



Reshaping the *Disability Services Act 2006*

An inclusive and accessible Queensland



Queensland
Government

Minister's message



As the Minister for Communities and the Minister for Disability Services and Seniors, I am committed to ensuring that we have legislation in place to promote, protect and safeguard people with disability in Queensland.

As Queensland transitions to the National Disability Insurance Scheme (NDIS) and works to achieve full scheme operation by 1 July 2019 it is important to consider the laws we need in place in Queensland to support the NDIS and reflect the changing landscape of how supports for people with disability are funded and delivered across Australia.

The Queensland Government wants to consider how the *Disability Services Act 2006* can best reflect the role of the Queensland Government moving forward, with a critical focus on championing accessibility and inclusion of people with disability within the community.

The Queensland Government is committed to building a Queensland where every aspect of community life welcomes and includes people with disability. We have a collective responsibility to make sure our

communities are accessible and inclusive for all Queenslanders.

Since the *Disability Services Act 2006* commenced, there has been further recognition of the rights of people with disability and the role of government in promoting and upholding these rights. This review also provides an important opportunity to ensure that our laws are contemporary.

Between August 2016 and April 2017 the Queensland Government conducted statewide consultation to seek input from the disability community on their lives and their needs. Findings from this process were used to develop Queensland's latest state disability plan, *All Abilities Queensland: opportunities for all (State Disability Plan 2017-2020)* (All Abilities Queensland).

During this consultation we heard how important it is to ensure that the voices of people with disability are at the centre of all decisions we make.

Part A of this Options Paper asks for your feedback on how we can ensure that Queensland has the laws it needs to

acknowledge the rights and abilities of people with disability in our community.

In addition, at Part B, we are asking for your feedback on some aspects of the quality and safeguards that are to be implemented to support the NDIS. All states and territories have agreed to the national NDIS Quality and Safeguarding Framework. This Framework provides a nationally consistent approach to help empower and support NDIS participants to exercise choice and control, while ensuring appropriate safeguards are in place so providers and their staff deliver high quality supports.

As part of this Framework, Queensland has agreed to a nationally consistent worker screening process for the NDIS. The objective of this screening system is to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the NDIS.

While the new worker screening system for the NDIS will be consistent across states and territories, Queensland can choose how to implement some of the changes. We want you to have the opportunity to contribute to

the development of Queensland's new worker screening system.

The ideas proposed in this paper provide opportunities to design legislation in partnership with our key stakeholders and the broader community.

I welcome your participation and feedback to ensure the legislation continues to meet the needs of Queenslanders with disability, their families and carers, well into the future.



The Honourable Coralee O'Rourke MP
Minister for Communities and
Minister for Disability Services and Seniors



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Part A: New disability legislation

1. An All Abilities Queensland

Between August 2016 and April 2017 the Queensland Government conducted statewide consultation to seek input from the disability community on their lives in Queensland and their needs. Over 1,000 Queenslanders had their say with over 380 responses received from delegates at the August 2016 Queensland Disability Conference.

More than 540 individuals and organisations made submissions in response to the *Towards an all abilities Queensland* consultation paper and around 250 people participated in discussions.

The [Towards an all abilities Queensland - Consultation Report](#) (PDF, 133 KB) [Towards an all abilities Queensland - Consultation Report](#) (DOCX, 103 KB) provides an overview of these contributions.

Through the consultation process, Queenslanders told us about barriers to their full participation in the community and changes needed to achieve a more inclusive and accessible Queensland:



Figure 1. Direct quotes from the *Towards an all abilities Queensland* consultation survey.

Findings from this process were used to develop Queensland's latest state disability plan, *All Abilities Queensland: opportunities for all (State Disability Plan 2017-2020)* (All Abilities Queensland). All Abilities Queensland aligns with the *National Disability Strategy 2010-2020* (NDS).

This consultation process provides an opportunity to build on the feedback we received as part of developing All Abilities Queensland and consider whether any key priority areas under All Abilities Queensland can be supported by disability legislation, and how the legislation can best do this. All Abilities Queensland contains the following priority areas:

All Abilities Queensland – Key priorities areas	
Communities for all	
	People with disability are welcomed, valued and respected members of their communities, and community activities, sports, arts, tourism and recreation are accessible and inclusive of all Queenslanders with disability.
Lifelong learning	
	Queenslanders with disability have the same opportunities as everyone else to access education and learning across all stages of life.
Employment	
	Queenslanders with disability have increased access to employment opportunities.
Everyday services	
	Queenslanders with disability have the same opportunities as everyone else in the community to access services, such as housing, health, transport, disability and community services, and justice and community safety are accessible and responsive to their needs.
Leadership and participation	
	Queenslanders with disability have the same opportunities as everyone else to participate in Queensland's society and democracy, influence decisions that affect them and take up key roles in public and private organisations.



2. New disability legislation for Queensland

The *Disability Services Act 2006* came into effect on 1 July 2006 and is the main law in Queensland for governing disability rights, services and safeguards.

Key elements of the <i>Disability Services Act 2006</i>		
Overarching human rights and service delivery principles		
<p>Promoting Access and Inclusion</p> <ul style="list-style-type: none"> • Ministerial councils • State disability plans 	<p>Quality and Safeguards for funded and delivered services</p> <ul style="list-style-type: none"> • Worker screening • Restrictive practices • Complaints • Investigations, monitoring and enforcement 	<p>Regulation of funding for service delivery</p> <ul style="list-style-type: none"> • Provision for individual service agreements • Link to the funding requirements under the <i>Community Services Act 2007</i>

Figure 2. Key aspects of the current *Disability Services Act 2006*.

The National Disability Insurance Scheme (NDIS) represents a fundamental change to how services and supports for people with disability are purchased and delivered. A key aim of the NDIS is to enable participants to have greater choice and control in the pursuit of their goals and the planning and delivery of their supports.

It also provides an opportunity to reflect the changing role of the Queensland Government and the primary focus moving forward on championing accessibility and inclusion.

Queensland is transitioning to the NDIS between 1 July 2016 and 30 June 2019. As Queensland approaches full scheme, it is timely to consider the laws we need to support the NDIS and how the *Disability Services Act 2006* can reflect the future role of the Queensland Government.

This paper sets out some ideas for how Queensland's *Disability Services Act 2006* could be redesigned to support implementation of the NDIS. These ideas have considered:

- what we heard from stakeholders during the *Towards an all abilities Queensland* consultation process
- other key changes that have taken place at the state, national and international level.

The Queensland Government wants your views on the ideas outlined in this paper to ensure the laws reflect the ongoing role of the Queensland Government as champion for access and inclusion for people with disability.

You may wish to comment on all of the ideas covered in the paper, or only those that are of interest to you. We also want to know whether there are any other issues you would like to raise.

To inform the development of contemporary disability legislation for Queensland, we want to draw on the experiences, perspectives, ideas and expertise of everyone in our community, in particular people with disability, their families, friends and carers, community organisations, advocates, businesses, local governments, and legal practitioners.

3. The context

Since the *Disability Services Act 2006* commenced there has been further recognition of the rights of people with disability and the role of government in promoting and upholding these rights. In addition, access and inclusion of people with disability within the community has expanded.

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

The Australian Government was one of the first governments in 2008 to ratify the UNCRPD to promote and protect the rights of people with disability to ensure equality across all areas of life.

Carers (Recognition) Act 2008 (CRA)

In 2008, the CRA was enacted in Queensland to recognise the rights of carers and their vital role in our community, including the Carers' Charter.

National Disability Strategy (NDS) 2010-2020

In 2011, Governments of Australia jointly endorsed the NDS to work towards the vision of an inclusive Australia.

The NDS outlines a ten-year framework to drive improvement across mainstream and specialist systems through six outcome areas. Implementation of the NDS is supported through state and territory disability plans.

All Abilities Queensland (2017-2020)

In 2017, All Abilities Queensland was released after significant consultation. All Abilities Queensland aligns with the outcome areas and direction of the NDS.

Human Rights Act (HRA) for Queensland

In 2018, the Queensland Government confirmed its commitment to the protection of human rights and the intention to introduce a HRA.

4. Ideas for new legislation

4.1 Strengthening the focus on the rights of people with disability

Why is it important?

We need to ensure that our laws in Queensland acknowledge the rights of people with disability, including by promoting their inclusion in community life.¹

Recognising the rights of people with disability is important to:

- promote community awareness about the abilities, rights and needs of people with disability, including accessibility
- set expectations of government, business and the community
- guide government and other bodies when they are making decisions relevant to people with disability, their families and carers.

What do our current laws say?

The *Disability Services Act 2006* recognises the rights of people with disability and contains:

Human rights principles

The human rights principles affirm that people with disability have the same rights as other members of society and that they should be empowered to exercise these rights.

These rights relate to:

- respect
- realising individual capabilities
- safeguards
- taking part in decision-making
- being free to make choices and exercise control.

¹ *Disability Services Act 2006*, s 6(a).



Service delivery principles

Queensland Government departments are required to consider the human rights and service delivery principles when developing their disability service plans.

These principles set out that services should be designed and implemented to provide for a number of things, including:

- participation of people with disability in planning and operation of services
- the services and the premises where they are provided are inclusive and accessible for people with disability
- part of coordinated systems and integrated with mainstream services
- the services promote the inclusion of people with disability in the life of the community.

Other important information**United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)**

The UNCRPD outlines the following general principles (Article 3):

- Respect for inherent dignity, individual autonomy including the freedom to make one's own choices, and independence of persons
- Non-discrimination
- Full and effective participation and inclusion in society
- Respect for difference and acceptance of persons with disabilities as part of human diversity and humanity
- Equality of opportunity
- Accessibility
- Equality between men and women
- Respect for the evolving capacities of children with disabilities and respect for the right of children with disabilities to preserve their identities.

NDIS Act 2013 (Cth)

A key object of the NDIS Act is to give effect to Australia's international obligations as a party to the UNCRPD and its general principles reflect this.



<p>National Disability Strategy (NDS)</p>	<p>The NDS includes the following priorities:</p> <p>Inclusive and accessible communities: People with disability live in well-designed communities with opportunity for full inclusion in social, economic, sporting and cultural life.</p> <p>Rights protection, justice and legislation: People with disability have their rights promoted, upheld and protected.</p> <p>Economic security: People with disability, their families and carers have economic security enabling them to plan for the future and exercise choice and control over their lives.</p> <p>Personal and community support: People with disability, their families and carers have access to a range of supports to assist them to live independently and actively engage in their communities.</p> <p>Learning skills: People with disability achieve their full potential through their participation in an inclusive high quality education system that is responsive to their needs. People with disability have opportunities to continue learning throughout their lives.</p> <p>Health and wellbeing: People with disability attain highest possible health and wellbeing outcomes throughout their lives.</p>
<p>All Abilities Queensland</p>	<p>All priority areas are relevant (see page 6).</p>
<p>Other jurisdictions</p>	<p>Laws in New South Wales and South Australia have recently been reframed to expressly aim to support the principles and purposes of the UNCRPD.</p> <p>New South Wales and South Australian laws set out general disability principles as well as specific principles recognising the needs of Aboriginal peoples and Torres Strait Islander peoples; people from culturally and linguistically diverse backgrounds; women; and children.</p> <p>As well as general principles, Victorian law also has specific principles which apply in relation to persons with an intellectual disability.</p>
<p>Other Queensland laws</p>	<p>The Queensland Government has committed to a Human Rights Act for Queensland, which will complement reframed disability laws.</p> <p>The <i>Carers (Recognition) Act 2008</i> and the <i>Multicultural Recognition Act 2016</i> both provide for Charters to promote Queensland as unified, harmonious and inclusive, and to recognise and support important groups within the community.</p>

Strengthening the focus on the rights of people with disability

Ideas for new laws

A. Strengthen disability principles

This could include more closely aligning disability principles under disability legislation with the principles under the UNCRPD.

This could be similar to the approach taken under recently reframed New South Wales and South Australian laws.

B. Introduce specific principles to recognise the needs of particular groups with disability

This could include setting out principles and specific themes to consider in relation to Aboriginal peoples and Torres Strait Islander peoples; people from culturally and linguistically diverse backgrounds; lesbian, gay, bisexual, transgender, intersex or queer (LGBTQI+) people; women; and children.

This could be similar to the approach taken under recently reframed New South Wales and South Australian laws.

C. Introduce a Charter of Disability Rights

Strengthening disability principles could also include the development of a Charter of Disability Rights. This could:

- set out rights in one place
- raise awareness within the community about the abilities, rights and needs of people with disability
- help support interactions between government and the community.

This could be similar to existing charter models in Queensland under the *Multicultural Recognition Act 2016* and the *Carers (Recognition) Act 2008*.

QUESTIONS:

Which ideas do you support and why?

Do you have any other comments, thoughts or ideas?



4.2 Increasing consistency, collaboration and accountability

Why is it important?

Promoting the participation of people with disability in all aspects of the community is a commitment for Queensland.

It is important that our laws set a clear and consistent expectation for access and inclusion to ensure that mainstream services and supports available to the general public are accessible by people with disability, to assist them to actively engage in their communities.

It is also fundamental that there are mechanisms in place about appropriate consultation with people with disability so that their views are always heard and considered.

What do our current laws say?

The *Disability Services Act 2006* includes requirements for Queensland Government departments to develop, use and review disability service plans:

Disability planning

- Each Queensland Government department is required to develop and implement a disability service plan.
- The main goal of a disability service plan is to improve access to government services for people with disability by:
 - ensuring human rights and service delivery principles are honoured
 - ensuring policies and processes include people with disability
 - taking action to support people during the NDIS transition
 - ensuring mainstream services are responsive and accessible to Queenslanders with disability.
- Disability service plans reflect the priorities under the current State Disability Plan. The State Disability Plan is not required by law.

Implementation and monitoring

- All Queensland Government departments are required to monitor, review and report on their disability service plans.

Frequency	Develop and implement at least once every 3 years.
Consultation	Departments must consult with Department of Communities, Disability Services and Seniors and other departments to ensure their plan forms part of a coordinated whole-of-government approach for service delivery to people with disability.
Content	To achieve improved access to services and more coordinated responses across government, departments need to identify in their plan issues regarding service delivery to people with disability and ways these issues will be addressed.
Reporting	Departments must publish their current disability service plan on the department's website.

- Queensland has administrative requirements around consultation, content, reporting and monitoring mechanisms for the State Disability Plan. Currently:
 - the plan is published on the Department of Communities, Disability Services and Seniors website
 - an annual progress report on the implementation of the plan and Queensland Government Actions is published and identifies updates to actions over the life of the plan
 - the views of Queenslanders with disability on progress under the plan is sought through engagement with the Queensland and Regional Disability Advisory Councils.

Other important information

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

The UNCRPD outlines the following general principles (Article 3):

- full and effective participation and inclusion in society
- accessibility.

The principles of inclusion, participation and accessibility are central to the social model of disability which is the idea that “whilst a person might have an impairment, their disability comes from the way society treats them, or fails to support them.”²

<p>National Disability Strategy (NDS)</p>	<p>The NDS includes a priority for inclusive and accessible communities being, that people with disability live in well-designed communities with opportunity for full inclusion in social, economic, sporting and cultural life.</p>
<p>All Abilities Queensland</p>	<p>The following priority areas are of particular relevance:</p> <ul style="list-style-type: none"> • communities for all • everyday services • leadership and participation.
<p>Other jurisdictions</p>	<p>Disability planning requirements</p> <p>Victorian and New South Wales laws require a State Disability Plan to be prepared every four years, in addition to departmental planning.</p> <p>New South Wales, Victoria and Western Australia require other government agencies to make disability plans, not just departments. New South Wales and Western Australia require local governments to establish disability plans.</p> <p>Implementation and monitoring</p> <p>Laws in New South Wales outlines detailed requirements for both state and public authority plans which include consultation, tabling, reporting and review requirements.</p>
<p>Other Queensland laws</p>	<p>The <i>Multicultural Recognition Act 2016</i> includes requirements for the responsible Minister to develop a Multicultural Policy which sets priorities for action by Queensland Government entities to bring the Multicultural Queensland Charter to life and drive improved outcomes for culturally diverse Queenslanders.</p> <p>A central Queensland Multicultural Action Plan sets out specific actions departments and government entities will undertake to achieve priorities of the Policy.</p>



Increasing consistency, collaboration and accountability

Ideas for new laws

D. Require the Queensland Government to develop a state plan

This formalises the current approach and aligns with the requirement in Victoria and New South Wales for a State Disability Plan to be developed regularly, in addition to departmental planning.

E. Expand disability planning to apply to additional public authorities

This could expand planning by requiring other public sector entities to develop plans. This could also involve changing the name of disability service plans to disability access and inclusion plans.

This could be similar to New South Wales, Victoria and Western Australian approaches which require different types of entities to develop plans.

In New South Wales, a State Disability Inclusion Plan is required to set out whole-of-government goals to enable full participation of people with disability in all facets of the community. Each public authority is required to have a disability inclusion action plan setting out measures to ensure people with disability can access general supports and services available in the community. This approach provides for greater collaboration and coordination among government departments, local councils and other entities in providing supports and services.

This could also be similar to the approach under the *Multicultural Recognition Act 2016* which requires different entities to take actions under the Multicultural Action Plan.

F. Strengthen consultation, implementation and monitoring requirements

Similar to the New South Wales approach, this could include detailed requirements for both state and department plans for:

- consultation with people with disability when preparing or reviewing plans
- public authorities to report on implementation of plans to relevant Ministers and advisory councils
- plans and reports about implementation of plans to be tabled in parliament, to provide a centralised accountability mechanism through parliamentary reporting processes
- regular review of plans.



G. Improve data collection

Requiring government to collect data and report on how people with disability are using mainstream services could help measure the effectiveness of disability planning.

This could be similar to the *Multicultural Recognition Act 2016* which requires the multicultural policy to provide for a consistent approach across government for collecting statistical information about the diversity of people who use services provided by government entities.

QUESTIONS:

Which ideas do you support and why?

Do you have any other comments, thoughts or ideas?

4.3 Strengthening government and community partnerships

Why is it important?

A strong partnership between government, the community, service providers, advocacy groups and people with disability is essential to ensuring that the views and voices of key stakeholders form an integral part of all processes.

During *Towards an all abilities* consultation, stakeholders expressed that representation on panels, committees and boards ensured broader opportunities for influence. Stakeholders identified that including people with disability and carers in planning and development of projects, initiatives and services on committees and boards would result in better opportunities for participation and break down barriers to access.

What do our current laws say?

The *Disability Services Act 2006* recognises the important role community representatives play in linking community and government, by providing for the establishment of ministerial advisory committees, including the Queensland Disability Advisory Council and regional disability advisory councils.

Establishment of advisory committees

- Advisory committees provide advice to government on issues and barriers facing Queenslanders with disability and how these can be addressed. Advisory committees also assist in ensuring Queensland Government policies, laws, services and planning are supported and implemented in a way that focuses on access and inclusion for all Queenslanders.

Functions of advisory committees

- The *Disability Services Act 2006* enables the Minister to establish committees to advise on disability issues and disability services. However, it does not set out further detail about the functions of these committees.

Membership of advisory committees

- Committee members are appointed by the Minister and may include a combination of people with disability, family members or carers of people with disability, and other people with disability sector experience and expertise.
- In Queensland, members of these councils are generally appointed for three years although this requirement is not contained in law.

Other important information

United Nations Convention on the Rights of Persons with Disabilities (UNCRPD)

Under the UNCRPD Australia is obliged to ensure, promote and recognise that people with disability are entitled to all human rights and fundamental freedoms. The establishment of disability advisory committees is one way Queensland ensures its legislation and policies complies with these obligations under the UNCRPD.

National Disability Strategy (NDS)

The NDS promotes the importance of stakeholder engagement and recognises that when implementing the NDS, all governments will work collaboratively with people with disability and their representative organisations, their families and carers and other relevant bodies.

All Abilities Queensland

The following priority area is of particular relevance:

- Leadership and participation.

All Abilities Queensland commits the Queensland Government to improving consultation and engagement with people with disability and their families and carers in developing Queensland policy and programs.



Other jurisdictions

Queensland, New South Wales, Victoria and Western Australia establish their ministerial advisory committees (or councils) in legislation.

New South Wales, Victorian and Western Australian laws have more specific requirements about their councils' structure and composition than Queensland. Unlike Queensland, these states also outline the functions of their committees in legislation.

Composition and structure

Some states:

- require their councils to have a certain number of members and to have a chairperson and a deputy chairperson (New South Wales, Victoria and Western Australia)
- require the majority of members to be people with disability (New South Wales and Victoria)
- require members to have the appropriate knowledge, skills or experience in matters relevant to interests of people with disability (New South Wales, Victoria and Western Australia)
- specifically require the council to have members with skills, knowledge and experience in matters relevant to children with a disability (Victoria)
- require the Minister to ensure that members include persons who reflect the diversity of persons with disability or reflect the interests of the entire spectrum of disability (Victoria and Western Australia)
- require the council to include persons who reflect the cultural and indigenous backgrounds of persons with disability (Victoria)
- require at least 2 members to have had recent experience in matters relevant to people with disability outside the metropolitan region (Western Australia).

Functions

Some states:

- include specific functions relating to inclusion (New South Wales and Victoria)
- require its council to advise the Minister about barriers to full inclusion and participation in the community and monitor implementation of strategies for promoting inclusion and removing barriers (Victoria)
- require its council to promote inclusion of people with disability in the community (New South Wales)
- require their councils to consult with people with disability or other disability advisory councils and bodies (New South Wales and Victoria)
- enable its council to advise the Minister and public authorities about the content and implementation of disability plans (New South Wales).



Other Queensland laws

The *Multicultural Recognition Act 2016* establishes functions for its advisory council to advise the Minister about:

- the needs, aspirations and contributions of people from diverse backgrounds
- raising awareness of the Multicultural Charter within the community
- developing and implementing government policies about multiculturalism
- delivering services and programs funded by government that consider the needs of people from diverse backgrounds.

The *Carers (Recognition) Act 2008* establishes the Carers Advisory Council that has functions to:

- work to advance the interests of carers and promote compliance by public authorities with the Carers Charter
- make recommendations to the Minister on enhancing compliance by public authorities with the Carers Charter
- provide general advice to the Minister on matters relating to carers
- carry out other functions as directed by the Minister.

Strengthening government and community partnerships

Ideas for new laws

H. Strengthen the legal requirements in relation to appointment and membership of committees

Laws could formalise the appointment process for members of advisory committees and strengthen the requirements in relation to membership on committees.

For example, this could include requirements like ensuring:

- adequate representation by people with disability
- members reflect the diversity of persons with disability.

I. Establish functions of advisory committees

The functions of the committees could be included in laws. This could help ensure that advisory committees are engaged in bringing issues relevant to people with disability to the government’s attention.

This could align with other states like Victoria whose laws require their committees to advise on issues like barriers to full inclusion within the community and strategies to remove these barriers.

QUESTIONS:

Which ideas do you support and why?

Do you have any other comments, thoughts or ideas?

Part B: Quality and Safeguards

1. NDIS Quality and Safeguards

The NDIS is changing how supports for people with disability are funded and delivered across Australia. This means we need a new system of quality and safeguarding measures in Queensland.

All states and territories have agreed to the national NDIS Quality and Safeguarding Framework (the Framework). The Framework provides a nationally consistent approach to help empower and support NDIS participants to exercise choice and control, while ensuring appropriate safeguards are in place and establishes expectations for providers and their staff to deliver high quality supports.³

The following principles underpin the Framework:⁴



³ Department of Social Services 2016, *NDIS Quality and Safeguarding Framework*, Australian Government, https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf.

⁴Ibid, p 11.

To meet these aims, the Framework consists of measures targeted at individuals, the workforce and providers in three core domains:⁵



The Australian Government undertook extensive public consultation when developing the Framework. This included the release of a public consultation paper outlining a range of options for a national quality and safeguarding system.⁶

The NDIS Quality and Safeguards Commission (the Commission) is a new independent agency established to improve the quality and safety of NDIS supports and services.

The Australian Government will be responsible for the following national functions:⁷

- provider registration (including quality assurance)
- a complaint handling system
- serious incident notification
- restrictive practice oversight
- investigation and enforcement.

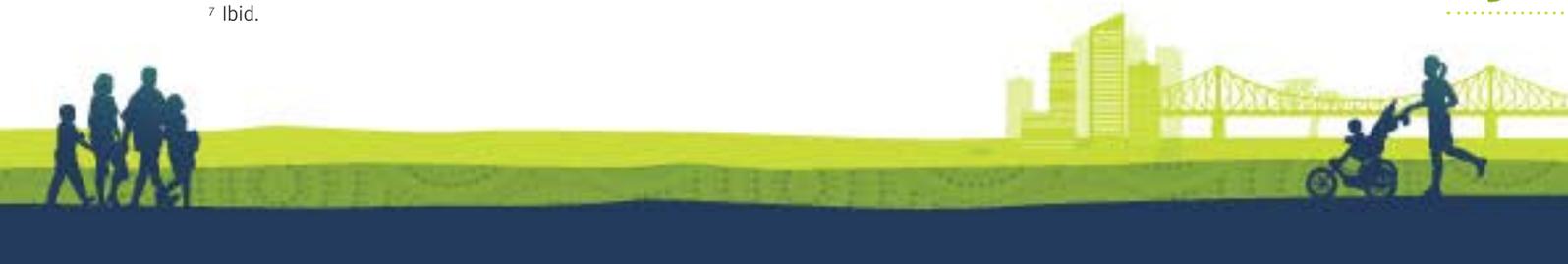
States and territories will be responsible for the following key safeguards:



⁵ Ibid, p 14.

⁶ Ibid, p 8.

⁷ Ibid.



1.1 Community visitor program

The Framework acknowledges the important role community visitors can play in protecting the rights and wellbeing of people with disability. Community visitor schemes will remain the responsibility of states and territories under the NDIS.⁸

The Queensland Government currently administers a Community Visitor Program under the *Public Guardian Act 2014*. Community visitors independently monitor different types of accommodation where adults with impairment live. They make inquiries and lodge complaints on behalf of adults with disability and can refer complaints to other bodies.

The Queensland Government is committed to continuing the function of a Community Visitor Program at full scheme NDIS to ensure safeguards are a priority for the most vulnerable adults with disability in Queensland.

The Australian Government is conducting an independent review of existing state and territory community visitor schemes.⁹ The Queensland Government is participating in this review. This review will help the Queensland Government consider the design of the community visitor scheme in the future and how this function can effectively interface with the NDIS and the NDIS Quality and Safeguards Commission.

1.2 Restrictive practices and positive behaviour support

Restrictive practices are interventions that have the effect of restricting the rights or freedom of movement of a person with disability. Their primary purpose should be to protect the person, or others, from harm.¹⁰ The Framework acknowledges that the NDIS should move towards a system where the use of restrictive practices in response to behaviours of concern occurs by exception and is underpinned by a positive behaviour support framework.¹¹

The Australian Government has led the development of key principles around the use of restrictive practices, including that an intervention must be the least restrictive response available, is used only as a last resort, and that the risk posed by the intervention is in proportion to the risk of harm posed by the behaviour of concern. States and territories will retain responsibility for authorising the use of restrictive practices.

Consistent with the UN Convention on the Rights of Persons with Disabilities (UNCRPD), governments have already committed to reducing and eliminating the use of restrictive practices through the National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Service Sector.¹²

⁸ Department of Social Services 2016, *NDIS Quality and Safeguarding Framework*, Australian Government, https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf; COAG agreed *Principles to determine the responsibilities of the NDIS and other service systems (APTOS)*, <https://www.coag.gov.au/sites/default/files/communique/NDIS-Principles-to-Determine-Responsibilities-NDIS-and-Other-Service.pdf>.

⁹ Department of Social Services 2016, *NDIS Quality and Safeguarding Framework*, Australian Government, https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf, p 54.

¹⁰ Ibid, p 66.

¹¹ Ibid, p 68.

¹² Department of Social Services, *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*, Australian Government, <https://www.dss.gov.au/our-responsibilities/disability-and-carers/publications-articles/policy-research/national-framework-for-reducing-and-eliminating-the-use-of-restrictive-practices-in-the-disability-service-sector>.



National consistency is a key element of the Framework. The Commission's behaviour support team is responsible for providing clinical leadership in behaviour support and promoting the reduction and elimination of restrictive practices. This will include assisting states and territories to develop nationally consistent minimum standards in relation to restrictive practices under the NDIS.

Feedback in relation to restrictive practices and positive behaviour support under the NDIS is not sought for this consultation process. As the national work progresses, the Queensland Government will undertake targeted stakeholder consultation in relation to these issues as required.

1.3 Worker screening

The Australian Government, states and territories will implement a nationally consistent worker screening system. The objective of nationally consistent worker screening is to protect and prevent people with disability from experiencing harm arising from poor quality or unsafe supports or services under the NDIS.¹³

The Australian Government is responsible for setting the policy framework for states and territories to conduct nationally consistent worker screening. This is achieved through the Intergovernmental Agreement on Nationally Consistent Worker Screening for the NDIS (the IGA).¹⁴ States and territories will remain responsible for operating the NDIS worker screening check.

1.4 Consultation on elements of NDIS worker screening

While the new worker screening system for the NDIS will be consistent across states and territories, Queensland can choose how to implement some of the changes.

The Queensland Government wants your views on the ideas outlined in this paper to make sure we implement a worker screening system that reduces the risk of unsafe workers providing support to people with disability.

We want to make sure people with disability, their families and carers, and also support providers and workers have the opportunity to contribute to the development and implementation of Queensland's new worker screening system.

¹³ Intergovernmental Agreement on Nationally Consistent Worker Screening, <https://www.coag.gov.au/about-coag/agreements/intergovernmental-agreement-nationally-consistent-worker-screening>, clause 14

¹⁴ Ibid

2. Issues for consultation—Worker screening

2.1 The scope of worker screening

Why is it important?

The scope of worker screening will determine whether or not employees and volunteers need checks when they are working with people with disability.

Determining the scope is also important to make sure screening systems target the right people and types of work or environments that may pose a risk of harm to people with disability.

What do our current laws say?

People need a yellow card if they are:

- working at a department funded non-government service provider,
- working at an NDIS non-government service provider (delivering prescribed NDIS specialist disability services for transition), **or**
- engaged by the Department of Communities, Disability Services and Seniors at a service outlet.

In these circumstances, volunteers, paid employees and people who have a contract for services with a service provider are required to have yellow cards. There is no requirement for a certain level of contact with people with disability to be eligible for screening.

What has already been agreed?

Under the national policy framework for NDIS worker screening it has been agreed that a person must meet certain screening requirements in order to be within scope of NDIS worker screening.

- People must be engaged with a registered provider and:
 - be involved in direct delivery of support and services, **or**
 - have more than incidental contact with people with disability.

Contact includes physical and face-to-face contact, and oral, written and electronic communication.

Under the national policy framework, people who hold executive, senior management and operational positions in a registered NDIS provider (key personnel) must also have a NDIS worker screening clearance.

The national framework for NDIS worker screening does not make screening mandatory for workers of unregistered providers. States and territories can choose to make screening for workers of unregistered providers who have more than incidental contact with people with disability, mandatory. However even if states do not make screening mandatory, self-managing NDIS participants can still request workers of unregistered providers to undergo a NDIS screening check.

The NDIS Code of Conduct applies to all unregistered providers and their workers providing NDIS services and supports and the Commission will investigate breaches.

The scope of worker screening

Ideas for new laws

A. Limit screening to the scope required in the national policy framework

Screening could be limited to the scope of screening required by the national policy for NDIS worker screening.

This would restrict screening to people who meet the screening requirements for NDIS worker screening. It would also allow self-managing participants to request workers of unregistered providers to have a NDIS worker screening clearance but it would not require screening for unregistered providers.

Issues to consider

This would maintain a strong framework to make sure all individuals with critical roles in providing NDIS services and supports are screened.

This also supports the aim of the Framework to give people with disability choice and control over their supports and reflects the diversity of needs of people with disability. Choice and control means that NDIS participants are able to make decisions about who they receive services from.

The Framework also aims to achieve the right balance between regulation and safeguards. The regulatory requirements for workers and providers are tiered to ensure regulation is proportionate to the level of risk associated with the needs of people with disability, and the type of support offered.

B. Expand the scope of mandatory screening

Under the IGA, jurisdictions can decide to make worker screening mandatory for unregistered providers if the screening criteria is met.

Issues to consider

This would be an expansion of the scope of screening beyond what is required in the national policy framework for NDIS worker screening.

While it arguably increases safeguards for people with disability who engage an unregistered provider, this option may impact on the underlying policy principle for the NDIS to minimise formal regulation of unregistered providers.

QUESTIONS:

Which ideas do you support and why?

Do you have any other comments, thoughts or ideas?



2.2 Ability to start work

Why is it important?

It is important to decide whether or not a person can start working with people with disability while their application for a check is being processed. We must consider how to effectively balance the appropriate level of safeguards for people with disability with making sure people with disability can readily access services.

What do our current laws say?

Under the yellow card system, some people can start work while their application for a yellow card is being processed and others cannot.

Paid employees may start working with people with disability once they have submitted an application for a yellow card. Volunteers must await until the outcome of their screening application before starting work.

What has already been agreed?

The national policy framework requires people to have an agreement to work with an NDIS service provider before an application is accepted by a worker screening unit. This means an individual cannot apply unless they are endorsed by an NDIS service provider.

There are two options proposed in the national policy framework in relation to the ability to start work while an application is being processed.

Option 1

States and territories can allow people to begin working with people with disability once they have submitted an application for an NDIS screening check. If states and territories choose this approach, there are a number of safeguards providers must put in place. This includes putting in place risk management plans and making sure the person is supervised by someone who has an NDIS worker screening clearance.

Option 2

States and territories can prevent people from starting work until they have been issued an NDIS worker screening clearance ('no card, no start' approach).



Other important information

People working with children	<p>Queensland’s working with children check system (the blue card system) is currently the same as the yellow card system in that it allows paid employees to start work while their application is being processed. Volunteers and business operators must wait until their application is finalised.</p>
‘No card, no start’ approach	<p>In 2017, the Queensland Family and Child Commission’s (QFCC) report <i>Keeping Queensland’s children more than safe: Review of the blue card system</i> (Review of the blue card system report) recommended that people be prevented from working with children while their applications are being processed (‘no card, no start’ approach; recommendation 20).</p> <p>The QFCC identified that allowing people to work while their application is being processed increases risks to the safety of children.¹⁵</p> <p>The Queensland Government has committed to a ‘no card, no start’ approach for all applicants in the blue card system. This includes a number of other complementary reforms, including:</p> <ul style="list-style-type: none"> • allowing people to apply for a working with children check (WWCC) before they are engaged with a regulated employer • implementing an automated and streamlined application process.
Sole traders in Queensland	<p>Queensland has recently passed legislation to implement a ‘no card, no start’ approach to screening for sole traders providing NDIS disability services.</p>
Other states and territories	<p>The ability for people to start work while an application is being processed is different across states and territories.</p> <p>In the WWCC and working with vulnerable person (WWVP) systems in New South Wales, Victoria, Tasmania and Western Australia most people can begin working or volunteering while their application is being processed.</p> <p>In South Australia, Northern Territory and Australian Capital Territory most people must wait for their application to be finalised before starting work.</p>
Royal Commission into Institutional Responses to Child Sexual Abuse	<p>The Royal Commission into Institutional Responses to Child Sexual Abuse (Royal Commission) made recommendations that state and territory working with children laws allow people to start working while their application is being processed, as long as safeguards are put in place to protect children.</p>

¹⁵ Queensland Family and Child Commission 2017, *Keeping Queensland’s children more than safe: Review of the blue card system* report, p. 50.

Ability to start work

Ideas for new laws

C. Allow individuals to begin working with people with disability while their application is being processed

Laws could allow people to start working or volunteering with people with disability while their application is being processed. This would be on the basis that safeguards are put in place by service providers.

Issues to consider

This means that an individual could be allowed to work while their application is processed, even though they might not be granted a clearance once their application is considered.

This would be a change in Queensland's approach to volunteers. Currently, volunteers must not start work until their application has been finalised. It would also be inconsistent with the position being implemented for WWCCs.

Under the national policy framework, this approach requires organisations to implement specific risk management plans, including supervision. Additional safeguards can also be put in place to remove individuals where there is a risk while a full assessment is completed.

D. Adopt a 'no card, no start' approach

Laws could require people to have a valid worker screening check before they can start working or volunteering with people with disability.

Issues to consider

This strengthens the safeguards for people with disability because it would prevent people with concerning histories from working while their application is being processed.

This would be a change in Queensland's approach to paid employees. Currently, paid employees can start working with people with disability once they have submitted an applications.

States and territories have agreed to streamline the application process for a NDIS worker screening clearance and establish a National Clearance Database. This will improve processing timeframes for applications and enable employers to more easily verify and endorse applications.

This means that applicants with no or simple criminal history should be processed quickly and able to start work once their application is finalised. People with complex histories are likely to be the applicants with extended processing timeframes.

QUESTIONS:

Which ideas do you support and why?

Do you have any other comments, thoughts or ideas?

2.3 The interaction of screening systems

Why is it important?

There are a number of screening systems in Queensland that collect information to assess a person's eligibility to work in a particular environment, activity or role.

For example, the yellow card system assesses a person's eligibility to work with adults with a disability in particular service environments. The blue card system assesses a person's eligibility to work with children in particular regulated environments.

These systems have different purposes and screen individuals that provide different types of services. However, there are also similarities in the systems' objectives and operations, which has enabled the systems to work together to reduce duplication of screening.

What do our current laws say?

Exemptions were introduced into the yellow card and blue card systems in 2010. These changes were made to recognise the similarities and differences across screening systems in Queensland that may result in duplication of screening and inconsistencies.¹⁶

Duplication is reduced through the following mechanisms:

- People with a blue card who want to work with adults with a disability can apply for a yellow card exemption.
- The exemption of registered health practitioners.¹⁷

People working with children with a disability are in scope of the blue card system (not the yellow card system) and only have to undergo one check—a WWCC.

Registered health practitioners are out of scope of the yellow card and blue card systems and are automatically exempt from screening when providing services to children and adults with disability as part of their role as a health professional.

¹⁶ Criminal History Screening Legislation Amendment Bill 2010, Explanatory Notes, p 3.

¹⁷ Criminal History Screening Legislation Amendment Bill 2010, Explanatory Notes.



What has already been agreed?

The national policy framework for NDIS worker screening identifies a limited range of exemptions.

The *NDIS (Practice Standards—Worker Screening) Rules 2018* (the Rules) require people who meet the screening requirements to undergo screening, unless they are a secondary school student on a formal work experience placement with a registered NDIS provider.

The required scope of screening and the limited range of exemptions will have implications for the interaction of current screening systems in Queensland, particularly for people working with children and registered health practitioners as they will no longer be able to rely on an exemption.

For example, the following people will require an NDIS worker screening clearance:

- people providing registered NDIS services and supports to children with disability
- registered health practitioners providing NDIS services and supports as part of their professional duties.

The interaction of screening systems

Ideas for new laws

E. Separate screening systems

Screening processes could operate independently of each other.

Issues to consider

Current exemptions for blue card holders and registered health practitioners will need to be removed to meet commitments at the national level.

This could mean that people are required to obtain a screening check for each sector in which they wish to work, for example, people working with both children with disability and children more generally might require two checks—an NDIS worker screening clearance and a blue card.

F. Screening systems interact with each other

Options to continue a connection between the two systems could be explored.

Issues to consider

Current exemptions for blue card holders and registered health practitioners will need to be removed to meet commitments at the national level.

This option could identify opportunities to reduce duplication of screening and increase consistency across screening systems.



QUESTIONS:

Which ideas do you support and why?

Do you have any other comments, thoughts or ideas?

How to make a submission

Throughout this paper you will find ideas to assist your submission. You may wish to comment on all of the ideas or only those that interest you. Once you have considered the ideas in the paper, you can make your submission in writing, via email or online until **9 November 2018**.

Email: submissions@communities.qld.gov.au

Mail: Strategic Policy and Legislation
Department of Communities, Disability Services and Seniors
GPO Box 806
Brisbane Qld 4001

Online: www.getinvolved.qld.gov.au
www.qld.gov.au/DSAreview

Submissions close at 11.59pm on **Friday, 9 November 2018**.

Note that we will not publish your comments without your consent. Please tell us if you agree to your comments being published or used in public documents.

Do you consent to your comments being published? Yes No

¹⁸ Department of Social Services 2016, *NDIS Quality and Safeguarding Framework*, Australian Government, https://www.dss.gov.au/sites/default/files/documents/04_2017/ndis_quality_and_safeguarding_framework_final.pdf, p 95.

Ideas to consider

PART A – Suggestions for a new disability legislation

Please let us know what you think about the following proposed changes.

You can answer all of the questions or some of the questions and even parts of the questions, it is up to you.

1. Should we make our disability principles like those listed in the United Nations Convention of Rights of Persons with Disabilities (UNCRPD)?

- Yes
- No
- No opinion

Comments

2. Should we include specific principles to recognise the needs of different groups of people with disability (eg. Aboriginal and Torres Strait Islander people, people from culturally and linguistically diverse backgrounds, LGBTQI+ people, women and children)?

- Yes
- No
- No opinion

Comments

3. Should we have a Charter of Disability Rights in the laws?

- Yes
- No
- No opinion

Comments

4. Although the Government has developed a State Disability Plan (*All Abilities Queensland*) should the laws require the Queensland Government to continue to develop a State Disability Plan?

- Yes
- No
- No opinion

Comments

5. In addition to Queensland Government departments, should laws require other government bodies (e.g. statutory authorities) to develop disability service plans?

- Yes
- No
- No opinion

Comments

6. Should laws require the Queensland Government (and any other bodies required to prepare disability plans) to consult with people with disability when preparing the plans?

- Yes
- No
- No opinion

Comments



7. Should laws require the Queensland Government (and any other bodies required to prepare disability plans) to report on what the plans achieve?

- Yes
- No
- No opinion

Comments

8. Should laws require the Queensland Government to collect information on how people with disability use mainstream services?

- Yes
- No
- No opinion

Comments

9. Should laws set out requirements for how members of disability advisory committees are appointed, including specific attributes needed for a person to become a member?

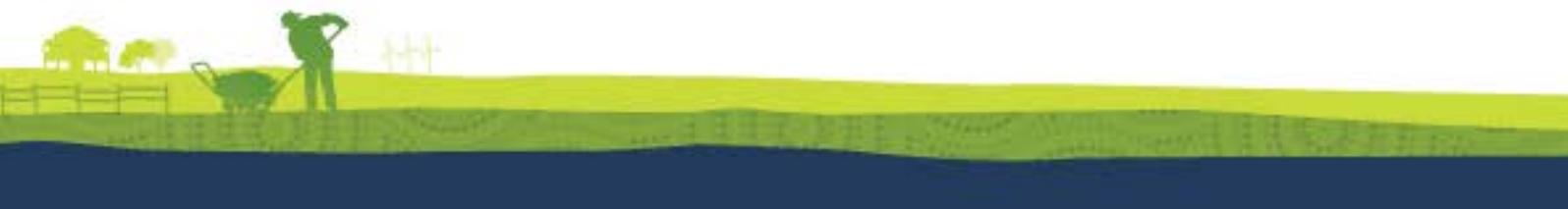
- Yes
- No
- No opinion

Comments

10. Should laws set out functions of disability advisory committees (for example, the Queensland Disability Advisory Council)?

- Yes
- No
- No opinion

Comments



11. Is there anything else you would like to tell us?

Comments

PART B – Worker Screening

You can answer all of the questions or some of the questions and even parts of the questions, it is up to you.

1. Should we expand the scope of NDIS worker screening so that people working with unregistered providers must get a clearance?

- Yes
- No
- No opinion

Comments

2. Should we adopt a ‘no card, no start’ approach or allow people to start working with people with disability while their application is being processed?

- ‘No card, no start’ approach
- Start working while application is being processed
- No opinion

Comments

3. How should the NDIS worker screening system interact with other screening systems in Queensland?

- Screening systems should be separate so that people are required to get a screening check for each sector they want to work in (e.g. people working with both children generally and people with disability may need two checks)
- Screening systems should interact so duplication of screening for people working in different sectors can be minimised
- No opinion

Comments

4. Is there anything else you would like to tell us?

Comments

Tell us a bit about yourself

You can choose not to answer any of the questions.

Which of the following best describes you?

- Person with disability
- Family member or carer of a person with disability
- Organisation providing services to people with disability (including advocacy)
- Business or professional group
- Other community or non-government organisation
- Local government
- Queensland or Australian Government
- Other (please specify)
- I prefer not to say

Which part of Queensland do you live in?

- Far North Queensland
- North Queensland
- Central Queensland
- South West Queensland
- North Coast
- South East Queensland
- Brisbane
- I prefer not to say

Where do you live?

- I live in a city
- I live in a town
- I live in a rural or remote area
- I prefer not to say

Which gender do you identify as?

- I identify as female
 - I identify as male
 - Other (please specify)
-



What is your age range?

- 18 – 24
- 25 – 34
- 35 – 44
- 45 – 54
- 55 – 64
- Over 65
- I prefer not to say

Do you identify as Aboriginal or Torres Strait Islander?

- I identify as Aboriginal
- I identify as Torres Strait Islander
- I identify as both Aboriginal and Torres Strait Islander
- I do not identify as Aboriginal or Torres Strait Islander
- I prefer not to say

Do you come from a non-English speaking background?

- Yes

If yes, please tell us your cultural and linguistic background

-
- No
 - I prefer not to say

Thank you — your feedback is important to us.



