



Access to the National Disability Insurance Scheme for people with impaired decision-making capacity

Report 2: 2018–19



Your ref:
Our ref:

27 September 2018

The Honourable C Pitt MP
Speaker of the Legislative Assembly
Parliament House
BRISBANE QLD 4000

Dear Speaker

Report to parliament

This report is prepared under Part 3 Division 3 of the *Auditor-General Act 2009*, and is titled *Access to the National Disability Insurance Scheme for people with impaired decision-making capacity* (Report 2: 2018:19).

In accordance with s.67 of the Act, would you please arrange for the report to be tabled in the Legislative Assembly.

Yours sincerely

A handwritten signature in blue ink, appearing to read "B. Worrall".

Brendan Worrall
Auditor-General

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Audit objective and scope

This is the second report on the National Disability Insurance Scheme (NDIS). We tabled *The National Disability Insurance Scheme: Report 14: 2017–18* on 3 May 2018.

The objective of the audit was to assess how effectively the Queensland Government is managing the transition to the NDIS and how well prepared it is to oversee services after the transition to NDIS.

The audit scope included a separate line of inquiry examining the effectiveness of the supports for those clients/potential clients of the NDIS who have impaired decision-making capacity. This report contains the results of that examination.

We assessed the effectiveness of the public sector entities supporting Queenslanders with impaired decision-making capacity as they make the transition to the NDIS. This included assessing the:

- processes to identify eligible NDIS participants within the Queensland guardianship and administration system
- administration systems for providing assistance in a seamless, appropriate and least restrictive way (that is, the way that places the least amount of restrictions on each participant's ability to make their own choices)
- co-ordination of advocacy services within the state.

The entities in scope for this report were:

- Department of Communities, Disability Services and Seniors
- Department of Justice and Attorney-General
- Office of the Public Guardian
- Public Trustee of Queensland.

The report also refers to the Queensland Civil and Administrative Tribunal's (QCAT) role in relation to people with impaired decision-making, but we did not audit the decisions it made. QCAT is independent from government in relation to its decision-making.

Appendix B contains further details about the scope and approach of the audit.

Appendix C contains the roles and responsibilities of other public sector entities that are involved in the NDIS but are not within the scope of this audit.

Reference to comments

In accordance with s. 64 of the *Auditor-General Act 2009*, we provided a copy of this report to relevant agencies. In reaching our conclusions, we considered their views and represented them to the extent we deemed relevant and warranted. Any formal responses from the agencies are at Appendix A.



Key facts



People with impaired decision-making are some of the most vulnerable clients of the NDIS.

People with impaired decision-making capacity

Approximately 1 500 people with a statutory guardian are eligible for the NDIS in Queensland.

Approximately 6 000 people with statutory administrators are eligible for the NDIS in Queensland.

Note: Statutory guardians make decisions to protect the rights of adults with impaired decision-making capacity. Statutory administrators manage an adult's financial affairs. QCAT declares impaired decision-making capacity.

Source: Office of the Public Guardian and Public Trustee of Queensland

Glossary

Terms	Definition
Advocate	An advocate is an individual or entity who speaks, acts, or writes with minimal conflict of interest on behalf of the interests of a disadvantaged person or group, to promote, protect, and defend the welfare of and justice for either the person or group.
Administrator	An administrator makes decisions about financial matters of an adult with impaired capacity. The appointment of an administrator is a legal decision (through the Queensland Civil and Administrative Tribunal). An administrator can be the Public Trustee or a private administrator.
Community Visitor Program	The Public Guardian manages the adult Community Visitor Program, which involves Office of the Public Guardian's community visitors independently monitoring different types of accommodation called 'visitable sites' where vulnerable adults live. An adult visitable site is defined under <i>the Public Guardian Act 2014</i> and includes authorised mental health services; the forensic disability service; or a place, other than a private dwelling house, that is prescribed under a regulation.
Financial matter	A financial matter, for an adult, is a matter relating to the adult's financial or property matters as per the <i>Guardianship and Administration Act 2000</i> .
Guardian	A guardian makes decisions about personal matters of an adult with impaired capacity. QCAT appoints guardians for adults with impaired capacity for a personal matter.
Impaired decision-making capacity	Impaired decision-making capacity is the inability to go through the process of reaching a decision and putting it into effect. There are three elements to making a decision: understanding the nature and effect of the decision, freely and voluntarily making a decision, and communicating the decision in some way.
National Disability Insurance Scheme	The National Disability Insurance Scheme (NDIS) provides eligible Australians under the age of 65, who have a permanent and significant disability, with the reasonable and necessary supports they need to enjoy an ordinary life.
National Disability Insurance Agency	The National Disability Insurance Agency (NDIA) is an independent statutory agency whose role is to implement the NDIS.
NDIS Quality and Safeguarding Framework	The framework is designed to ensure high quality supports and safe environments for all NDIS participants. It seeks to help participants and providers access information and resolve issues quickly, and strengthen the capability of participants, the workforce, and providers to participate in the NDIS market.

Terms	Definition
Nominee	<p>The <i>National Disability Insurance Scheme Act 2013</i> recognises two types of nominees when appointing friends and family to support someone with access to the NDIS. These are plan nominees and correspondence nominees.</p> <p>A plan nominee has the same authority as the participant. Correspondence nominees are unable to participate in the preparation, review, or replacement of the participant's plan or the management of funding for supports under the participant's plan.</p>
Personal matter	<p>A personal matter, for an adult, is a matter relating to the adult's care, including the adult's health care, or welfare. It can include: where the adult lives and with whom, services provided to the adult, diet, and dress. A personal matter excludes a special personal matter or special health matter as defined in the <i>Guardianship and Administration Act 2000</i>.</p>
Queensland Civil and Administrative Tribunal	<p>The Queensland Civil and Administrative Tribunal (QCAT) is an independent tribunal empowered to make decisions under various pieces of legislation including the <i>Guardianship and Administration Act 2000</i>.</p>
Restrictive practices	<p>People who live with intellectual disability or cognitive disability may engage in behaviours that place them and/or others at risk of harm. Service providers and state government agencies may use restrictive practices (when authorised) to protect a person from harm or doing harm. Note: governments have agreements in place to minimise or eliminate the use of restrictive practices.</p>
The Public Guardian	<p>The Queensland Public Guardian is an independent statutory appointment of the Queensland Government. QCAT can appoint the Public Guardian to make decisions to protect the rights and interests of adults for personal matters. The Public Guardian is the guardian of last resort.</p>
The Public Trustee	<p>The Public Trustee is a self-funding statutory authority that reports to Queensland Parliament through the state's Attorney-General. QCAT can appoint the Public Trustee to manage a person's financial matters.</p>

Introduction

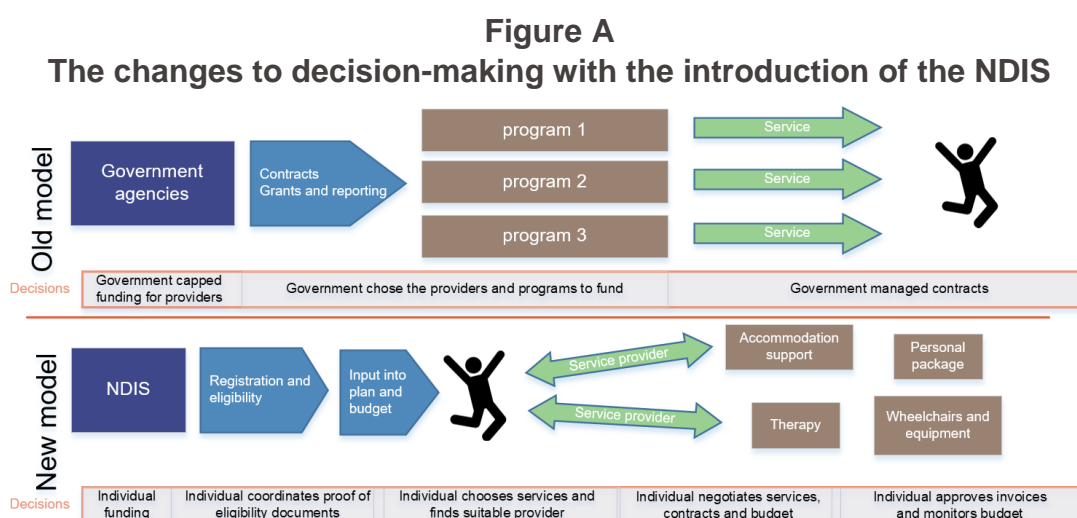
The National Disability Insurance Scheme (NDIS) is one of the largest public policy reforms ever implemented in Australia. It gives people with disability greater choice and control over the supports they can access in their NDIS plan and over who provides them. By the end of March 2018, 14 410 people with disability in Queensland had an approved NDIS plan.

Some people with disability may need support in accessing the NDIS. The National Disability Insurance Agency (NDIA), which implements the NDIS, provides some assistance through its Local Area Coordinators, across the state. In addition, people with disability can receive assistance through:

- **informal support** from a family member or friend, who can be recognised by the NDIS as a 'plan nominee'. The nominee can participate in the planning process, manage plan reviews, and enter into contracts with service providers on the person's behalf
- **advocates** (from a professional advocacy service). They can help people with disability prepare for NDIS planning and manage reviews and disputes, including legal challenges to NDIS decisions
- **guardians or administrators** Guardians are appointed by Queensland Civil and Administrative Tribunal (QCAT) to make decisions for a person who has been found to have impaired decision-making capacity for decisions about personal matters. Administrators are appointed by QCAT or the Supreme Court to make decisions for a person who has been found to have impaired decision-making capacity for decisions about financial matters.

Choice and control

As the new NDIS model places greater emphasis on the need for choice and control, this may increase the amount of decisions individuals and their families and carers need to make. Figure A demonstrates this.



Note: Participants whose NDIS funds are self-managed approve invoices. Invoices of participants whose funds are NDIA managed are approved by the NDIA.

Source: Queensland Audit Office

Guardians and administrators

People with impaired decision-making capacity may need support in accessing the NDIS. Providing this support is changing the way the justice system (in particular the Office of the Public Guardian, Public Trustee, and advocacy services) support their clients who may be eligible for the NDIS.

Entities in the guardianship system, including the Public Guardian and the Public Trustee, play a role once appointed by QCAT. Guardians make decisions for personal matters, which may include matters related to health, accommodation, and/or service provision. The Public Guardian also has a role protecting the rights and interests of people subject to the use of restrictive practices (including short-term approvals for the use of containment or seclusion). The Public Trustee makes decisions about financial matters for people with impaired decision-making capacity.

The Department of Justice and Attorney-General (DJAG) funds the Office of the Public Guardian from its appropriation. The Public Trustee charges its clients fees.

Disability advocacy services

Some people with disability may need help in accessing the NDIS regardless of whether they have impaired decision-making capacity or not. They may be able to get support from family, friends, or a professional advocate. Access to a suitable advocate may reduce the need for someone to have a guardianship appointment.

Advocacy services are funded by:

- the Department of Communities, Disability Services and Seniors—disability advocacy services. These services are delivered by non-government (not-for-profit) organisations and associations that support a range of people with disability across the state
- DJAG—legal advocacy services provided by legal aid commissions and community legal centres across the state. These are for people experiencing financial disadvantage and priority clients, including people with disability
- the Australian Government—advocacy services through the National Disability Advocacy Program. These services are delivered by non-government (not-for-profit) organisations and associations that support a range of people with disability.

Community Visitor Program

The Public Guardian also manages the adult Community Visitor Program. This involves community visitors independently monitoring different types of accommodation called 'visitable sites'. An adult with an impairment, or with impaired capacity may live in places such as:

- disability accommodation
- authorised mental health services
- some private hostels
- the Forensic Disability Service (for people with disability and a history or risk of criminal offending)
- community care units.



Community visitors make inquiries and lodge complaints on behalf of residents and can refer complaints to an external agency (such as the Department of Communities, Disability Services and Seniors, the NDIA, Queensland Health, or the Residential Services Unit) where appropriate. This program plays an important role in protecting the rights of vulnerable Queenslanders. The impact of changes on this program under the NDIS are not yet fully understood.

NDIS quality and safeguards

A new NDIS Quality and Safeguards Commission (NDIS Commission) will start operating in Queensland from 1 July 2019. Until that time, NDIS participants, providers, and workers will continue to be covered by existing state-based quality and safeguard arrangements.

The NDIS Commission will be responsible for working to improve the quality and safety of NDIS services and supports, investigating and resolving problems, and strengthening the skills and knowledge of providers and participants across Australia.

The framework has three components:

- developmental—building capability skills and support systems
- preventative—preventing harm and promoting quality
- corrective—responding if things go wrong.



Summary of audit findings

Supporting the transition of people with impaired decision-making capacity

Planning—Department of Justice and Attorney-General

We assessed the planning that the Department of Justice and Attorney-General (DJAG) undertook to prepare for the transition of its clients to the National Disability Insurance Scheme (NDIS) in 2014. It developed an overarching NDIS transition plan that covered all the affected business units and independent statutory authorities in the justice portfolio, including the Office of the Public Guardian and the Public Trustee.

While formal measures were not in place to monitor progress of the affected business units under its transition plan, DJAG did periodically seek updates from both the Office of the Public Guardian and the Public Trustee in relation to:

- impacts on both agencies as a result of the interface with NDIS
- preparedness for NDIS.

These updates were sought as part of the reporting process for the group overseeing Queensland's transition—the Reform Leaders Group.

Managing the transition—the Office of the Public Guardian

In preparation for the transition to the NDIS, the Office of the Public Guardian proactively put processes in place to support its clients and developed information for its staff. It identified which of its clients with formally appointed statutory guardians would be eligible for the NDIS and worked on data-sharing agreements and ways to support them. However, it did not complete its preparation in time for the start of transition in 2016. This is in part due to uncertainty arising from operational aspects of the NDIS. Some work is still in progress.

By May 2018, the Office of the Public Guardian had registered 87 per cent of its clients in regions that have completed transition, and 69 per cent of its clients have an approved plan. The National Disability Insurance Agency (NDIA) approves the plans.

Managing the transition—the Public Trustee of Queensland

In preparation for the transition to the NDIS, the Public Trustee has also proactively put processes in place to identify and support its clients and has developed guidelines and training for its staff. However, it does not keep sufficient records of staff attendance or completion of NDIS training sessions. These are necessary, as attendance records from NDIS training sessions can demonstrate that staff have the information they need to fulfil their roles to refer clients with impaired decision-making capacity for assistance in registering with the NDIS.

The Public Trustee identified which of its clients would be eligible for the NDIS and worked on registering them with the NDIA. However, it did not complete its preparation in time for the start of transition in 2016.

Its systems for registering are now ready for the rest of the transition. By May 2018, it had registered 100 per cent of its clients in regions that had completed transition to the NDIS.

Managing changes in workload

In 2016, when the Townsville region transitioned to the NDIS, the Office of the Public Guardian recognised that supporting its clients through the registration and planning process placed additional pressure on staff. It identified that it did not have the resources to allocate to the extra work.

Uncertainty about the operational aspects of the NDIS reduced the Office of the Public Guardian's ability to analyse the additional resources needed before transition began. DJAG funds the Office of the Public Guardian from its appropriation as a grant. This grant has increased by five per cent since 2014–15.

The Public Trustee is self-funded, and its fee schedule is published in the Queensland Government Gazette. So far, it has absorbed the additional resource costs associated with assisting its clients in transitioning to the NDIS.

The Queensland Civil and Administrative Tribunal (QCAT) is funded from DJAG's appropriation. It has estimated that the additional workload over 2018–19 will see QCAT's wait time for considering appointments (related to the NDIS) increase from the current 13 weeks to 16 weeks. To date, QCAT has received approximately 390 NDIS-related guardianship applications. The delays in hearing matters will likely result in delays to the ability of adults with impaired capacity to participate in the NDIS.

Review of workload

In February 2018, the Office of the Public Guardian initiated a review of its operations in preparation for a future funding submission. Although the review is not yet complete, the Queensland Government has allocated additional funding from DJAG's appropriation of \$2.5 million in 2018–19 for the Office of the Public Guardian and QCAT to meet immediate demand pressures. Of this amount, \$2.2 million has been allocated to the Office of the Public Guardian to help with the additional workload created by the NDIS. QCAT received \$0.3 million for two registry positions and to partially pay for the required sessional tribunal members to hear related matters.

The adequacy of this funding needs to be confirmed with reviews and analysis across the Office of the Public Guardian and QCAT.

Monitoring the transition

Monitoring progress of clients

Both the Office of the Public Guardian and the Public Trustee are monitoring the intake rates of their clients as they make the transition to the NDIS.

As the financial decision-maker, the Public Trustee supports its clients in registering for access with the NDIS. It is not involved in the personal and lifestyle decisions required to develop an NDIS plan or in contracts with service providers. At present, it can't access data about this from the NDIS and can't monitor plan approval rates or budgets for its clients.



This increases the risk that supports and services that could be funded through the NDIS may be paid for from individuals' own funds. The Public Trustee is currently working (with other public trustees nationally) to negotiate with the NDIA to be recognised as a limited plan nominee. This would give the Public Trustee access to the information from the NDIA it needs to manage its client's financial affairs but not personal information.

The Office of the Public Guardian can access data on its clients, as the NDIS recognises the role of a guardian. It is monitoring the progress of its clients.

Monitoring quality and safeguards

The NDIS Quality and Safeguarding Framework (the framework) released in February 2017, establishes the NDIS Quality and Safeguards Commission to give effect to the Commonwealth Government's regulatory responsibilities under the Framework. It allows anyone to make a complaint about a provider of NDIS-funded supports. This may include participants, family members, an individual worker or provider, an advocate or community visitor, a professional, or a member of the community. Complaints may be about suspected abuse, neglect, or exploitation.

The framework also has a capacity building component, as relatively few participants and their families are likely to have had experience in managing contracts with service providers. It acknowledges that some participants may need support, for example, in recognising good and bad quality NDIS providers. Participants may also need help to understand their rights to complain and to exercise them. This will include people with impaired decision-making.

The Office of the Public Guardian is amending its existing training programs and guidance for staff on their responsibilities in reporting critical and non-critical incidents. The Public Trustee trains its staff in managing the financial affairs of its clients and has amended the training to include the impacts of the NDIS.

However, neither the Office of the Public Guardian nor the Public Trustee has reviewed complaints management policies and systems to ensure they are ready to support clients in referring complaints about NDIS service providers under the new national framework.

Community visitor programs in all jurisdictions are currently being reviewed by the Australian Government to determine their ongoing role with the introduction of the NDIS Quality and Safeguards Commission. Given the important role the program plays in Queensland, the Office of the Public Guardian will need to monitor the impacts of the new framework on its ability to continue to protect the rights and interests of its clients.

Coordinating advocacy services

We found there are gaps in the geographic coverage and types of advocacy services for people with disability who do not need a formally appointed (by QCAT) substitute decision-maker. If an adult does not have support from people in their lives to assist them in making decisions, applications may be made to consider assigning a formal substitute decision-maker. Advocacy services could fulfil the role of providing support to people with disability who require support but do not need formal substitute decision-making appointments.

The new model relies on giving people as much choice and control as possible, so it is important that help is provided to enable successful access to appropriate support plans. The NDIS Local Area Coordinators and the NDIS information, linkages and capacity building activities provide some support to participants. But the NDIS does not include advocacy. National evaluations have found that people who cannot strongly advocate for themselves are getting poorer outcomes from the NDIS.

Advocacy groups have raised concerns publicly and with us about:

- gaps in advocacy provision for people with disability
- shortages of supply of independent face-to-face advocacy in regional areas
- the need to educate the community about advocacy services.

The Department of Communities, Disability Services and Seniors (DCDSS) funds individual, system, and some legal disability advocacy services. DJAG funds legal and system advocacy services, which are accessible by people with disability. Since the transition to the NDIS, DCDSS has increased funding for state disability advocacy services from \$3 million in 2015–16 to \$3.8 million in 2017–18 (an increase of 29 per cent). It has committed to extend the funding to 2020–21.

The Australian Government is currently reviewing its disability advocacy program and is maintaining existing funding levels until June 2020.

There is currently no overall state strategy for the coordination of state-funded individual and legal disability advocacy services. This increases the risk that the demand caused by the new NDIS model may disadvantage people who need help in accessing the NDIS.



Audit conclusions

The Public Guardian and Public Trustee have successfully supported most of their clients in accessing the NDIS in the regions that have already transitioned. Both agencies have made several process changes to accommodate the NDIS, but they are not fully ready for full scheme (after transition).

The Public Trustee has made changes to its processes but could make improvements to staff training and to client communications about the changes. The Office of the Public Guardian has also made many of the necessary changes but is still preparing and assessing its capability in terms of staff and systems.

Both agencies need to amend their processes to align with the new NDIS Quality and Safeguarding Framework (from 1 July 2019).

The transition to the NDIS and a National Quality Safeguarding Framework may affect the Public Guardian's Community Visitor Program. The results of a national review will inform the future operations of the program. In order to ensure Queenslanders are well supported under the new scheme, the Queensland Government will need to consider the impacts of the changes and work through the division of responsibilities between the national and state services.

Agencies involved in this audit agree there is a gap in the advocacy system for people who are not supported by the guardian and administration system but need help accessing the NDIS. These people require more help than a Local Area Coordinator provides, but they may not need a substitute decision-maker.

The agencies responsible for funding advocacy services still have work to do in delivering a strategic approach to the delivery of advocacy services. They have to ensure that those who need it receive enough support to successfully access the NDIS.

Recommendations

The Public Trustee

We recommend that the Public Trustee of Queensland:

1. review its complaints management policies, guidance, and training materials to align with the new NDIS Quality and Safeguarding Framework

The review should cover providing support to its clients (within the limitations of its legislative functions) to recognise when they have the basis for a complaint and how the complaints process works.

The Public Guardian

We recommend that the Public Guardian:

2. review its complaints management policies, guidance, and training materials to align with the new NDIS Quality and Safeguarding Framework

The review should cover:

- providing support to its clients (within the limitations of its legislative functions) to recognise when they have the basis for a complaint and how the complaints process works
- considering referrals of complaints from or on behalf of NDIS participants about service providers under the NDIS National Quality and Safeguarding Framework
- working with the NDIS Quality and Safeguards Commission on client data-sharing arrangements.

The Department of Justice and Attorney-General

We recommend that the Department of Justice and Attorney-General:

3. analyses the adequacy of the resources allocated to the Office of the Public Guardian and the Queensland Civil and Administrative Tribunal (QCAT) to ensure people with impaired decision-making capacity are effectively supported in getting timely access to the supports available from the NDIS

The analysis should determine the resources necessary to:

- effectively manage the initial increase in applications in (2018–19 and 2019–20) to QCAT for the appointment of the Public Guardian for a matter
- support people appointed a guardian in accessing the supports of the NDIS for the period of the appointment (maximum of five years).



The Department of Communities, Disability Services and Seniors

We recommend that the Department of Communities, Disability Services and Seniors:

4. develops a statewide strategy to support people with disability access the NDIS.

The strategy should include consideration of:

- the role of advocacy in supporting access to the NDIS
- actions to reduce the pressures on the guardianship system
- the results of the current review of the National Disability Advocacy Program to identify opportunities to improve coordination of Commonwealth and state-funded services.



1. Context

This chapter provides the background to the audit and the context needed to understand the report.

Transition to a National Disability Insurance Scheme

Queensland began planning for the transition to a National Disability Insurance Scheme (NDIS) in 2013. Townsville was the first Queensland region to make the transition in 2016, followed by Mackay. In 2017, it was the turn of Toowoomba, Ipswich, Bundaberg, and Rockhampton. Beenleigh, Brisbane, Maryborough, Robina, and Cairns started transition in July 2018. The last Queensland regions will be Caboolture, Strathpine, and Maroochydore in January 2019.

The *NDIS Bilateral Agreement between the Commonwealth and Queensland* estimates that by full scheme (in July 2019), there will be 91 217 Queenslanders in the NDIS. Some of these will have a statutory guardian or administrator appointed. Appendix D shows the estimated transition numbers by region of people with guardians and administrators.

People who may need support in accessing the NDIS

The NDIS model is built on the basis that there are benefits to be had when individual people with disability exercise choice and control over the supports they need. Some people with disability may need help to successfully make the necessary choices and decisions involved in accessing the NDIS.

People with impaired decision-making capacity

A person may have a decision-making impairment due to a range of factors, including an intellectual disability, acquired brain injury, or the effects of dementia.

In some cases, a person's decision-making capacity is impaired to such a degree that they lack legal capacity to make some or all their own decisions, either alone or with assistance. This is referred to as having impaired decision-making capacity. As appointing a guardian is a significant restriction on a person's ability to make their own decisions, the Queensland Civil and Administrative Tribunal (QCAT) only makes an appointment after careful consideration.

Appointing a guardian or administrator sits within a complex legal framework based on the following principles. A person:

- is presumed to have decision-making ability at law, and that right should be preserved to the greatest extent practicable
- may be able to exercise that decision-making ability with support, and has the right to support
- has a guardian or administrator appointed as an absolute last resort.



Statutory guardians and administrators

The Queensland guardianship and administration system operates to help adults with impaired decision-making capacity to manage their personal and financial matters.

QCAT appoints guardians and administrators as substitute decision-makers. In making the decisions for an adult, the guardian and/or administrator must apply the general principles set out in the *Guardianship and Administration Act 2000*. QCAT may appoint the Public Guardian as guardian for a person provided there is no other appropriate person available for appointment.

Some adults with a cognitive or intellectual disability may show challenging behaviour which could cause harm to themselves or others. To manage this behaviour, a range of restrictive practices may be required, and a guardian may be appointed to make decisions about their use. This is a complex area and can (when authorised) include: containment and seclusion, chemical, physical or mechanical restraint, and restriction of access to an object.

Administrators are substitute decision-makers for financial matters. This role is often (but not always) undertaken by the Public Trustee of Queensland (the Public Trustee).

QCAT must review an appointment of a guardian or administrator (other than the Public Trustee or a trustee company under the *Trustee Companies Act 1968*) at least every five years. If the matter is for restrictive practices, it is for a maximum of two years. QCAT can appoint the Public Trustee as administrators on an indefinite basis and private trustee companies for a maximum of five years.

Informal decision-makers

Not all decision-makers for people with impaired decision-making are formally appointed guardians and administrators. Depending on the type of matter and the decision to be made, some decisions can be made on an informal basis by members of the adult's existing support network without the appointment of a decision-maker for the adult.

Roles and responsibilities

The roles and responsibilities of federal and state government entities are affected by the introduction of the NDIS. There are several entities that play different roles in helping people with disability to access the NDIS. In the following paragraphs, we describe the different roles and responsibilities of the main entities/functions relevant to this audit.

Department of Communities, Disability Services and Seniors

Prior to administrative changes of government in 2017, the Department of Communities, Disability Services and Seniors (DCDSS) was the Department of Communities, Child Safety and Disability Services. For reasons of consistency we refer to the department by its current name. DCDSS leads and facilitates the delivery of disability services and community care services for people under 65 years of age. Its role is to:

- provide and invest in services delivered by the department and funded non-government organisations including personal care, accommodation, and carer support, respite, community access, therapy, and learning and skill development
- lead and facilitate whole-of-government NDIS transition planning and implementation
- support initiatives that create inclusive communities and services for people with disability.

DCDSS also funds advocacy services for people with disability and their carers.

Restrictive practices

The Australian and Queensland governments regulate the use of restrictive practices to protect people's human rights, and they have agreements in place to minimise or eliminate their use. DCDSS, QCAT, and the Public Guardian (as well as the NDIS Quality and Safeguards Commission after transition) play an important role in overseeing the use of restrictive practices in disability services.

Queensland Civil and Administrative Tribunal

QCAT is an independent body that appoints the most appropriate guardian or administrator where:

- it determines that an adult has impaired capacity
- there is a need for a decision or an adult is likely to do something that involves or is likely to involve unreasonable risk to the adult's health, welfare, or property
- not appointing a guardian or administrator will result in an adult's needs not being adequately met, or their interests not being adequately protected.

When QCAT receives an application, it must ensure it has all relevant information and material relating to the application. Its staff prepare for the hearing by:

- seeking the views of the adult and the adult's family and support network
- ensuring the applicant provides a completed health professional's report. This provides a health professional's opinion about a person's capacity for decision-making.

QCAT's experience is that NDIS issues may have already been raised in the application, by the applicant, and may be the reason for making the application. Alternatively, NDIS issues may be identified during the inquiry process by the QCAT registry.

NDIS issues could be due to a range of factors including that the adult has a limited or no support network and, without an appointment of a guardian, may not be able to navigate the NDIS system. The average time from receipt of the application to the hearing is currently 13 weeks.

Generally, only QCAT can approve the use of the restrictive practices of containment and seclusion. Such approvals can only be for a maximum of 12 months. The considerations in approving the use of containment and seclusion are significant and are detailed in the *Guardianship and Administration Act 2000*.

Office of the Public Guardian

When appointed as guardian, the Public Guardian is the substitute decision-maker for an adult pursuant to the terms of the QCAT order and requirements as detailed in the *Guardian and Administration Act 2000* (including general and health care principles). It also administers the Community Visitor Program.

Guardianship program

The Public Guardian can act as a person's guardian (if appointed by QCAT) to make decisions for personal matters, which may include matters related to health, accommodation, legal (but not financial or property) matters, and/or service provision. Such appointments are only made as a last resort, where a person is declared to not have decision-making capacity and if no one else appropriate is available to undertake the role.



Community Visitor Program

The Community Visitor Program involves the Public Guardian's community visitors independently monitoring different types of accommodation called 'visitable sites' where vulnerable adults live. It is separate from the guardianship function. Community visitors conduct announced and unannounced inspections of visitable sites to monitor and advocate for the rights and interests of the people at the sites.

Queensland's community visitors are paid, independent officers who provide system oversight by identifying problems that may not have been reported by families, friends, or workers. In 2016–17, Queensland community visitors made 5 224 visits to adult visitable sites, identifying 1 931 issues.

Restrictive practices

The Public Guardian also has a role in:

- monitoring and providing short-term approvals for containment and seclusion as part of a positive behaviour support plan
- approving restrictive practices if appointed as a restrictive practice guardian.

The Public Trustee of Queensland

The Public Trustee, established under the *Public Trustee Act 1978*, can be appointed as a person's administrator by QCAT.

The administrator is required to act honestly and with reasonable diligence and in accordance with the general principles of the *Guardianship and Administration Act 2000*. Its duties are to:

- determine the full nature and extent of the adult's financial interests
- ensure the adult receives all entitlements to income or benefits such as pensions
- develop a budget covering expected income and expenditure that ensures financial security and maximises the adult's independence and quality of life
- ensure the adult participates in the decision-making process to the greatest extent practicable
- review the performance of investments and consider the risk of capital or income loss or depreciation, the likely income return, and the timing of income return.

Participating in the NDIS has a direct impact on a client's personal finances. The Public Trustee as the financial administrator informs eligible clients about the NDIS and if necessary refers them for assistance with the initial step of registering with the NDIS.

The Public Advocate

The Public Advocate provides a systemic advocacy function for adults with impaired capacity. Unlike individual advocacy, this aims to address systems and structures that have an ongoing impact on them. The Public Advocate has broad powers to request information from people and entities in relation to adults with impaired capacity. It conducts research and prepares reports on systemic issues relevant to adults with impaired capacity.

The Public Advocate is monitoring the implementation of the NDIS across Queensland, with a focus on people with impaired decision-making capacity. As part of this work, it is planning to publish a series of case studies relating to the NDIS experience of Queensland adults with impaired decision-making capacity, including how well the NDIS has facilitated choice and control in their lives.



Disability advocacy service providers

The federal, state, and territory governments fund disability advocacy agencies to provide disability advocacy support in specific geographic areas. The agencies are not-for-profit organisations and may be categorised into generalist or specialist agencies:

- Generalist agencies provide advocacy support to people with any type of disability or cultural background.
- Specialist agencies may provide advocacy support to people with disability:
 - with a specific type of disability
 - with specific issues such as housing, education, or employment
 - from diverse cultural and linguistic backgrounds
 - from Aboriginal and Torres Strait Islander backgrounds.

Local Area Coordinators

Local Area Coordinators assist people with information and guidance about accessing the NDIS, developing and refining their plans, and linking them to community and mainstream services. They also work within the local community to ensure inclusiveness for people with disability.

Local Area Coordinators do not provide case management, do not act as an advocate for a person with disability, and cannot approve an NDIS plan.

NDIS Quality and Safeguards Commission

The NDIS Quality and Safeguards Commission began in early 2018 and will be operational in jurisdictions as they complete transition.

It will implement the NDIS Quality and Safeguarding Framework (the framework), which is intended to provide a nationally consistent approach to:

- empower and support NDIS participants in exercising choice and control
- ensure appropriate safeguards are in place to confirm that supports are safe, culturally respectful, and of high quality, and are linked to achieving the goals of people with disability
- establish expectations for providers and their staff to deliver high quality supports.

The NDIS Commission intends to work closely with those Queensland bodies who have responsibility for the regulation of products and services and other bodies who support people with disability.

Appendix C lists the roles and responsibilities of other entities involved in transitioning to the NDIS that are discussed within scope of this report.



2. Supporting transition

Introduction

The Queensland Government recognised that the transition to the National Disability Insurance Scheme (NDIS) was a large and complex reform affecting nearly all government services. Planning for the transition began in 2014, with all affected government agencies involved in the planning process.

In December 2014, a whole-of-government group with oversight of the transition to the NDIS—the Reform Leaders Group—endorsed the Department of Justice and Attorney-General's (DJAG) *National Disability Insurance Scheme (NDIS) Agency Specific Transition Plan 2014–2016*. The Director-General of DJAG and the Public Guardian are members of the Reform Leaders Group.

The Office of the Public Guardian and the Public Trustee of Queensland (the Public Trustee) are statutory entities within the justice portfolio. They both have clients with impaired decision-making capacity who will be affected by the transition to the NDIS.

Both report to parliament through the Attorney-General of Queensland and do not report to the Director-General of DJAG. For the purposes of the transition to the NDIS, they worked with DJAG on the development of the transition plan for the whole justice system.

Supporting the transition of people with impaired decision-making capacity

Department of Justice and Attorney General

More could be done to monitor the transition plan and coordinate transition to the NDIS across the justice system.

DJAG's plan had five key areas of action for its business units and statutory authorities. They were:

- **communication and engagement:** Support people with disability, and communities, in being well-informed and confident about what the NDIS means for them
- **client readiness:** Support people with disability, families, and carers in exercising choice and taking up opportunities
- **provider readiness:** Support non-government disability service providers in operating in a competitive, market-based environment
- **workforce readiness:** Develop a skilled and strong workforce
- **department/agency readiness:** Prepare Queensland government departments to move disability funding and services to the National Disability Insurance Agency (NDIA), which is the agency that implements and delivers the NDIS.

The Office of the Public Guardian, the Public Trustee, and individual business units within DJAG, committed to developing their own NDIS strategies and plans to meet the needs of their specific clients.

DJAG established an intra-agency working group that:

- had oversight of implementation of the plans
- included representatives from the affected business units and statutory authorities
- provided regular reports to the Reform Leaders Group on departmental issues in transition
- undertook a readiness assessment—requested in December 2017 for the Reform Leaders Group—for the affected business units.

However, the group did not:

- meet regularly throughout the transition period
- define the information needed to monitor the implementation of the plan
- report on progress (against the approved timeframes for the actions allocated to the individual business units/statutory bodies) to DJAG’s board of management or the director-general.

This reduced the intra-agency working group’s ability to advise senior management on the readiness of the various business processes and systems across the business units and statutory authorities affected.

DJAG’s transition plan had specific actions for those business units and statutory authorities who have clients potentially eligible for the NDIS. The Office of the Public Guardian and the Public Trustee completed most of the actions in the transition plan on time but did not complete all of them before the transition of the first region (Townsville in July 2016) as per the DJAG transition plan.

They did not complete the communication and engagement strategy as planned. The transition plan identified the vulnerable nature of people with impaired decision-making capacity and their families and carers. The intent was to take a strategic approach to engaging and communicating with this group to reduce the uncertainty and anxiety of such a significant change. Figure 2A shows the actions and whether they were completed on time.

DJAG has completed its NDIS transition strategy and plan for the 2018–19 period, which includes a process for reporting on and managing emerging risks for justice portfolio entities. The plan includes a risk register. DJAG is using this plan as a reporting tool to identify risks and outline strategies to manage these risks.



Figure 2A
The Office of the Public Guardian and the Public Trustee NDIS plan actions

Action	Completed on time	
	Office of the Public Guardian	Public Trustee
Develop an initial communication and stakeholder engagement strategy specific to the operational/practical circumstances of that particular area	No	No
Identify the mechanisms by which NDIS participants will be identified	Yes	Yes
Assess current corporate services and systems to establish impacts and assess whether adaptations or new systems are required.	Yes	Yes
Develop a change management plan to assist with seamless transition to the NDIS.	Yes	No

Source: Queensland Audit Office from DJAG's transition plan

The Office of the Public Guardian

The Office of the Public Guardian developed a draft change management strategy and plan documents to manage the transition. To date, it has not completed or approved them, two years after transition of the first region began. Despite the lack of approved documents, it put in place the following measures to manage the NDIS transition for the clients of its guardianship program:

- processes to identify clients eligible for the NDIS, including data-sharing agreements with the NDIA
- materials for communicating with its clients
- change management approaches, including systems assessments and workforce transition workshops and materials.

Strategies to identify Office of the Public Guardian clients eligible for the NDIS

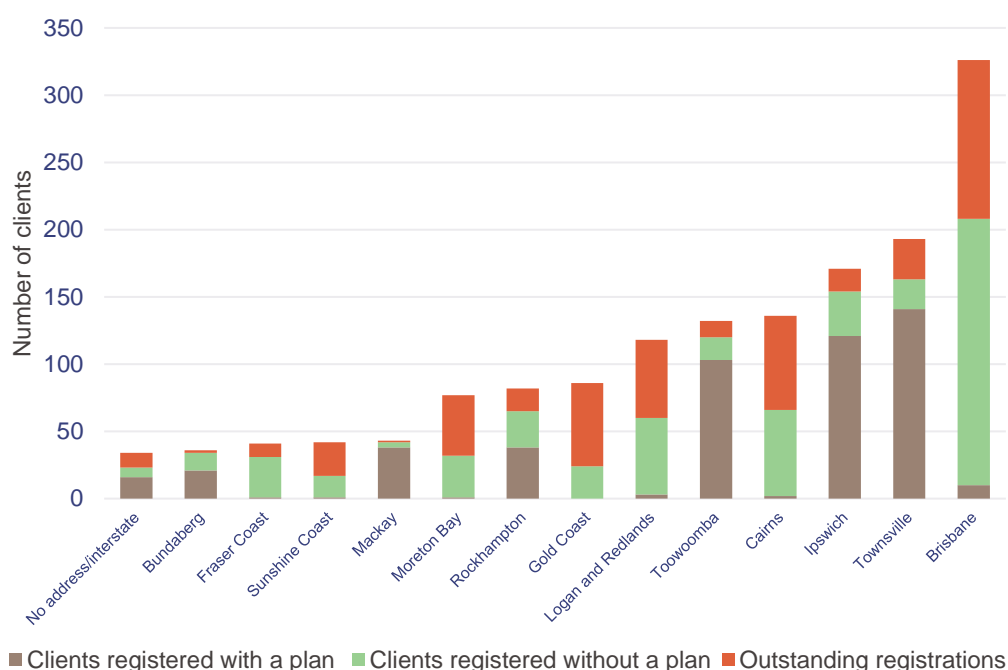
In July 2015, the Office of the Public Guardian began to segment its clients (if it had been formally appointed as their statutory guardian by the Queensland Civil and Administrative Tribunal—QCAT) to prepare for the transition to the NDIS. This process:

- excluded clients who were over 65 years old, as they are ineligible for the NDIS
- considered if the client was currently receiving support services funded by the Department of Communities, Disability Services and Seniors, as they would be registered with the NDIS as part of a bulk transfer
- identified if the client was already registered with the NDIS
- included a review of client files to identify current appointments where the guardianship was no longer needed or alternative supports were available.

The Office of the Public Guardian has put in place processes to identify the clients (for whom it has been appointed by QCAT) who are eligible for the NDIS. It has been monitoring the registration rates of these clients.

Figure 2B shows the status of registration and plan approval of NDIS-eligible clients by phasing location. As at 31 May 2018, 87 per cent of the Office of the Public Guardian's eligible clients have registered with the NDIS (with or without a plan) and 69 per cent have an approved plan in place. Only the regions where the NDIS has fully commenced as at this date have been included in the calculations.

Figure 2B
Registration status of NDIS-eligible Office of the Public Guardian clients, 31 May 2018



Note: Of the 1 808 clients under the age of 65 that the Office of the Public Guardian identified as eligible for the NDIS, it had the relevant area of appointment for 1 517. Phasing locations are based on the Office of the Public Guardian's regions and do not necessarily correspond to the NDIS rollout locations.

Source: Queensland Audit Office from data provided by the Office of the Public Guardian

Stakeholder engagement and communication materials

The Office of the Public Guardian developed a draft NDIS communications plan in 2015. It identified the primary audience as adults with impaired decision-making (external) and their guardians (internal). The plan details the Office of the Public Guardian's communication objectives, stakeholders, key messages, channels, and milestones. The Public Guardian did not formally approve the communication plan.

A factsheet outlining the Office of the Public Guardian's role in the NDIS process is available on its website. It provides advice about the options for having a guardian appointed for support in accessing the NDIS and it includes a link to the NDIS website.

Other support services (Queenslanders with Disability Network and Multiple Sclerosis Queensland) have developed specific information packs for their members that:

- provide advice about how to prepare for the NDIS transition (who to involve and the types of documents to prepare)
- are easy to understand, with pictures and videos of what to expect, showing the process from the beginning
- target the specific disability needs of the reader.

DJAG's transition plan specifically identified the importance of engaging and communicating with Aboriginal and Torres Strait Islander peoples about the NDIS. The Office of the Public Guardian information does not specifically address this need.

Change management approaches

The Office of the Public Guardian developed an NDIS transition plan in February 2016. It also undertook a range of actions in preparation for and during the transition, including:

- participating in whole-of-government working groups for transition in specific areas
- appointing additional staff (a director and a principal practice officer in the guardianship team) to manage the transition process and support each region as they transition to the NDIS
- amending of the Office of the Public Guardian client record management system (Resolve) to capture NDIS-specific data
- maintaining a risk register of NDIS-specific risks and actions
- monitoring a federal review of community visitor schemes (which involve visiting people living in disability accommodation, mental health facilities, and other visitable locations) and updating Queensland Community Visitor Program staff on the potential impact (via webinars, information sheets, and a standing agenda item for relevant staff meetings)
- enhancing its information management system to capture NDIS-specific information and reporting capacity.

The Office of the Public Guardian started to develop a workforce transition plan for guardians in 2015 but did not complete it. The plan did not cover the staff of the Community Visitor Program.

From 1 July 2016, the Office of the Public Guardian determined that the NDIS became 'business as usual' for its service delivery and did not consider that it needed a workforce transition plan. It did, however, undertake several actions to prepare its workforce for the NDIS transition, including:

- developing guidance materials for staff. It developed the guidelines in May 2017 and updated them in December 2017 in preparation for the start of registration of its largest cohort of clients
- providing regular staff updates and a monthly staff newsletter with updates on the NDIS as required
- providing workshops and training for staff on the impact of the NDIS on its clients.

Not having an approved workforce transition plan creates a risk that staff use inconsistent approaches to their work as they individually develop ways of dealing with the changes.

The Public Trustee of Queensland

The Public Trustee did not develop specific strategies and plan documents with actions, accountabilities, milestones, and risks to manage the transition. However, it did put in place:

- processes to identify clients eligible for the NDIS, including data-sharing agreements
- materials for communicating with its clients
- change management approaches, including systems assessments and workforce transition workshops and materials.

Despite the informal approach to documenting the plans and approaches, the Public Trustee has put in place the key elements needed to be ready to transition its clients to the NDIS.

Strategies to identify the Public Trustee clients eligible for the NDIS

The Public Trustee undertook an analysis of its existing client files to identify its potentially eligible clients. Out of approximately 9 000 existing financial administration clients, it identified 5 895 as potentially eligible for the NDIS.

If the Public Trustee's clients do not register themselves or do not have informal networks to support them in accessing the NDIS, the Public Trustee offers to support them in registering. This allows it to ensure its clients receive their funded entitlements under the NDIS.

The Public Trustee is not entitled to a copy of its clients' NDIS plans (from the NDIA at least) and it does not have a role in ensuring that plans are appropriately prepared. (This function is the responsibility of the chief executive officer of the NDIA.) However, if it were to identify an apparent deficiency in a plan for one of its clients it would raise a concern.

The Public Trustee estimates that it has registered all its eligible clients in regions that have completed transition. It has started to register its remaining 826 clients in the Caboolture, Strathpine, and Maroochydore regions, which are the last Queensland regions to transition.

Stakeholder engagement and communication materials

Although the Public Trustee did not develop a stakeholder engagement and communication plan, it has developed communication materials to support its clients in understanding the impact of the NDIS. It has:

- prepared and placed on its website an NDIS factsheet, explaining to clients and other stakeholders the Public Trustee's role and responsibilities in the NDIS processes
- prepared a correspondence template for all financial administration clients eligible for the NDIS, including follow-up letters if there is no action from the initial letter.

However, it did not take a strategic approach and engage with its clients in developing the communication materials. This reduced opportunities for the Public Trustee to:

- obtain buy-in for the change from clients
- promote the initiative to affected client groups
- test the design of the proposed changes with a broad range of stakeholders and assess how they will affect clients
- ensure that it identifies all the relevant stakeholders.



DJAG's transition plan specifically identified the importance of engaging and communicating with Aboriginal and Torres Strait Islander peoples about the NDIS. The Public Trustee information does not specifically address this need.

Change management approaches

Despite not developing a change management plan, the Public Trustee made substantial modifications to its business processes, including:

- creating a temporary Program Manager NDIS position to manage the transition
- designing and documenting NDIS business processes
- enhancing its client information management system, including additional NDIS-specific fields and automation of certain tasks, such as reminders
- preparing training materials and conducting staff training seminars for relevant staff at all regional offices where the NDIS has been/is about to be rolled out.

Although the Public Trustee has established effective business processes to prepare its workforce for the NDIS, it does not keep sufficient records of staff attendance or completion of training sessions. These records are important to ensure all staff have the necessary skills and expertise to support people with impaired decision-making capacity in registering with the NDIS.

In regions that have transitioned to the new disability model, the Public Trustee has registered 100 per cent of its eligible clients with the NDIS. This indicates its revised business processes and systems are effective in registering clients.

Managing the transition

There is scope to adopt more collaborative approaches to supporting people with impaired decision-making capacity.

Managing the transition involves assisting those clients identified as potentially eligible through the NDIS application process. The Office of the Public Guardian and the Public Trustee did not discuss and plan the most effective pathway to do this, but they have learnt through experience and now have an agreed process.

Collaboration between the Office of the Public Guardian and the Public Trustee

Initially, there was no agreement between the Office of the Public Guardian and the Public Trustee on how they planned to work together to support people in Townsville with impaired decision-making capacity in making the transition to the NDIS. (Townsville was the first region to make the transition.)

From the Public Trustee's initial review of its 494 Townsville clients, 33 applications for the appointment of a guardian were lodged with QCAT. QCAT conducted hearings in some early matters and as a result requested that the Public Guardian and the Public Trustee to consider how the applicants might access the NDIS without the need for an appointment. The Public Guardian and the Public Trustee considered the applications and the Public Trustee withdrew some of the applications after the Public Guardian arranged for advocacy and support for the clients. For the rest of the applications, QCAT made orders it considered appropriate on the material before it.

The Public Trustee liaised with the Public Guardian in relation to 97 clients in Townsville and Mackay, before the Office of the Public Guardian advised that it was unable to assist further due to resourcing. As a result of the original 33 applications made, QCAT found it appropriate to appoint a guardian in nine instances. The others were referred to advocacy services who assisted the adults in engagement with the NDIA.

The Office of the Public Guardian estimates that the average cost of preparing each application was \$2 900, totalling \$95 700. QCAT estimates that the average cost of considering each application is between \$1 850 and \$2 100, a total of between \$60 000 to \$70 000 for the 33 matters.

On 21 April 2017, the Office of the Public Guardian and the Public Trustee agreed to a new approach to supporting clients in accessing the NDIS. They agreed that for future applications to QCAT:

- the Public Trustee will use its existing due diligence process to assess the client's situation and liaise with the Office of the Public Guardian where considered necessary
- if a guardian appointment is considered unnecessary, the Public Trustee will register the client directly with the NDIA
- the Office of the Public Guardian will then review the information and determine if there are other supports that could assist the Public Trustee's clients in accessing the NDIS
- if no other options are identified, the application will be lodged to QCAT to consider the appointment of a guardian on the material and information before it.

The Office of the Public Guardian and the Public Trustee did not set a review date to assess the effectiveness or efficiency of the new collaborative approach. The Public Guardian has absorbed this additional work within its existing budget.

Case study one shows the process undertaken to appoint a guardian to a person with disability for the purposes of accessing the NDIS. It also shows how the Office of the Public Guardian and the Public Trustee consider alternative informal supports that may be available from friends and family as part of the process.



Case study 1

Appointing a guardian to support access to the NDIS

Background

ME is a 56-year-old female with a congenital intellectual impairment and Parkinson's disease. She lives in an aged care facility. Under the NDIS, she may be eligible for reasonable and necessary supports, including a new wheelchair and community supports for outings.

Consideration

In September 2016, at the request of ME's current service provider, the Public Trustee lodged an application with QCAT to appoint a guardian to support her in accessing the NDIS.

In December 2016, the Office of the Public Guardian and the Public Trustee identified an advocacy service that could informally support ME in accessing the NDIS. However, in January 2017, the advocacy service advised that ME did not meet all the criteria for their service.

The Queensland Civil and Administrative Tribunal

QCAT conducted a hearing and appointed the Public Guardian to make decisions about the NDIS for ME.

Outcome

ME is now receiving support from the Public Guardian in accessing the NDIS. The Public Guardian was appointed for a period of two years.

Source: Queensland Audit Office from information provided by the Public Trustee.

Impacts on workload

The transition to the NDIS has several impacts on the workload of the Office of the Public Guardian, the Public Trustee, and QCAT in supporting people with impaired decision-making capacity. These include the:

- workload increasing while they are supporting them in initially accessing the NDIS
- additional applications for appointments of guardians specifically for NDIS matters
- requirement for each person's plan to be reviewed at least annually. This means guardians will have ongoing activities in supporting people with impaired decision-making through these reviews. The Office of the Public Guardian notes that some of its clients have had their plan reviewed every three months. The Public Guardian can be appointed for up to five years.
- introduction of the NDIS Quality and Safeguarding Framework, which may also place greater responsibilities on the guardianship system to monitor and report on quality and safeguards. (Refer to the 'Monitoring the transition' section later in this chapter for more detail.)

Office of the Public Guardian

Public guardians in jurisdictions that trialled the NDIS estimate that the ongoing monitoring of individual clients' NDIS support packages added an additional 50 per cent to their workload. The Office of the Public Guardian has already experienced, and will continue to experience, a significant increase in work during the transition period. This work includes arranging access for guardianship clients to the NDIS, participating in the plan preparation process, implementing the approved plans, and participating in the review process. Since QCAT may appoint guardians for up to five years, the workload can continue for some time.



The Office of the Public Guardian's funds come from an annual grant from DJAG and an annual grant from the Public Trustee. It does not charge its clients for the cost of the guardianship service.

The Office of the Public Guardian estimates that, based on the experiences of public guardians in other jurisdictions (New South Wales and the Australian Capital Territory), it will take on average 50 hours to develop and finalise a participant's initial plan and service agreements. The Office of the Public Guardian estimates that managing a client who is a participant in the NDIS will add between half to double the existing workload per client. It is also expecting an increase in client numbers.

It estimates the cost of its staff involvement in formally appointing a guardian as \$2 900 per client. It also estimates that supporting its clients through the NDIS registration and planning process will require an additional 24 656 hours of staff time—equivalent to approximately \$3.2 million.

Figure 2C shows the Office of the Public Guardian's income from DJAG and the Public Trustee for the last three years. It shows that since 2014–15, its income has increased by 5.4 per cent.

Figure 2C
The Office of the Public Guardian income by source—2014–15 to 2016–17

Income source	2014–15 mil.	2015–16 mil.	2016–17 mil.
Grant from DJAG	\$23.7	\$24.2	\$25.0
Grant from the Public Trustee	\$1.1	\$1.1	\$1.1
Total	\$24.8	\$25.3	\$26.1

Source: Queensland Audit Office from Office of the Public Guardian data

In 2016, the Office of the Public Guardian identified risks to its ability to meet the growing need to support its clients with the NDIS. To inform future submissions for additional resources, it is undertaking an independent review of its operations to determine the most efficient and effective operating model for meeting the expected growth in demand for its services.

The review is considering the full range of the Office of the Public Guardian's services, including the impact of the transition to the NDIS. It is seeking ways to respond to the increasing numbers of clients and the time required to meet the complexity posed by the NDIS.

Although the review of costs has not been completed, the Queensland Government has already committed further funds to DCDSS for additional advocacy services. It is funding \$9.5 million in grants over three years to non-government advocacy groups and \$2.5 million to the Office of the Public Guardian (\$2.2 million) and QCAT (\$0.3 million) to meet immediate demand pressures related to the rollout of the NDIS.

The Office of the Public Guardian allocated its funding for an additional 18 positions:

- guardianship (11 positions),
- Community Visitor Program (6 positions)
- legal services unit (1 position).

However, without complete analysis, DJAG cannot determine if this is sufficient to meet the needs of the guardianship system.

Public Trustee

The Public Trustee charges fees to its clients. The fees are approved by government and published in the *Queensland Government Gazette*. For the majority of its clients, the Public Trustee provides a rebate on its fees as part of its Community Services Obligation Policy. Examples of its Community Service Obligations are fee rebates for:

- financial administration for adults with impaired decision-making capacity where the cost of providing that service cannot be paid for in full from the adult's own funds
- will-making services to Queenslanders regardless of whether it is appointed executor of the estate.

To date, the Public Trustee has not sought funding from government in respect of the transition of clients to the NDIS. The Public Trustee has also not charged additional hourly fees for work in relation to the NDIS to any client although he has an entitlement to do so and might in the future charge fees.

To manage the additional workload of registering its clients, it created two additional positions to manage and oversee the transition: an AO8 Program Manager, (August 2016 to October 2017) and an AO6 Assistant Program Manager (June 2016—July 2018).

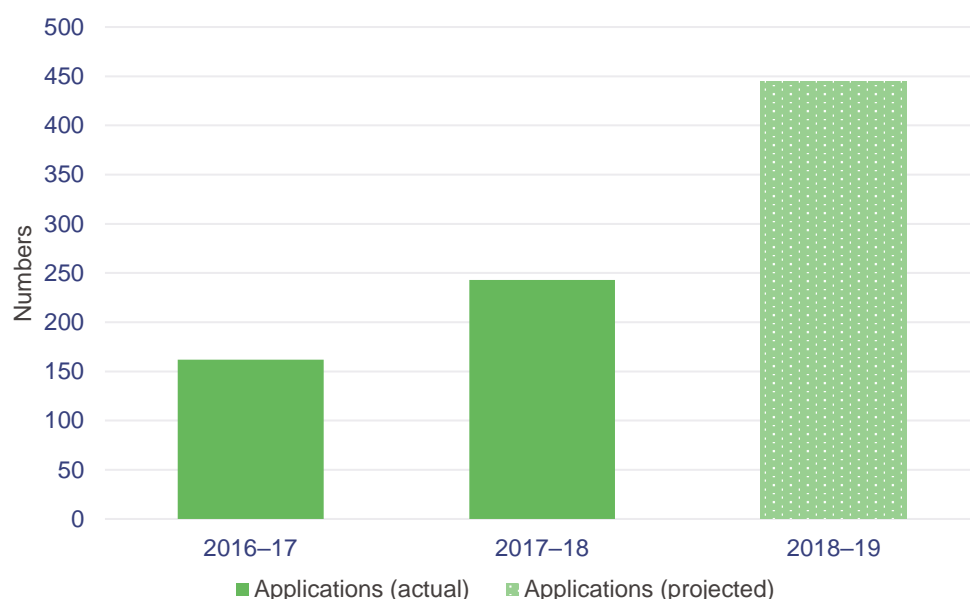
Queensland Civil and Administrative Tribunal

QCAT has also identified an increase in its workload due to the transition to the NDIS. Figure 2D shows the forecast increase in applications due to the impact of the NDIS. The estimates are based on applications from the transitioning of regional areas and may underestimate the demand as transition continues.

The lack of available data on the total number of potentially NDIS-eligible people with impaired decision-making capacity restricts QCAT to relying on its experience to date in forecasting the number of applications. The significant increase in 2018–19 is affected by the transition of the largest sites of Brisbane, the Gold Coast, and the Sunshine Coast.

There is a risk of delays due to existing workload pressures. The additional volumes coming through the systems could also lead to delays in processing applications for guardians and other advocacy services. QCAT anticipates that the wait time for guardianship matters will increase from the current 13 weeks to 16 weeks. This could, in turn, delay access to the NDIS.

Figure 2D
Forecast of impact of NDIS on Queensland Civil and Administrative Tribunal applications



Source: Queensland Audit Office from QCAT data

Monitoring the transition

The support for people with impaired decision-making from the Public Guardian does not stop when they are signed up to the NDIS. There is a role for guardians in assisting their clients to review and monitor their plans. The Public Guardian can access information from the NDIA to perform this role effectively.

The Public Trustee cannot access client information from the NDIA, which may affect its ability to monitor client financial matters.

In addition, the new NDIS Quality and Safeguarding Framework will impact on a range of people who work with people with disability, including the Public Trustee and the Office of the Public Guardian. The two agencies are at different levels of readiness for this change.

Monitoring plans

Public Trustee of Queensland

Once its clients register with the NDIS, the Public Trustee cannot access further data from the NDIA on the status of:

- the NDIS plan, including the financial value of the support package
- any reviews of the NDIS plan
- expenditure against the plan.

The NDIA provides the Department of Communities, Disability Services and Seniors (DCDSS) with regular reports on each individual's NDIS registration number and NDIS pathway status. This would be useful information for the Public Trustee, as it would allow the administrators to follow up enquiries with the NDIA on individual client financial matters.

DCDSS provides extracts of the dataset to agencies with transitioning disability supports/services, but this relates specifically to existing clients of the agency only. The Public Trustee asked DCDSS to provide access to the data so it could upload NDIS information for people for whom they are appointed the administrator. However, as they are not an agency that provides disability supports/services that are transitioning to the NDIS and have not provided a dataset of transitioning clients to the NDIA, DCDSS advised the Public Trustee that it has no authority to provide the data. This is because the request from the Public Trustee does not relate to the purpose for which the NDIA provide Queensland with the data.

DCDSS advised the Public Trustee to continue its endeavours to enter an information-sharing memorandum directly with the NDIA. These negotiations are ongoing.

Despite the difficulties in accessing reliable data on the NDIS status of its clients, 68 per cent of the 2 861 eligible Public Trustee clients (in areas still to complete or yet to transition) have successfully registered with the NDIS. There are eligible clients in regions that have not transitioned yet.

All state trustees continue to work with the NDIA to try and implement limited plan nominee provisions to gain access to their clients' information relevant to managing their financial matters. This is being led by State Trustees Victoria. To date, the state trustees and NDIA have draft provisions that have yet to be agreed. The NDIA also requires information and communication technology (ICT) changes to be completed before these provisions can be implemented.

If the NDIA recognised the Public Trustee as a limited plan nominee, the Public Trustee would be able to access its clients' data, plans, and review dates. This information would allow it to monitor the successful of its strategy in supporting its clients in terms of them receiving reasonable and necessary supports under the NDIS.



Monitoring compliance with quality safeguards

There is a risk that the Office of the Public Guardian and the Public Trustee may not be ready to integrate their processes and systems with the new NDIS Quality and Safeguarding Framework (the framework).

The newly formed NDIS Quality and Safeguards Commission (the NDIS Commission) will take responsibility for the framework from 1 July 2019 in Queensland (see Appendix C for information about the role of the NDIS Commission). Broadly, the framework makes the new NDIS Commission responsible for:

- registering and regulating NDIS providers and overseeing provider quality
- monitoring compliance with the new NDIS Practice Standards and NDIS Code of Conduct, which set out expectations for the quality and safety of services and the conduct of workers
- responding to concerns and complaints about NDIS services and supports
- educating providers on the need for an in-house complaints system and supporting participants in making a complaint
- advising providers on the need to establish and maintain an incident reporting system and to report serious incidents to the commission
- monitoring the use of restrictive practices and educating providers and participants about behaviour support strategies, with the aim of reducing and eliminating restrictive practices in the NDIS
- leading collaboration with states and territories to design and implement nationally consistent NDIS worker screening
- facilitating information sharing about quality and safeguards with the NDIA and other state, territory, and federal regulatory bodies
- providing market oversight by monitoring changes in the market that need attention.

The framework has preventative and capacity-building components. These components rely on participants being supported in identifying and managing risks as they interact with NDIS service providers. People supporting participants, including substitute decision-makers, advocates, and workers in the disability sector, can assist with capability building and identifying and reporting suspected abuse, neglect, and exploitation.

The Office of the Public Guardian and the Public Trustee have always had a role in referring complaints on behalf of their clients, but there is a need to refine their processes in light of the new framework.

Preparing for the new framework

The Public Trustee trains its staff in managing the financial affairs of its clients and has amended the training to include the impacts of the NDIS. It has policies to identify, investigate, and refer financial misappropriation of its clients' finances. It has not amended these policies to ensure that the way it reports complaints will align with the NDIS Commission where necessary. Anyone may raise a complaint with the commissioner about a provider of NDIS-funded supports.

The Office of the Public Guardian's Community Visitor Program has a critical role in protecting the rights and interests of people with impaired decision-making capacity. The community visitors regularly inspect visitable sites (supported accommodation) for compliance with the standards, and to identify issues and complaints. The program does not cover people living in private dwellings.



There are two key risks to the scope of the program:

- The Australian Government anticipates that as people transition to the NDIS, they will have greater choice and control over where they live and will choose to live in private dwellings. If this is the case, fewer people will be covered by the program. The Australian Government has initiated a national review of community visitor programs.
- From 1 July, 2019 the framework will change the way the disability sector is regulated. When the NDIS Commission starts in Queensland at that time, the way community visitors refer complaints will change.

The Office of the Public Guardian is amending its existing training programs and guidance for community visitors on their responsibilities for reporting critical and non-critical incidents under existing state regulations. It has not yet aligned the way community visitors refer complaints with the new NDIA National Quality Safeguards or how they will play a greater role to build the capacity of people in the community visitor program.

Queensland's Public Advocate has also identified that, for the new framework to be effective, some people with impaired decision-making capacity will need more help:

- to recognise that they have the basis or need for a complaint
- to know there is a mechanism for complaint
- to make the complaint and follow the process through.

People who are not covered by the Community Visitor Program (those in private dwellings) will especially need support in making a complaint and following the process through to completion. We acknowledge that, as with any new system, it will take time to establish new processes. It will also take time for people with disability, their families, and carers to fully understand the roles and responsibilities within the new system.

Restrictive practices

Prior to the transition to the NDIS, DCDSS, the Public Guardian and QCAT had specific responsibilities for regulating the use of different kinds of restrictive practices (practices intended to protect a person or others from harm).

DCDSS currently administers the delegations for the regulation of restrictive practices under the *Disability Services Act 2006* by:

- approving short-term approvals for all restrictive practices other than containment and seclusion
- developing positive behaviour support plans for people subject to containment and seclusion
- reporting on and monitoring restrictive practices by disability service providers as per the Disability Services Regulation 2017.

The legislative and operational arrangements for the regulation of restrictive practices are under review. This is to determine the roles and responsibilities for restrictive practices and any necessary changes to the state legislation due to the NDIS Commission, legislation, and rules. It will be important for government to adequately monitor any resource implications for the Office of the Public Guardian should the review result in the allocation of additional responsibilities.



Coordinating advocacy services

The delivery model for state-funded disability advocacy services needs to be improved. There are gaps in geographic coverage across the state for face-to-face advocacy services—people in some regional centres access advocacy via teleconference. There are also gaps in the types of advocacy services available for legal, individual, and systemic advocacy.

The NDIS does not include funding for advocacy services, and the existing model has not been reviewed to address the gaps in services or to ensure services integrate with and complement the introduction of the NDIS.

In 2018, a national evaluation report undertaken by Flinders University identified that the NDIS works best for participants and families who are able to advocate strongly for themselves. The report also found there are poorer outcomes for NDIS participants with intellectual disability, psychosocial disability, and complex needs, or those with older carers facing their own health issues.

The Australian Productivity Commission reported that:

... disability advocates also play an important role and help participants in a way that NDIS supports cannot. They can help participants get better plans, find supports, navigate the new scheme with its new jargon and complexities, and provide systemic advocacy about difficulties faced by people with disability.

Funding of state disability advocacy services

DCDSS and DJAG are the two state agencies that fund disability advocacy services.

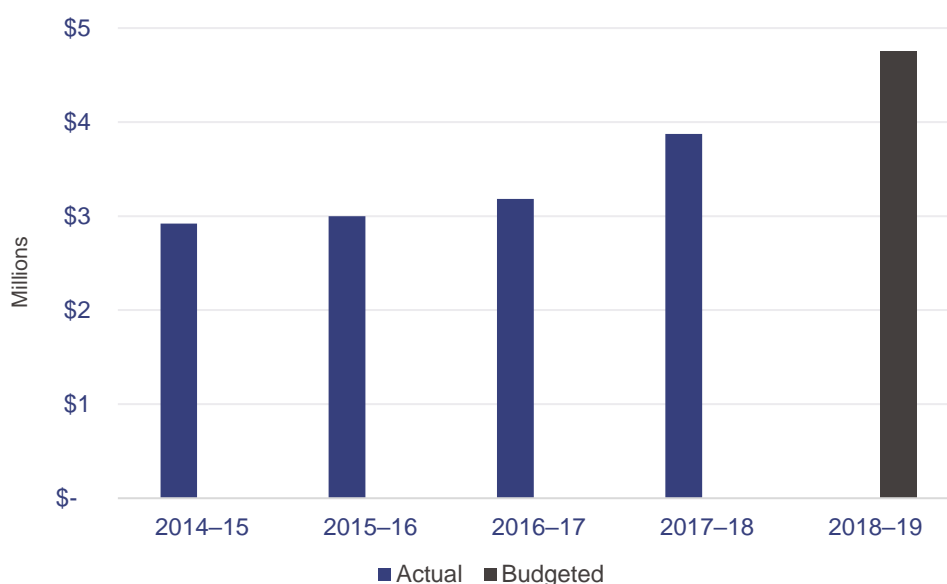
Department of Communities, Disability Services and Seniors

The DCDSS transition plan did not have specific strategies or actions for disability advocacy services in Queensland. DCDSS quarantined the state funding for disability advocacy services and intended to put it towards Queensland's contribution to the Commonwealth for the NDIS. In 2013 and 2016, the department expected the funding for advocacy services would be included under the NDIS.

The Productivity Commission, in its 2017 review of NDIS costs, recommended that federal, state, and territory governments continue to fund disability advocacy organisations until 2019–2020. DCDSS has continued to fund advocacy services throughout the transition and in February 2018, the Queensland Government committed to continuing funding of state disability advocacy services until 2020–2021.



Figure 2E
Department of Communities, Disability Services and Seniors
disability advocacy funding—actual and budgeted



Source: Department of Communities, Disability Services and Seniors (unaudited figures)

Department of Justice and the Attorney-General

DJAG administers state and Commonwealth funding for advocacy and legal services that are accessible to people with disability (among others). They include:

- an advocacy and legal assistance service in South East Queensland to older people, people with a disability or mental illness, and Indigenous Australians—\$0.5 million (\$0.2 million Commonwealth funded and \$0.3 million state funded) over three financial years (2017–18 to 2019–20)
- a statewide advocacy and legal assistance service to people with a disability or mental illness—\$1.4 million (\$0.6 million Commonwealth funded and \$0.8 million state funded) over three financial years (2017–18 to 2019–20)
- a statewide advocacy and legal assistance service concerning social security and disability discrimination law to financially disadvantaged people and people with a disability or mental illness—\$2.6 million (\$1 million Commonwealth funded and \$1.6 million state funded) for over two years (2017–18 and 2019–20).

Benefits of coordinating services

The Queensland disability plan, the *All Abilities Queensland: Opportunities for All—State disability plan 2017–2020*, does not include any actions or performance measures for state disability advocacy services. Queensland would benefit from a statewide strategy for disability advocacy services.

There is no data on the total number of potentially NDIS-eligible people who may have impaired decision-making capacity. It is also unclear how many people with impaired decision-making are not receiving support in accessing the NDIS.

In January 2018, the Office of the Public Guardian commissioned a cost-benefit analysis to determine whether referring people who may have impaired decision-making capacity to an advocacy service is more efficient than having a formally appointed guardian. The purpose of the study is to estimate the net economic and social benefits of investing any additional resources into advocate service agencies.

The scope of the review does not include the impact on all people who may benefit from the support of an advocate. This could limit the ability of the review to understand the total resources and demand across the whole guardianship and administrative system.

The Australian Government is currently reviewing the National Disability Advocacy Program. The review is considering the changes expected from the rollout of the NDIS. It is also looking at the best models to address the current gaps in geographic coverage and some types of advocacy for people with disability. Considering the results of this review could provide Queensland with an opportunity to improve coordination of state-funded services from the perspective of the end user, and provide a more seamless service.

Greater coordination of advocacy services may decrease the number of people who may have guardians appointed and relieve some of the pressures on the Office of the Public Guardian and QCAT.



Appendices

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A. Full responses from agencies

As mandated in s.64 of the *Auditor-General Act 2009*, the Queensland Audit Office gave a copy of this report with a request for comments to:

- the Public Guardian
- the Public Trustee of Queensland
- the Department of Justice and Attorney-General
- the Department of Communities, Disability Services and Seniors.

The heads of these entities are responsible for the accuracy, fairness and balance of their comments.

This appendix contains their detailed responses to our audit recommendations.



Comments received from the Public Guardian, Office of the Public Guardian



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George Street Brisbane QLD 4003
Telephone + 61 7 3234 0870
Or 1300 653 187
Fax + 61 7 3239 6367
Email publicguardian@publicguardian.qld.gov.au

12 September 2018

Mr Brendan Worrall
Auditor-General
Queensland Audit Office
Level 14, 53 Albert Street
BRISBANE QLD 4000

Via email: gao@gao.qld.gov.au

Dear Mr Worrall

Thank you for your letter of 23 August 2018 regarding the Queensland Audit Office (QAO) performance audit of the National Disability Insurance Scheme (NDIS), and for the opportunity to comment on the proposed report, *Access to the National Disability Insurance Scheme for people with impaired decision-making capacity* (the proposed report).

I have reviewed the proposed report and enclose the response from the Office of the Public Guardian (OPG). I greatly appreciate your consideration of my previous correspondence.

I am very supportive of the findings and recommendations in the proposed report. I congratulate you and your Office on this piece of work.

While I understand QAO's decision that matters regarding the retention of the Community Visitor scheme in Queensland are outside the scope of the audit, I would like to take this opportunity to reiterate the invaluable role that Queensland's community visitor program will play in ensuring the NDIS Quality and Safeguards Commission (the Commission) achieves its purpose in Queensland, of promoting the safety and quality of NDIS services, resolving problems and identifying areas for improvement.

As you may know, the future operation of the community visitor program at disability sites is still pending. Community visitors are a vital safeguard for vulnerable Queenslanders residing in visitable disability sites. Community Visitors will be instrumental to the Commission's complaint function having full effect. For example, how can the anticipated 70% of scheme participants with a cognitive impairment be expected to make complaints to the Commission without someone overseeing and advocating for their rights?

I have previously raised concerns in various forums regarding the insurmountable barriers faced by people with impaired decision-making capacity, particularly those who are non-verbal, if they are required to self-advocate and access an NDIS complaints scheme on their own, without the support of community visitors. Many may not have any other person in their lives, other than their service provider, and no one to advocate for their rights and interests. Community visitors remain an indispensable part of an effective disability complaints process, especially for persons with intellectual, cognitive or psychosocial disability.

Community visitors also provide an invaluable support role to the work of other Queensland agencies. The Queensland Civil and Administrative Tribunal has the authority under the *Queensland*

Page 1 of 2

Civil and Administrative Tribunal Act 2009 to request community visitors to visit and report on restrictive practices being used on an adult at a visitable disability sites, as part of its consideration of whether to grant approval for the use of containment or seclusion of a person.

Thank you once again for the opportunity to participate in the audit and comment on the proposed report. Should you require further information regarding this matter, please contact me by email on Natalie.Siegel-Brown@publicguardian.qld.gov.au or on 07 3006 2542.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Natalie Siegel-Brown', with a stylized flourish at the end.

Natalie Siegel-Brown
Public Guardian

Enc.

Responses to recommendations

The Public Guardian

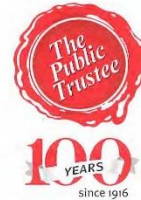
Access to the National Disability Insurance Scheme for people with impaired decision-making capacity

Response to recommendations provided by Ms Natalie Siegel-Brown, Public Guardian, Office of the Public Guardian on 12 September 2018.

Recommendation	Agree/ Disagree	Timeframe for implementation (Quarter and year)	Additional comments
<p>We recommend that the Public Guardian:</p> <p>2. review its complaints management policies, guidance, and training materials to align with the new NDIS Quality and Safeguarding Framework</p> <p>The review should cover:</p> <ul style="list-style-type: none"> providing support to its clients (within the limitations of its legislative functions) to recognise when they have the basis for a complaint and how the complaints process works considering referrals of complaints from or on behalf of NDIS participants about service providers under the NDIS National Quality and Safeguarding Framework working with the NDIS Quality and Safeguards Commission on client data-sharing arrangements. 	Agree	30 June 2019	The Office of the Public Guardian will review its complaints management policies, guidance, and training materials to align with the new NDIS Quality and Safeguarding Framework, in accordance with the recommendation by 30 June 2019.

Comments received from the Public Trustee of Queensland

444 Queen Street Brisbane Qld 4000
GPO Box 1449 Brisbane Qld 4001



12 September 2018

Mr Brendan Worrall
Auditor-General
Queensland Audit Office
P O Box 15396
CITY EAST QLD 4002

Contact Name: Peter Carne
The Public Trustee of Queensland

Dear Mr Worrall

Re: Performance Audit on Access to the National Disability Insurance Scheme (NDIS) for People with Impaired Decision-Making Capacity

Thank you for your letter and enclosure of 23 August 2018.

The NDIS is important legislation which will provide greater choice and control over the support people with a disability can access.

As you have noted, in preparation for the transition to the NDIS my office has proactively put processes in place to identify and support our clients and to develop guidelines and training for our staff. Accordingly, I was particularly interested in your review.

In response to your Report, my staff have commenced a number of initiatives to ensure that your recommendation will be implemented. My office's response to the recommendation can be found in the **attached** "Appendix A".

I have instructed my Head of Internal Audit to maintain a watching brief, and asked that he monitor management's actioning and implementation of your recommendation.

Should you require any further information, your office may wish to contact Mr Etienne Geringer, Head of Internal Audit via email to Etienne.geringer@pt.qld.gov.au or by phone on 07 3213 9245.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Peter Carne', written over a printed name and title.

Peter Carne
Public Trustee of Queensland

Encl/...

The Public Trustee

1300 360 044

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• Will making
• Enduring Powers of Attorney

• Executor Services
• Estate Administration

• Disability Services
• Trust Administration

• Real Estate Auctions and Sales
• Charitable Trusts

Responses to recommendations

Appendix A – Response to recommendation

Response to recommendation provided by A/Executive Director Client Experience & Delivery, Public Trustee of Queensland on 5 September 2018.

Recommendation	Agree/ Disagree	Timeframe for implementation (Quarter and year)	Additional comments
<p>We recommend that the Public Trustee of Queensland:</p> <ol style="list-style-type: none"> review its complaints management policies, guidance, and training materials to align with the new NDIS Quality and Safeguarding Framework <p>The review should cover providing support to its clients (within the limitations of its legislative functions) to recognise when they have the basis for a complaint and how the complaints process works.</p>	Agree	<p>A number of enhancements to our complaints workflow processes will be in place from 31 December 2018. However, given that the NDIS Quality and Safeguarding Framework will come into effect after July 2019, we will reassess our workflow at that time.</p>	<p>NDIS complaints will be incorporated within the wider "Complaints Workflow Guidance" document which is being developed by Client Experience & Delivery. The following outcomes will be produced as part of the guidance document –</p> <ol style="list-style-type: none"> Client Experience & Delivery will work with the PTQ Complaints Unit to ensure that the PTQ Complaints Management Policy and Procedure make reference to third-party complaints, such as the NDIS. A complaint workflow document will be produced which will form part of the Trust Officers training materials. Specific complaints training will not retrospectively be rolled out but will form part of the ongoing training. In respect to NDIS, the NDIS training material will also be expanded to educate Trust Officers on how to appropriately handle any NDIS complaints and to whom those complaints should be referred to.

Comments received from Director-General, Department of Justice and Attorney-General



Department of Justice and Attorney-General Office of the Director-General

In reply please quote: 521367/6; 4500142

Your reference: 9164P

13 SEP 2018

1 William Street Brisbane
GPO Box 149 Brisbane
Queensland 4001 Australia
Telephone 13 74 68 (13 QGOV)
www.justice.qld.gov.au

ABN 13 846 673 994

Mr Brendan Worrall
Auditor-General
Queensland Audit Office
PO Box 15396
CITY EAST QLD 4002

Dear Mr Worrall

Thank you for your letter dated 23 August 2018 regarding the proposed report on *Access to the National Disability Insurance Scheme for People with Impaired Decision-Making Capacity* (proposed report).

I have reviewed the proposed report and **enclose** the response from the Department of Justice and Attorney-General (DJAG).

I am pleased to advise that DJAG supports Recommendation 3.

DJAG notes that the Queensland Government has allocated additional funding of \$2.5 million in 2018-19 for the Office of the Public Guardian (OPG) and the Queensland Civil and Administrative Tribunal (QCAT) to meet immediate demand pressures. DJAG will continue monitoring the adequacy of resources in OPG and QCAT to determine whether further funding is required in 2019-20 and beyond. DJAG will complete this action by Quarter 2, 2019.

Thank you for the opportunity to comment on the proposed report.

Yours sincerely

A handwritten signature in blue ink that reads "J. Lang".

Jennifer Lang
Acting Director-General

Enc.

Responses to recommendations



Department of Justice and Attorney-General

Access to the National Disability Insurance Scheme for people with impaired decision-making capacity

Response to recommendations provided by Director-General, Department of Justice and Attorney-General on 13 September 2018.

Recommendation	Agree/ Disagree	Timeframe for implementation (Quarter and year)	Additional comments
<p>We recommend that the Department of Justice and Attorney-General:</p> <p>3. analyses the adequacy of the resources allocated to the Office of the Public Guardian and the Queensland Civil and Administrative Tribunal (QCAT) to ensure people with impaired decision-making capacity are effectively supported in getting timely access to the supports available from the NDIS</p> <p>The analysis should determine the resources necessary to:</p> <ul style="list-style-type: none"> effectively manage the initial increase in applications in (2018–19 and 2019–20) to QCAT for the appointment of the Public Guardian for a matter support people appointed a guardian in accessing the supports of the NDIS for the period of the appointment (maximum of five years). 	Agree	Quarter 2 2019	<p>The Queensland Government has allocated additional funding of \$2.5 million in 2018-19 for the OPG and QCAT to meet immediate demand pressures. The Department of Justice and Attorney-General will continue monitoring the adequacy of resources allocated to OPG and QCAT to determine whether further funding is required in 2019-20 and beyond.</p>



Comments received from Director-General, Department of Communities, Disability Services and Seniors



Office of the
Director-General

Department of
**Communities,
Disability Services
and Seniors**

Your reference: 9164P
Our reference: COM 05777-2018

17 SEP 2018

Mr Brendan Worrall
Auditor-General
Queensland Audit Office
GPO Box 15396
CITY EAST QLD 4002

Dear Mr Worrall

A handwritten signature in blue ink that reads "Brendan".

Thank you for providing me with a copy of your proposed report to Parliament on the performance audit on *Access to the National Disability Insurance Scheme for people with impaired decision-making capacity*.

I agree that some Queenslanders with disability need support and/or advocacy rather than a formal substitute decision-maker to help them access the NDIS and achieve quality plans to address their support needs.

The report highlights areas where there is room to strengthen and better coordinate state-funded support and advocacy services and I accept your recommendation to develop a statewide advocacy strategy.

As requested, I attach my formal response to recommendation 4, which relates specifically to the Department of Communities, Disability Services and Seniors.

Thank you for the opportunity to comment on this report.

Yours sincerely

A handwritten signature in blue ink, likely belonging to Clare O'Connor.

Clare O'Connor
Director-General

Enc. (1)

1 William Street
Brisbane Queensland 4000
GPO Box 806 Brisbane
Queensland 4001 Australia

Responses to recommendations



Department of Communities, Disability Services and Seniors

Access to the National Disability Insurance Scheme for people with impaired decision-making capacity

Response to recommendation 4 from the Director-General, Department of Communities, Disability Services and Seniors, on 13 September 2018.

Recommendation	Agree/Disagree	Timeframe for implementation (Quarter and year)	Additional comments
<p>We recommend that the Department of Communities, Disability Services and Seniors:</p> <p>4. develops a statewide strategy to support people with disability access the NDIS.</p> <p>The strategy should include consideration of:</p> <ul style="list-style-type: none"> the role of advocacy in supporting access to the NDIS actions to reduce the pressures on the guardianship system the results of the current review of the National Disability Advocacy Program to identify opportunities to improve coordination of commonwealth and state-funded services. 	Agree	Quarter 3, 2018-19	<p>This strategy will support the department's work to address one of the conclusions in the QAO's Report 14, 2017-18: <i>The National Disability Insurance Scheme</i>.</p> <p>That report found that Queensland participants were entering the NDIS at a lower rate than expected. The department has increased focus on strategies to increase the rate at which new entrants enter the scheme. To achieve this, a statewide strategy to support those new entrants will be critical.</p>



B. Audit objectives and methods

We tabled the first report on this audit on 3 May 2018. This is the second report on this audit and it assesses support for people with impaired decision-making capacity.

The objective of the audit was to assess how effectively the Queensland Government is managing the transition to the National Disability Insurance Scheme (NDIS) and how well prepared it is to oversee services post transition to NDIS.

We addressed the objective through the following lines of inquiry.

Figure B1
Audit scope

Lines of inquiry		Criteria
1	Queensland inter-governmental governance arrangements for the NDIS ensure accountability and achieve value for money.	1.1 Do the Queensland inter-governmental governance arrangements for the NDIS provide an adequate control framework to address Queensland's key risks?
		1.2 Do the payments made under the bilateral agreement comply with the <i>Financial Accountability Act 2009</i> and regulations?
		1.3 Is Queensland appropriately monitoring and managing funding issues during transition to ensure value for money at full scheme?
2	State-funded services effectively integrate with the new NDIS operating model to provide continuity of care for people with disability.	2.1 Has the Queensland Government identified and integrated its mainstream services that: <ul style="list-style-type: none"> • need to be redesigned to interface with the NDIS? • support 'hard-to-reach' participants in transitioning to NDIS? • support transition from state-funded services (for example, hospitals and correctional centres) to NDIS-funded packages?
		2.2 Do governance structures provide sufficient oversight to effectively coordinate mainstream services and decommission in-scope state-funded disability services during transition to full scheme?

Lines of inquiry		Criteria
3	Is the Queensland guardianship and administration system able to support clients of the NDIS with impaired decision-making capability?	3.1 Office of the Public Guardian and the Public Trustee have implemented effective: <ul style="list-style-type: none"> processes to identify eligible NDIS participants within the Queensland guardianship system administration systems to provide assistance in a seamless and appropriate manner in a least restrictive way.
		3.2 Office of the Public Guardian and the Public Trustee have adopted a balanced approach to address eligible clients' need for choice and control, and to fulfil Queensland Government's statutory obligations.

Source: Queensland Audit Office

Audit approach

This report specifically examined the Queensland guardianship and administration system and how it reflects specific needs and protections for NDIS-eligible people with impaired decision-making capacity. They are some of the most vulnerable of all NDIS clients.

We assessed the effectiveness of the public sector entities supporting Queenslanders with impaired decision-making capacity as they make the transition to the NDIS. This included assessing the:

- processes to identify eligible NDIS participants within the Queensland guardianship and administration system
- administration systems for providing assistance in a seamless, appropriate, and least restrictive way (that is, the way that places the least amount of restrictions on each participant's ability to make their own choices)
- co-ordination of advocacy services within the state.

Entities subject to this audit

Department of Communities, Disability Services and Seniors

Department of Justice and Attorney-General

Office of the Public Guardian

Public Trustee of Queensland.

C. Roles of entities not within scope

This appendix lists the roles and responsibilities of entities involved in transitioning to the National Disability Insurance Scheme (NDIS) but not within scope of this report.

Queensland Treasury

Queensland Treasury is responsible for managing the finances of the state government, including preparing the state budget and providing advice on the financial and economic impact of policy decisions such as the NDIS.

It manages the impact on state agency budgets as services decommission and staff transfer out of state agencies in line with the regional transition schedule.

It used the Australian Productivity Commission's estimates to model participant numbers in selecting the geographical phasing and financial contributions reflected in the NDIS *Bilateral Agreement between the Commonwealth and Queensland*.

National Disability Insurance Agency (NDIA)

The NDIA is the independent statutory agency set up to implement and deliver the NDIS across Australia. Its role is to connect people with information and resources and offer guidance as they plan for, select, and use the supports, services, and community activities they need.

The NDIA is responsible for managing participants and providers throughout the process. This includes assessing, registering, and monitoring service providers to ensure they have the capacity to provide the requisite services. The NDIA registers participants, assesses their plans to determine the level of funding and support they require, and makes payments to them. It does not provide services to participants.

A board governs the NDIA and receives advice from an independent advisory council. A national joint standing committee of the Parliament of Australia reports on implementation, performance, and governance of the NDIS.

Department of Social Services

The Australian Department of Social Services helps to support people with disability by delivering programs, services, benefits, and payments such as the disability support pension scheme. It is also responsible for leading the development of the policy framework for the NDIS on behalf of the Council of Australian Governments and administering the *National Disability Insurance Scheme Act 2013* (the Act). It exercises statutory powers under the Act on behalf of the Minister for Social Services, with the agreement of the states and territories.

The Department of Social Services is also responsible for administering the NDIS appeals process if the NDIA denies a person services or funding. People can dispute the decisions of the NDIA by appealing to the federal Administrative Appeals Tribunal.



In May 2013, the Department of Social Services commissioned a consortium, led by the National Institute of Labour Studies at Flinders University, to conduct an evaluation of the trial of the NDIS. The evaluation took place between 2013 and 2017 and covered South Australia, Tasmania, the Barwon region in Victoria, the Hunter area in New South Wales, the Australian Capital Territory, and the Barkly Region in the Northern Territory. It is the most comprehensive evaluation of the NDIS to date. The national scope of the scheme means that the findings of the report are applicable to Queensland.

NDIS Quality and Safeguards Commission

The NDIS Quality and Safeguards Commission (the commission), an independent government body, commenced in early 2018 in New South Wales and South Australia. It will be operational in jurisdictions as they complete transition to allow for optimal support of providers transitioning to the new system. In Queensland this will be 1 July 2019.

It will implement the NDIS Quality and Safeguards Framework (the framework), which is intended to provide a nationally consistent approach to:

- empowering and supporting NDIS participants in exercising choice and control
- ensuring appropriate safeguards are in place to confirm that supports are safe, culturally respectful, and of high quality, and are linked to achieving the goals of people with disability
- establishing expectations for providers and their staff to deliver high quality supports.

The NDIS Commission:

- responds to concerns, complaints, and reportable incidents, including abuse and neglect of NDIS participants
- promotes the NDIS principles of choice and control, and works to empower participants to exercise their rights to access good quality services as informed, protected consumers
- requires NDIS providers to uphold participants' rights to be free from harm
- registers and regulates NDIS providers and oversees the new NDIS Code of Conduct and Practice Standards
- provides guidance and best practice information to NDIS providers on how to comply with their registration responsibilities, including how to provide culturally responsive and appropriate disability supports
- monitors compliance against the NDIS Code of Conduct and Practice Standards, including undertaking investigations and taking enforcement action
- monitors the use of restrictive practices within the NDIS with the aim of reducing and eliminating such practices
- leads collaboration with states and territories to design and implement nationally consistent NDIS worker screening
- focuses on education, capacity building, and development for people with disability, NDIS providers, and workers.
- facilitates information sharing between the NDIA, state and territory authorities and other Australian regulatory bodies.

The framework also establishes the authorities, and processes for functions such as:

- advocacy services funded outside of the NDIS through federal government-funded programs such as the National Disability Advocacy Program
- systems for detecting fraud and related issues associated with the responsibility for paying providers and verifying that they have delivered the supports
- complaints about the NDIA or NDIA-funded Local Area Coordinators
- universal complaints and redress mechanisms—including fair trading, professional, and industry bodies
- anti-discrimination and human rights legislation overseen by the disability, discrimination, and human rights commissioners.



D. Transition numbers by region

Transition to the scheme is occurring region by region. It started in May 2016 and will be complete by July 2019. Figure D1 shows the numbers of Queenslanders (by region) estimated to be making the transition to the NDIS. It also shows the number of estimated participants who have an existing statutory guardian or administrator appointed.

It is not clear how many potentially new participants in the NDIS may have impaired decision-making capacity and may need support in accessing the scheme.

Figure D1
Queensland's transition phasing to the National Disability Insurance Scheme

Region	Total estimated participants	Existing guardian appointed	Existing administrator appointed
Townsville	4 653	193	494
Mackay	3 524	46	163
Toowoomba	7 095	128	575
Ipswich	7 027	174	585
Bundaberg	3 976	40	127
Rockhampton	5 205	80	309
Beenleigh, Brisbane, Maryborough, Robina, Cairns	42 800	775	2 893
Caboolture/Strathpine and Maroochydore	16 970	156	749
Interstate	-	19	-
Total	91 250	1 611	5 895

Note: Regional estimates are based on Queensland Treasury's estimates from a synthetic dataset and do not match the estimates from the *NDIS Bilateral Agreement between the Commonwealth and Queensland*.

Source: Queensland Audit Office, Office of the Public Guardian, The Public Trustee of Queensland

Auditor-General reports to parliament

Reports tabled in 2018–19

1. **Monitoring and managing ICT projects (Report 1: 2018–19)**
10 July 2018
2. **Access to the National Disability Insurance Scheme for people with impaired decision-making capacity (Report 2: 2018–19)**
27 September 2018
3. **Delivering shared corporate services in Queensland (Report 3: 2018–19)**
27 September 2018



Audit and report cost

This is the second of two reports on our National Disability Insurance Scheme audit. The audit and two reports cost \$730 000.

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Performance engagement

This audit has been performed in accordance with ASAE 3500 *Performance Engagements*.

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