The adequacy and effectiveness of the NDIS Code of Conduct and the NDIS Practice Standards;
- d. The adequacy and effectiveness of provider registration and worker screening arrangements, including the level of transparency and public access to information regarding the decisions and actions taken by the Commission.
- e. The effectiveness of communication and engagement between the Commission and state and territory authorities;
- f. The human and financial resources available to the Commission, and whether these resources are adequate for the Commission to properly execute its functions;
- g. Management of the transition period, including impacts on other commonwealth and state based oversight, safeguarding, and community engagement programs; and
- h. Any related matters.



## QAI's recommendations

QAI recommends:

1. The Commission adopt a proactive and diligent, rather than regulatory and responsive, approach to protecting NDIS participants
2. The Commission establish referral pathways with National Disability Advocacy Program (NDAP) providers, independent state funded disability advocacy organisations, Community Legal Centres (CLCs) and State Legal Aid Commissions to ensure participants who are particularly vulnerable are supported through complaint and investigation processes.
3. The Commission promotes and supports people with disability to understand their rights and what 'best practice' service provision looks like by either:
  - a. Directing people to authentic and existing resources relating to quality service provision such as the Community Resource Unit's information;<sup>2</sup> or
  - b. Developing best practice resources in collaboration with people with disability, their families and carers and advocacy organisations.
4. The Commission ensures that no service providers are registered to deliver 'wrap around services', as a means to avoid conflict of interest and coercion, ensure participants' rights to 'choice and control' and ensure alternative choices are available for participants.
5. The Commission monitors the data of reported Restrictive Practices, including the types and frequency, to ensure that strategies to eliminate or reduce the uses are consistent with the National Framework. This could also include:
  - a. The Commission order mandatory training of support workers where uses of Restrictive Practices are not reduced or eliminated within an agreed review period; and
  - b. An onus on providers to demonstrate that strategies in the participant's Behaviour Support Plan have been implemented. If this is not evident the Commission order a change of provider; and
  - c. Where more than one review period has passed without any progress towards reduction or elimination of Restrictive Practices, the Commission order a change in service provider.
6. The Commission works with plan managed and self-managed participants, their families and informal supports who directly employ workers to better understand their responsibilities as employers.
7. The Commission works with plan managed and self-managed participants, their families, and informal supports to provide clarity about their rights to hire or employ service providers or support workers, and their responsibilities in relation to Behaviour Support and Restrictive Practices.

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<sup>2</sup> Community Resource Unit 2017, *The Good Life*, <http://thegoodlife.cru.org.au/funded-supports/>



8. The Commission investigates allegations of abuse, neglect and exploitation in a timely manner, including the use of unauthorised Restrictive Practices.
9. The Commission works collaboratively with the National Disability Insurance Agency to provide information and context when NDIS participants request reviews of funding to leave undesirable situations such as abusive home environments.
10. The Commission supports NDIS participants through complaints processes rather than referring matters back to service providers with no support for participants.
11. The Commission makes the compliance and enforcement actions (including banning and exclusion list) easily accessible.
12. The Commission refers Participants who require assistance to independent disability advocacy organisations.



## The monitoring, investigation and enforcement powers available to the Commission, and how those powers are exercised in practice

The NDIS Quality and Safeguards Commission (the Commission) commenced operating in Queensland on 1 July 2019. During the past year, QAI have assisted NDIS participants, their families and informal supports through the complaints process. QAI has been satisfied with the response from frontline staff, who show empathy and compassion, however QAI is unsatisfied with the response and method the Commission has taken in relation to these complaints. The follow-up from the Commission has left participants unsupported, confused and reluctant to reengage with the Commission.

### Case Example 1: Rob\*

*Rob is a 35-year-old who lives independently with his pet cat. Rob is significantly impacted by his mental health condition and receives NDIS funding for daily support in the home and his community. Rob also receives funding for a support coordinator. Rob extensively researched support coordinators with experience supporting people with psychosocial disabilities and found 'MNO Support Coordination'. Rob's experience with MNO Support Coordination was not positive as he found them to be only recommending their own services for support workers and therapists, sharing his contact details and personal information without consent and making hurtful comments about his mental health. Rob contacted the NDIS Quality and Safeguards Commission to discuss his concerns. He was assigned a case manager who was very pleasant and supportive. The case manager arranged a meeting between Rob and MNO Support Coordination to discuss the issues however, the case manager did not attend the meeting. It was unclear from the emails that the case manager would not be attending and both Rob and MNO Support Coordination expected them to be at the meeting. This left Rob feeling very deflated and put into a corner as he did not feel as though he could stand up for himself with the provider. Rob ceased services with MNO Support Coordination and the NDIS Quality and Safeguards Commission considered the matter resolved, despite Rob being left without supports and feeling deflated by the process and meeting.*

*\*Identifying details have been changed*

QAI has been particularly concerned with the lack of monitoring and oversight the Commission has shown to date of NDIS service providers. One particular concern which has been highlighted to the National Disability Insurance Agency and the Commission, is the lack of oversight, monitoring and investigation of service providers who provide 'wrap around services', such as accommodation, support workers, support coordinators and even their own therapist's or medical professionals. These service models are especially prevalent in Supported Independent Living (SIL)





arrangements, hostels and other group home settings. Many participants living in SILs, hostels or group homes did so prior to the NDIS roll out. These participants have not been provided the opportunity to explore different housing options, different service providers or even different support coordinators outside of the service provider who provides both accommodation and support workers. On occasion where a participant may voice their concern or request that an outside organisation provide support (such as support coordination), the participant is threatened with eviction, termination of support services and in some cases 'reprimanded'. This results in participants staying quiet to ensure they have somewhere to live. QAI classes these types of actions as sharp practice as well as a conflict of interest which impinges on a participant's right to choice and control.

Due to the lack of involvement from the Commission previously towards similar complaints, a NDIS participant and their QAI Decision Support Advocate have had to make the difficult decision not to formally complain about this type of practice due to fears of the repercussions towards the NDIS participant. This is due to the fact that the participant is living in a hostel which is owned by the same service provider which provides daily support. QAI acknowledges that this issue is multifaceted which makes immediate change difficult, such as lack of alternative housing options through Department of Housing. However, a participant should not have to weigh up whether to continue to be poorly supported but have a house to live in, rather than become homeless whilst seeking quality support options.

## **The effectiveness of the Commission in responding to concerns, complaints and reportable incidents – including allegations of abuse and neglect of NDIS participants**

In 2020 QAI met with the State Manager and Director of Complaints of the Queensland section of the Commission to discuss complaints, reportable incidents and Restrictive Practices. During this meeting, advocacy organisations who are funded by the Department of Social Services (DSS) to provide both generalist individual disability advocacy and specialised individual advocacy raised concerns regarding the level of independent advice and support which is provided to a participant when engaging with the Commission. Advocacy organisations raised the idea of creating referral pathways with advocacy organisations, CLCs and possibly legal aid commissions to ensure participants are provided advice and support relating to their rights, understanding the complaints processes and investigation powers. To date, despite assurances made to advocacy organisations at face to face forums that the Commission had a commitment to work with advocates in order to better support participants, this has not transpired. The Commission reported to QAI that there are



links on their website to provide general information to participants about disability advocacy. QAI sees this as a failure of their stated commitment and a failure to ensure participants are adequately protected and supported and their rights upheld. Vulnerable participants of the NDIS may not have the ability to independently seek out advocacy support. This is particularly disappointing as QAI and other advocacy organisations have been successful in establishing direct referral pathways with other government and non-government departments and organisations to support people with disability through often difficult and complex processes. QAI holds the view that the Commission should make 'warm referrals' in a similar way to the warm referrals made by the Administrative Appeals Tribunal (AAT) to advocacy organisations when it is evident that an applicant is particularly vulnerable and will not be able to effectively engage independently in the appeals process. This collaboration ensures people with disability are supported in a way that meets their needs, and often assists the referring party to resolve any issues at hand.

The Commission also reported working closely with the Office of the Public Guardian (OPG) investigations team, and the Queensland Police Service (QPS). QAI has a specialised individual advocacy service funded by the Department of the Attorney General (DJAG) to support people with disability when engaging with Police. NDIS participants should be supported by the Commission to access services which currently exist to maximise a participant's understanding of different processes. While not all people with disability will require the support of an advocate, it is imperative for the Commission to understand that some people with disability are highly vulnerable and will require independent advocacy to ensure their voice is heard, especially where they lack family or informal support. Indeed, it is impractical and unreasonable that a Commission established to safeguard people with disability do not do all that is possible to ensure that people are assisted to access independent advocacy.

## **The adequacy and effectiveness of the NDIS Code of Conduct and the NDIS Practice Standards**

The NDIS Code of Conduct applies to registered service providers, unregistered service providers, service providers delivering information, linkages and capacity building programs (ILC) and service providers delivering Commonwealth Continuity of Support programs. The NDIS Code of Conduct and its related information has been targeted at service providers and their employees. There are guidance resources available for service providers and workers, which expand on the NDIS Code of Conduct and encourage service providers to consider whether, and how, they are complying with the Code. However, no such material exists for NDIS participants; rather participants are provided with the Code on a post card with no context or provision of examples about how the Code could be



met by a provider.<sup>3</sup> Although QAI appreciates that service providers may require guidance on how to meet the Code, this exemplifies the Commission's tendency to focus on service providers and service provision rather than having NDIS participants as the centre of focus. The Commission must spend more time and energy on the development and provision of resources and education which empowers NDIS participants to understand their fundamental rights to quality service provision and choice and control.

### **Case Example 2: Morgan\***

*Morgan, a young woman with intellectual impairment, has self-managed her supports for ten years with the assistance of her nominee (mother) and they directly hire support workers. The NDIS Code of Conduct is written into the service agreement they have devised for all workers along with requisite requirements for criminal history checks, insurances etcetera. However, there is a paucity of workers available in the thin market, and this family has experienced workers not turning up for shifts without notice, resigning without notice, price gouging, and an ongoing cycle of workers who set up meetings and undertake buddy shifts for which they are paid, often for weeks on end, only to fail to commit to the terms of the agreement and leave without notice. There is no recourse for self-managing participants other than to report the individuals who will undoubtedly be free to continue this practice and drive up the costs of the NDIS and exacerbate the 'casualisation' of the workforce.*

## **The adequacy and effectiveness of provider registration and worker screening arrangements, including the level of transparency and public access to information regarding the decisions and actions taken by the Commission**

Much of the critical information on the Commission's website is deeply embedded in such a way as to be inaccessible to most participants. Whilst the Commission must maintain the balance of public information sharing and privacy, the NDIS provider register (compliance and banning orders) are particularly difficult to locate via the Commission's website. In order to find the publicly available banning list, which outlines people and service providers banned from providing services to an NDIS participant, a participant first needs to navigate to the 'NDIS Providers' tab on the Commission's website. A participant then must negotiate a convoluted process that leads the user into a labyrinth of tabs before the information can be located. For example: the user must click on 'provider responsibilities' and then 'registered provider requirements'. From there, a participant must scroll to suitability assessment and click a hyperlink embedded in 'had a banning order in place'.

<sup>3</sup> NDIS Quality and Safeguards Commission June 2019, *Code of Conduct postcards*, <https://www.ndiscommission.gov.au/sites/default/files/documents/2020-03/postcard13032020.pdf>



This will bring the participant to another webpage which has the compliance and enforcement actions available for viewing. It is difficult to comprehend how the Commission expects participants to check service providers compliance status when the information is not linked to the NDIS participant tab on the website.

Further to this, the inaccessibility of Commission's website is matched by its incongruent rules about the responsibilities of self-managed participants and or their nominees as compared to those of registered service providers where the participant is subject to the application of Restrictive Practices. The Commission has ruled that self-managed participants must employ registered providers to develop Behaviour Support Plans, and any support worker or related service provider must be registered to deliver support where restrictive practices are used. However, there is a lack of information for self-managed participants regarding any non-registered supports they may directly hire where there is no use of these Practices. For example, a Participant may use directly hired support workers for community access and social participation if there are no Restrictive Practices(RP) used, but any supports or services that are employed in the home where RP may be used must be registered to do so.

What is also concerning is the Commission failing to provide transparent information about registered service providers who have changed their name since the inception of the Disability Royal Commission (DRC). Many service providers have renamed in an attempt to 'save face', while stories of abuse, neglect and exploitation are reported to the DRC. The Commission could work with the DRC to understand which service providers have purely rebranded themselves, whilst still operating under the same models. Examples include *Aftercare* rebranding as *Stride and House* and *No Steps* rebranding as *Aruma*. Further, some banning orders are actually merely suspensions. While QAI acknowledges that mistakes can be made and that providers may make necessary improvements to warrant reinstatement into the Scheme, Participants should have access to the reasons for the suspensions or bans.

## The effectiveness of communication and engagement between the Commission and state and territory authorities

### Case example

#### Case Example 2: T

##### Background

*T is an NDIS Participant and lives in his own home in North Queensland. He uses a powered wheelchair for mobility and until 2018 he drove a modified accessible van.*



In 2018 his NDIS Plan included conversion upgrades and electronic restraints to a new van. The Planner recommended that T send the vehicle to a NDIS registered service provider (provider) in Brisbane. The decision to send the vehicle to the major city was likely based on the quoted price for the conversion \$27,300. The provider advised the work would take 3 weeks and would be carried out to the appropriate safety and industry workmanship standards and that the work would be covered by warranty.

Two months after the vehicle was delivered to the provider in Brisbane T was informed that the conversion was finally completed.

At the time of delivery, whilst the Multivan was being unloaded from the truck, the truck driver noticed a leak in the fuel tank. At the time of delivery there was also no spare key or logbook. When I inquired with the provider, I was informed that the key and logbook had been misplaced or lost.

T had to organize a replacement key through the local Volkswagen dealership and have the key programmed so that it was compatible to his vehicle. He also organised for the vehicle to be inspected on a hoist and the following major faults were noted:-

- fuel tank did not have the correct clamps on some of the fittings
- poor welding on the subframes for the wheelchair conversion did not meet the expected standard
- underbody of the new vehicle revealed exposed wiring
- electronic restraint was not working correctly

T contacted the provider who agreed that rectification work to the fuel tank and electronic restraint could be carried out locally and the provider would reimburse for this work.

Subsequent email and phone correspondence (December 2018 and January 2019) with the provider indicated the very casual approach to safety particularly with reference to the welding. The provider has not accepted responsibility for the poor workmanship nor offered to rectify the work.

T was directed to the provider by the NDIA and following protracted and fruitless attempts at negotiations with the provider, T contacted the NDIA about the problems, was informed that it was not an NDIS matter – it was a provider, Participant matter and that T had to resolve the problems without any assistance from the Agency.

Despite assurances that NDIS enables Participant choice and control T had no choice or control about where this conversion was to be performed or which provider would perform the work. The NDIA made that decision and his NDIS Plan paid for the work, however the Agency totally abrogate any responsibility for the quality and standard of the work, whether it represents value for money and most importantly if the work carried out is safe and does not represent any risk to a Participant

It seems there is no process in place by the NDIS for ensuring that the work is carried out to required standards and that it aligns with Section 34 (1)c of the NDIS Act, and represents value for money, or Section 34 (5)(1)a, that the support is not likely to cause harm to a Participant.



### **Follow Up:**

*T engaged the support of an independent advocate who assisted the client to compile a submission detailing the matter to the Office of Fair Trading, whilst simultaneously filing a complaint with the NDIS Quality and Safeguards Commission. The Quality and Safeguards response advised the advocate that they would wait to see the response from the Office of Fair Trading.\**

*The Office of Fair Trading provided a response that indicated that “Welding Standards are outside of their remit; they do not have any powers to follow up on quality of workmanship and they are not experts in this area”. In a written response the OFT documented that the OFT does not have the authority to direct a trader to complete repairs to a particular standard. Their recommendations were to pursue the matter through the courts, QCAT and the NDIS Quality and Safeguards Commission.*

*The advocate continued to follow up with the NDIS Quality and Safeguards Commission via several emails and conversations with the Commission representative.*

*In March 2020, the advocate was contacted by phone and given a lengthy verbal update that essentially communicated that the Commission\* was still looking at avenues to hold the provider accountable, however the options for T were best pursued through a QCAT Legal action.*

*Given that this was almost two years after the purchase of this vehicle, it was imperative to organise urgent professional welding inspection to determine if the work met the required standards and to provide a quote for repairs to bring the workmanship up to the required standard. The advocate liaised with the local NDIS office so the inspection/quote could be funded through T’s existing supports in his Plan.*

*The report from the vehicle inspection identified that the conversion work clearly did not meet the required standards and the quote for repairs was almost \$6,400.00.*

*Aside from the risks associated with the welding not meeting standard, the inspection report also identified that the fuel tank was still leaking. The advocate considered that this was a direct and immediate risk to the client, electronically restrained in the vehicle, unable to exit the vehicle in the event of a fire. Eventually the remedial work was completed but funded by the Participant’s Plan – a cost that he should not have had to bear and the NDIS Quality and Safeguards Commission transferred the responsibility of the matter to the client\*.*

## **The human and financial resources available to the Commission, and whether these resources are adequate for the Commission to properly execute its functions**

In QAI’s experience, the frontline staff (such as those answering the hotline) are pleasant and eager to gather information from participants to assess if the Commission is able to assist with their enquiry. However, the Commission’s interest in an issue appears to be limited to this initial interaction, following which, participants must frequently check-in with the Commission to ensure their concern is being investigated. Without this follow-up, participants often wait extended periods



of time to have their matter assessed. This is concerning as those who most require safeguarding are often those who do not have the ability to continually follow up. QAI is also concerned that the Commission has a 'hands off' approach towards complaints resolution and investigation. Often people are reaching out to the Commission due to a distressing event, or series of distressing events, and although the Commission may organise a meeting with the participant and the service provider, the Commission does not become involved. This approach is unhelpful (as exemplified in Rob's case (case example 1 above) and can lead to a significant power imbalance between participants and service providers.

## Management of the transition period, including impacts on other commonwealth and state-based oversight, safeguarding, and community engagement programs

The Commission has been active in Queensland since July 2019. However, many participants are unaware of the Commission, the Commission's role, and the Commission's powers. QAI receives enquiries daily from participants and their families regarding their rights relating to poor service provision and possible avenues available to resolve these issues.

As of January 1st, 2020, the *Human Rights Act 2019* (Qld) commenced in its entirety, with oversight from the Queensland Human Rights Commission (QHRC). However, to date, it appears there is no such as locking a door for a period of self-isolation or quarantine is **not** a Restrictive Practice.<sup>4</sup> The tone of the factsheets, brochures and general information provided by the Commission during COVID19 and generally feels as if the Commission's role is to protect service providers.

QAI recommends the Commission revisit its purpose and refocus its attention on promoting, safeguarding and protecting participant's lives rights and education. Interface agreement between the Quality and Safeguards Commission and the QHRC. Again, QAI sees this as a failure to uphold participant's rights as NDIS registered providers are specifically defined as public entities under the *Human Rights Act 2019* (Qld). By developing an agreement between the Commission and the QHRC, people with disability are provided the opportunity to have issues resolved by either one or both of the Commissions, rather than being advised that either commission does not resolve certain issues.

## Any related matters

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<sup>4</sup> Queensland Advocacy Incorporated 2020, *Disability Royal Commission submission – Impact of COVID19 restrictions on people with disability in Queensland*, pages 2-8 <https://www.qai.org.au/wp-content/uploads/2020/06/Emergency-Planning-and-Response-submission.pdf>



The COVID-19 pandemic created unprecedented challenges across all aspects of life for all Australians. NDIS participants were also affected by COVID-19 and QAI is disappointed with the Commission's factsheet prepared in relation to COVID-19, behaviour support and Restrictive Practices.<sup>5</sup> QAI disagrees with the Commission's stance that applying an environmental restraint such as locking a door for a period of self-isolation or quarantine is not a Restrictive Practice.

The tone of the factsheets, brochures and general information provided by the Commission during COVID19 and generally, feels as if the Commission's role is to protect service providers.

QAI recommends the Commission revisit its purpose and refocus its attention on promoting, safeguarding and protecting participant's lives rights and education.

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<sup>5</sup> NDIS Quality and Safeguards Commission March 2020, *Fact sheet: Coronavirus (COVID-19) – Behaviour support and restrictive practice*, <https://www.ndiscommission.gov.au/document/1991>

