



# *Annual Report*

## *2010-2011*

**Queensland Advocacy Inc.**

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## Management Committee Members

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President	Robert McRae
Vice President	Byron Albury
Secretary	Mike Duggan
Treasurer	Meriel Stanger
Committee Member	William Beanland
Committee Member	Trevor Boone
Committee Member	Karen Williams

## Staff Members

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Director	Kevin Cocks/Ken Wade
Law Reform Advocate	Ken Wade
Systems Advocate	Rebekah Bradshaw/Nick Collyer
Individual Advocate	Elizabeth Francis
Human Rights Lawyer	Jim Gibney/Monica Taylor/Althea Arends
Mental Health Lawyer	Rebekah Leong/Julie Hearnden
Mental Health Paralegal	Karen Thorpe/Chantelle Baguley
Office/Finance Manager	Deborah Bryzak
Administration Assistant	Karlie Marshall

## Introduction

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**Queensland Advocacy Incorporated (QAI)** is an independent community based systems and individual advocacy organisation for people with disability in Queensland.

QAI advocates for the fundamental needs, rights and lives and protection of the most vulnerable people with disability in Queensland. QAI does this by engaging in systems advocacy work - through campaigns directed to attitudinal, law and policy change. QAI also provides limited individual legal and non-legal advocacy for vulnerable people with disability through three discrete projects. These are:

### **1. The Justice Support Program (JSP)**

The JSP advocates for individuals with a disability in the Justice and related systems. The Advocate's role is to marshal legal and community support services to provide the person with the best possible opportunity to remain in the community and to prevent them from re-offending.

### **2. The Mental Health Legal Service (MHLS)**

The MHLS is a specialist legal service dedicated to providing legal advice and representation to individuals receiving involuntary treatment for mental illness in Queensland.

### **3. The Human Rights Legal Service (HRLS)**

The HRLS provides specialist legal advice and conducts strategic casework aimed at protecting and promoting the fundamental human rights of vulnerable people with disability in Queensland. Once a week, the HRLS operates a specialist, telephone-based Legal Advice Service (**LAS**). The aim of the LAS is to increase the access of people with disability to the law.

The Department of Families, Housing, Community Services and Indigenous Affairs (**FaHCSIA**) under the Commonwealth *Disability Services Act* funds QAI systemic advocacy. Legal Aid Queensland funds the Human Rights Legal Service (**HRLS**). The Department of Justice and Attorney General through the Legal Practitioners' Interest on Trust Accounts Fund (**LPITAF**) funds the Mental Health Legal Service (**MHLS**) and the Justice Support Program (**JSP**). QAI also seeks funding from philanthropic organisations and trusts for projects.

This **Annual Report** covers the period from 01 July 2010 to 30 June 2011. It describes in detail the efforts of QAI to be a strong and effective systems and individual advocacy organisation, committed to its mission of promoting, protecting and defending through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

## ***QAI's Mission and Objectives***

### **QAI's mission is:**

*"To promote, protect and defend, through systems advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland"*

## **QAI's objectives are:**

1. To affirm and put first people with disability in Queensland;
2. To undertake systems advocacy that strives to promote, protect and defend the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland;
3. To undertake legal advocacy that strives to promote, protect and defend the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland;
4. To take an active leadership role in advocating for the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland;
5. To support, promote and protect the development of advocacy initiatives for the most vulnerable people with disability in Queensland;
6. To be accountable to the most vulnerable people with disability in Queensland;
7. To conduct an efficient and accountable organisation; and
8. To adhere to and constantly reaffirm the following beliefs and principles:
  - All human life has intrinsic dignity and worth;
  - People with disability must positively and actively be accorded worth, dignity, meaning and purpose through being included in and with their community;
  - Social Advocacy is functioning (speaking, acting, writing) with minimum conflict of interest on behalf of the sincerely perceived interests of a person or group, in order to promote, protect and
  - Defend the welfare of, and justice for, either individuals or groups, in a fashion which strives to be emphatic and vigorous and is likely to be 'costly' to the actor in terms of:
    - time or other resources;
    - emotional stress;
    - bodily demands;
    - social opprobrium, rejection, ridicule;
    - self-esteem, self certainty;
    - socio-economic security, livelihood; and
    - physical safety, life

## **The essential elements of Social Advocacy are:**

- strict partiality;
- minimal conflict of interest;
- emphasis on fundamental needs and issues;
- vigorous action;
- cost to the advocate;
- fidelity; and
- being mindful of the most vulnerable person. Systems advocacy is a particular form of advocacy that focuses on influencing and changing 'the system', that is, the whole of society and the various systems operating within, in ways that will benefit people with disability as a group within society. Systems advocacy includes, but is not limited to, policy and law reform activities.

## Presidents Report

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It is with much sadness and some regret that I write my final President's report.

My time on the Management Committee has been lengthy but very enjoyable and, I like to think, during that time QAI has continued to mature/ develop into a very effective and reputable systemic advocacy organisation. In part, this is due to the fine members of staff who we have been able to attract into our ranks. QAI was very fortunate to have Kevin Cocks as its Director for many years. Kevin, supported by a succession of enthusiastic Management Committees and staff members, was able to make a great contribution to the cause of vulnerable people. His efforts were noticed and respected by many people at government and judicial levels as well as others including many of those who work in the 'disability sector'. This has led to QAI being an organisation which people are drawn to, both as employees, Management Committee members and supporters.

The effectiveness and reputation of QAI is also due to the efforts of the Management Committees which over the years have facilitated the many worthwhile activities which QAI has engaged in. In my opinion, the future of QAI is very bright. Ken Wade has settled into the Director's chair and with several new staff appointments QAI is well positioned to venture forth.

Funding has been a problem over the past and it has the effect of inhibiting our further development. However, given that in the past we have achieved so much with limited funding, we must persevere. Having said that, I urge the members of the new Committee to revisit this issue.

I thank all present and past members of staff and Management Committee members with whom I served for their strong efforts and wish them and QAI all the best for the future.

**Robert McRae**



## Director's Report

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This is my first Annual Report as Director of QAI. I would not have dreamed even just twelve months ago that the close of another year would see me in this position. Our former Director Kevin Cocks seemed an immovable institution here at QAI after twelve years at the helm, and even longer as a fixed point of moral integrity, whichever way the winds of change blew, against which the entire sector could align its moral compass. No one could have imagined that Kevin would leave QAI. He was synonymous with QAI in the sense that he had made virtue and high principle synonymous with the organisation. But destiny beckoned, and Kevin left QAI in February 2011 to take up the prestigious post of Queensland's Anti-Discrimination Commissioner. QAI's Management Committee selected me to take his place. They did me a great honour for which I am deeply grateful. I will endeavour to discharge the trust holding the Directorship of QAI confers with the same virtue, grit, principle and wisdom of my predecessor.

There have been other staff changes at QAI in the reporting period. Julie Hearnden who was employed as a Systems Advocate has taken up a position as a solicitor in the Mental Health Legal Service. The position she vacated has been filled by Nick Collyer, who has joined QAI as a full-time systems advocate. Nick's experience of disability-related matters is limited, however, his work with the socially disadvantaged is extensive, having worked in advice, advocacy and law reform for people living in rooming accommodation, as a tenancy law adviser at the Tenants' Union of Queensland, and as a housing worker at the Caravan and Mobile Home Residents' Association, Bayside Tenancy Advice Service, Logan Youth and Family Services and TAAS Inner North. Nick has also been a community worker in inner Brisbane, helping to produce the Community Action Network Awards, Politics in the Pub at the Powerhouse and Doorways Magazine for and by people who are homeless or living in rooming accommodation. He has also worked as a researcher in social enterprise at QUT's Centre for Philanthropy and Not-for-Profit Studies.

Nick is an affable warm-hearted character whose social conscience, ready-wit and sparkling charm have seen him nestle so comfortably in to the culture of QAI he might have been born and bred for the role. He is a strong swift writer, nimble researcher and shrewd thinker who has demonstrated with his passion for social justice and thirst for related work that he is a bargain that QAI was incredibly lucky to secure.

I would like to thank the Management Committee for their leadership, work and support during this time of internal change. Additionally, I acknowledge and thank all staff members for their dedication and tireless efforts to carry out the work of QAI over the past year. I thank my family for their love and support.

During the reporting period, QAI's work has been strengthened by the support of many people outside of the organisation. In particular I would like to thank people with disability and their families and friends who continue to hold a dream for a better life for all people with disability. The staff and I draw great strength from people's tenacity to face adversity daily, while holding on to the dream of having a better life. Finally, I thank the members of both the Disability Advocacy Network of Australia (DANA) and the Combined Advocacy Groups Queensland (CAGQ) for their commitment and enthusiasm to working collectively to ensure the continuation of a strong, vibrant and robust advocacy sector in Queensland and Australia.

### ***Scope of Report***

This Annual Report covers the activities carried out by QAI in the financial year 2010-2011. During the past 12 months QAI has continued to focus its advocacy efforts in five areas: (1) Community Living, (2) Law Reform, (3) Human Rights Legal Service (**HRLS**), (4) Justice Support Project (**JSP**) and (5) Mental Health Legal Service (**MHLS**). Systemic activities are funded by a recurrent grant from FaHCSIA, the other projects are funded by the Legal Practitioners Interest on Trust Accounts Fund (LPITAF). Of the LPITAF funded projects only the Human Rights Legal Service has recurrent funding. The other projects receive non-recurrent funding. This included an extra \$64,000 in the 2010-2011 financial year for QAI to establish a telephone legal advice service for people with disability. For more information about these projects please refer to



the individual reports inside this volume. In the following pages I will provide a brief overview of the systemic matters that have engaged QAI during the past twelve months.

Overview of QAI's systemic Activities 2010-2011.

## ***The United Nations (UN) Convention on the Rights of Persons with Disabilities***

### **(CRPD) Shadow Report**

It is critical that people with disability have an opportunity to have their voices directly heard by the UN treaty body for the convention on the rights of persons with disability.

To capture that voice, QAI has joined with a group of committed community organisations that includes People With Disability Australia, The Australian Federation of Disability Organisations, and the Disability Discrimination Legal Centre to form an expert reference group that has contracted law firm DLA Piper to draft a Shadow Report to the Government's first baseline report to the UN Treaty Body.

DLA Piper staged consultations nationally on the basis of which it crafted a comprehensive 350 page draft report. The planning group has met on four occasions by telephone conference and had two face-to-face workshops to commence the review of the report.

As a result of the work in this reporting period we have developed an action plan to produce a final draft shadow report with recommendations for endorsement from all participants in the consultation process. The final document will then be presented to the UN treaty body.

That document is now in the process of substantial revision. Information from a source close to the UN Treaty Body for the CRPD indicates that the UN adheres strictly to administrative protocols to manage its workload. Shadow Reports consequently are preferred in a form that is concise and easy to manage. The revision of the shadow report must therefore reduce by one half to two thirds the bulk of the Shadow Report without affecting substantive content. This revision is progressing and should produce a first redraft sometime in August or September of the next reporting period.

### **Blue Skies**

The [\*Blue Skies Scenario\*](#) is a vision for an inclusive community. It was developed by the Blue Skies Group as a community response to the call for an alternative future for people with disability, their families and supporters.

The Blue Skies team has had four planning meetings in this period. Resulting in a one-day workshop with strategic stakeholders from around Queensland to develop eight priority policy positions to inform the Queensland disability strategy. Blue Skies was awarded the Minister's Excellence award at the annual Disability Awareness Week awards ceremony. This recognition is an indication of the influence Blue Skies has in commencing cultural reform within government departments. The Blue Skies Group has also commenced engagement with key disability leaders in Perth with the objective of assisting them to investigate establishing a Western Australia Blue Skies Group.

### **Wasted Lives Campaign**

This campaign has evolved from the initial focused campaign around people with disability living in Baillie Henderson Hospital, Toowoomba (BHH) to include all people with impairment who are captured in health institutions across Queensland.

Article 19 of the Convention on the Rights of Persons with Disability enshrines the right of people with disability to live where, and with whom, they choose. Many people with disability living in institutions have had no opportunity to exercise this right. They should have that opportunity.

QAI released 5 Issues Papers about this subject, the first outlining QAI's position on institutional closure, and seeking a moratorium on the movement of people in Brown house at Baillie Henderson to other units and a commitment to a personalised plan developed for each person.

### *Building a supporter base*

QAI have also been busy building a supporter base, (please see our website for a copy of the supporter form to become a supporter of the campaign), lobbying MP's, raising awareness of systemic issues, and meeting with Ministerial advisors from Disability Services (DS) and Health and Departmental staff at policy and regional level (Toowoomba).

QAI held a half day community forum in October 2010 to bring the lives of people with disability living in institutional care to public attention. The gathering attracted people with disability, family members, service providers, other community members, and some of the key people involved in government, policy, funding and institutional care.

The forum put forward not only moving accounts of incarcerated people's lives, but also how people have imagined better and have planned and worked towards a good life in the community.

The then Minister for Disability Services and Multicultural Affairs, Anastacia Palaszczuk made a commitment to:

- Ensure community access is available to people with disability living in institutions
- Develop time frames for moving people with intellectual disability out of Baillie Henderson Hospital
- Develop a program to enable the transition of people with disability out of health institutions.

In a follow up letter to QAI, the Minister stated that the government is "taking steps to address the support and accommodation needs of people with a disability residing in health facilities."

"The initial focus is on working with people residing in Baillie Henderson Hospital and their families." The Minister went on to say: "I will continue to look at the ways the lives of people residing in health facilities can be improved, including those who reside in Jacana and Casuarina."

The Department of Disability Services and Community Care have commenced policy planning including: engaging a community organization to undertake an assessment process and report on undertaking planning for each person at Baillie Henderson with an intellectual disability.

QAI are monitoring the development of planning for the contingent at Baillie Henderson Hospital and influencing the Department's process of developing ministerial advice in relation to moving people with disability from institutional living.

### ***National Disability Insurance Scheme (NDIS) Campaign –***

First Phase: QAI's former Director, Kevin Cocks, participated in a two-day forum in Sydney this was hosted by The Australian Human Rights Commission, PWDA and the Australian Federation of Disability Organisation (AFDO). There were 17 organisations represented at this forum, they were either advocacy organisations, peak bodies or organisations for people with disability. Throughout the course of the two days they developed a framework for a submission to the PC Inquiry. This framework was distributed to all advocacy agencies and peak body members. As you will see if you have time to scan through the submissions published on the PC website there has been some very strong yet coherent and consistent messages provided to the PC Inquiry.

QAI drafted a presentation to be given at the PC hearing in Brisbane in the second half of 2010. Kevin Cocks then finalised QAI's submission and presented this to the PC Inquiry.

The Aim of the campaign is to provide advice and oversight and to ensure:

- 1) Maximum community input into the PC Inquiry about the long-term care and support needs of people with disability and their families and carers; and
- 2) That there is wide spread community support and action that will result in government making transformational changes to the current system of support to benefit people with disability, families and carers; and
- 3) That all sectors work constructively together.

Second Phase: After the Productivity Commission released its draft report on 28 February 2011 QAI delivered a presentation at the Public Consultations in Brisbane and provided a written submission to the Productivity Commission about the draft report.

While many elements could have been addressed superficially in the time permitted for reply. QAI decided to focus its submission on the need for and role of advocacy under the NDIS. I took this decision for two reasons. Firstly, the Commission's 800 page report dealt with advocacy in only the most cursory and superficial way. Secondly, it became evident during QAI's presentation to the Commission in the public hearings in Brisbane that the Commissioner's had little idea of what constituted advocacy, how important it is, how poorly it is funded and how vital is the need for advocacy to be independent of the service system established to support people with disability.

The sitting Commissioner had been well primed for our presentation by an earlier appearance by someone struggling to receive essential support for their basic hygiene needs. The memory of that individual burned so clearly in the Commissioner's mind that as soon as I finished the formal part of the presentation she asked me a question. She wanted to know why, with the CRPD and advocacy organisations such as QAI, people like the earlier individual could fail to receive supports essential to their basic hygiene needs.

QAI explained to the Commissioner that while the Australian Government has ratified the CRPD it has not been adopted into Australian law. This means a remedy cannot be found under domestic law. At best the CRPD has persuasive force. Recourse may be had to the UN Treaty Body for the CRPD, but again any recommendations the Treaty Body may make have only persuasive force.

As for advocacy? QAI explained to the Commissioner that advocacy is grossly underfunded relative to the need for it. Consequently much need for advocacy services, however deserving or desperate, goes unaddressed.

The Commissioner appeared receptive to both of these arguments. She then enquired whether advocacy services could not be provided by the organisations proposed in the Draft Report to provide brokerage and other services to people with disability receiving support under the NDIS. QAI gently pointed out that the conflict of interest inherent in vesting the responsibility for advocacy in a body that could become the legitimate target of advocacy made such an arrangement impossible.

It was on this basis I took the decision to devote QAI's entire submission to the subject of advocacy.

Given the impact personal stories had on the Commissioner at the Public Hearing, QAI was careful to use case examples to explore the vital role of advocacy in the lives of people with disability and to illustrate the paramount need for that advocacy to be independent.

I have also attended three workshops hosted by Disability Services as part of their consultation process for preparing the Government's response to the NDIS Draft Report.

## ***Community Safeguards Coalition: My Life, My Home, My Solution Campaign Stage 2***

Reform of Disability Services Queensland (DSQ) and Department of Housing policies on forced co-tenancy and shared accommodation, block funding, emergency and crisis care funding.

The community safeguards coalition has continued to monitor the progression of Disability Services to draw upon their policy of 'vacancy coordination' to warehouse people in groups of three or more.

QAI as a member of the safeguards coalition has been involved in three meetings with government officials challenging current policy and has written five letters to the Premier, Treasurer, Disability Services Minister, Minister of Communities and Housing requesting information to demonstrate how their current policies are not breaching the national disability standards and the human rights as articulated in articles, 15, 16 and 19 of the CRPD.

A Position Paper has been developed and will target service providers to build capacity to engage DS in a way that allows them to eliminate forced co-tenancy arrangements in funding agreements.

CSC members presented at the ACCID Conference in September 2010. This presentation included stories of forced co-tenancy by persons subject to co-tenancy in Qld.

The CSC are still awaiting despite repeated requests for Departmental policy on shared accommodation and support.

## ***Effectiveness of Early Intervention and Diversion for People with Impaired Capacity in the Criminal Justice System***

Establishment Phase Report on Applying a Pathways Analysis to Reframe Program Responses

This report establishes the need for a longitudinal study to gather solid evidence regarding the benefits of early intervention and diversion for people with impaired capacity from the criminal justice system in terms of the client, social and resource allocation outcomes. It will involve the active engagement of key agencies in the government and community sectors. The conclusions from the study are expected to lead to a change in focus from crisis management approaches delivered through the criminal justice system to responses all involving early intervention and ongoing support delivered through human services.

Additionally, government will benefit from such responses in order to fulfil their human rights obligations and reduce risks.

The project team consulted with all agencies on the Interdepartmental Working Group on People with an Intellectual Disability in the Criminal Justice System. There was considerable agreement amongst these agencies regarding the need for a coordinated whole of government response to circumvent people with impaired capacity from entering or cycling through the Criminal Justice system when other more cost effective options might exist. While the Disabled Justice report triggered a whole of government response, there is considerable agreement among research partners that there is still much work to be done.

Sponsorship provided during 2009-2010 was in the knowledge that it was the first of a two phase research project with the second phase the longitudinal study. The longitudinal study is currently scheduled over two financial years. The indicative budget is \$190,000, comprising of \$140,000 and \$50,000 in the 2010–11 and 2011–12 financial years respectively. Community organisations have committed \$15,000 for 2010-11.

In December we were informed by the lead agency that serious commitment is needed in order to progress this work.

Unfortunately the Queensland Government has rejected QAI's application for funding of the longitudinal study. We will continue to seek funding for the progress of this project from all available sources.

### ***Disability forensic service draft bill consultation***

In 2006 the Queensland Government commissioned the Hon Justice W.J. Carter to investigate and report upon the use of restrictive practices in Queensland on adults with intellectual/cognitive disability in services either funded or operated by the Queensland Government. One of the practices with which Justice Carter took particular issue was the detention in mental health facilities of people with a primary diagnosis of intellectual/cognitive disability who were the subject of forensic orders. Justice Carter strongly recommended the establishment of a forensic service entirely separate from Mental Health for the support and development of these people. The service was to be underpinned by the principles of person-centred positive behaviour support, incorporating as part of their expression the assessment of adults by appropriately qualified individuals and the development on the basis of this assessment of a positive behaviour support plan designed to develop the individual's capabilities, expand their capacities and improve their quality of life. The eventual outcome was the management of problem behaviour and return to the community for all residents of the forensic service. A service entirely removed from Mental Health is essential to provide the specialist knowledge and supportive culture necessary to ensure the adult's return to the community.

The Queensland Government's response was to prepare draft legislation to regulate the forensic service that mirrored in every detail the Queensland Mental Health Act. By doing so the Government contravened as thoroughly as they could both the spirit and the letter of Justice Carter's recommendations and hopes for the new service.

QAI was included in the Government's consultation on the draft legislation. These included audiences with the relevant minister and senior heads of department. At these meetings QAI illustrated in the most emphatic language just how thoroughly the draft legislation contradicted Justice Carter's detailed and explicit recommendations on the subject. QAI followed these consultations with extensive submissions relating the flaws in the legislation and the extensive changes that were necessary to realise Justice Carter's intention.

To its immense credit the Queensland Government listened to the criticisms, delayed passage of the Bill and returned it to the drafters for extensive remodelling. Significant changes have been made. Greater emphasis has been placed on person-centred behaviour support programs compared with the original that focussed less on personal development and more on security and detention.

The Director of the service was originally intended to be the Director of Mental Health, both Directorships to be held concurrently. Now the Director of the forensic service will be the Chief Practitioner, a newly created statutory officer entirely independent of Mental Health and whose expertise lies in the field of intellectual disability. To our immense pleasure Jeffrey Chan, formerly Victoria's Senior Practitioner, has been appointed to the role. He brings with him a professional perspective that is grounded firmly in the principles of human rights. He will, we believe, by force of personality and passionate belief work considerable change for the better on the approach that will be adopted within the Forensic Disability Service towards the individuals it is intended to support.

His work should be made easier by the source from which staff for the service will be drawn. The workers providing personal support to the residents of the service will be recruited from the Department of Communities. Previously the plan had been to recruit these workers from mental health staff working for

Queensland Health. This would have risked importing the medical model of treatment into the forensic service along with the staff.

These are substantial victories which will go a long way towards establishing the appropriate culture within the service, a culture that will emphasise the positive development of residents rather than their mere detention.

### ***Restrictive Practices***

As stated in the previous section the Queensland Government commissioned the Hon Justice W.J. Carter in 2006 to investigate and report upon the use of restrictive practices in Queensland on adults with intellectual/cognitive disability in services either funded or operated by the Queensland Government. Justice Carter recommended a radical revamp of the way restrictive practices were used and administered. Key to his recommendations was the proper assessment of all individuals for whom restrictive practices were proposed and the development of a positive behaviour support plan to develop the individuals' skills and capabilities, and to improve their quality of life.

Restrictive practices were only to be employed as a short-term, last-resort measure as part of a positive behaviour support program to manage the most dangerous behaviours. The primary focus of effort, invention and resources was always to remain on the development and implementation of positive strategies to develop the individual and improve their quality of life. Only such developments and improvements could provide the long-term reduction in challenging behaviours that prompted the use of restrictive practices and denied the individuals' the wholesome and satisfying community involvement that are necessary for true health and happiness. Restrictive practices could offer no more than a means to control, with legalised forms of assault and detention, individual episodes of challenging behaviour. It is well accepted now, that restrictive practices do not of themselves produce wholesome behavioural change. In fact, they can act as a trigger for further behavioural incidents.

The Queensland Government's response to Justice Carter's report was a legislative scheme enacted in June 2008 to regulate the use of restrictive practices. Unfortunately, that legislation is not rights based and has not been understood that way. It is compliance based and is understood to establish a legal basis for the use of restrictive practices, rather than a positive pathway for reducing and eliminating their use. Given the potential for the abuse of restrictive practices, the appalling risks they pose to the liberty and health of affected individuals, and the unsatisfactory nature of the legislation regulating their use, QAI has made restrictive practices in Queensland an ongoing, priority project.

During the reporting period, QAI staged a public forum about restrictive practices in Queensland. The forum was held in the Undumbi Room of the Parliamentary Annexe on Monday 23 August between 8:50am and 5:15pm. It was widely advertised and was rapidly oversubscribed. Attendees formed a representative mixture of people with disability and their families, and representatives from government, Non-Government Organisations' and community organisations.

QAI spent about a year and a half planning the forum. As with all events of this type, this combined a long period of low intensity organisational effort, followed by a shorter (approximately 3 – 4 months in this case) of high-intensity preparation. Initially QAI sought to promote a joint venture with Disability Services Queensland. However, our overtures, which were open and sincere, appeared to inspire concern about our motives for wishing to stage this event. We were clear that the forum would not be used as a weapon to attack Disability Services, but as an opportunity to host an open exchange of ideas about the appropriate approach to the use of restrictive practices. Unfortunately, Disability Services Queensland did not respond with an invitation to co-host an open forum for information exchange. Instead, we were invited to advise Disability Services Queensland on how they might include in their own forums the opinions of adults and families affected by restrictive practices. QAI was dissatisfied with this and decided to proceed alone.

This decision carried with it substantial financial risk, but QAI believed the importance of the topic warranted the assumption of that risk. QAI also believed interest in, and concern about, restrictive practices was so high that this risk could be substantially offset against pledges of support from interested parties. So events proved.

QAI immediately approached the then Minister for Disability Services, Anastacia Palaszczuk, and asked her to petition on QAI's behalf the Speaker of the Legislative Assembly both to reserve the Undumbi Room for the forum and to waive the room's hiring fee. To her immense personal credit, the Minister acted swiftly on our behalf and secured both of our requests. She also agreed to take a personal role in the conduct of the forum and deliver the closing remarks at the end of the day. QAI also secured sponsorship from Endeavour Foundation, Community Resource Unit (CRU), Queensland Parents for People with a Disability (QPPD), Mamre, National Disability Services (NDS) and the Centre of Excellence for Behaviour Support. The sponsorship provided was given graciously and unstintingly, and covered everything from substantial cash donations to the full audio-visual recording of the day's events. Also, McCullough Robertson provided many thousands of dollars of pro bono legal advice. Speakers were equally generous with their time and their efforts.

Mindful that the programs of events of this type tend to be dominated by academics and professionals who explain things in terms of models, theories and paradigms, QAI tried to balance the program by including the voices of adults and families who have experienced restrictive practices. QAI did this by including two presentations by people who presented their personal stories of how restrictive practices have affected their lives. They were Sorayda Corpuz who explained the nightmare restrictive practices created for her son David and their entire family, and Donna Parkes who through a facilitated video presentation described the horrors restrictive practices had visited upon her life. Both also related how sincere efforts to improve the quality of life David and Donna enjoy have led to the elimination of restrictive practices from their lives. Their stories were supported by the presentation of Doctor Paul Ramcharan, an academic who described the results of his research efforts to elicit the feelings about restrictive practices of people who have endured them. He did this by relating their responses about restrictive practices in their own words.

These three presentations were undeniably the highlights of the day. They prompted by far the greatest response from the audience, which numbered almost one-hundred-and-sixty. That is not to say the calibre of the other speakers was poor. They were fine by any standard and would have scintillated anywhere but the centre of the spotlight glare Donna, Paul and Sorayda turned upon restrictive practices. Their presentations were so powerful and so passionately received, I believe, because they brought home for the first time to many in the audience the human suffering restrictive practices cause. The other keynote speakers included - Doctor Jeffrey Chan (Victoria's Senior Practitioner), Professor Karen Nankervis, (Director of the Centre of Excellence for Behaviour Support), Phillip French (Phillip French Consulting) and Doctor Michael Kendrick (Kendrick Consulting International). Michael Hogan (Deputy Director-General Disability Services) also appeared and gave a brief update about the government's 'Positive Futures Initiative', the government's euphemistic term for their flawed response to Justice Carter's recommendations in his 2006 report *Challenging Behaviours and Disability – A Targeted Response*.

When QAI took the decision to stage a full-day forum specifically about restrictive practices, we knew it was a risky undertaking. It was risky financially, and risky in terms of the expected payoff in the form of beneficial outcomes. We knew what we hoped the forum would achieve, and we knew how short of expectation realised outcomes might be given the geological scale of the cultural shift needed to move the use of restrictive practices from a medical and compliance model to a rights-based model. Given the monstrous character of the attacks restrictive practices constitute upon the rights, freedom, physical and mental health of people subject to their use, QAI judged the risks not only worth taking but morally and ethically essential.

We hoped the forum would attract a diverse audience from across the sector who were prepared to listen with an open mind to a discussion about positive rights based alternatives to the use of restrictive practices. This we achieved. We hoped to attract and engage in that discussion the relevant Minister and senior bureaucrats from her department. This we achieved. We hoped to reveal from behind the obscuring wall of prejudice, indifference, and regulation the tragic and all too casual brutality endured by the silently suffering men and women subject to restrictive practices. From the responses we received from the audience to Donna and Sorayda's stories, this we achieved.

We hoped the forum would serve as a catalyst for the essential cultural and legal change that must occur if restrictive practices are to be appreciated for the evil they are and rejected and replaced with the principles of person-centred positive behaviour support. A long-entrenched culture is difficult to shift. It yields either to the sudden application of highly-explosive force or the progressive accumulation of pressure applied incrementally until it reaches irresistible force. QAI has no atomic weapons in its arsenal. We must rely on the progressive incremental application of pressure. The forum constituted a further incremental increase in the pressure QAI has been building gradually on this issue for the past several years. It may be years more before the profound cultural change necessary is achieved, but early signs are encouraging. Shortly after the forum major positive change occurred in the senior ranks of bureaucracy in Disability Services. There has also been a marked increase at the senior level in receptivity to criticism of policy, procedure and planning. The positive government response described above to QAI's criticism of the Disability Forensic Bill is clear evidence of this.

*QAI anticipates ramping up effort around restrictive practices in the near future. Over the course of 2011-2012 the Disability Services Act 2006 Qld is scheduled for review. . Part 10A of the DSA regulates the use of restrictive practices by funded service providers. This Part will be reviewed first followed by the remainder of the Act. Disability Services has hinted major changes are envisaged. QAI intends to ensure major changes are realised.*

## **Miscellaneous Submissions**

### **Issue of death certificates for people living in level 3 residential facilities.**

In the first half of the reporting period the Queensland Deputy State Coroner issued her findings in the inquest into the death of Leon Streader. Leon Streader lived in a level 3 residential facility. Mr Streader died there and his treating doctor signed the death certificate. Importantly, Mr Streader's treating Doctor owned the facility where Mr Streader died. No issues were found with the death certificate. However, the Deputy State Coroner recommended that in future:

*"Where a doctor has a financial interest in a level three accredited facility in which the doctor treats a resident, the doctor is not to issue a cause of death certificate for that resident, or alternatively the certificate is to be countersigned by another independent doctor."*

QAI applauded the Deputy State Coroner's recommendation as far as it went, but recommended that the prohibition it envisaged be taken even further. QAI based its argument on the relevant articles of the CRPD and recommended that the prohibition against signing death certificates for residents of level three accredited facilities should extend to all doctors who have an interest in those facilities regardless of whether or not they were treating the resident who died. Further, if the idea of a co-signatory is to be adopted, that co-signatory must be truly independent. Independence could best be assured by establishing a pool of doctors accredited for that purpose. The isolation of some locations may seem to make such an option impractical. However, a precedent exists for the routine delivery of medical practitioners to remote locations in the daily operations of the Royal Flying Doctors.



## **Reform of the Jury Act**

During the reporting period the Queensland Law Reform Commission's requested QAI to provide submissions on its review of Queensland's Jury Act. The relevant section for QAI's purposes was 4(3)(l), which states that a person is ineligible for jury service if they have:

***a physical or mental disability that makes the person incapable of effectively performing the functions of a juror***

This essentially prohibits people with disability from performing jury service for no reason other than the existence of their disability.

QAI made the following recommendations to the QLRC:

1. The Jury Act must be amended to include a presumption that everyone including all people with disability have the capacity to perform jury service. This presumption is a rebuttable one and the onus of demonstrating lack of capacity must lie with the entity advancing the contrary.
2. Where the presumption is challenged the incapacity must be demonstrated on a case-by-case basis according to the individual's ability to discharge their duties as a juror. Incapacity must in no way be presumed because of the existence or nature of the disability.
3. The above presumption must apply to all people with disability not just people with a physical disability.
4. The State must have the obligation to provide reasonable accommodation to all people with disability. Where reasonable accommodation would permit or facilitate the performance of jury service those accommodations must be made and all efforts to identify and provide reasonable accommodation must be genuine. Reasonable accommodation may include the provision of an interpreter, provision of material in an alternative format, etc. Any technical aids/devices provided to accommodate a person with disability must be regularly updated.
5. All courts including their precincts, support vehicles etc should be fully accessible.
6. All people with disability should have the right to abstain from performing jury service if they choose.
7. All people with disability should also have the right to defer jury service if they believe elements of a particular case would pose barriers to their participation and these barriers could not be relieved with reasonable accommodations.
8. The presence on a jury of a person with disability must not of itself constitute grounds to challenge either the verdict or the competence of that jury.

**Ken Wade**

## **Justice Support Program**

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### ***Background***

In 2008 the original Justice Support Program (JSP) received funding from the Legal Practitioner Interest on Trust Accounts Fund (LPITAF) to recruit and train volunteers to provide a 24/7 “Police Support and Court Support” service for people with disability who were involved in the criminal justice system as complainants, victims, witnesses, suspects or defendants. In the following two years JSP evolved into an individual advocacy service for people with disability in the justice system.

In May 2010 when it appeared that the funding would not be continued into the 2010-2011 financial year JSP commenced the process of finalising the files or referring clients to other advocacy organisations. All JSP staff, supporters and stakeholders were notified that the program would close down as of 30 June 2010.

### ***The new JSP service model***

When further funding was secured from LPITAF in July 2010, QAI refined to JSP service model to provide individual advocacy and early intervention for a person with disability who is involved in the criminal justice system, with an emphasis on advocating for the provision of support services which will assist the person to alter his offending behaviour as well as resourcing legal advice and representation for that person. In August 2010 a full time Project Coordinator/Individual Advocate was recruited and appointed with a start date of 13 September 2010.

### ***Publicity and Promotion***

JSP had effectively been disbanded for three months and the new service model needed to be publicised. A flier and information sheet has been developed for JSP, the flier is designed to catch the attention of JSP clients or their carers/supporters, it is brightly coloured, has large print, is simply worded, is not overloaded with information and encourages people to contact JSP if they have been charged with an offence and need help to access services or support. The information sheet is designed for the professional or referrer and provides information about JSP and QAI, the referral process and criteria for access to the program, as well as some examples of the types of services JSP can provide. The publications have been distributed to a network of Community Legal Services, the Legal Aid Duty Lawyer Service Providers, Community Support Services and Organisations, as well as selected individuals resourced from the considerable contacts accumulated by QAI over the past 20 years of advocating for people with disability in Queensland. The flier has been distributed to various Magistrates Courts, Police Stations and Prosecutions Offices and the Legal Aid Queensland Offices in the greater Brisbane area.

The Advocate has promoted JSP to the Duty Lawyer Service, the First Advice Contact Team, the Consumer Protection Service and the Anti-Discrimination Service at Legal Aid Queensland.

### ***Duty Lawyers***

A recent Court of Appeal decision [R v AAM; ex parte A-G \(Qld\) \[2010\] QCA 305](#) has emphasised the difficulties a person with intellectual impairment has in dealing with the criminal justice system. The implementation of the National Partnership Agreement on Legal Assistance Services (NPA) has resulted in

Legal Aid giving priority to the early resolution of legal problems through preventative legal services (i.e. information, referral and community legal education) and early intervention services (i.e. advice, minor assistance and advocacy) such as the duty lawyer service.

The Duty Lawyer is usually the first point of contact within the legal system for a person who has been charged with an offence and information about JSP has been distributed to all the in-house and external duty lawyer service providers. JSP has also been individually promoted to the court support services, duty lawyers, registry staff (and prosecution staff if possible) at the Ipswich, Richlands, Beenleigh, Holland Park, Roma Street, George Street, Sandgate and Pine Rivers Magistrates Courts.

### ***Processes and Procedures***

File management procedures were developed by blending the procedures used by the QAI Legal Services and the Advocates at Speaking Up For You as well as drawing from the JSP Advocate's previous experience as a paralegal at Legal Aid Queensland. JSP clients have outstanding criminal charges (or are about to be charged), however the case files are not legal files and any legal advice or service is provided to the client by external sources. By the same token the only resource available to JSP for recording and monitoring the case files is the Community Legal Service Information System (CLSIS) which is data management software designed by the Commonwealth Attorney-General's Department for Community Legal Centres in Australia, specifically to manage their legal advice and case matters. JSP has developed and implemented client file management procedures using a combination of legal, advocacy and support worker's files.

### ***Services***

#### **Information, non-legal advice and minor assistance**

84 provided since mid-September 2010 - on request and recorded in detail in printed and electronic format (CLSIS).

#### **Examples:**

- a. A mother's concerns for her adult daughter with Schizophrenia who had been charged with public nuisance and was intent on taking the matter to trial despite the advice from Legal Aid and the duty lawyer that she was fortunate not to be charged with a more serious offence. JSP advised the mother to first consult her family doctor about his opinion of her daughter's capacity and depending on his opinion, encourage her daughter to return to her treating health professionals or consult a lawyer (privately if she can afford it, or at one of the Community Legal Centres in Brisbane such as Caxton Street or QPILCH) about the responsibilities and processes involved in being appointed as her daughter's guardian.
- b. A mental health consumer in the secure ward at Princess Alexandra Hospital (PAH) had recovered from the physical illness that had prompted his transfer from Arthur Gorrie Correctional Centre (AGCC) to PAH, however his treating team was reluctant to arrange his transfer back to AGCC because he had been charged with a serious offence, had been on remand at AGCC for a considerable time, did not appear to have a lawyer, and was distressed because he believed his savings had disappeared – JSP contacted the Prisoners Legal Advice Unit at Legal Aid who noted that the client had been funded for representation, JSP contacted the client's law firm who stated that they had been sending their letters to AGCC and would resume contact with the client now that they knew his correct address, JSP contacted the Public Trustee who stated that they had spoken to the client by phone the previous week and had explained at length that some funds had been sent to the PAH to be held in trust for his day to day expenses and the

balance was invested in accordance with the financial management plan that had been developed in consultation with, and approved by, the client. The Public Trustee agreed to send a copy of the plan to the PAH so it could be forwarded and retained on file at AGCC, this way the Counsellors and treatment team at AGCC could show him the paperwork the next time he became confused and concerned about the whereabouts of his life savings.

- c. An inquiry from a Disability Support Worker in a remote Queensland country town. One of his mature aged clients has a low IQ, the family is well known in the town, his sisters and brothers were long term residents in institutions and there is a history of sexual and physical abuse of the siblings, the client now has no friends or family supports in the area. The client had been charged for the second time with wilful exposure, this time because some children saw him urinating in his back yard. The children told their parents and the parents lodged a complaint with the local police. The previous charge was originally indecent treatment, he was doing the same thing but this time it was in a public place and in the presence of children. At the first instance the police prosecutions reduced the charge and it was dealt with in the Magistrates Court. The Support Worker arranged for a psychologist's report and provided submissions to the court about his client's personal history and intellectual impairment which prompted the Magistrate to dismiss the charge. The Support Worker was not sure if he could afford to put the same time and resources into assisting the client with the second charge. JSP recommended that he fax the Police material to Brisbane Legal Aid and arrange for his client to be advised via phone (in his presence so he could write notes) about the offence (important he tell them his client was in his own fenced back yard this time) and the likely outcome if the Magistrate is satisfied that it was an offence. JSP also provided the Support Worker with the name of the local law firm that provided the duty lawyer service and informed him that advising and representing defendants such as his client was a core service they provided. The Support Worker knew about the duty lawyer but had never requested help for his client because he thought the Duty Lawyer was only there to assist the defendants with serious charges.

## **Cases**

26 cases opened and 12 closed between 13 September 2010 and 30 June 2011.

Some cases are **simple and short** - such as arranging to obtain a copy of the police material for a client's minor offence so that he can get some legal advice before the next mention date, then supporting the client through seeing the duty lawyer, following the court process and arranging an affordable payment plan with SPER if a fine is ordered. In this sort of case the client is eligible and no special effort is needed to ensure he accesses all the legal services available, however there is a risk that he would not complete a step i.e. turning up for advice from Legal Aid without his QP9s, forgetting to attend court unless he's reminded, etc..

The common thread with the **longer term and complex** cases is that the clients have a significant or severe intellectual impairment, sometimes coupled with behavioural problems such as in Autism Spectrum Disorders. The clients have a history of behavioural issues which draws them to the attention of the Police, the issues are not addressed (usually because their parent or carer does not have the time, resources, ability, training or support to address the behaviour) and escalate to being charged with a minor offence and a plea of guilty in the Magistrates Court (sometimes with the assistance of the duty lawyer). By this stage the parent or carer seeks assistance, usually from the Department of Communities, however the waiting list for the initial assessment is historically 16 months or more and no interim support is offered. In the meantime the offending behaviour continues and starts to become entrenched, leading to more frequent or serious charges. The parent or carer looks around for other avenues of support or the clients'

more frequent interactions with the criminal justice system brings them to the attention of a person with enough insight to realise that they need more than a legal remedy for their problem and a referral is made to JSP.

It is relatively simple to ensure that the client is represented for the criminal justice process, which frequently results in the charges being suspended pending a referral to the Mental Health Court. The lawyer arranges for an assessment and report regarding the client's capacity and generally some JSP support is needed to remind the client or his carer to attend the appointment, sign authorities, provide instructions etc. If the client is not eligible for a grant of aid e.g. the offence is minor and there is a low risk of a custodial sentence, assisting and supporting the client to navigate the criminal justice system can be more time consuming because of the time waiting in court but the client is buoyed by the knowledge that the rules are relatively clear and easily accessible and there are checks and balances that serve to ensure that the process is followed without deviation or prejudice.

The difficulty is in obtaining support for the client so that his behavioural problems can be addressed. There appears to be reluctance at a grass roots level within the Department of Communities to provide support for what is loosely termed as "criminal behaviour", although every reassurance is given that a representative of the department will attend or provide a report to the Mental Health Court regarding the client's disability or incapacity. There seems to be some confusion about the concept of a person who does not have sufficient capacity to be held responsible for the offending behaviour, yet he is still branded as a criminal or denied the support services that are almost essential to changing that "criminal behaviour".

JSP is developing strategies to obtain the support for these clients, particularly with the younger clients who can benefit from being introduced to groups of other young people, either in sporting facilities, church, social or community groups, or a supported workplace. The positive example of a group of tolerant and patient young people with good social skills is a powerful incentive for the client to try to alter his behaviour. Generally these opportunities can be accessed through NGOs which have a more realistic attitude towards "criminal behaviour", despite being partly funded by the Department of Communities.

### ***Future priorities***

Disability advocates in Queensland will have achieved a significant milestone when there is a publicly available government policy to provide support to all people with disability, with priorities measured by the extent of the injury or the vulnerability of the person, rather than whether the person's behaviour is potentially criminal or not.

To reach this goal JSP strives to educate and influence stakeholders regarding:

- the special needs and vulnerability of people with disability (particularly those with intellectual impairment) when involved in the criminal justice system; and
- the economic, social and humane benefits of a co-ordinated and cross departmental early intervention approach to the provision of support for people with disability in Queensland with a view to preventing or reducing their risk of becoming involved in the criminal justice system.

**Elizabeth Francis**

# Mental Health Legal Service

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## *Background and 2010-11 highlights*

In 2008-09, the Mental Health Review Tribunal (**MHRT**) received over 13,000 matters. Almost none of the people with psychiatric and intellectual disabilities whose mental health orders were reviewed in that year were represented before the MHRT. The State does not provide Legal Aid Queensland with the resources to grant legal assistance to people whose mental health orders are reviewed by the MHRT and there are virtually no other sources of legal services available to this group of people.

In this context, QAI applied for and received one-year funding to set up the Mental Health Legal Service (**MHLS**) from the Legal Practitioner Interest on Trust Accounts Fund (**LPITAF**) to provide free legal assistance in relation to mental health law in Queensland. The core work of the service involves representation before the Mental Health Review Tribunal.

The service commenced on 14 January 2010, staffed by a full time solicitor and part time paralegal. In February 2011, the service was able to replace the paralegal role with a full time solicitor position.

The MHLS empowers people receiving involuntary treatment to participate in the review of their own treatment and ensure that the process, in which fundamental human rights are severely restricted, is lawful. Clients have stated that they felt their Tribunal hearing was fairer and more accessible due to being represented. Many clients of the MHLS face significant and multifaceted barriers to communication and, without representation, their full story would not have been told.

In 2010, QAI was successful in a tender to provide legal services to the Tribunal where it was considered necessary by the Tribunal that a patient have legal representation. Tender arrangements commenced on 1 July 2010.

2010-11 also marked the beginning of QAI's volunteer law student program, our first representation before the Mental Health Court, and our first Secondee from DLA Piper.

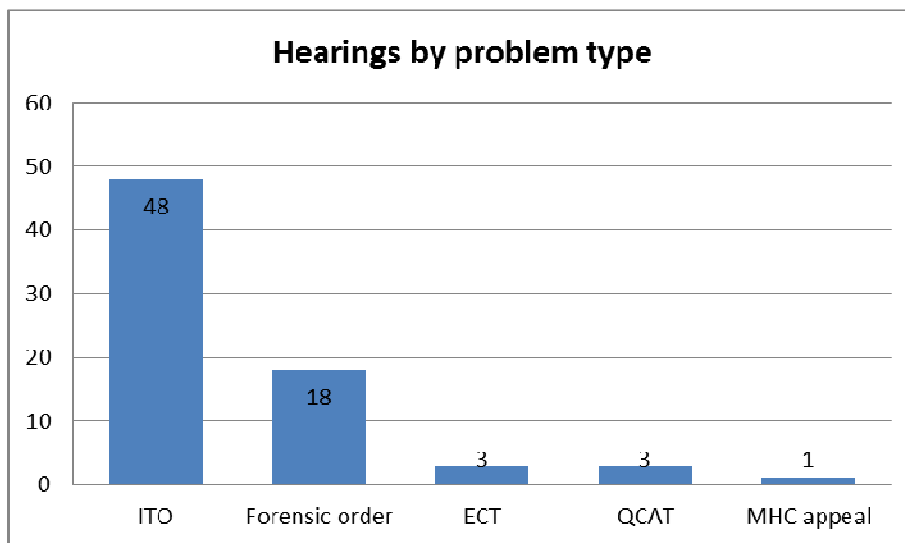
While the MHLS was successful in obtaining further funding for the 2010-11 and 2011-12 financial years from LPITAF, secure, adequate funding for the MHLS continues to be an ongoing problem.

## *Legal advice and casework*

The MHLS recorded **100 advices** in the 2010-11 financial year. The majority of advices related to ITOs, representing 63% of all advices. This was followed by people seeking advice about forensic orders (8%) and treatment (8%).

In 2010-11, the MHLS opened **139 cases**, in relation to **117 clients**. At times during the 2010-11 financial year, the Service has had to operate on one staff member alone with minimal support and this has significantly impacted on the services ability to accept new clients.

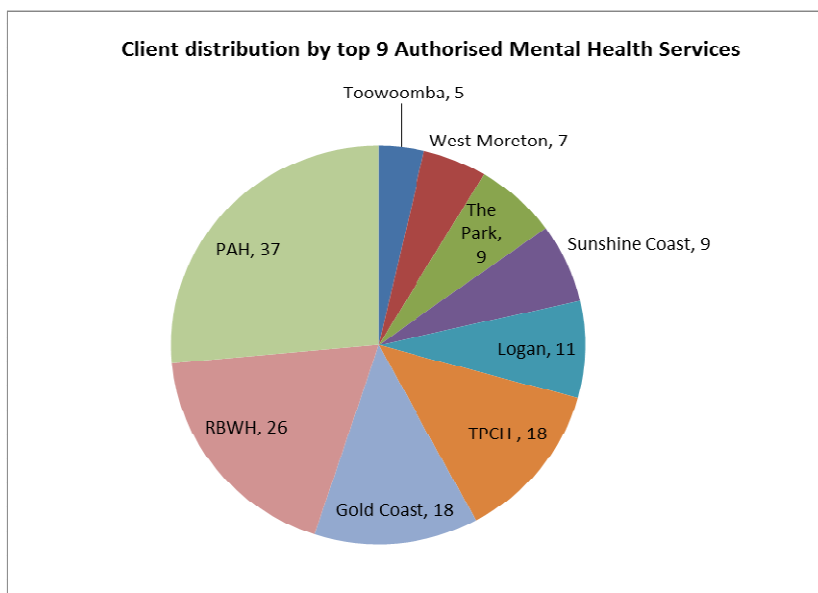
We attended **69 MHRT** hearings, **1 Mental Health Court** hearing and **3 Queensland Civil and Administrative Tribunal** hearings as our client’s legal representative.



In addition to strict legal work, the MHLS also advocated more broadly for clients’ rights to self-determination and dignity. This included discussing with the client’s treating team unsuitable or unsatisfactory medication regimes, inappropriate case management or managers, implementation of allied services and future plans, with a view to releasing the client from involuntary treatment. The MHLS has also advocated for individuals to be discharged from hospital settings where individuals have been detained at hospital for the first time or feel the reasons they were brought to hospital were not justified. In some cases the MHLS have had meetings and discussions with treating teams about alternative suitable accommodation options for individuals detained in hospital facilities.

The MHLS has also assisted clients with access to legal advice in relation to matters that fall outside the scope the Service, for example, assisting clients to complete applications to Legal Aid Queensland to obtain advice and assistance in relation to criminal charges. On several occasions the Service has also assisted clients to complete Information Access Application forms where they can obtain their clinical files; in most cases a client will not be granted full access to their clinical files.

### Client demographics



The MHLS has assisted clients as far as Cairns, Bundaberg and Townsville. However, the majority of client’s came from the south east corner, including patients from the Princess Alexandra Hospital, Royal Brisbane and Women’s Hospital, The Prince Charles Hospital, Logan and the Gold Coast.

The majority of referrals came from the health sector.

## ***Pro bono assistance***

MHLS is grateful to the pro bono assistance of barrister **Karen Williams** who provided pro bono representation in a forensic order review hearing to a severely disadvantaged indigenous client and to both **Karen Williams** and barrister **Mark Plunkett** who provided a detailed strategy in order to obtain a client's release from seclusion.

We also thank barrister Kim **Forrester** who represented a client before the Mental Health Court on appeal. While Kim's professional fees were subsidised by Legal Aid Queensland, they were far below commercial rates and time spent on this matter.

## ***MHRT Tender***

The Mental Health Review Tribunal Tender Agreement (**MHRT Tender**) commenced operation on 1 July 2010. The MHRT Tender provides for the referral of important matters for legal representation by the MHRT to QAI. QAI coordinates a panel of barristers who have agreed to take on this sort of work.

In 2010-11, the MHRT referred **11 matters** under the MHRT tender. We would like to thank the involvement of the following counsel: **David Cormack, Kim Forrester, Nan Noble, Nicholas Tucker** and **Karen Williams**.

## ***Staffing***

In August 2010, QAI farewelled **Karen Thorpe** as the MHLS's first paralegal and welcomed **Chantelle Baguley**, who was appointed as the new paralegal for a fixed term of 6 months

In February 2011, **Julie Hearnden** was appointed as the second full time solicitor in the MHLS.

**Rebekah Leong** continues as the MHLS senior solicitor.

## ***Other outcomes***

### **Volunteer Program**

Since December 2010, QAI has run a student volunteer program, open to senior law students who are willing to volunteer for a full day for 10 consecutive weeks.

QAI thanks the contribution of the following volunteers:

Summer 2010-11	Semester 1, 2011	Semester 2, 2011
Jessica Patrick	Alexandra Rofe	Alexandra Trifa
Laura Cook	John-Matthew Haddad	Danielle Keys
	Matthew Littlejohn	Jade Henderson
	Rachel Andrews	Kathleen Mott
	Samuli Haataja	Krischelle Mangalindan
	Vanessa Hall	Liz Logan



## **Secondment program**

Since inception, the MHLS in conjunction with QPILCH have been in discussions with DLA Piper regarding the setting up of a fortnightly legal clinic at a mental health service provider, staffed by pro bono lawyers from DLA Piper. This project was developed to include the establishment of a pro bono program in which DLA Piper lawyers would represent people before the MHRT.

DLA Piper was asked to provide a Secondee to help establish these projects.

On 1 August 2011, law graduate **Kristie Swainston** from DLA Piper commenced as a Secondee of both QAI and QPILCH to work on the project and provide the MHLS with valuable casework support. The secondment will run on a part time basis for 6 months. By the end of the 6 month period, it is anticipated that (1) a legal clinic at Open Minds will be established (2) the framework for referring ITO review matters to DLA Piper on a pro bono basis will have been established.

**Rebekah Leong and Julie Hearnden**

# Human Rights Legal Service

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## *The function of QAI's Human Rights Legal Service (HRLS) is:*

To provide specialist legal advice and representation services to vulnerable people with disability in relation to protection of their fundamental human rights, particularly where their rights are at risk in the following ways:

### **1. Risk to Life - including risk of serious injury**

Matters involving abuse and neglect of persons leading or likely to lead to death or serious injury. Guardianship matters relating to life sustaining measures and other special health matters. Involvement in coronial inquests into the deaths of people with disability, or to deaths caused by inappropriate care of persons with disability.

### **2. Risk to Liberty**

Matters involving potential admission or re-admission of people with disability into the prison system due to the lack of proper supports to those people to successfully live in the community. Guardianship matters and matters under Restrictive Practices Amendments to the Disability Services Act (DSA 2006). Matters under the Mental Health legislation relating to detention of persons who have not committed crimes or whose incarceration is an overreaction or an inappropriate response to minor crimes or various non-criminal behaviours.

### **3. Risk to Fraternity/Property**

Matters furthering the goals of QAI's Community Living projects including matters pertaining to institutional practices Child Protection matters Guardianship/Administration matters pertaining to financial abuse or poor financial management by Public Trustee and personal decision making.

## **Background**

From the start of the HRLS in November 2008, QAI decided to provide legal advice services in relation to a wide range of matters within the abovementioned range of targets; but to take on only a small number of strategic test cases likely to have high systemic impact for vulnerable people with disability in Queensland.

During its 3 years of operation, the HRLS has prioritised cases concerning guardianship and restrictive practices under the Disability Services Act. The HRLS has also taken on matters involving people with intellectual disability or cognitive impairment on forensic orders, with a focus on people who are subject to long term detention and restraint under the Mental Health Act.

The HRLS has also done casework involving end of life matters and initiating personal injury actions for people with intellectual disability who had suffered abuse and neglect in institutional care.

From the very beginning, the HRLS has noted a strong demand for casework assistance in relation to people subject to Involuntary Treatment Orders (ITO's) and Forensic Orders. In response to this demand, the HRLS lawyer lobbied and received funding on behalf of QAI to establish a Mental Health Legal Service (MHLS) specifically dedicated to providing legal services for people with mental health conditions who were subject to ITO's and Forensic Orders. The MHLS commenced operating in January 2010.

Generally, the HRLS only had capacity to actively progress around 10 to 14 individual cases at any one time. 2010-tl marked the commencement of a dedicated telephone advice service to provide limited advice and assistance to people whose matter fell within the scope of the HRLS brief, but could not access HRLS casework services due to limited resources. Through a one-off LPITAF grant, QAI was able to employ a second HRLS lawyer 3 days per week to establish and supervise the HRLS telephone advice service. This service relied on volunteer lawyers who donated their time to attend QAI offices on a Thursday to provide the telephone advice to our clients. We acknowledge these volunteer lawyers for their very substantial contributions to the success of this HRLS advice service and to their unpaid work for our clients:

- Dianne Hollyoak, Sparke Helmore
- Matthew Hawker, Sparke Helmore.
- Branka Mijovic
- Claire Brolan
- Althea Arends
- Erin Thomas

### ***Staffing and funding***

After 3 years working with QAI, the HRLS Lawyer, Jim Gibney, resigned from QAI to return to work with Legal Aid Queensland in September 2011. Jim’s contribution to the establishment, development and success of both the HRLS and MHLS, and as principal lawyer of QAI, is gratefully acknowledged.

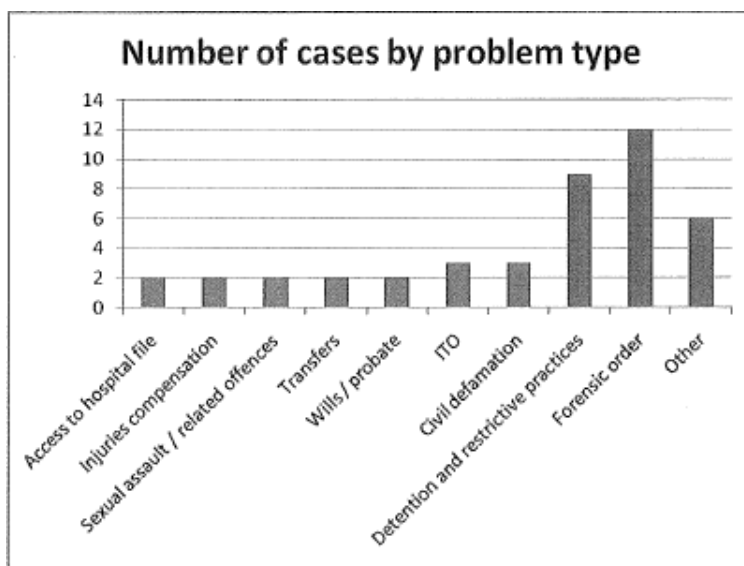
David Manwaring has been employed as the new HRLS lawyer and he commenced work in this role on 10 October 2011.

Funding for the second HRLS lawyer to coordinate the telephone advice service was exhausted in September 201t. This position was first held by Monica Taylor and later by Althea Arends. The position is currently vacant as QAI awaits the outcome of a further funding application.

### ***HRLS Operation in Financial Year 2010-11***

In 2010-11, the third year of operation of the HRLS, we continued with the same strategy to provide legal advice on a wide range of topics and to represent clients in selected guardianship and restrictive practices matters, as well as ITO and Forensic Order reviews before the MHRT.

**In 2010-11 the HRLS:-**



- Provided legal advices to 122 clients about 139 legal matters;
- Opened 40 cases;
- In 9 cases, we provided legal representation to clients in relation to detention and restrictive practices. In 15 cases, we represented clients in relation to Forensic Orders or ITOs. The following graph shows the nature of this casework.

## ***Number of cases by problem type***

### **HRLS Major Casework 2010-11**

Major cases taken on by the HRLS during the 2010-11 year included:

- Represented an intellectually disabled man who has been held in seclusion (effectively) 24 hours/day 7 days/week over several years in a DS facility at Wacol - the HRLS lawyer was appointed by QCAT as this young man's Separate Representative lawyer on three occasions during 2010-11 to provide him with legal advocacy throughout the year and to represent him before QCAT in three separate hearings related to whether his continued detention in seclusion should be approved, and if so, under what terms and conditions;
- Represented an intellectually disabled man in his late 30's who has been accommodated in psychiatric wards at Baillie Henderson Hospital for 14 years: the last 8 of those years he has been detained there involuntarily for treatment under an ITO; The HRLS lawyer represented this man before the Mental Health Review Tribunal (MHRT) on review of his ITO and obtained an order for a specialist psychiatric report by an independent psychiatrist - this psychiatrist reported back to the Tribunal findings that supported our submissions (the specialist reported that our client did not have a mental illness and could better be supported living in the community), and the MHRT revoked the ITO. It is worth noting that the MHRT had in fact reviewed our client's ITO on more than 10 occasions over the previous 8 years - on those reviews our client had not had the benefit of legal advice or representation - and the MHRT had for over those 8 years repeatedly confirmed the detention and involuntary treatment of our client at the hospital (despite the fact that he had never had a mental illness);
- Represented the intellectually disabled man just referred to above (who had been detained at Baillie Henderson under an ITO for years) before QCAT on an application for the appointment of a guardian and administrator - to assist him obtain "a package" for support to live in the community.
- Represented a young man who has a dual diagnosis of schizophrenia and intellectual disability. He has been detained as a forensic patient in the high secure Psychiatric Hospital since 2006 and for most of that 5 years he has been held in seclusion. For the first time, this man was represented before the Mental Health Review Tribunal on his forensic order review hearing in August 2011. We briefed **Brian Cronin** of Counsel (who worked on a pro bono basis) to appear for the client and Brian has agreed to continue to assist in this matter;
- Made representations and provided written submissions on behalf of an impaired client to the Adult Guardian in relation to an application to the Adult Guardian for Short Term Approval of Seclusion, Containment, and chemical & physical restraint. This application was decided "on the papers" by the Adult Guardian - she refused the application in accordance with our submissions. (Note this work was done in collaboration with Karen Williams of Counsel - on a pro bono basis);
- Briefed **Karen Williams** and **Kim Forrester** of Counsel (on a pro bono basis) to prepare written submissions (as ordered by QCAT) on the issue of administration of \$8 and \$4 medication by direct care workers to our brain injured client, whilst he was held in seclusion in a Disability Services (DS) facility at Wacol (in contravention of the *Health (Drugs & Poisons) Regulations*);

- Represented two separate intellectually disabled men held in psychiatric hospitals in relation to assaults which they allegedly committed whilst detained in the hospitals: in one of these cases the HRLS lawyer made representations to Legal Aid and the Public Trustee and the Adult Guardian which resulted in our client receiving Legal Aid representation before the Mental Health Court on the sexual assault charge (without this work our client would not have obtained the legal representation he requires on this matter before the Mental Health Court);
- Represented two intellectually disabled men detained in psychiatric hospitals under Forensic Orders, in relation to their transfers from The Park to the newly commissioned Forensic Disability Service (FDS) at Wacol. And subsequently represented them before the MHRT on the review of their forensic orders - the first such reviews of forensic patients detained in the new FDS secure facility.
- Represented an intellectually disabled man in his late 30's who has been accommodated in a DS facility at Wacol in recent years using restrictive practices. Over a period of 18 months the Service Provider & DS had increased the use of seclusion of our client from short periods of up to 90 minutes to seclusion 24 hours per day: and QCAT had granted approval for this extraordinary use of seclusion, expressly approving continuous seclusion for periods up to 36 hours continuously. The effective result in practice was that our client was actually held in seclusion 24/7 continuously. The HRLS lawyer provided legal advocacy for this client representing him in a series of professionally facilitated meetings between DS, his QCAT appointed guardians, the NGO Service Provider, and SRS clinicians. The Lawyer also represented our client before QCAT and strongly advocated against the unwarranted and extreme use of seclusion and calling on all parties to urgently investigate the use of alternative strategies of intervention and care. By the time the lawyer appeared before QCAT for this man on a third occasion, the clinicians had undertaken substantial reassessments of our client and identified a previously undiagnosed communication disorder (of a type that was exacerbated by seclusion) - with the guidance of the SRS clinicians, seclusion was then totally eliminated from our client's regime. There was then no QCAT approval sought by the Service Provider/DS and work is now focused on resettling our client in a community living placement. Our client is now living without seclusion and without the gross violation of his liberty and the personal distress this caused him.
- Provided an extensive brief to Ken Fleming QC for advice (on a pro bono basis) on instituting Supreme Court proceedings for compensation against the State of Queensland for the wrongful detention of our intellectually disabled client who was detained and treated against his will under an ITO at Baillie Henderson Hospital for 8 years.

## ***Legal Advice Service***

### **Current Status of Funding of the HRLS Legal Advice Service**

There is currently no committed ongoing funding for the LAS past the end of September.

No funding was allocated for the LAS as part of the approved funding for the HRLS for a further year through DJAG.

An application was submitted to LAQ/DJAG on 28 July for funding from a special projects pool of \$500,000 but as yet QAI have not received any feedback on the application. There is no commitment to a date as to when the final decision for allocation of funding will be made.

## **Introduction of the Legal Advice Service**

In September 2010, a part-time Solicitor was employed to co-ordinate a specialist telephone legal advice service. Volunteer lawyers were recruited and trained to provide specialist advice to clients with a disability through telephone appointments on a Thursday. The other function of the LAS appointed solicitor is to provide support to the Principal Lawyer in the day to day running of cases as required. In particular there has been considerable time spent by the Part –time Solicitor on matters patients under a Forensic Orders. One such case involved a patient at the Park on a Forensic order since 2006 with a dual diagnosis of Schizophrenia and mild intellectual disability who for most of that detention has been kept in seclusion. This patient, for the first time had legal representation at a periodic review hearing of his Forensic Order on 19 August. A significant amount of solicitor hours were spent taking instructions and researching in preparation for the FO hearing. **Brian Cronin** of Counsel accepted a pro bono brief to appear for the client. HRLS would like to acknowledge Counsel’s important case input and representation to date.

## **Client Advices (non-casework)**

During the 2010-2011 reporting period, a total of 144 advices were provided by the HRLS and LAS. Areas of law covered were predominantly guardianship and administration, restrictive practices, disability discrimination and consumer complaints. The employment of the LAS solicitor has enabled the HRLS Principal Lawyer to focus on case-work.

## **Volunteer Lawyers**

We have had the regular assistance of Dianne Hollyoak and Matthew Hawker, two solicitors in the employ of the national firm Sparke Helmore. Sparke Helmore has pledged their continued support of the LAS. Sparke Helmore has another Solicitor, Dev Pillay, who has expressed interest in joining as a volunteer Lawyer once a month. Branka Mijovic, an enthusiastic first year Solicitor has volunteered on a weekly basis since commencement of the Thursday telephone advice clinic and has been a valuable contributor. Unfortunately for QAI, Branka has relocated to Canberra to take up a graduate position with the Department of Innovation in Canberra.

Another Solicitor, Claire Brolan who works part-time as an Individual Advocate at Amparo has been a regular volunteer. We thank Claire for her valuable support of the LAS.

A further induction of volunteer Lawyers will be required upon recommencement of the LAS.

**Jim Gibney and Althea Arends**

**Attachment One -  
Financial Audit for the year  
ending 30 June 2011**