



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

Review of Queensland's laws relating to Civil Surveillance and the Protection of Privacy in the context of Current and Emerging Technologies

**Submission by Queensland Advocacy Incorporated
to**

Queensland Law Reform Commission

7 February 2019

Ph: (07) 3844 4200 or 1300 130 582 Fax: (07) 3844 4220 Email: qai@qai.org.au Website: www.qai.org.au

2nd Floor, South Central, 43 Peel Street, STH BRISBANE QLD 4101

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

The Secretary
Queensland Law Reform Commission
PO Box 13312
George Street Post Shop, Brisbane, Qld 4003

7 February 2019

By email: lawreform.commission@justice.qld.gov.au

Dear QLRC,

Thank you for the opportunity to contribute to the review of Queensland's laws relating to civil surveillance and the protection of privacy in the context of current and emerging technologies.

We welcome this opportunity to make comment about how these issues may affect or enhance the needs, rights and lives of vulnerable people with disability in Queensland.

Civil surveillance that relates to people with disability in public open spaces may be used to monitor and safeguard a person with disability against harm if this has been established by family/or carers and where possible with consent of the individual.

However, QAI is also aware that the use of electronic monitoring may be utilised in public spaces by government and others as a means of observing the behaviour and actions of individuals as a means of intervention and control. This may be used by the police, health facilities, schools and other government departments.

It is our experience that without adequate insight, training and expertise, gross misinterpretations of the behaviour of people with disability often leads to rapid and aggressive responses that escalate situations needlessly.

Given the scope of this inquiry QAI is unable to contribute meaningfully without also providing comment on the topic of workplace surveillance. Because many people with disability are not afforded the privacy and dignity of living in a home of their own, and confined to large residential facilities, nursing homes, hospitals and long-stay health facilities the use of workplace monitoring of staff working in these areas potentially impinges on the rights, privacy and dignity of people with disability. This is sometimes inadvertent and in some instances quite deliberate.

Further in relation to workplace surveillance, many people with disability work in sheltered workshops (now referred to as Australian Disability Enterprises). The intent and purpose of monitoring and surveillance of employees in such situations is unclear. Are the service providers operating these outmoded facilities monitoring their paid support workers or are they monitoring the modern slave employees with disabilities, and what is the rationale for doing so?

Many people with disability who work in these conditions also reside in group homes operated by the same service providers – in effect under the 'care', control, tenancy and employ of the same service entity. As you will appreciate, the mixed agenda for maintaining surveillance of people in these situations is a gross imbalance of power. Any complaint made by the person or persons with disability either as a resident, service user or employee could be significantly undermined by the service provider.

Yours sincerely,



Michelle O'Flynn

Director

About QAI

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy NGO 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.

Our Human Rights and Mental Health Legal Services offer legal advice and representation: the first, on guardianship and administration and the latter on mental health matters. Our Justice Support, NDIS Appeals Support and Decision Making Support Pilot Programs provide non-legal advice and support to people with disability in the criminal justice system and to participants in NDIS Appeals and those requiring support to make decisions in this system. This individual advocacy informs our campaigns at state and federal levels for changes in attitudes, laws and policies, and it assists us to understand the challenges, needs and concerns of people who are the focus of this submission.

QAI's constitution holds that every person is unique and valuable, and that diversity is intrinsic to community. People with disability comprise the majority of our Board; their wisdom and lived experience of disability is our foundation and guide.

Foreword

As signatories to the United Nations Convention on the Rights of Persons with Disabilities (CRPD), Queensland must align all laws, policies and practices to accord with the Convention. In relation to this inquiry, Article 22 is the indicator which must be upheld in the reforms to such law reform, which provides as follows:

Article 22 - Respect for privacy

- 1. No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.*
- 2. States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.*

Introduction

The question of civil surveillance when applied to vulnerable and often devalued people is multi-faceted as the complexities and dilemmas regarding the subject of scrutiny, the motive and/or purpose of surveillance and the responses that usually follow such observations are often incongruent, misplaced and misunderstood.

First one must examine whether it is the person with disability who is subject to the surveillance or the support staff.

Often the life of the person with disability is subject to observation, discussion, reporting, recording, and shared between many other entities including across several government departments, multiple service providers, statutory bodies and community organisations. Privacy is frequently breached and confidentiality rarely maintained, and it is inevitable that the reputation and dignity of the person is subsequently fractured.

While some electronic monitoring is considered commonplace (such as phone calls for quality and training) most people in the community can opt out of this option. Most people in the community are not observed through cameras in their own homes, in their workplaces, or as they engage in everyday activities in the community yet this can be a daily experience for some people with disability.

We will attempt to convey both the benefits and disadvantages of electronic monitoring of people with disability across some of the review questions. It is the view of QAI that the use of such monitoring mechanisms be used with the understanding and consent of the person with disability and in accordance with their wishes. Where the person has impaired capacity, considerable and

concerted effort must be made to assist and scaffold the person's capacity to understand the reasons for their use.

QAI's response to Consultation Questions

Scope of a new legislative framework

Q-1 What considerations should apply to surveillance that is conducted in a public place?

QAI considers that there are competing interests for the use of electronic monitoring of people with disability and across a range of areas and spaces. It is our position that the rationale for monitoring people with disability must primarily be to safeguard the person from risk while being the least restrictive and/or intrusive and not impact on their right to privacy and dignity.

Observing disability support staff can occur in both public and private places. It can seem at first glance to be seemingly innocuous and a safeguard, however, infractions of the privacy of the person being supported is commonplace and almost inseparable in some circumstances. Indeed, when one considers that a significant number of people with disability are living in congregate housing arrangements, work in sheltered workshops, attend day programs with other people with disability, and are supported in some instances by the same service provider across all settings, it is almost impossible to safeguard the privacy, confidentiality and dignity of individuals. Where people have several service providers sharing information it is further eroded.

QAI contends that this inquiry must give keen attention to the surveillance of people with disability in their homes, in their workplaces and where they access public spaces. Public spaces such as hospitals (where unfortunately some people with disability are forced to reside, some in locked wards), school classrooms and outside areas, town malls, and public events such as concerts and schools, are areas that many people are observed by closed circuit television, however, the motive and purpose for observing people with disability across these settings cannot be separated from the responses to actions or behaviours of a person with disability and/or mental illness.

It is unclear who is observing people and the level of their skills in interpreting body language and behaviour. Some people with disability exhibit patterns of behaviour that can be misconstrued, misunderstood and in many instances the person can be subjected to harsh and unjust physical and chemical attacks merely because they may act differently to what is considered usual. Some people have involuntary movement disorders, tics and these can be manifested by repetitive actions, shouting, swearing, spitting. It is not acceptable that people can be observed, assaulted and then apologised to after such physical affronts merely because they are not understood.

It could be argued that while some places might be clearly identified as a 'public place' there are others that have a dual or multi-purpose. For example, the home of a person with a disability who has support services in the home also renders the home a workplace to those who provide the support. This cross-over between the private and public space could lead to possible infringements on the rights of people with a disability.

We would suggest that the use of surveillance in dual or multi-purpose places should be limited due to the nature of activities that occur in those places. It is likely that the nature and types of activities that occur within these places demand privacy.

We also note that surveillance in public places may have a legitimate primary purpose but caution should be taken to consider the secondary or ancillary purposes in which surveillance may occur.

The issue of consent of those under surveillance or caught within the scope of prescribed surveillance event in 'public places' should also be considered. This consent should have the qualities of being explicit, informed and free from undue influence.

Q-2 What considerations should apply to surveillance that is conducted overtly or covertly?

In May 2014 the Office of the Public Advocate released a report into the use of electronic monitoring at disability accommodation sites in Queensland.¹ Data from 'visitable' sites was collected by the Community Visitor Program, while a voluntary online survey of accommodation support services provided other information that demonstrated the stark contrast between purpose, policy and practice. During this inquiry the most common audio monitors used at disability accommodation sites were baby monitors and intercoms. Closed circuit cameras, still image cameras, and portable video devices are the most commonly used visual monitors.

The use of monitoring devices in these locations is ostensibly used as risk mitigation, however, it is a retrograde action and does nothing to protect people from harm either by accident or design such as abuse or violence. It is a means however of identifying perpetrators be they a member of staff or a co-resident or visitor. Of concern to QAI is the potential for the use of such devices to offset cost by reducing staffing levels, particularly in smaller group homes or hostels. This will place greater risk of harm or neglect to vulnerable people while further 'disabling' the person by the impact of the lack of appropriate support.

Service providers report that health issues of residents is a prime concern and a reason to use electronic devices, yet research consistently finds that the health needs of residents in congregate settings are very poor, routinely overlooked and neglected. Another assertion for the use of these devices is to enable responsiveness by staff, however it is recognised that alarms such as smoke alarms, car and burglar alarms are ignored, and over-reliance on such devices will lead to complacency, neglect and harm.

The use of monitoring devices in a setting that may be a workplace to staff yet is still the home of the person with disability and the mutually antagonistic functions of this will always impinge on the right to privacy of the person with disability. People with disability who live with the use of restrictive practices, and or who are subjected to forensic orders experience high levels of surveillance even when contained, secluded and or restrained. This level of scrutiny has in our experience often been the catalyst for escalated conflict and aggression by both the service providers and the individual, borne out of frustration, confusion, anger and resentment.

The purported rationale for the use of monitoring devices in a person's home, whether it is an individual's home or a shared living arrangement, is often reasons of health concerns and accident prevention or response.² However, the placement of the monitoring devices are in locations which are inappropriate and unnecessarily impacts on a person's privacy (for example – in a person's bedroom, which has had the result that one person was observed while having consensual sexual activity).

QAI also considers that the right to privacy and dignity should be afforded to staff and volunteers working with the person, but their needs and rights are secondary to the person with disability. However, any audio or images must be deleted immediately unless there is evidence of harm, abuse or neglect and immediate action must be taken.

The quality and accuracy of the recorded information should also be considered. Factors which will affect the quality and accuracy of the recording include the circumstances in which the recorded information is collected. Gray's³ commentary on misheard recordings is a timely reminder that technology is fallible. In the commentary, reference is made to Jimi Hendrix's song 'Purple Haze' and the often misheard lyrics 'Excuse me while I kiss the sky'. The point made by the former Judge

¹ https://www.justice.qld.gov.au/__data/assets/pdf_file/0007/258361/emi-report.pdf

² https://www.justice.qld.gov.au/__data/assets/pdf_file/0007/258361/emi-report.pdf

³ Peter Gray, 'Language matters: Lost in transcription: covert recordings' [online]. VICTORIAN BAR NEWS, No. 163, Winter 2018: 52-53.

is that misconception about observable events absent wider context can distort the true portrayal of the events in question.

Q-3 Should new legislation adopt the existing 'categories' approach used in other jurisdictions and define 'surveillance device' to mean:

- (a) a listening device;*
- (b) an optical surveillance device;*
- (c) a tracking device;*
- (d) a data surveillance device;*
- (e) other device (and if so, what should this be)?*

QAI notes that, with continually emerging technology, it will be challenging to develop and maintain an exhaustive list of categories. Further, certain emerging technologies (such as biometrics) that have a wide scope for surveillance may be difficult to track. We submit that, in light of rapid technological development, it is more appropriate to adopt a 'technology neutral' approach, as proposed in Question 5, below. Ultimately, the human rights violations engaged in surveillance and the implications for the person surveilled is where the focus should lie.

Q-4 If 'yes' to Q-3:

Not applicable.

Q-5 Alternatively to Q-3, should new legislation adopt a 'technology neutral' approach and define 'surveillance device' to mean, for example, 'any instrument, apparatus, equipment or technology used either alone, or in combination, which is being used to deliberately monitor, observe, overhear, listen to or record an activity; or to determine or monitor the geographical location of a person or an object', or some other definition?

QAI supports this approach.

The use of surveillance devices

A prohibition on the use of a surveillance device for particular purposes

Q-6 For what purposes should the use of a surveillance device be prohibited? For example, some or all of:

- a) overhearing, recording, monitoring or listening to a relevant conversation;*
- b) observing, monitoring or recording visually a relevant activity;*
- c) accessing, tracking, monitoring or recording information that is input into, output from or stored in a computer;*
- d) determining the geographical location of a person, vehicle or object;*
- e) some other purpose; for example, the collection of biometric data?*

Families and carers of people with disability may on occasion record video or photographs or audio of a person with disability for the purposes of education or training of support staff or to demonstrate a particular issue for clinical assessment and support. QAI declares that this must always be performed with the best interests of the person, and where and when possible with their consent. Such material is more beneficial to the person when this is portrayed in the most positive imagery but we acknowledge that in some instances, evidence of incidents and situations can be best explained and viewed at critical moments that are not complimentary to the person's image. In these instances once professional advice has been obtained the material should be destroyed.

Some people with disability may communicate at times or mostly by means other than verbal. For some people, actions and behaviours have been the means to communicate when all other discreet signals have been ignored, misinterpreted or unseen. Some people may place themselves at risk by leaving their supporters or their homes to roam, or when unable to cease an involuntary movement may be harming themselves or have the potential to harm themselves; or may engage in behaviours that when misunderstood could provoke attack by others.

To mitigate this risk and to avoid the imposition of restrictive practices, some families and/or supporters have encouraged the person to wear tracking devices of varying types. Some merely track a person's location, others have potential to make a phone call to the person, and others may also be listening devices.

Q-7 Should the prohibition in Q-6:

- a) be restricted to intentional or knowing use?*
- b) be restricted to private conversations and private activities, or should it extend to some other conversations and activities?*
- c) extend to attachment, installation or maintenance of the device?*

QAI considers that information obtained through surveillance, if used in a coercive manner, can exploit vulnerability to the detriment of the person surveilled, irrespective of whether the person was informed and knowing of the use.

The content of the conversations should be the determining factor as to whether use of a surveillance device is prohibited in a particular situation. For example, conversations between two staff members the content of which covers the provision of support to a person with disability may not be a private conversation if carried out in a workplace, yet may contain private and sensitive information about that person that should not be permitted to be disclosed.

The prohibition should extend to the development of technologies and be adapted in accordance with the progress of the technology.

Exceptions to the prohibition on the use of a surveillance device

Q-8 In what circumstances should a person be permitted to use a surveillance device with consent? What should be the requirements of consent, and should this vary depending upon the particular use or type of device?

As noted above in response to Question 6, there are circumstances in which surveillance, monitoring or tracking of a person may be justified.

We submit that, in the case of recordings as discussed above, the person should consent to this recording of photos or video and the purpose of it and must be afforded the opportunity to view the material and offer comment or suggestions.

We submit that in the case of tracking devices, the person subject to wearing the device should give consent to have such devices placed either in their home or on their person. However, if the person is unable to give such consent they should have the purpose of the device explained to them in ways they can understand, and have opportunity to view the device and any recorded material or photographs. Such material can be very useful to build the person's capacity to understand the purpose of monitoring and increase self-awareness particularly in the context of decision support.

Q-9 Should there be a general exception to the prohibition in Q-6 to permit participant monitoring? Why or why not?

QAI does not support a general exception to the prohibition on monitoring except in cases where the person has provided full, informed consent without concern for any adverse consequences.

Q-10 If 'no' to Q-9, should there be any exceptions that permit participant monitoring in particular circumstances?

Only in circumstances where the person has provided full, informed consent without concern for any adverse consequences.

Q-11 If 'yes' to Q-10, what should be the particular circumstances for any exceptions and why? For example:

- a) to protect a person's lawful interests;*
- b) where it is in the public interest;*
- c) where it is consistent with a person's safety or well-being (for example, where there is an imminent threat of violence or property damage, or to protect a child or adult with impaired capacity); or*
- d) where it is not intended to communicate or publish to a person who is not a party?*

QAI notes that these circumstances must be directly linked to protecting the person's safety and well-being, and therefore the tracking must have the demonstrated ability to not only report this retrospectively, but to permit a timely response (for example, placing a tracking device on a person with intellectual disability who has demonstrated the inclination to wander onto busy roads without regard for the dangers of doing so).

Q-12 Apart from participant monitoring, should there be any exceptions that permit a person to use a surveillance device without consent in particular circumstances?

QAI considers that, in circumstances where there is a reasonable concern that violence, abuse or coercion is occurring but there is no means of determining who is the offender is, this may give rise to justification for monitoring without consent and rendering such evidence admissible in subsequent court proceedings.

Q-13 If 'yes' to Q-12, what should be the particular circumstances for any exceptions and why? For example:

- a) to protect a person's lawful interests;*
- b) where it is in the public interest; or*
- c) where it is consistent with a person's safety or well-being (for example, where there is an imminent threat of violence or property damage, or to protect a child or adult with impaired capacity)?*

Given the importance of privacy as a fundamental human right, and the difficulties in balancing competing rights, the threshold for an exemption to this right must be high.

Q-14 Should there be other circumstances in which the use of a surveillance device is permitted or is not an offence, for example:

- a) for a lawful purpose;*
- b) for certain people acting in the course of their occupation, such as media organisations, journalists, private investigators or loss adjusters;*
- c) to locate or retrieve a device;*
- d) where the use is unintentional; or*
- e) in other prescribed circumstances?*

If so, what provision should be made for these circumstances, and why?

Where the surveillance is for a lawful purpose, it must be recognised that it is still a breach of the privacy of the person. Therefore, the competing rights must be carefully balanced. Any exceptions must be carefully considered as they erode the fundamental human right to privacy.

In all circumstances, the focus must be on balancing the right to privacy with competing human rights, such as the right to protection from violence, abuse and neglect and also considering the flow on effects of any potential breach of privacy.

In circumstances where surveillance is justifiable, ongoing safeguards must be implemented to ensure that the surveillance, and the information obtained via surveillance, is limited to the extent necessary to achieve the purpose.

QAI does not consider that intention should be a circumstance justifying a breach of privacy in circumstances where it is foreseeable that a breach might occur. Lack of intention, of itself, is not sufficient to excuse a violation of a person's privacy.

Communication or publication of information obtained from a surveillance device

Q-15 Should there be a general prohibition on the communication or publication of information obtained through the unlawful use of a surveillance device? Why or why not?

Should be a prohibition on communication or publication of information used for a use other than a proscribed use.

QAI considers that there should be a general prohibition on the communication or publication of information obtained through the unlawful use of a surveillance device.

It is suggested that a Machiavellian approach to communication or publication of information obtained through the unlawful use of a surveillance device whereby the end justifies the means is undesirable.

Communication can be a difficult task for people with a disability. The use of assistive communication technologies has helped bridge some of the difficulties that people with disability face in relation to communication when other methods have failed or are not effective. Surveillance using these technologies could be deemed a betrayal of the primary user. For instance, in the case of a person with a communication impairment using a computer application to assist with communication – the primary purpose of the computer application is to assist with communication. If there were a secondary purpose, in which the computer application also collected data from the communication (primary purpose) either overtly or covertly for the benefit of a third party, this might be considered exploitative.

Q-16 If 'no' to Q-15, should the communication or publication of information obtained through the unlawful use of a surveillance device be prohibited in particular circumstances, for example, if the communication or publication is not made:

- a) to a party or with the consent of the parties to the private conversation or activity;*
- b) in the course of legal proceedings;*
- c) to protect the lawful interests of the person making it;*
- d) in connection with an imminent threat of serious violence or substantial damage to property or the commission of another serious offence;*
- e) in the public interest;*
- f) in the performance of a duty;*
- g) to a person with a reasonable interest in the circumstances;*
- h) by a person who obtained knowledge other than by use of the device; or*
- i) in any other circumstances?*

Not applicable.

Q-17 Should there be a general provision permitting the communication or publication of information obtained through the lawful use of a surveillance device? Why or why not?

No. Even where information is lawfully obtained, its communication and publication should be subject to stringent safeguards and conditions. A concern that QAI has is that people with a disability navigating the domestic violence and family law proceedings may have information that is sensitive and confidential which may have been obtained through lawful means but if that information should be communicated or published it could have devastating and potentially life threatening consequences.

Q-18 If 'no' to Q-17, should the communication or publication of information obtained through the lawful use of a surveillance device be permitted in particular circumstances, for example, if the communication or publication is made:

- a) to a party or with the consent of the parties to the private conversation or activity;*
- b) in the course of legal proceedings;*
- c) to protect the lawful interests of the person making it;*
- d) in the public interest;*
- e) in connection with an imminent threat of serious violence or substantial damage to property or the commission of another serious offence;*
- f) in the performance of a duty;*
- g) to a person with a reasonable interest in the circumstances;*
- h) by a person who obtained knowledge other than by use of the device; or*
- i) in any other circumstances?*

Yes. We agree information obtained through the lawful use of a surveillance device should only be permitted to be communicated or published in very exceptional circumstances, which must have a strong evidentiary foundation.

Q-19 Should any special provision be made in relation to the communication or publication of information obtained through the prohibited or permitted use of a surveillance device:

- a) by a journalist or media organisation;*
- b) by a private investigator;*
- c) by a loss adjuster; or*
- d) in any other circumstances?*

If so, what provision should be made and why?

As noted above, even where information is lawfully obtained, its communication and publication should be subject to stringent safeguards and conditions. The only circumstances in which we consider publication (and restricted publication) to be appropriate is where it aids the protection of a person, particularly a vulnerable person, from violence, abuse or neglect.

Admissibility of evidence obtained from surveillance device

Q-20 How should the admissibility of evidence, in court proceedings, of information obtained by the unlawful use of a surveillance device be dealt with?

As noted above, QAI considers that, in circumstances where there is a reasonable concern that violence, abuse or coercion is occurring but there is no means of determining who is the offender is,

this may give rise to justification for monitoring without consent and rendering such evidence admissible in subsequent court proceedings.

Penalties and remedies

Q-21 Should prohibited use of a surveillance device or prohibited communication or publication of information obtained through the use of a surveillance device be punishable:

- a) as a criminal offence; or*
- b) by a civil penalty; or*
- c) as either a criminal offence or a civil penalty, as alternatives?*

We submit (c), depending on circumstances.

Q-22 How should the liability of a corporation, or a corporate officer, for a contravention by the corporation be dealt with?

QAI supports the imposition of corporate responsibility.

Q-23 Should there be power to order the forfeiture of a surveillance device used in a contravention of the legislation, or of a report or record of information obtained by the use of a surveillance device in a contravention of the legislation?

QAI proposes that reports or records should be required to be provided and destroyed and an undertaking required to be provided not to unlawfully use the surveillance device.

Q-24 Is it necessary for the legislation to include any other ancillary prohibitions, for example, to deal with:

- a) the possession of records obtained from the prohibited use of surveillance devices?*
- b) the possession, manufacture, supply or advertising of surveillance devices?*
- c) the use of surveillance devices to intimidate, harass or hinder a person?*

QAI considers that the use of surveillance devices to intimidate, harass or hinder a person should be an offence, with an aggravated component in circumstances where the person subject to surveillance is particularly vulnerable by virtue of being a person with disability or another attribute and also in circumstances where there is a power imbalance between the parties (such as in the case of an employment or service provision relationship).

Q-25 Should there be a right to bring a civil proceeding in respect of a contravention of the prohibited use of a surveillance device or the prohibited communication or publication of information obtained through the use of a surveillance device?

Yes. QAI supports the introduction of this right.

Q-26 If yes to Q-25, what relief should be available to a plaintiff in a civil proceeding, for example:

- a) an order that the contravener is prohibited from conduct (for example, from using a surveillance device) or must do something (for example, remove a surveillance device)?*
- b) a declaration (that the conduct was unlawful or that the unlawful conduct breached the person's privacy)?*
- c) an order for monetary compensation (for any loss or damage or up to any particular amount)?*
- d) other relief?*

QAI supports the availability of a broad range of remedies that can be tailored to the circumstances of the case at hand, including all options outlined in this question.

Q-27 *If yes to Q-26(a), should breach of a prohibitory or mandatory order be a criminal offence or dealt with as a contempt or by some other procedure?*

In appropriate circumstances, QAI considers that there should be criminal liability imposed.

Enforcement and regulatory powers

QAI considers enforcement of the legislation, coupled with strong and robust regulatory powers, important to give teeth to the regime.

Q-28 *Should there be an independent regulator and, if so, what entity should this be?*

QAI supports having an independent regulator, but we emphasise the importance of ensuring this regulator is aware and informed of issues that impact upon the surveillance of certain people, including people with disability and mental illness.

Q-29 *What regulatory and compliance functions or powers should be conferred on an independent regulator or otherwise provided for under the legislation, for example:*

- a) conciliation or mediation of complaints about breaches of the legislation;*
- b) appointment of inspectors to investigate or monitor compliance with the legislation;*
- c) the issue of compliance notices;*
- d) starting civil penalty proceedings;*
- e) education and best practice guidance and advice about the legislation;*
- f) research, monitoring and reporting of matters relevant to the legislation?*

QAI considers that conciliation and mediation is always a preferable first step, as it permits for a cost-effective resolution. We note that there is an imbalance in relation to access to justice that people with a disability experience. Conciliation and mediation, while preferable to litigation, can still be costly and for those on government pensions can be out of reach. A no cost jurisdiction to support enforcement and regulation may offer some reprieve.

Conclusion

QAI thanks you for the opportunity to make this submission. We would be happy to provide further information or clarification upon request.