



Queensland Advocacy Incorporated

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

Systems and Legal Advocacy for vulnerable people with Disability

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Paul.GREVELL@Communities.qld.gov.au

Dear Paul

Please accept the following comments as part of QAI's contribution to the review of the delivery of disability advocacy in Queensland.

Yours sincerely,

Michelle O'Flynn, Director

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

Patron: His Excellency The Honorable Paul de Jersey AC

About QAI

Queensland Advocacy Incorporated (QAI) is a member-driven and non-profit advocacy NGO for people with disability. Our mission is to promote, protect and defend through advocacy, the fundamental needs, rights and lives of the most vulnerable people with disability in Queensland.

Our Human Rights and Mental Health services offer legal advice and representation: the first, on guardianship and administration and the latter on mental health matters. Our Justice Support, and NDIS Appeals programs provide non-legal information and support to people with disability in the criminal justice system and to participants in NDIS Appeals. Individual advocacy informs our campaigns at state and federal levels for changes in attitudes, laws and policies.

QAI's constitution holds that every person is unique and valuable, and that diversity is intrinsic to community. People with disability comprise the majority of our Board and their lived experience of disability guides our work.

Responses to DCDSS questions

1. Where do you see the gaps are in advocacy services across QLD?

Outside of NDIS-related advocacy needs (e.g. for Access support, for legal advice on contracts with Registered Service Providers and for NDIS appeals) the principal service gaps are:

- **Advocacy around discrimination in:**
 - **Education**

Many schools still operate with a segregation mindset, and consistently discriminate against students with disabilities. Recent Australia wide research determined that more than 70 per cent of students with disabilities have had their enrolment discouraged by principals of mainstream schools.¹ In Queensland, 14.3 percent of students with disabilities attend special schools² and the rate of growth in student numbers in these schools is alarming: approximately 5 percent per annum over 2011 to 2016, compared to an average 6 percent growth in numbers of students who do not have disabilities.³ While there has been a modest drop in the proportion of students with disability in special schools, enrolment in special schools still outstrips general population growth. There is also unregulated use of Restrictive Practices, including physical and mechanical restraint and seclusion along with elevated rates of suspension and expulsion which disproportionately affect students with disability .

Apart from Education Queensland's internal complaint and review processes, discrimination complaints are parents' only remedy. Parents of students with disabilities need advice and advocacy. To provide more evidence and analysis, we have attached our 2018 response to Education Queensland's Disability Review Response Plan 'Every Student with Disability Succeeding'.

- **Access to transport and the built environment**

The only statutory remedy for less favourable treatment is anti-discrimination complaints, and few organizations provide advocacy support in relation to these. In Queensland, the state government is running trains that are not compliant with the Disability Standards for Accessible

¹ Kathy Cologon and Robert Jackson. 2017. Gatekeeping and restrictive practices with students with disability: results of an Australian survey: Paper delivered at the Inclusive Education Summit, Adelaide.

² 2016 figures.

Public Transport (DSAPT). When the Human Rights Commission rejected Queensland's application for exemptions from the DSAPT, Queensland left the trains in-service. QAI has provided some support to Brisbane residents with disabilities who have been affected by these less-than-accessible services, but this is not one of our focus areas.

Other access issues requiring advocacy include:

- access to cruise ships (without having to pay extra in order to get an accessible living space)
- access to aircraft e.g. At great personal expense, Sheila King made an individual complaint about the '2 wheelchairs per flight policy and was unsuccessful, but that prohibition, and others, remain a limitation for people travelling with wheelchairs, particularly as wheelchairs get larger.

- **Para-legal advocacy and support in criminal justice**

QAI operates a one FTE criminal justice support program for people with intellectual and psychiatric impairments. Many people who are charged with 'street offences' have intellectual or psychiatric impairments⁴ and this group is overrepresented across the offending spectrum and throughout the justice system, as victims, suspects, defendants and prisoners. People with intellectual and psychiatric impairments are in watch houses, courts, remand centres, jails and forensic facilities because they are disadvantaged in myriad ways. International⁵ and Australian research⁶ confirms that offenders with intellectual and psychiatric impairments are more likely to have experienced childhood neglect or abuse, to be unemployed, poor and/or from an indigenous minority, to have limited social and communication skills and behavioural and/or psychiatric conditions.

Approximately 10% of people in Queensland prisons have intellectual disability,⁷ (five times the rate of the general population⁸) and the 2010 national prisoner health census determined that 33% of people in Australian prisons had a mental illness.⁹ Almost half of Queensland prisoners have a disability, including intellectual disability, mental illness,¹⁰ acquired brain injury, fetal alcohol spectrum disorder and other capacity impairments.¹¹ Amongst Queensland Aboriginal

⁴ For example, see Howard Posner, Assistant Director - Legal Aid Criminal Law Services. 2012. *Five Criminal Law Issues Raised By Recent Appellate CJS Cases*. Legal Aid Queensland, <https://elo.legalaid.qld.gov.au/webdocs/dbtextdocs/internal/irregseries/cle/2012/fivecriminal.pdf>. - and see Chapter 3, 'Overrepresentation'.

⁵ William Glaser & Kristen Deane. 1999. 'Normalisation in an Abnormal World: A Study of Prisoners with an Intellectual Disability' *International Journal of Offender Therapy and Comparative Criminology*. 43(3): 338.

⁶ See, for example, S Hayes. 2005. *Prison Services and offenders with intellectual disability – the current state of knowledge and future directions*. 4th International Conference on the Care and Treatment of Offenders with a Learning Disability, 2005 April 6-8, University of Central Lancashire, Preston, UK.

⁷ Based on figures from the most recent comprehensive survey (Corrective Services Queensland. 2002. *Intellectual Disability Survey*) and on comparable data from a number of NSW studies.

⁸ Corrective Services Queensland. 2002. *Intellectual Disability Survey 2002*.

⁹ Australian Institute of Health and Welfare. 2011. *The Health of Australia's Prisoners 2010*. Australian Institute of Health and Welfare.

¹⁰ About 33% of Australian prisoners have a mental illness (Australian Institute of Health and Welfare. 2011. *The Health of Australia's Prisoners 2010*) and 10% have an intellectual disability, of whom half have a mental illness – making a total of 38% of prisoners in these two categories alone.

¹¹ I Heffernan, K Anderson & K Dev. 2012. *Inside Out - The Mental Health of Aboriginal and Torres Strait Islander People in Custody Report*. Queensland Forensic Mental Health Service.

and Torres Strait Islander prisoners, the proportion with disabilities is even higher; 73 percent of men and 86 percent of women in Queensland jails have mental health disorders.¹²

These people need not just legal representation, but well-informed advocates who can connect them with Legal Aid, financial counselling, drug & alcohol, employment and housing services.

The QAI program is effective in reducing recidivism and provides a model that could be scaled for similar services throughout the state.

- **Advocacy for rights established by Queensland's new human rights legislation**

The budget given to the Anti-discrimination Commission is not sufficient to ensure the bare administration of the new act, let alone to provide people with disability with claims support consistent with natural justice.

2. What is the role of advocacy in assisting people accessing the NDIS? .. AND

3. Are there other solutions to reduce the pressure on appointing formal guardians?

The Queensland Audit Office and the Office of the Public Guardian ('OPG') take the view that the OPG is having to deal with an increase in the number of guardianship appointments because of the NDIS.

The number of clients the OPG has registered with the NDIS is steadily increasing, and at 30 June 2018 stood at 1,360 – an increase of 1,100 clients from 2016-17. Additionally, of the average of 72 adults who come under the Public Guardian's guardianship every month, approximately 26 are people needing support to enter the NDIS. This means workloads are also increasing, with each client needing significant assistance to enter and utilise the scheme.¹³

¹² This is the 12 month prevalence: *ibid.*

¹³ *OPG Annual Report* (p.51)

The Public Guardian ('OPG') *Annual Report*, said of people who are under statutory guardianship orders, that:

.. while many of these clients need advocacy to ensure they are getting the support they need from the NDIS, it doesn't mean they require a decision maker. However due to a lack of adequate advocacy services, the Public Guardian is being appointed as their guardian to ensure they access the NDIS.¹⁴

Few would disagree that advocacy is a less costly and certainly less restrictive alternative to guardianship, but while the NDIS may be driving *demand* for new statutory guardianship, it does not appear to be driving *actual appointments* in Queensland. Consistently across the period since the launch of the NDIS in Queensland, appointments for accommodation, service provision and health care remain the most common.

While approximately one-third of new adult guardianship clients 'are needing support to enter the NDIS',¹⁵ this is not the primary reason for the appointment, and nor is it reflected in the total number of guardianship appointments, which remains steady. The numbers reveal that QCAT would have made most new appointments since NDIS launch regardless of whether clients were presumptively NDIS-eligible, and that QCAT is not making appointments primarily so that people can access the NDIS.

	2014-15	2015-16	2016-17	2017-18
Queensland OPG Guardianship clients	2868	3037	3112	3149
New Appointments	764	833	818	858
% change in new appointments on prev year		+9%	-1.8%	+4.9%
% increase in total Guardianship clients		5.9%	2.5%	1.2%

Source: OPG Annual Reports

¹⁴ OPG Annual Report 2018, p 51.

¹⁵ Ibid: 51..

The NDIS may affect guardians' workloads by increasing the number of decisions that statutory guardians are called upon to make, and time spent providing non-decision supports. The OPG Annual Report states that these extra duties include:

- liaising with the client, their support network, health professionals and service providers to register the client with the NDIS
- arranging the necessary assessments and collating information to ensure the needs of the client are clearly understood by the National Disability Insurance Agency
- attending NDIS planning meetings with the client, and
- subsequently working with the client to help them to utilise their NDIS plans and choose their own service providers.¹⁶

However, the fact that OPG clients are getting registered does not mean necessarily that the OPG is responsible for that access. Advocates can assist people into the scheme in a way that is less costly and less restrictive.

.....

¹⁶ Ibid: 51.

QAI's State-based Systemic Work in 2017-18

Submissions and Appearances at Public Hearings – (many of the following activities had multiple submissions, public appearances and campaign actions)

Productivity Commission NDIS Costs

Submission to Australian Human Rights Commission for the ratification of OPCAT \

Cashless Debit Card

NDIS Transitional Arrangements

Child Protection Reform Amendment Bill

Submission to the Law Council of Australia – The Justice Project

Medicare Levy Amendment (National Disability Insurance Scheme Funding

NDIS Quality and Safeguards Bill

General Issues around Implementation of the NDIS

Feedback on DSS Worker Screening Consultation paper

General Comment on Equality and Non- discrimination (Article 5) – CRPD

Fees for Paperless Bills - Inquiry into Paper Billing

RBWH Clinical Services Plan 2018-23 Consultation

Examination of the Guardianship and Administration and Other Legislation Amendment Bill 2017

Senate Community Affairs Committee Inquiry- NDS – Inclusive And Accessible Communities

Self-management and the NDIS for people living with Restrictive Practices.

NDIS participants living in hostels

Presentation - s 216 of the Qld Criminal Code at the Sexual Violence Awareness Month Forum

Cherbourg outreach for NDIS

Joint Standing Committee on the National Disability Insurance Scheme - Market Readiness

Department of Social Services “Ensuring a Strong Future for Supported Employment”

Queensland Law Reform Commission “Review of Termination of Pregnancy Laws in Queensland

“General Issues around the Implementation and Performance of the NATIONAL DISABILITY INSURANCE SCHEME”.

Education Queensland’s Disability Review Response Plan ‘Every Student with Disability Succeeding’

Continuity of supports and services for people not eligible for the NDIS.

Collaborations, Partnerships and Networks

QAI hosts regular teleconferences for CAGQ (Combined Advocacy Groups of Qld) and NDIS Appeals Support Advocates (Qld). Other collaborations are Community Safeguards Coalition, #AdvocacyMatters campaign, representation to the Board of Disability Advocacy Network of Australia (DANA), Disability Service Partnership Forum, and regular attendees to the Hot Topics Brisbane group.

QAI is also a member of a consortia to assist in the establishment of self-advocacy Council of People with Intellectual Impairment.

Australians for Disability Justice Campaign.

Australian Lawyers for Human Rights: a national collective of proponents for ratification of the Optional Protocol Convention Against Torture, informing the group of the work of QAI around the Human Rights Act for Queensland and our submission to the Senate Inquiry regarding the indefinite detention of people with disability.

QAI and Australian Aged and Disability Advocacy (AADA) continue to partner in delivering training and information for people with disability, carers and health professionals about Guardianship and related directives.

Consultations and Representations

Human Rights Learning Centre – consultation regarding model of best practice for advocates operating in Human Rights context

Commonwealth Ombudsman Office regarding NDIS Implementation issues

Education Queensland meeting to discuss the Department’s Inclusive Education response to the Deloitte Access Report into Inclusive Education for Students with Disability.

Legal Aid Queensland Lawyers Fiona Muirhead and Loretta Kreet to discuss engagement protocols with NDIS Appeals Support Advocates

Office of the Public Guardian - cost benefits of advocacy vs guardianship in the context of the NDIS.

Queensland Attorney General - Final Report of the Royal Commission into Institutional Responses to Child Sexual Abuse.

Department of Social Services, NDIS Q & S Commission - NDIS Quality and Safeguards: Forum for Advocates and the NDIS Commission.

Office Public Advocate – consultation on the OPA strategic business plan

Events

In partnership with Human Rights Watch, QAI hosted the launch of the HRW Report “I needed Help – Instead I was Punished) at the Supreme Court Library.

Media

<http://www.cairnspost.com.au/news/cairns/residents-in-rural-and-remote-residents-reminded-to-take-advantage-of-ndis-funding/news-story/205eb2d8bd7c016d6fdb4cc02992af3b>

<https://www.thechronicle.com.au/news/why-the-ndis-should-matter-to-all-toowoomba-locals/3225516/>

<https://www.gympietimes.com.au/news/why-the-ndis-should-matter-to-all-gympie-locals/3226064/?ref=hs>

“The Wire” - NDIS. <http://thewire.org.au/story/ndis-rush-leaves-participants-confused/>

ABC Radio National - Interview by Katherine Gregory for regarding chemical restraint and electroconvulsive therapy.

Courier Mail and Channel 9 news - Brisbane City Council “Paths to Nowhere”.

Courier Mail - penalties for people parking improperly in accessible parking spaces

Introduction

1. submission about what we think is important for the future advocacy landscape in Qld. (without dobbing we need to indicate that not all advocacy is delivered to the same standard) How systemic issues are escalated and to what effect? That some issues do require specific expertise especially if escalation to legal representation is a possibility.