

Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020 (Qld)

**Submission by
Queensland Advocacy Incorporated**

**Committee Secretary
Health, Communities, Disability Services
and Domestic and Family Violence
Prevention Committee**

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About Queensland Advocacy Incorporated

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.

Queensland Advocacy Inc. (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 QAI 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 to the NDIS and where necessary within the Administrative Appeals Tribunal. QAI is also a member of the Combined Advocacy Groups of Queensland. QAI's individual advocacy as well as issues relayed to us by our individual advocacy allies informs our campaigns at state and federal levels for changes in attitudes, laws and policies and assists us to understand the challenges, needs and concerns of people with disability.

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

Worker Screening Amendment Bill

The objectives of the Disability Services and Other Legislation (Worker Screening) Amendment Bill 2020 (the Bill) are to:

1. support nationally consistent worker screening for the National Disability Insurance Scheme (NDIS) and the Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS (the IGA);
2. enable Queensland to operate a state disability worker screening system for certain disability services that it continues to fund, or deliver, outside of the jurisdiction of the NDIS Quality and Safeguards Commission (NDIS Commission);
3. streamline and strengthen the legislative framework for disability worker screening in Queensland; and
4. ensure the blue card system operates effectively and efficiently alongside the disability worker screening system and the strongest possible safeguards are maintained in relation to persons working with children with disability.

QAI's recommendations

QAI recommends:

1. The proposed new section 14 of the *Disability Services Act* (as outlined in clause 9 of the Bill) be updated to change the definition of *funded service provider* to include the State.
2. The Queensland Government publish its framework for deciding whether a person poses an unacceptable risk of harm to people with disability which is more exhaustive than that provided in the proposed new Part 5, Division 4 Subdivision 3 of the *Disability Services Act* (as outlined in clause 11 of the Bill).
3. The Queensland Government work with the NDIS Quality and Safeguards Commission, plan or self-managed participants, and unregistered service providers to encourage optional workers to request a national worker screening clearance.

Introduction

This submission is informed by QAI's experience in delivering non-legal advocacy for people engaging with the NDIS, through its National Disability Insurance Scheme Appeals Support Program and Decision Support Program, as well as our systems advocacy. It is also informed by insights gained through collaboration with our allies in advocacy, and the lived experiences of members and staff.

Inclusion of the State as a funded service provider

The Bill specifically excludes the State from being a funded service provider within the meaning of the Bill. This is disappointing as the State is a NDIS registered service provider and as such, is required to meet the standards set by the NDIS Quality and Safeguards Commission. A core part of complying with these standards is ensuring NDIS workers meet the criteria as set out in the Intergovernmental Agreement on nationally consistent worker screening for the NDIS.¹ By excluding the State from being a funded service provider, workers who are employed by the State are not required to request clearance under this Bill prior to engaging in NDIS work. This puts people with disability who engage State services at risk of abuse, neglect, and exploitation, as State workers will not be assessed against more defined and rigorous definitions of risk and exclusions, and creates a division of standards and rights on the basis of the worker's employer.

Inclusion of offences for NDIS providers engaging in contractors

Since the introduction of NDIS, disability service providers have had to adjust and change their business structure due to no longer having guaranteed incomes; a stark contrast from the certainty provided under block funding. With the loss of guaranteed income, there has been an increase in casualisation of front-line workers.² This increased casualisation has also led to individuals being employed by service providers as sole traders or contractors.³ Simultaneously, many support workers have chosen to operate as unregistered and registered sole traders or contractors⁴. By excluding offences for NDIS providers, who have engaged contractors to provide NDIS services prior to receiving clearance, service providers may be tempted to engage contractors in the hopes of circumventing processing time of clearance, putting people with disability at risk of harm.

Publish risk assessment framework

During the public briefing for this Bill on 23 June 2020, there was discussion of a National Operational Guidelines manual being developed which will include a disqualifying framework for clearance. As the CEO has discretion in relation to providing clearance to a relevant person, it would be beneficial for the public to understand what types of acts a relevant person may have engaged in, in order for them to be disqualified to provide NDIS

¹ Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS:

https://www.coag.gov.au/sites/default/files/agreements/iga-nationally-consistent-worker-screening_2.pdf

² MacDonald, F, Bentham, E & Malone, J 2018, "Wage theft, underpayment and unpaid work in marketised social care", The Economic and Labour Relations Review.

³ MacDonald, F & Charlesworth, S 2016, "Case for care under the NDIS: Shaping care workers' working conditions", Journal of Industrial Relations.

⁴ <https://www.qai.org.au/2020/05/14/submission-to-the-ndis-workforce-inquiry/> and P20 3.7 Experienced and Skilled Workforce <https://www.qai.org.au/2019/10/24/ndis-thin-markets-project-submission/>

services. It is recommended that this framework be robust to ensure any acts or omission of acts which are not in the best interest of people with disability be assessed rigorously. This should include all reportable incidents where the relevant person was involved.

Encourage clearance for unregistered providers

As outlined in the Bill, only NDIS registered service providers are required to have nationally recognised clearance prior to engaging in NDIS risk-assessed work. The Queensland Government has worked closely with peak bodies such as National Disability Services to ensure service providers and their workers are aware of their clearance requirements moving forward. However, the Queensland Government, in collaboration with the NDIS Quality and Safeguards Commission, are yet to engage with plan or self-managed participants and unregistered service providers to explain what their clearance means. The Queensland Government, alongside the NDIS Quality and Safeguards Commission, should begin to work with individuals and communities to explain how worker screening can assist with decision-making in relation to employment of individuals and unregistered service providers and how worker screening can decrease the risk of abuse, neglect and exploitation of people with disability. This may see plan or self-managed participants request their workers (for whom screening is currently optional) to be screened, as well as encourage unregistered service providers to embrace worker screening for community safety.

Any other matters

QAI welcomes the inclusion section 138W for the chief executive officer to bear medical costs should a registered health practitioner be required to prepare a report about a relevant person's mental health. This inclusion provides clarity and financial equality for relevant persons. QAI also supports the newly included capacity for a relevant person to review their clearance status via internal review, prior to requesting a review at the Queensland Civil and Administrative Tribunal. This will provide relevant persons with the ability to provide additional information which may influence their clearance status, without proceeding through a Tribunal proceeding.

Conclusion

QAI looks forward to the introduction of this Bill and hopes the Queensland Government collaborates with other states and territories as well as the NDIS Quality and Safeguards Commission. This collaboration will ensure no relevant person is provided with worker screening clearance should they pose an unacceptable risk of harm to people with disability.