21 January 2016

Your ref Disability Services and Other Legislation Amendment Bill 2015
Our ref H&D – 15

Research Director
Communities, Disability Services and
Domestic and Family Violence Prevention Committee
Parliament House
George Street
Brisbane Qld 4000

By post and by email: csdfvpc@parliament.qld.gov.au

Dear Research Director

Disability Services and Other Legislation Amendment Bill 2015

Thank you for the opportunity to provide comments on the Disability Services and Other Legislation Amendment Bill 2015.

This response has been compiled with the assistance of the Queensland Law Society's Health and Disability Committee who have substantial expertise and practice in this area.

We provide our feedback in the below submission. Please note that in the time available to the Society and the commitments of our committee members, this submission is not intended to be an exhaustive review. The Society broadly supports the Disability Services and Other Legislation Amendment Bill 2015 but wishes to bring attention to particular issues raised by the proposed amendments.

We are happy for the submission to be published and would be pleased to be involved in any public hearing with respect the Bill.

Independent Complaints Mechanism

The Society notes and welcomes the new powers proposed, under the Disability Services Act 2006 (DSA), to enhance safeguards and organisational compliance under the National Disability Insurance Scheme (NDIS). What is of some disappointment is that the proposed amendments do not allow for the establishment of an independent complaint and review mechanism.

It is our submission that an independent body, charged with promoting and protecting the rights and best interests of people using disability and community services in Queensland, is best placed to handle and resolve complaints about these services. Further, the role of an
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An independent body could monitor and review how disability and support services, funded via the NDIS or State agreements, are delivered.

The establishment of an independent Disability Commissioner, for example, could have the following functions:

- Receive, resolve and investigate complaints;
- Initiate inquiries and investigations;
- Assist people with a disability to make a complaint; and
- Review the causes of complaints, identify any systemic issues for service improvement and make recommendations for improving the handling and resolution of complaints.

An independent Disability Commissioner would also provide information, education, training and advice concerning complaints and the management of complaints to support workers and disability organisations.

The Society notes the work conducted by the Disability Services Commissioner in Victoria and the Health & Disability Commissioner in New Zealand. Both these statutory positions provide for an independent oversight in how disability services are conducted as well as an avenue for advocacy, review and resolution of consumer complaints. In its 2015 Annual Report, the Victorian Disability Services Commissioner highlighted the opportunities for further service delivery improvement in the NDIS trial site in Barwon. It is important that people with a disability have access to appropriate quality services with safeguards in place to support their choices and live independently in the community. As the President of the Victorian Disability Services Board has stated:

"... the independence of this office is central to the success of the Disability Services Commissioner because people who use services and their families and carers can make a complaint without fear of retribution or service withdrawal. This process empowers people with a disability to make complaints, which in turn has led to service system improvements. The board considers that when the NDIS quality and safeguarding framework is developed it is vital that there is no diminution of safeguards for people with disability in Victoria under the national scheme".

The Society appreciates that the cost of establishing a new independent body would not be insignificant. Consideration could be given to expanding the statutory powers of an existing body to encompass the functions of a Disability Commissioner. For example, the role of the current Health Ombudsman for Queensland could be expanded to include the functions of a Disability Commissioner. This would mirror the statutory role of the Health & Disability Commissioner in New Zealand.

Recommendation 1

The Queensland Government considers the establishment of an independent Disability Commissioner charged with promoting and protecting the rights and best interests of people using disability and community services.

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2 Ibid.
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Approval for the use of Restrictive Practices (Containment & Seclusion)

The Society notes a number of proposed amendments to Part 6 of the DSA. These amendments make no reference to positive behaviour support and the use of restrictive practices. This means that the current provisions, found in the DSA, remain in place.

Sections 151 through to 165 of the DSA refer to the requirements and approval for the use of containment and seclusion for an adult. These provisions provide for a limitation as to who can develop a positive behaviour support plan (PBSP) and subsequent approval for the use of containment and seclusion. Such a limitation would appear to be inconsistent with the aims under the NDIS.

Under the General Principles of the National Disability Insurance Scheme Act 2013 (Cth), it is noted that people with disability should be supported to exercise choice, including in relation to taking reasonable risks, in the pursuit of their goals and the planning and delivery of their supports.\(^3\) Under the DSA, only the Department of Communities, Child Safety and Disability Services ("the Department") can develop a PBSP in relation to the use of containment and seclusion. This means that under a NDIS, participants will not be able to choose who develops their PBSP, even if a service provider has access to a specialist in the field of positive behaviour support.

The Society believes that the failure to amend the requirements for the development of a PBSP (for containment and seclusion) means that the Department has a monopoly in regards to the development of PBSPs. It is a restriction that is not shared by other jurisdictions in Australia.

Recommendation 2

Part 6 of the Disability Services Act 2006 is amended to allow for participant choice in the development of a positive behaviour support plan for the use of restrictive practices (containment and seclusion).

Thank you again for the opportunity to provide feedback on the Disability Services and Other Legislation Amendment Bill 2015.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Ms Louise Pennisi on (07) 3842 5979 or l.pennisi@qls.com.au

Yours faithfully

Bill Potts
President

\(^3\) Section 4(4) National Disability Insurance Scheme Act 2013 (Cth).