



# ***HEALTH AND COMMUNITY SERVICES COMMITTEE***

**Members present:**

Mr PJ Dowling MP (Chair)  
Mrs JR Miller MP (Deputy Chair)  
Mr SW Davies MP  
Mr AS Dillaway MP  
Mr JD Hathaway MP  
Mrs DC Scott MP  
Mr DE Shuttleworth MP

**Staff present:**

Ms S Cawcutt (Research Director)

## **PUBLIC BRIEFING—INQUIRY INTO THE DISABILITY SERVICES (YOUR LIFE YOUR CHOICE) AMENDMENT BILL**

### **TRANSCRIPT OF PROCEEDINGS**

**MONDAY, 8 OCTOBER 2012**

**Brisbane**

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### **Committee met at 2.11 pm**

**CHAIR:** I declare open the public briefing on the Disability Services (Your Life Your Choice) Amendment Bill 2012. Hansard will be recording today's proceedings. It is our intention to publish unless there are some significant reasons we ought not publish. I welcome officials from the Department of Communities, Child Safety and Disability Services.

**CHANDLER, Ms Kim, Director, Strategic Policy and Intergovernmental Relations, Disability Services, Department of Communities, Child Safety and Disability Services**

**O'CONNOR, Ms Clare, Executive Director, Disability Services, Department of Communities, Child Safety and Disability Services**

**ROBERTSON, Ms Lynette, Director, Disability Programs and Innovation, Disability Services, Department of Communities, Child Safety and Disability Services**

**CHAIR:** The purpose of the briefing is to receive information from the department about the bill. Its purpose is to enable funding to be provided directly to an individual with a disability so the person can control the purchase of disability services. I understand that your briefing will also cover how self-directed funding will be implemented and your consultation about this process. At 3.30 this afternoon we will hold a public hearing on the bill when we will hear from some of the organisations that have made submissions. We have allowed 20 minutes for the briefing, and we may also have some questions after your presentation. Which one of you would like to begin?

**Ms O'Connor:** Good afternoon, Mr Chairman and members of the committee. Thank you very much for letting us present this afternoon on the bill. The objectives of the bill are really to encompass the importance of self-directed funding within the objects and the principles to make sure that we can enable funding to be provided, as you say, directly to individuals or to another party on their behalf—and we will come to that in the briefing—and also to require an agreement to be prepared for the funding to be distributed.

The bill introduces amendments that will bring Queensland into line with other Australian jurisdictions. When we describe the practice in other jurisdictions, you will see that it is very similar. The amendments also will reflect a contemporary service delivery environment and make sure that we are ready for the National Disability Insurance Scheme.

It has been shown that service systems that centre on control and choice have good outcomes for clients, and this has really been the focus of recent disability reforms across the country and also overseas—making sure that we can treat people with disabilities as equal citizens, putting them in charge of their funding and their service plans and their purchases.

So why do we have to amend the act? It is for a number of reasons. Currently we can only give funding to incorporated entities. While some individuals do receive funding, that only happens after they become an incorporated organisation under Commonwealth law or under the Queensland Associations Incorporation Act. That is very administratively burdensome for an individual. To illustrate that, in the case of a corporation under the Corporations Act, as a minimum they would have to have a director, a registered office and a constitution. They would have to prepare a financial report, as well as meet other requirements of ASIC. They need a management committee, association rules and financial reporting, as well as record keeping.

In terms of simplification, basically people will no longer have to incorporate and it will make it a much simpler process. So we can pay someone directly or where there is a child involved we can make the payment to the parents on the child's behalf. If a person is an adult, they may wish to nominate someone else to receive the funding on their behalf. If a person with a disability has impaired decision-making capacity, then under the amendments the minister would be able to approve funding to an appointed guardian or administrator for the person or an appointed attorney for the person or member of the person's support network other than a paid carer. That would mean that those relevant disability services could be obtained.

Certainly the amendments that are proposed as for the way practice occurs in other jurisdictions enable people to buy outside the funded disability sector directly for the first time, so from mainstream services. We have some work occurring on the safeguards in relation to those purchases. The self-directed support framework will be rolled out in two phases. Phase 1 is the trial of the host provider model and phase 2 will be the rollout of the direct funding model.

The bill inserts a new part into the act—funding to people with a disability—and it sets out key definitions for the new part including relevant disability services. And there is quite a list. I will not read them all for you but I am happy to put them into Hansard and provide a list for the committee. Some examples include personal care services, community access, respite, specialist accommodation support, mobility and orientation training, behaviour support, vehicle modifications, and aids and appliances. We expect under the amendments that an individual funding agreement will set out the terms and conditions under which funding can be provided and also the relevant disability services to be obtained with the funding.

In relation to other jurisdictions, our amendments will not set out detailed requirements—and that is the practice elsewhere—about administration, and monitoring and enforcement of agreements. Those matters would be set out in policy, in supporting documentation and in the agreements themselves. All Australian states and territories, other than Queensland and Victoria, have an express head of power in the disability legislation for funding to be provided directly to the person with a disability. Tasmania, Western Australia, the ACT and the Northern Territory require a person to enter into a funding agreement before they can receive funding, which is what the Queensland bill also requires. Tasmania is the only jurisdiction in the country that has more extensive and prescriptive detail in its legislation for compliance and enforcement of direct funding agreements.

In terms of the Your Life Your Choice framework, this will set Queensland up for the National Disability Insurance Scheme, where the focus is very much on providing opportunities for people with a disability to exercise choice and control over their disability supports. There is work occurring in setting up the National Disability Insurance Scheme in terms of definitions of reasonable and necessary supports, and we look forward to the results of those consultations and deliberations.

As I mentioned, there will be two phases. The minister has already invited people to participate in the host provider model, which basically sets up a regime of providers who can assist people with the purchase of services and that can be done under the act as it currently exists. Following on from that there will be the direct funding and expansion of the host provider model, and that will occur in 2013 if the amendments are passed.

In terms of the policy and procedures that we have to develop for implementation, as you mentioned before, how and when payments will be made, how the reporting requirements will unfold and who we intend to require in relation to reporting against the list of services that the people are purchasing, employment and insurance requirements, employment of family members and how the funding received by people would be excluded from being assessable income for taxation purposes—and other jurisdictions have rulings on that from the taxation department and social security—and things like the GST implication for the department associated with direct funding. We are working actively on those issues now. The policies are under development. Like other jurisdictions, there will be the legislation, the policies, the guidelines and the funding agreements.

In relation to consultation on the framework, there has been very active consultation both in 2011 and 2012. There have been workshops, a co-production meeting earlier this year and a follow-up meeting in April. There was a meeting in May with the Queensland Disability Advisory Council members. The minister has also had a round table discussion in relation to these issues and is continuing to work with stakeholders. I have met with the Community Safeguards Coalition a couple of times to discuss self-directed funding. Most recently we have consulted with our new Adult Guardian in relation to the amendments and clarifying the role of guardians within the role of the framework and the role of administrators. Basically it is a simple legislative amendment but underneath it sits a range of policies and guidelines that are under active consideration. Thank you very much.

**CHAIR:** I acknowledge that Desley Scott has now joined us. She arrived right at the commencement of Ms O'Connor's presentation. Ms Robertson, did you have something you wanted to add to that?

**Ms Robertson:** No.

**CHAIR:** Ms Chandler?

**Ms Chandler:** No.

**CHAIR:** Are there any questions from members of the committee?

**Mrs MILLER:** What are the audit requirements on this money?

**Ms Robertson:** People will need to provide reporting and accountability back through the department, and that will be set up in the funding agreement. In terms of the processes for reporting back and being clear on where expenditure has gone, we are still working through those. Other jurisdictions have clear guidelines and rules, and we will be looking at those as part of that.

**Mrs MILLER:** Under the previous arrangements where you had incorporated bodies, the department would pay for audits to be completed. Is it the intention of the department to pay for audits to be completed?

**Ms Robertson:** Again, in terms of whether that is part of the overall funding for a person and how their funding is used, it is something we will need to work through.

**Mrs MILLER:** So you have not considered that yet?

**Ms O'Connor:** In terms of brokerage arrangements, for example, under the first tranche of invitations that have gone out to families the minister has put a five per cent loading that can be used for a range of administrative purposes and that would fall within that. In the reporting back against the national minimum data set, for example, the acquittal of funding sits within that five per cent. So that is in addition to the package that people get for their disability services.

**Mrs MILLER:** So will you be mandating that an audit be conducted at least on an annual basis on this funding that might go through completely just to parents?

**Ms O'Connor:** It would be subject to the requirements within the public sector and the audit arrangements that are in place under things like the financial management standard and the financial accountability.

**Mrs MILLER:** I am well aware of that.

**CHAIR:** I think it is fair to point out that this is a departmental briefing. Policy questions need to be directed to the minister or to the government.

**Mrs MILLER:** No, it is not a policy issue. It is a difference between what happens now under the existing arrangements and what you are proposing to do in the future.

**Ms O'Connor:** Yes.

**Mrs MILLER:** So will you come back and advise this committee on what you intend to do in relation to those audit requirements?

**Ms O'Connor:** We are happy to come back and respond further, but in terms of the acquittal of public moneys it will be subject to the same regimes as for current. The arrangements for reporting back that exist, for example, under brokerage models at the moment do have people acquit and the brokers acquit the moneys that go out to people with disability services. The administrative fees that are charged within that five per cent example that I have given cover off that acquittal under the financial management regimes.

**Mrs MILLER:** If you are going to give lump sums to parents directly, what training do you have in mind for parents?

**Ms Robertson:** We are proposing to roll out some sector training. By 'sector training' I mean for both organisations and for parents, families and people with disability. There is some training out now but it is very much focused on choice and control, but commencing early next year we will be rolling out training over the next couple of years. In the first instance we will be looking at skill development, information, the development of handbooks so that parents and people with disability have information about all of the requirements, what they need to do and also information about where else to go. It is fairly consistent with some of the other jurisdictions having a whole range of guidelines but we want to develop user handbooks that are quite friendly and help people interpret.

Government is also rolling out the host provider. People can also go to a host provider and the host provider can do some of that planning, some of that accountability, reporting and all of those sorts of things and manage that on behalf of a person, and they will still direct their funding but they could have a host provider as well. So there will be a couple of options for people.

**Mrs MILLER:** So the couple of options are a host provider or the person themselves?

**Ms Robertson:** Yes, or they could still directly purchase from an organisation.

**Mr DAVIES:** I have a question from a client of disability services. Going forward, what qualifications or requirements will a provider be required to have under the legislation? For example, do they have to have an ABN? This particular girl has a family member who provides care to her so she is wondering whether she employs this person.

**Ms Robertson:** In terms of the family member issue, that is dealt with quite differently in other jurisdictions. You will understand that the policy underneath this legislation is in development so there is no definitive answer, but in other jurisdictions some say no and others say you may if the person is not living in the house with you, or it is because of cultural reasons, or the person is employed through an organisation. You may have someone employed through an organisation and still be a family member, so that gives that separation I suppose. We are looking at the discussions around the NDIS and some of the information coming out of that as well in terms of family member employment.

**Mr DAVIES:** Apart from family members, what are the requirements or qualifications for people who are providing services? Currently it is agencies, but going forward it might not necessarily be agencies.

**Ms Robertson:** No. If it is agencies, obviously there will still be some coverage for the person. The agency will be providing services under the Disability Services Act. Where it is mainstream services, such as buying domestic assistance from an organisation that is not disability funded, they would meet any requirements that they are required to, as all mainstream services have to do. They may buy privately and they will be covered by consumer protection and all of those sorts of laws and requirements.

**Mr HATHAWAY:** I am more interested in extending on from what Steve was talking about, which is the mechanisms. You talk in the document about the mechanisms of separation I guess of a host provider, because that provider may also be a provider of a service that their client might want. What sorts of mechanisms are we talking about?

**Ms Robertson:** For the host provider and the service, they need to be able to account separately for the funding and report to the individual and to the department about the way that funding is expended. It can be a host provider. It is like a little service model within an organisation, and obviously there is an intent around the separation of that and the service delivery. However, if a person chooses to purchase from that same organisation they can do that.

**Mr SHUTTLEWORTH:** I am going to ask an amalgam of all that has happened so far. It is more of a concern. Under this bill, people are to be provided with a level of choice, which I think is a fantastic thing and that is the way we are heading. But being that they are people with disabilities their capacity to access consumer protection mechanisms, fair trade and so forth is probably limited. This comes back to what Jo-Ann was asking, and that is: how is the department going to provide a level of protection in terms of auditing service providers and also ensure that in relation to the money that has been provided in a case funded model to an individual they are getting a good bang for their buck and that individuals are being well protected and well serviced?

**Ms Chandler:** I think that risk is something that we will have to manage carefully and in partnership with the person in receipt of the funding. As Lyn has alluded to, where people purchase from a funded service provider there will be all the safeguards of the DSA currently in place. That service provider will be screened, will have a number of policies in place and will be subject to our complaints mechanisms. However, where they start to go outside of the funded service sector, those protections that are under the DSA tend to disappear. In relation to the policy work that will be undertaken before these amendments can be implemented, we will be working out how we can best manage risk and have a framework that is suitable so that people can exercise choice and control. Some of that may be around having enough information so that people know about the mechanisms they can access such as the normal complaints mechanisms like the Health Quality and Complaints Commission or the Anti-Discrimination Commission or consumer law, for example. Or it might be about managing risk where people, for example, who have impaired capacity are in receipt of restricted practices. We have a requirement—and it is still to be developed—that they only access funded services where all the safeguards in part 10A of the act would apply.

**Ms Robertson:** Some other jurisdictions have things relating to personal care. Where there is a vulnerability, there may be a policy in place where personal care can only be purchased from a service provider listed under the act, and people can exercise choice outside of that for mainstream things where there is less risk. They are the things we are looking at. We do not have the policies set on those, but they are certainly things we are exploring.

**Mrs MILLER:** So basically you are saying that the act could be passed but a proclamation date for the act could be a lot further away so that you can get your policies and procedures in place?

**Ms O'Connor:** Yes.

**Mrs MILLER:** How long do you think it would be before you would be looking to have the act proclaimed?

**CHAIR:** Is that a decision for the minister?

**Ms O'Connor:** It is a decision for the minister, but we are not contemplating commencement until at least April next year to enable the development of policies. Can I just add another point to the question before? Many people with disabilities, particularly people with physical disabilities, and the families of people with disabilities are very capable of purchasing from the private market. If they have impaired capacity, then that is a whole other regime that comes into play. People with spinal injuries, for example, want higher levels of choice and control and are very able to purchase some aspects from the private market. So we would be delaying commencement until we have a policy framework in place.

**Mrs MILLER:** Will those policies and procedures be written into the bill or the regulations?

**Ms Chandler:** No. The legislation is what you see there at the moment and all the policies and procedures will simply be in policy.

**Mrs MILLER:** Is there an intention to have regulations hanging off the act?

**Ms Chandler:** Not at present, but, again, that is a question for the minister ultimately. There is no head of power for a regulation for these amendments at the moment.

**CHAIR:** I am mindful of the time. I thank you for your presentation here this afternoon.

**Committee adjourned at 2.35 pm**