

Disability Services (Your Life Your Choice) Amendment Bill 2012

Explanatory Notes

Short title

The short title of this Bill is the Disability Services (Your Life Your Choice) Amendment Bill 2012

Policy objectives and the reasons for them

This Bill is part of a broader Government strategy and commitment to strengthen Queensland's frontline disability services. The Government has developed a strategy that focuses on streamlining and improving service access; increasing choice and control over disability supports for people with a disability and their families; promoting early intervention and prevention; and providing better value for money and reducing red tape for service providers.

As part of this strategy, the Government has developed the *Your Life Your Choice Self-Directed Support Framework* that will enable people with a disability and their families to take control of the planning, purchase and review of their disability services. One component of this framework will be the ability of a person with a disability or another person on behalf of the person with a disability to receive funding directly.

This Bill amends the *Disability Services Act 2006* (DSA) to allow the Government to provide funding directly to a person with a disability or a person on their behalf, as part of the self-directed funding framework.

The DSA regulates the funding of disability service providers. Currently in Queensland, funding may only be provided to incorporated entities under the DSA. A number of individuals have established incorporated entities which are a separate legal entity to the individual (either incorporated as an incorporated association or a company under the *Associations Incorporation Act 1981* or the *Corporations Act 2000*) and have had to meet the requirements of service providers in order to receive funding under the DSA. The additional requirements under the corporations

legislation, in addition to the reporting requirements under the DSA, are onerous and do not support choice and control over services and supports for people with a disability.

A power under the DSA for the Minister to provide funding directly to an individual will reduce red tape for people seeking to control their own funding. It also aligns Queensland with other States and Territories and will ensure that Queensland is well positioned to transition to any future National Disability Insurance Scheme.

Achievement of policy objectives

To achieve the policy objectives, the amendments to the DSA will:

- broaden the objects and principles of the DSA to encompass the importance of individual choice and control;
- provide a head of power to enable funding to be provided directly to individuals or to another person on behalf of an individual (such as a person nominated by the person with a disability or a guardian appointed for the person, or a parent of a child with a disability); and
- require an agreement to be prepared for the funding to be provided.

Alternative ways of achieving policy objectives

There are no effective alternative ways of achieving the stated policy objectives.

Estimated cost for government implementation

Administrative costs associated with the provision of funding directly to individuals will be absorbed within existing departmental resources.

Consistency with fundamental legislative principles

The amendments support the rights of people with a disability to have choice and control over their disability services and supports. The Bill is consistent with fundamental legislative principles.

Consultation

Consultation undertaken during the development of the Productivity Commission's Inquiry Report *Disability Care and Support* which

recommended the development of the National Disability Insurance Scheme indicated strong support from the community and disability stakeholders for providing more choice and control to people with a disability in accessing supports and services. There has been support from the disability sector in Queensland (key service providers and disability advocate organisations) to allow for funding to be provided directly to individuals.

Consistency with legislation of other jurisdictions

All Australian states and territories, with the exception of Queensland and Victoria, provide an express head of power for funding to be provided directly to a person with a disability. These amendments will bring Queensland into line with other jurisdictions.

Notes on provisions

Part 1 Preliminary

Clause 1 sets out the short title of the Act as the Disability Services (Your Life Your Choice) Amendment Act 2012.

Clause 2 provides that the Act will commence on proclamation.

Part 2 Amendments of the Disability Services Act 2006

Clause 3 provides that the Act amends the *Disability Services Act 2006*.

Clause 4 amends the objects of the Act in section 6 to provide that an object of the Act is to ensure that people with a disability have choice and control in accessing relevant disability services.

Clause 5 amends section 7 to highlight the new focus on consumer choice and control in the delivery of disability services. Section 7 is amended to provide that the objects of the Act are achieved by regulating disability services funded by the department to enable consumer choice and ensure the quality, safety, responsiveness and accountability of the services.

Clause 6 broadens the human rights principles in section 19 to emphasise the rights of a person with a disability to individual autonomy and independence, including the freedom to exercise choice and have control of their lives.

Clause 7 inserts a new Part 5A into the *Disability Services Act 2006* titled Funding to people with a disability.

Clause 7 inserts a new section 43A which provides that the purpose of the Part is to enable people with a disability to receive funding to obtain relevant disability services.

Clause 7 inserts a new section 43B which provides new definitions which are relevant to the new Part 5A, this is, 'individual funding agreement', 'parent', 'relevant disability services', and 'relevant person'.

An individual funding agreement is an individual funding agreement under the new Part 5A.

A parent of a child with a disability includes a person who exercises parental responsibility for the child, but excludes a person standing in the place of a parent of a child on a temporary basis. Circumstances where the exclusion applies would be where for example, a person is caring for the child on a temporary basis while the parents of the child are away temporarily. The parent of a child also includes, for an Aboriginal child or a Torres Strait Islander child, a person who is regarded as a parent of the child under Aboriginal traditions or Torres Strait Island customs respectively.

Relevant disability services for a person with a disability mean disability services within the meaning of the *Disability Services Act 2006*, and care and support associated with the person's disability.

For an adult with a disability, 'a relevant person' is a person nominated by the adult to deal with matters under the new Part 5A on behalf of the adult. In instances where the adult with a disability does not have capacity to nominate a person, a relevant person is a guardian appointed for the person under the *Guardianship and Administration Act 2000*, an attorney appointed for the person under an enduring power of attorney under the

Powers of Attorney Act 1998 or a member of the adult's support network (e.g. a member of the adult's family or a close friend of the adult) other than a paid carer within the meaning of the *Guardianship and Administration Act 2000*. Where funding is for a child with a disability, a relevant person means a parent of the child.

Clause 7 inserts a new section 43C which allows the Minister to approve funding to a person with a disability or a relevant person to enable a person with a disability to obtain relevant disability services.

If the Minister approves funding to a person, the funding cannot be provided unless the person enters into an individual funding agreement with the chief executive under the new section 43D. This ensures that there is a written agreement with appropriate governance which clarifies each party's responsibilities and obligations under the individual funding agreement.

Clause 7 inserts a new section 43D that specifies minimum requirements that the individual funding agreement between the chief executive and the person with a disability or the relevant person must specify:

- the terms and conditions of the funding that the chief executive considers appropriate; and
- the relevant disability services to be obtained with the funding;

Clause 8 omits the definition of 'support network' in Part 10A of the Act, as the Bill amends the dictionary in schedule 7 to include a new definition of support network, as it is also referred to in the new Part 5A.

Clause 9 amends the dictionary to insert additional definitions for 'individual funding agreement', 'parent', 'relevant disability services', and 'relevant person', and to amend the definition of 'support network' to provide that it is defined in schedule 4 of the *Guardianship and Administration Act 2000*.