



Queensland Advocacy Incorporated

Our mission is to promote, protect and defend, through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

Systems and Legal Advocacy for vulnerable people with Disability

www.pc.gov.au/inquiries/current/human-services/make-submission

By post: Human Services Inquiry

Productivity Commission

Locked Bag 2, Collins Street East

Melbourne Vic 8003

10 February 2017

Dear Sir/Madam

Thank you for accepting QAI's submission for the Productivity Commission's Human Services Inquiry

Yours sincerely,

Michelle O'Flynn

Director

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QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

1. About Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems, legal and individual advocacy organisation for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights of the most vulnerable people with disability.

Queensland Advocacy Incorporated's directs its systems advocacy to attitudinal, law and policy change, and supports a range of other Queensland and national advocacy initiatives. QAI also operates three individual advocacy services: the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program. The people who use these services provide us with insights into their experiences, needs and concerns. Our experiences in providing legal and advocacy services and support for individuals within these programs has provided us with a wealth of knowledge and understanding about the experiences, needs and concerns of individuals who are the focus of this inquiry.

2. Introduction

The Productivity Commission has been tasked with finding innovative ways to improve the efficiency and cost effectiveness of the human services sector, which covers a diverse range of services, including health, education and community services, for example job services, social housing, prisons, aged care and disability services.

In the first stage, as stated in the Study Report 'Introducing Competition and Informed User Choice into Human Services: Identifying Sectors for Reform' the Productivity Commission assessed many services that directly (for example, Disability support services and Disability employment services) and indirectly (for example, alcohol and drug, corrective, and mental health services) serve people with disabilities.

In the second stage of the Human Services inquiry the Commission will make recommendations on how to apply increased competition, contestability and informed user choice to those human services that were identified in the first stage.

Of the Productivity Commission's priority areas identified for reform, QAI will comment on the two in bold:

- **social housing**
- public hospital services
- end of life care
- public dental services
- human services in remote Indigenous communities, and
- **commissioning arrangements for family and community services.**¹

¹ November 2016 Study Report 'Introducing Competition and Informed User Choice into Human Services: Identifying Sectors for Reform'

3. Choice, Competition and Contestability

Choice is empowering and uncontroversial: it can facilitate greater independence and improve overall quality of life, particularly for people with disability who have long been denied dignity and full status as citizens and human beings, let alone choice and opportunities for self-determination. Underpinning user choice is the principle that, with some exceptions, informed users are best placed to determine which services and providers best meet their needs and preferences.

This is a fundamental principle underpinning markets, facilitating the matching of service users to their preferred services or providers, by putting users at the heart of service delivery through choice. Recent reforms to disability support services are beginning to return control and choice of people with disabilities to determine what support is best for them. However, the concept of self-determination by simply making choices as a consumer does to purchase cars or groceries is not the same.

The primary reason it is different for human services lies in their historical genesis. As a general rule, markets operate most efficiently when there is competition between suppliers and competition between consumers. However, an ideological commitment to unfettered competition does not necessarily sit well with the operational principles of a human service sector.

Service models that respond solely to competitive pressures threaten the agility of non-profit providers to generate the social capital integral to their foundation. Such organisations work for the public benefit, have a community focus and a sense of mission, and may utilise volunteers to support service delivery. For-profit services do not and generally cannot generate these collateral benefits to community because of a difference in prioritisation of profit over beneficial outcomes. Measures designed to level the playing field and mitigate the competitive advantage provided by, charitable status, for example, do so at the risk of mitigating the public benefits those organisations generate.

QAI prefers a mixed human services economy: one that recognises the importance of choice and control and competition, but also allows for 'block-funded' provision where the free market is not sufficiently responsive or has adequate specialisation and skills. QAI recognises that 'block funded' models rely heavily on external regulatory frameworks, because absent consumer choices, providers can only be trusted or compelled (through rules and regulations) to act in the interests of users. Examples of the types of services best funded through a block funding mechanism are:-

Auslan Interpreter Services

Advocacy – individual, family, systems, citizen, legal for example

Neighbourhood and drop-in centres

QAI also recognises that block funded models do not create financial incentives for providers to respond to users' needs in the way that user-directed funding does; and that service users

may feel disempowered when they have little or no say over the choice of service they receive, and have little redress if funding is allocated directly to providers.

However, QAI also recognises that there will always be specific support needs for people with disability that may not be efficiently or fully met by a for-profit system. We illustrate the importance of user choice on the demand side, and the limits of the for-profit model on the supply side with the following case example.

Case Example

A young man with moderate cognitive disability lived in a 'transitional unit' duplex owned by the State of Queensland, and with 24 hour support by a for-profit disability service. Taking into account the physical design and arrangements of the accommodation, the young man's assessed need for support, and the safety of their employees, the disability service and the Department of Disability Services Queensland settled on a support agreement that cost the state just under \$800 k per annum. Under the agreement, the young man had two support workers with him at all times, separated from him by a transparent Perspex safety glass screen that allowed them to monitor his behavior.

The Queensland Civil and Administrative Tribunal ('QCAT' or 'the Tribunal') ordered this young man's otherwise unlawful 'containment' pursuant to the restrictive practices provisions of the *Disability Services Act 2006* (Qld), itself introduced by parliament following recommendations made by Carter J following his investigation of neglect, abuses and deaths at the Basil Stafford Centre at Ipswich near Brisbane in the 1990s.²

Following years of determined advocacy and legal representation, the Tribunal agreed to trial an alternative accommodation and support arrangement for the young man. The arrangement was proposed by a not-for-profit service provider that has a strong commitment to human rights and social justice principles over the 'bottom line'. Under this proposal, the young man would live in a rented home close to his family, and the service provider would offer day-only support with no containment and locked doors. Advocacy convinced the Tribunal that out of self-interest the existing service had overstated the young man's risk profile. The young man would have the freedom to come and go as he pleased.

That arrangement has been successful. For the past four years the young man has lived independently, with minimal support, and runs a small business selling second hand goods at a weekend market. His annual support costs less than half of what it did when he was under 24 hour confinement.

Human services run 'for-profit' do not necessarily provide better quality services, or less expensive ones. The for-profit focus on the 'bottom line' is not a negative in-itself, but it may be when there are few other organisations competing for government contracts-for-service and therefore few incentives to find efficiencies. QAI is well aware of for-profit service providers that have delivered excellent direct support services without compromising quality and personalised supports, however, these services have been established with people with

² Carter J. 2006. *Challenging Behaviour and Disability: A Targeted Response*.

disability and their families as the driving force in their approaches and ethical standards and with a long-term relationship with the civil society movement.

Note on Choice

The Study Report states that many people who enter social housing are likely to be capable of exercising choice over their housing options. It must be recognised that there will also be many people living in social housing who are unable to exercise choice without support for decision making, particularly people with cognitive disabilities or psycho-social disabilities.

Introducing competition and contestability and informed user choice can improve the effectiveness of human services, but this will not necessarily happen in areas where people do not have access to someone they trust to help them to make an informed choice, and particularly if their support needs are not met on an individualised basis. When people are forced to share their care because of insufficient funds, forced or coerced tenancy has been problematic to the point that many people in these living arrangements experience neglect, abuse, violence, and or exploitation.

QAI commends the body of recent work on supported decision-making to the Productivity Commission, and the many other developments of decision supports in the disability sector.

4. Priority Areas and people with disabilities

4.1 Social Housing

Before considering ways to increase the effectiveness of the social housing system by introducing greater choice, competition and contestability, the following principles should apply.

- *Right to a home of one's own³ like everyone else.* Independent living in community is always the best option. Institutional living may be cheaper to build and maintain initially, but only at the expense of the quality-of-life cost to people with disabilities. The goal must always be the elimination of segregated, congregate and socially isolated environments.
- *Freedom to choose where and with whom they live.* Again and again, social housing providers favour the economies of scale of medium and high-density ghetto developments, and group homes. These become the person's 'free choice' of residence when private rental is the only other alternative.
- *Access to appropriate well-funded self-directed support and services to live freely in the community.* Housing and support must go hand in hand for people with disabilities, but never from a single provider. Adequate, affordable and user-directed support is crucial to preventing abuse, neglect and harm; deliver enhanced outcomes, and cost no more, often less, than traditionally run services.
- *Housing is indispensable for meeting other needs* - employment, health, income support, social engagement and opportunities for freely-given natural supports through relationships; and supports the inclusion and participation of persons with disability in community life

'Market-wide' strategies

Government funding for housing has shifted over the past 50 years from direct capital investment in affordable housing properties, to providing preferential tax treatment for investment in private housing and rent assistance for people on lower incomes. This has created an enormous shortfall in affordable housing. Australian cities rank high on 'worst in the world' affordable housing comparison tables, and Sydney is currently number 2 on the Demographia International Housing Affordability Survey list⁴ but regional Australia fares little

³ file:///qai-dc/homes\$/michelleo/Downloads/Sub%2030%20(1).pdf

⁴ <http://www.demographia.com/>

better. Social housing providers compete against one another and other housing providers in a stacked housing market. The efficacy of steps to increase competition, contestability and informed user choice in social housing will be marginal if not accompanied by steps to boost them across the whole housing market.

Introduce tax concessions to improve affordability. There is currently no capital gain tax or state land tax on owner-occupied housing. This costs \$45 b *per annum* in revenue foregone and inflates the market by encouraging speculative spending.

Modify the treatment of housing investment income. Negative gearing and the prospect of capital gains encourage speculation. They inflate the market; make first home buyer entry difficult, and put residential dwellings out of the reach of social housing providers.

Stamp duties and land tax should be reformed across a broader base and restructured so they are applied progressively, according to property values per square metre. Stamp duties should be replaced by an extended land tax.

Community housing strategies

Rather than funding supply growth, the Commonwealth's housing funding distribution to the states has acted as an operational subsidy to prop up a system in which rents no longer cover operating costs. The sale of public housing by state governments has had an impact on city and regional housing markets alike. Many governments have shed both their employee and public housing stock in rural and regional communities, resulting in a reduced supply of affordable homes and increased competition in both rental and home-buying markets. Social housing is often the only viable and sustainable option for people with disability who are wholly dependent on their disability pension and other Centrelink benefits. The Commonwealth can improve social inclusion for persons with a disability by funding more social housing that accommodates the needs of this vulnerable group, and particularly by favouring providers who understand the need for salt and pepper-style housing rather than concentrated cluster housing.

Pensioners and people dependent on welfare or disability payments are priced out of the private rental market, and face fierce competition for the social housing safety net. An adequate supply of social housing means older Australians are better able to age in place and not have to forgo daily essentials simply to pay their rent. People with disability are not left to fend for themselves in substandard dwellings that make no allowance for their particular needs. Women escaping domestic violence are not forced to stay in motels or, worse still, remain in abusive relationships.

Community housing providers do not stop at providing an affordable home: often they have established and strong links with providers across a range of social services, if not providing such services themselves. When people with disability have access to secure, appropriate and affordable homes, they become more productive members of the community, easing demand on health, police and other social services.

Social housing is better able to meet the needs of disadvantaged groups as it offers lower rents, more secure and stable tenure, and appropriate modifications for accessibility, but

supply is limited and waiting lists far too long, and the heavy demand means that people have to demonstrate that they are in greater need than others on the waiting list, while those already housed in community housing have to demonstrate their continuing disadvantage to remain eligible. Rather than encourage people to improve their circumstances, for example, through gaining employment or working extra hours, the shortage of affordable housing and the need to demonstrate disadvantage has the opposite effect.

State and territory governments can improve the flexibility and personalisation of landlord services by transferring stocks of low income housing to the administration of community providers and by supporting community-managed low-cost housing initiatives. For example, Victorian Common Equity Rental Cooperatives (CERCs) and Rental Housing Cooperatives (RHCs) programs provide housing and stability for people who may otherwise have no sense of control over their lives. Self-managed housing improves resilience and independence especially in relation to health, family relationships and monetary concerns; reduces exposure to very-high housing costs and the risk of eviction; and makes it more likely they will gain and retain paid employment.

Address the tax status of Community Housing Providers. Many community housing providers currently meet the conditions for charitable status and do not want to put that status at risk. The more they engage in trading activities the more they risk losing charitable status.

Property transfers and land contributions can accelerate stock transfer from states to community housing providers and community housing providers can develop underutilised land.

The Commonwealth can expand affordable housing through innovative finance.

Community housing providers need access to a pool of low-cost long-term private funding such as a new asset class of private investment in rental housing, but to do that needs a government underpinned finance mechanism.

The National Rental Affordability Scheme ('NRAS') was the only program to attract private investment in affordable housing, and was very successful in Qld. NRAS delivered 2,800 dwellings in Queensland in the last five years to 2015, all with private investment and well above the average of delivery on a per capita basis, by borrowing other people's capital and making the affordable housing equation work. NRAS facilitated partnerships across the not-for-profit, for-profit, development, and financial sectors. Many NRAS projects were joint ventures with different developers and mixed tenure, and were able to build sustainable communities with some private sales, some NRAS and some social housing.

NRAS brought direct private investment into the affordable housing arena and increased community housing providers' engagement with financial institutions - once financial institutions saw their capacity to be able to manage and build affordable housing.

As a supply stimulus, NRAS had been effective, creating a mechanism that enabled a combination of private equity, the private sector, community-housing providers and the government to work in collaboration. Delivery of NRAS under that [model] was successful, given that it had a substantial amount of inertia to overcome in its initial stages.

Queensland put more resources into NRAS and made the criteria far more specific, including the eligibility criteria for tenants. Queensland had a much higher level of control and far more rigid requirements through the application and management process as well as embracing the scheme.

Eliminate ‘percent of income’ rent calculation (which is also an employment disincentive) and peg rent in social housing to a proportion of market rate.

The Henry Review proposed that rent assistance should be increased so that assistance would be sufficient to support access to an adequate level of housing. It should be indexed in line with market rents to reflect growth, and should be extended to public housing tenants, with recipients paying rents that reflected market rates, subject to gradual transitional arrangements.

The Henry review argued that a new source of funding should be made available in respect of the tenants who have high housing needs, such as those with high costs due to disability or people likely to face discrimination in the private market. The payment would be based on the needs of recipients and, where practical, directed by them to providers of their choice.

Introduce Social housing policy reforms such as-

- Elimination of ‘anti-social behaviour’ provisions. Replace them with supports to promote harmony in multiple dwellings.
- Promote preventative and trust-based approaches
- Provide for independently reviewable decisions
- Fund tenancy advice and advocacy out of bond capital.⁵
- Place a higher priority on the obligations and responsibility of landlords when it comes to house modifications for those with particular housing needs.
- Introduce measures, such as tax incentives, to encourage landlords to improve the energy efficiency of their properties and to make required modifications for tenants with disability.

⁵ The National Disability Strategy 2010–2020 was endorsed by COAG on 13 February 2011.⁹⁶ and sets out six priority areas for action. Housing is under the objectives of inclusive and accessible communities and under Economic security. The Strategy recognises the importance of having antidiscrimination measures, complaints mechanisms and advocacy, which would have an important role in ensuring that **people with disability are treated fairly** in the rental market.

Reduce supply of housing shortage by-

An approach to sustain people with disability living in either (a) social housing or (b) private rental properties that would respect their rights to determine where, how and with whom they live could entail the following strategies on a state and national basis:-

- Match people (according to age, interests, lifestyle etc) who are social housing eligible with people with disability but with the final determination being that it must be a mutually agreed arrangement, but one that is not indefinite if either party wants to end the arrangement. This could occur in either social or private rental houses.
- Subsidise private rental to median priced market properties so that people with disabilities can access affordable private rental either on an ongoing basis or in the interim until suitable social or public housing is available to them. Subsidies should equate the rental to what a person would pay for a similar public or social housing premise in the same area. This is vital for people with disability who are unable or unlikely to find paid employment. (*from our paper “A Home of One’s Own”
- Work with universities that assist students with finding suitable affordable accommodation – specifically students of human or social service/social justice studies who may be more amenable to sharing with a person with a disability. This could extend to international students.
- Establish services to find suitable housemates (both with and without disability) to share with people with disability in social housing or private rental based on existing web-based services*.

Certainly when one considers that people with disability living in private hostels and boarding houses are paying 85% of their DSP to live in substandard conditions, given food that is often of poor nutritional value and having to eat in the caretakers residence, often without privacy for visitors, phone calls or at times even personal care, risk to health by incorrect medication administration, risk eviction because of complaints, then one might think they could be better off taking the risk of living in private rental, possibly even without funded support.

4.2 Commissioning family and community services

The Issues Paper advances the argument that family and community services are fragmented, inequitable across jurisdictions, inconsistent in their eligibility criteria, incoherent in their identification of need, and not always effective in delivering outcomes even when outcomes (as opposed to outputs) are a primary focus. In addition, services are poorly coordinated and difficult to navigate.

QAI’s view is that the Productivity Commission’s own vision elaborated in *Disability Care and Support*, 2011, and implemented with modifications as the National Disability Insurance Scheme, provides a viable vision, model and trial for the commissioning of human services as

a whole. The concept of two 'tiers' of provision (originally three⁶) appears to be working, so far, the lion's share of pre-NDIS funding being transferred from block funded disability services into the choice and control of people with disability themselves, and a smaller residual proportion of funding reserved for 'Information, Linkages and Capacity' - the kind of services that are not easily transitioned to a user-pays model of service delivery, and which will be distributed through a series of tenders governed by a co-designed commissioning framework.

There is no point in reinventing the wheel, and QAI suggests that the Productivity Commission delays its recommendations on commissioning until it knows more of the successes and pitfalls of the ILC process.

⁶ Productivity Commission. 2011. *Disability Care and Support*. Volume One, Chapter Three.