

# Queensland Advocacy Incorporated 2013-14 Annual Report

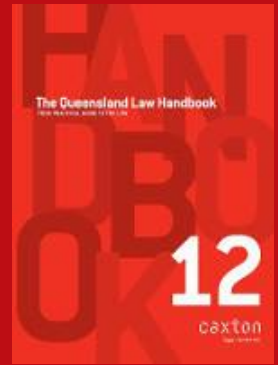




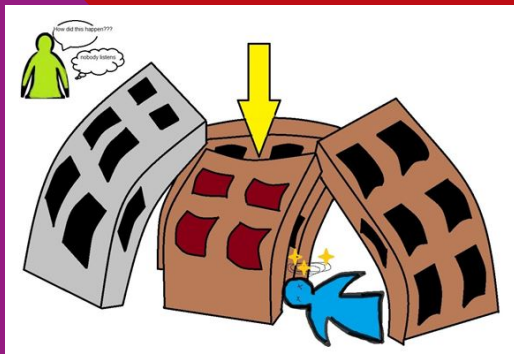
Volunteer Farewell 2013



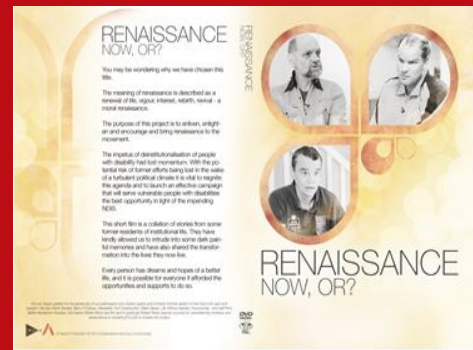
QAI stall at 'Sanity Fair' for Mental Health Week 2013



Queensland Law Handbook



Centre of Excellence Symposium



Renaissance Now, Or? DVD and Forum



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# Contents, Management Committee & Staff

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	Contents	Page No.
<b>Introduction</b>		<b>4</b>
<b>President’s Report</b>	<b>Byron Albury</b>	<b>6</b>
<b>Treasurer’s Report</b>	<b>Meriel Stanger</b>	<b>7</b>
<b>Director’s Report</b>	<b>Michelle O’Flynn</b>	<b>8</b>
<b>Systems Advocacy</b>	<b>Emma Phillips</b>	<b>15</b>
<b>Systems Advocacy</b>	<b>Nick Collyer</b>	<b>17</b>
<b>Principal Solicitor</b>	<b>Rebekah Leong</b>	<b>20</b>
<b>Mental Health Legal Service</b>	<b>Julie Hearnden, Roba Rayan</b>	<b>22</b>
<b>Human Rights Legal Service</b>	<b>David Manwaring</b>	<b>25</b>
<b>Justice Support Program</b>	<b>Elizabeth Francis</b>	<b>29</b>
<b>Attachment: Audited Financial Reports for 2013-2014</b>		

## Management Committee

President	Byron Albury
Vice President	Fiona Kennedy
Treasurer	Meriel Stanger
Secretary	Trevor Boone
Committee Member	Michael Duggan
Committee Member	Jade Chee
Committee Member	Julie Johnson

## Staff

Director	Michelle O’Flynn
Systems Advocate	Nick Collyer
Systems Advocate	Emma Phillips
Individual Advocate	Elizabeth Francis
Advocate/Paralegal	Imogen Coates-Marnane
Principal Solicitor	Rebekah Leong
Mental Health Lawyer	Julie Hearnden
Advocate/Paralegal	Natalia Nash
Mental Health Paralegal	Roba Rayan
Human Rights Lawyer	David Manwaring
Office/Finance Manager	Deborah Bryzak
Administration Assistant	Karlie Harris
Administration Assistant	Kay Marks
Administration Assistant	Krischelle Mangalindan

**QAI hours of  
operation**  
*Monday to  
Friday  
9am -5pm*

# 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:

## **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.

## **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.

## **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. The Community Legal Services Program 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 has also received donations over the past year and continues to seek funding from philanthropic organisations and trusts for projects.

This Annual Report covers the period from 01 July 2013 to 30 June 2014. 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.

## **Mission**

QAI's 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."

## Objectives

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:
    - o time or other resources;
    - o emotional stress;
    - o bodily demands;
    - o social opprobrium, rejection, ridicule;
    - o self-esteem, self-certainty;
    - o socio-economic security, livelihood; and
    - o 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.

# President's Report

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I'd like to take this opportunity to welcome everybody to the 27<sup>th</sup> Annual Report of Queensland Advocacy Incorporated. It has been my honour and privilege to serve as president of QAI for the past 3 years. Over that time, QAI has been involved in a number of activities which have had a profound impact on the people we continue to serve.

The board is pleased to announce that Michelle O'Flynn is QAI's new Director. Michelle was previously a Systemic Advocate with QAI and has been Acting Director since 16th September 2013. Michelle has demonstrated her strong passion and resilience for promoting, protecting and defending the fundamental needs, rights and lives of the most vulnerable people with disability. QAI thanks Michelle for accepting the appointment of Director.

One of the key things that we have worked on as an organisation in the past year was the forum "RENAISSANCE – NOW OR??" – Continuing the deinstitutionalisation of people with disability which took place" on Friday 8 August 2014. The keynote speakers included Graeme Innes (Former Disability Discrimination Commissioner, AHRC), Kevin Cocks AM (Anti-Discrimination Commissioner of Queensland), Jodie Cook (Public Advocate of Queensland), Margaret Ward (on behalf of Professor Lesley Chenoworth), Jeremy Ward (Former QAI Director and Advocate), Dianne Toohey and other individual advocates supporting people with disabilities from Speaking Up For You (SUFY). The forum was a great success.

I'd like to take this opportunity to thank the entire board Fiona Kennedy, Mike Duggan, Meriel Stanger, Trevor Boone, Jade Chee and our newest member, Julie Johnson for their ongoing support of QAI and their ongoing commitment to supporting Queensland's most vulnerable people. I would also like to thank our members for joining us at the Annual General Meeting and for their continued support.

Byron Albury

# Treasurer's Report

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I am pleased to present QAI's Financial Report for the year ending June 2014.

I would like to thank Hayward's Chartered Accountants for the preparation of the Audited Financial Reports and for their support throughout the year.

QAI has continuation of funding for various projects.

<b>DFHCSIA</b>	<b>\$424,658.00</b>
<b>LPITAF –Mental Health Legal Service</b>	<b>\$164,664.00</b>
<b>LPITAF – Justice Support Program</b>	<b>\$138,948.00</b>
<b>Community Legal Services Program –Human Rights Legal Service</b>	<b>\$119,289.00</b>
<b>MHRT</b>	<b>\$6,664.00</b>
<b>SSAP</b>	<b>\$50,000.00</b>
<b>Donations</b>	<b>\$17,206.00</b>

**\*A full financial report can be found at the end of the Annual Report.**

I would like to acknowledge our Donations:

- Minter Ellison
- Queensland Alliance for Mental Health
- Madonna Nicoll
- Grill'd Burgers
- Mamre Association Inc
- People with Disability Inc
- Kevin & Judith Finch
- Jude Lang
- Nicole Nolan
- Barbara Dundas
- Thea Summerville
- River North Lifestyles Association
- Deanne Morrison
- Sarah Roberts

QAI has continued to review and update their financial policies and procedures and I am satisfied the procedures now in place will enable QAI to continue to function smoothly in the future. QAI's day to day financial matters are administered by Deborah Bryzak. Deborah provides me with an enormous amount of assistance and I would like to thank her for guiding me through the maze of figures and reports.

I have thoroughly enjoyed working with the Management Committee and the dedicated staff of QAI and I would like to thank them for their support and continued vision. My time as Treasurer has been positive, harmonious and rewarding and I look forward to being passionate about my future as Treasurer of QAI.

Meriel Stanger



# Director's Report

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This past year has been a whirlwind of activity, change and opportunity for QAI and staff and committee members. The challenges presented to both our organisation and me as a staff member have been welcomed and invigorating. Certainly some of the changes such as the departure of Ken Wade our former Director were unexpected, and after overcoming some initial hesitancy I was very honoured to be asked to act as stand-in until such time as a permanent replacement could be found.

Seven months later I was privileged to be successful in my application for the position. I am in awe of my predecessors. The work and achievements of Jeremy Ward, Kevin Cocks, and Ken Wade collectively and individually have reserved QAI as the vanguard advocacy organisation in Queensland on several fronts, and particularly in the area of human rights as a leader on the national scene.

Change is something that we must be prepared for, respond well to but more importantly we must be proactive and have contingency plans in place. Most of all QAI aspires to change the minds of those in systems, services and community who have misconceptions about people with disability.

My colleagues have been incredibly helpful and it is no small measure of a working party that while there are different roles and responsibilities, I believe no one person is any more important than another. We are a highly efficient and effective team and I have been blessed to work with them all in this manner. With the support of a dynamic and talented team of co-workers I will endeavour to safeguard the integrity and reputation of this wonderful organisation, and my best effort to complement and progress QAI's agenda.

## Human Resources

Over the past year QAI had some staff changes firstly with departure of Ken Wade our former Director as reported last year. **Karlie Harris** our Receptionist and Administration Officer took maternity leave and our interim contract replacement was Kay Marks for a period of three months.

Our organisation is most appreciative of the efforts of our volunteers, some of whom return as successful applicants for positions within QAI. Kay's probation period concluded we then employed former volunteer **Krischelle Mangalindan** on an interim basis until Karlie's return in September. Krischelle has been a delightful and most obliging employee although we wish her every success in obtaining a position where her talent as a lawyer can be best put to use. In the meantime QAI has benefited immensely from her obliging manner, her kindness and efficiency. Karlie's return in September was eagerly awaited and the partnership with Krischelle is a seamless, effective and engaging support to people with disabilities, our allies, our management committee and staff.

**Natalia Nash** another former volunteer, returned once again in August 2013 working both in the MHLS and JSP services as paralegal before leaving at the end of the year to focus on her studies.

Utilising funds in the most productive manner, **Imogen-Coates-Marnane**, a softly spoken strength was teamed with Liz as paralegal in our Justice Support Program and Mental Health Legal Service for a short-term contract. As her contract concluded Imogen travelled to Cambodia and we farewelled her with regret at her departure.



**Roba Rayan** was engaged to fill a contracted position as back-fill for the MHLS position while Julie was seconded to work in Specialist Service Training Project with QAILS. Roba then assumed the dual paralegal position when Julie Hearnden returned to MHLS. QAI has been fortunate indeed to reap the benefits of a workforce endowed with many fortes. The arrangements with contracted paralegals are mutually beneficial bringing a desirable reinforcement to our workforce and our outputs for supporting people with disabilities, but also provide a wonderful training ground for students about to graduate. Roba has certainly been a valuable asset to QAI and personifies this mutual advantage.

We trust that they and our student volunteers enter the legal profession with broadened values of and for vulnerable people; a well-rounded and grounded skillset; and an embedded personalised approach in working with people.

The systems team has been enhanced greatly by the employment of **Emma Phillips**. Emma is a lawyer and a full time mother of three. Her written report crafted for QAILS in regard to the Specialist Service Accessibility Project (a collaborative effort Julie Hearnden was seconded to) was most impressive. Emma is employed part-time as a key researcher and writer for the systems team.

QAI is very appreciative of all our volunteers and **Nick Lauer** has continued to give freely of his time and knowledge to the streamlining of our database and systems.

### **Funding and Quality Assurance**

With changes to (the former Commonwealth department FHaCSIA) the Department of Social Services has made major reforms to communities and advocacy programs. Despite QAI certification under the National Disability Advocacy Program accreditation processes of 2013 and our first surveillance audit in June 2014, we will be moving to complying with new standards under the National Standards for Disability Services by June 2015. To enable this, we are grateful to the Department for the extra funds that will assist us in this process.

The Department of Justice and the Attorney General provides funds to our individual services and are now allocated on a triennial basis. This initiative has provided some certainty and reassurance to the people that QAI supports as well as to our staff and operational processes.

Our Principal Solicitor Rebekah Leong has a keen eye for funding opportunities as does our Office Manager Deborah Bryzak. Our efforts to secure additional funds through traditional sources via different programs are supplemented by efforts to obtain other revenue outside these areas. Although not successful we submitted requests through the Gambling Community Benefit Fund, Jupiter's Community Benefit Fund, and Mental Health Collaborations Fund. We would like to thank our volunteer **Guillaume Benoist** for his assistance with our funding applications.

### **NDIS - Participant Readiness Funding Grants**

QAI submitted a tender for funding for this project. Although this would normally be outside the purview of our work, QAI submitted a proposal for this tender to enable residents of **Baillie Henderson Hospital** authentic support for decision making opportunities within the context of eligibility for the NDIS. This project was titled **ELAN VITAL (Life Force)** to portray what we hoped could be achieved for these residents and for many others if our proposal was accepted as a model for residents of other long stay health facilities. We costed this project at \$110,310 over two years. We were unsuccessful in this bid; however, QAI has received strong support from the Health sector and encouragement from the Department of Communities. There will be a subsequent effort to ensure and safeguard the validity of any work to be done with the residents of Baillie Henderson Hospital.

## **SUBMISSIONS: Policy**

The following submissions have been tendered in a bid to change policy and practice:-

**Accommodation Support and Respite Services (AS&RS)** – This block funded government service is being outsourced to non-government tender and QAI submitted our recommendations on fast-tracking this service into the Your Life Your Choice (YLYC) model.

**Submission to The Office of the Public Advocate - People with Disability in Long Stay Health Facilities** - The position paper and project of the Public Advocate is as a result of our continuation of advocacy efforts around the residents of Baillie Henderson Hospital Toowoomba and other facilities. Our paper in response to her project was submitted and is part of an ongoing and more expansive deinstitutionalisation project.

**Position Paper - The Individualisation of Funding Supports for People With A Disability “Liberation for All when Funding is Unblocked”**. This paper was produced as a partner to our submission to the Public Advocate regarding people with disability in long stay health facilities. This work is to illustrate the potential for people with disability to live and enjoy the same rights and freedoms as other citizens in our community.

**Conceptual Framework Decision Making Support for Queenslanders with Impaired Capacity** - The Office of the Public Advocate called for feedback to the framework she has developed on this matter in close consultation with QAI and others. Working in partnership with Nick Collyer and David Manwaring, QAI submitted feedback to this project. We subsequently developed the QAI's position on Supported Decision Making paper.

*“QAI endorses all of these principles and goals (of the CRPD), and with respect to the few people for whom guardianship orders are appropriate QAI further believes that the rights, will and preferences of the person should be the starting point and not just a consideration in the decision-making process of a substitute decision maker.”*

In relation to the Young People in Nursing Homes Alliance forum that I attended in February, we followed up with a submission to three table questions which will inform the Queensland Government cross departmental **Action Plan around People in Long Stay Health Facilities**.

**NDIA Strategic Plan** – QAI and 54 others offered feedback to the National Disability Agency Strategic Plan. Our key messages were to ensure that people with disability living in institutional or shared care arrangements were prioritised for access to the opportunities the NDIS may present, and that the NDIA are uniquely placed to exert influence over the state governments to commit to public housing for people with disability.

**Director Forensic Disability Services** -Simon Wardale – Working with David Manwaring our HRLS lawyer, QAI provided feedback and recommendations to the draft model Positive Behaviour Support Plan and the Complaints Management Procedure.

A large focus of my work has been the filming, editing and presentation of the dvd **“Renaissance – Now Or”** and the related forum of the same name. This has been a campaign of significance in that it is directed at three government departments, and has national implications with the NDIS. Follow up strategies have entailed an email template developed and disseminated to forum audience members, presenters and other interested parties with the targets being State Ministers, the Shadow Cabinet and the NDIA. This campaign will have impact and implications for the government's Action Plan for People with Disability in Long Stay Health Facilities.

Sincere thanks to **Peter Johnston** and **Jemma Goring** from **Fade In Productions** for professional, timely, generous and friendly support and most of all – excellent work on both the filming of the dvd and the forum.

QAI wishes to express deep gratitude to **Robert Reed** and **Minter Ellison** for the generous \$10,000 donation which enabled this project to go ahead. Such benevolence (as is all the Pro bono engagements by our legal friends) enhance the work and in this instance gave voice to people with disabilities to share their experiences with authenticity and authority.

#### **SUBMISSIONS: Legal/Law Reform**

**EDUCATION (STRENGTHENING DISCIPLINE IN STATE SCHOOLS) AMENDMENT BILL 2013** – A written submission to influence severely restrictive amendments to the education act which doubles the term of a short term suspension from 5 to 10 days and removes natural justice from parents and students to appeal short term suspensions. This submission was also made at the public hearing with the Education and Innovation Committee via teleconference.

**Letter to the Human Rights Commission - Application for an exemption under section 55 of the Disability Discrimination Act 1992 (Cth) (DDA)** – This letter was addressing the application by Fhacsia for an exemption under section 55 of the Disability Discrimination Act for the use of the BSWAT. QAI does not support the exemption or the use of the BSWAT.

**Restrictive Practices Legislation Amendment Bill** - David Manwaring (QAI HRLS lawyer) and Nick Collyer (QAI systems advocate) made personal appearances at the public hearing before the Health and Community Services Committee to present our position and concerns about the amendments. As a team, David, Nick and I produced several written submissions, and Emma Phillips has developed a research paper that will inform a position paper and statement for QAI.

**Electoral Reform Amendment Bill** – I have been in collaboration with QAILS, ADCQ, GetUp, the Human Rights Legal Centre, unions, academics and others in our efforts around halting proposals to introduce voters requiring to produce identification at polling booths during elections. I tendered our submission to the Legal Affairs and Community Safety Committee in January.

#### **YLYC – Self Directed Framework**

After attending a workshop of the Co-Production group of stakeholders QAI made further submission of feedback to the framework of the self-directed model for Your Life Your Choice legislation.

I supported Nick in the development of the QAI position paper “**Advocacy and the NDIS**”. QAI also made submissions to the **Queensland Competition Authority Inquiry into Prices Disparity for Medical Aids and Equipment** and the **Guide Hearing and Assistance Dogs Review Panel**.

#### **Meetings and Networking Opportunities**

Several journeys to **Toowoomba** were made in order to establish rapport and trust with people with disability who agreed to participate in our dvd project around deinstitutionalisation.

Nick and I met with Anna Cox from **Youngcare** to follow up our investigations in the Government Land for Service Providers Program.

Together with David from HRLS we have met with Simon Wardale from **Forensic Disability Services** and discussed model Positive Behaviour Support Plan, Restrictive Practices Amendments and issues of “consent”.

David and I attended the **NDS Disability Care Aust.** “Complex Needs Conversation” “What can Queensland contribute to National Conversation around Restrictive Practices and people with challenging behaviour” – provided feedback and an alternative view to service providers and clinicians.

Ongoing meeting with Jodie Cook, **Public Advocate** in regard to People with Disabilities in Long Stay Health Facilities and Restrictive Practices.

Meetings with **QPILCH, QAILS and Legal Aid** regarding various projects, funding and the Specialist Service Accessibility Project.

Jason Kidd from Department of Communities’ visited QAI to discuss department policy directions particularly in regard to people in long stay health facilities and our concerns regarding group homes and block funded arrangements.

I met with the Human Rights Legal Centre rep, GetUp, Union reps, ADCQ rep, James Farrell from QAILS, Anglicare and others to discuss changes to **Electoral Reform Amendment Bill** (voter ID) and removal of caps to political donations.

Met with Kevin Martin (formerly Adult Guardian – now **Public Guardian**) in relation to consent to participant engagement in the dvd project.

**Community Safeguards Coalition** – Nick and I have shared activities and involvement with this ongoing collaboration.

Attended consultation with consultants Equal for **Department of Social Services** (formerly Fhacsia).

I regularly attended **Disability Services Partnership Forum** with Department of Communities.

Attended **Your Life your Choice Review** at NDS Hub Lutwyche.

Nick and I met with officials from the **Treasurer’s** office to raise the profile and agenda of issues for people with disability in long stay health facilities, shared accommodation and support, and the problems associated with forced co-tenancy, restrictive practices, lack of public housing and insufficient funding. (This was instigated by a letter to the Treasurer).

I attended the **Young People in Nursing Homes Alliance Action Plan Forum** hosted at Undumbi Room in the Parliamentary Annexe in regard to supports for people in long stay health facilities to access NDIS and move to homes of their own.

I attended the meeting of the **Qld. Action for Universal Housing Design** to be informed and to offer support to the QAUHD Forum that followed the Robert Jones Memorial Oration.

Accompanied by Nick Collyer I met with **Matthew Crossley from Minister Tracey Davis’s** office and Sharon Paley to discuss people in long stay health facilities (This meeting was organised as a result of a letter to the Premier that was delegated to the Minister’s office).

Liz and I attended the information session regarding the **Public Guardian**.

It was my pleasure to attend the **Robert Jones Memorial Oration**.

As is customary QAI continues to host the teleconferences with the **Combined Advocacy Groups of Qld (CAGQ)** and is in preparation for the Annual Conference in coming weeks.

David and I attended the **Restrictive Practices Implementation Working Group** to discuss the proposed statement to family members and positive behaviour support plan model and reporting and data collection.

Along with other QAI staff members I attended the Professional Development seminar **“Current research in Forensic Disability”** with presenters Simon Wardale and Donna Lockyer.

I attended the Values in Action workshop – NDIS through the lens of SRV.

With QAI staff I met with Justice **David Thomas and Claire Endicott from QCAT** at QAI to discuss referrals to QAI in regard to representation for people under order for Restrictive Practices.

### Campaigns and Media

**“Joe Hockey – Hand off the NDIS!”** QAI instigated a Change.org online petition with over 500 signatures.

**Media Release - “Be careful what you wish for”** – A response to the Anglicare campaign to promote their shared-care residential school model and centre-based respite option and to suggest that the NDIS fund such facilities in order to support carers.

**Media Release – “Federal Government Payment Scheme set to silence workers on slave pay rates”** - QAI supports the action taken by Maurice Blackburn Lawyers and AED Legal Centre to protect the interests of workers with intellectual impairment from further discrimination and disadvantage. **July** Media release included the continuation of our objection to the discriminatory **BSWAT assessment tool** for employees with disability. The new system proposed by Patrick McClure in his report to government about welfare reform included significant changes to access to the Disability Support Pension. This was supported by ongoing awareness-raising on our Face Book Page.

Subsequently I was interviewed by **radio 4ZZZ** in regard to the same issue.

**Online Petitions:** QAI have supported other campaigns including the GetUp campaign and online petition against voter ID.

**Social Media** – Thanks to **Ashurst** for their Pro bono assistance for development of our Use of Social Media, Moderation, and Privacy and Confidentiality policies we now have our **Facebook** page LIVE and our **YouTube** channel is activated. Video presentations from our Forum “Renaissance – Now Or?” and the dvd of the same name can be viewed on this channel, and linked to our Facebook page.

**Radio:** In January I was interviewed on ABC radio by Rebecca McLaren in regard to the effect that emergency warning may have on people with disability... a précis reads *“Emergency warnings can be frightening and people with disabilities need to be prepared and supported by good neighbours. Building supportive neighbourhoods is important for everyone in emergency situations but especially so for people with disability.”*

### Publications/Promotions

We wish to thank **DLA Piper** for their assistance in the update of **“Include Me In”**

## Presentations/Events

Sharing registration with Nick I attended the first day of the **Queensland Department of Communities Disability Conference**.

In March I delivered a power-point presentation and Q & A about **Advocacy** to students at Southbank TAFE.

I attended a conference in Sydney in May “**Self Directed Approaches –How to give consumers greater choice & control**” and heard reports from the NDIS trial sites.

David, Nick and I worked as a team to present to the Centre of Excellence symposium to present our delivery of the power point “**Deconstruction – How to Return Respect and Control to Marginalised People**” – referring to a model that supports choice and control for people who live with the imposition of Restrictive Practices. This powerpoint was created by Emma Philips.

**Renaissance – Now Or?** – A most successful forum with authenticity – stories from people with disability sharing their experiences both present and past about institutional life; confronting media stories that remind us of the need for vigilance; and presentations from guest speakers including Graeme Innes, Jodie Cook, Kevin Cocks Jeremy Ward, Lesley Chenoweth and Margaret Ward, SUFY and their special guests Derek and Stephen.

## Client/Stakeholder Satisfaction

David Manwaring’s participation in a guardianship panel for SLASS conference was much appreciated by all attendees and this was conveyed by the moderator from Caxton Legal Centre.

Our individual advocacy services receive regular client feedback giving positive responses. QAI received positive feedback from several audience members at our presentation to the Centre of Excellence symposium but Olivia Gatfield, PhD candidate from the University of Queensland sent in her written appreciation.

Our attendees at the forum “Renaissance – Now Or?” provided positive feedback and commitment to future engagement on this area of work.

Staff members have participated in research projects for other organisations or centres, and have received esteemed thanks for their valuable input.

Finally a general overview of the past year has been one that has focussed as ever on the human rights of vulnerable Queenslanders with disability. The review of the Mental Health Act and the Restrictive Practices Legislation, our continuing efforts on deinstitutionalisation of people with disability, access to justice and support for decision making and autonomy have been the main thrust of our energies and attention.

Some extra attention from media and other organisations outside of the disability sector in general would indicate that QAI is continuing to promote, protect and defend through advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

None of our endeavours would be possible without the unswerving faith and dedication of our generous committee members who volunteer many hours of their time and steadfast stewardship of QAI. On behalf of all of the staff and the people who we serve, I thank the committee for their hard work and support.

Michelle O’Flynn



## Systems Advocacy – Emma Phillips

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I have been working for QAI since June 2014, in the role of Systems Advocate (Research & Writing), two days per week. I am thoroughly enjoying this work, as the scope and content of the matters that I work on are important and interesting and strongly resonate with my personal values. I feel privileged to work within the wonderful Systems Advocacy team with Michelle O'Flynn and Nick Collyer.

I came to QAI after working for QAILS on *Access all Areas: Specialist Services Accessibility Project*, which explored the interface between generalist and specialist community legal centres in Queensland, with a view to identifying ways to support Queensland CLCs to work more effectively together to deliver equitable and accessible specialist legal services in the public interest. As the SSAP project was a collaborative project between QAILS and QAI (the research undertaken by QAILS was tested in a case study by QAI's Mental Health Legal Service), my work for QAILS provided a terrific introduction to QAI's work.

Prior to working within the community legal sector, I worked as a solicitor, specialising in industrial relations and discrimination and equal opportunities law. My work in these areas included work for trade unions and individuals who had experienced discriminatory conduct, an unfair dismissal or unfair work contract, as well advocating more broadly for improved industrial conditions for groups of workers. This work led me to undertake a PhD through La Trobe University, proposing a new labour market model that would be more inclusive of, and equitable for, presently marginalised groups of workers.

### Submissions

#### Welfare Reform Submission

I researched and drafted QAI's submission on the Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services: *A New System for Better Employment and Social Outcomes*.

This submission considered:

1. The proposed architecture of the new welfare system and emphasised the need to ensure financial protection is provided for people with disability, in recognition of the significant financial impact of disability and the protection required to ensure that people with disability are not financially disadvantaged within the community.
2. The importance of supporting people with disability to live in accordance with their choice, including autonomously where desired and possible.
3. The proposal to introduce the concept of "reward for work": it was submitted that this terminology introduces a reward-penalty dichotomy into the discourse on work in the welfare context and implies an element of penalty or blame for those unable to work and also signifies a mindset that values labour market involvement over other pursuits and disadvantages those who are unable to work. The multi-dimensional value of working was acknowledged and the importance of increasing the involvement of people with disability in the workforce was noted as an urgent priority area for government.
4. The adverse effects of stereotypes about people with disability, particularly in the context of mental health and the importance of developing inclusive strategies to raise awareness about the benefits of workplace diversity and to encourage outreach activities within corporate culture.



## Research

### ***The use of Restrictive Practices for People with an Intellectual or Cognitive Impairment***

I have researched and written, and am presently reviewing, a research paper on the use of Restrictive Practices for people with an intellectual or cognitive impairment. This research paper covers the following topics:

- The present Australian approach to people with an intellectual or cognitive impairment who exhibit behaviours of concern;
- The use of Restrictive Practices for persons exhibiting behaviours of concern;
- The legislative/policy position on the use of RPs;
- The disparity between the statutory position (which mandates minimising the use of RPs) and normative practice (where there is largely unfettered use);
- Behaviour as a form of communication for some people with an intellectual or cognitive impairment, including a consideration of the factors that calm and escalate behaviours of concern;
- A comparative analysis of approaches to RPs in other jurisdictions (both within Australia and overseas);
- The value of informal supports; and
- The importance of changing mindsets and stereotypes.

This research paper will ultimately be used as the basis for QAI to develop a position statement on Restrictive Practices and to seek positive change for people with disability who are or may be subject to the imposition of Restrictive Practices.

### ***Disabled Justice Update***

I am currently assisting Nick Collyer with finalising *Disabled Justice II*, including:

- Researching and writing Chapter 6 of the update on comparative jurisdictions; and
- Reviewing, redrafting and checking the full draft of *Disabled Justice II* for legal accuracy.

We intend to publish, distribute and launch *Disabled Justice II* in early 2015.

## Campaigns and Media

I contributed to the media release on QAI's submission on the Interim Report of the Reference Group on Welfare Reform to the Minister for Social Services: *A New System for Better Employment and Social Outcomes*.

## Publications/Promotions/Networking

- I undertook the background research, and helped to prepare a powerpoint presentation, for the Positive Practices Symposium convened by the Department of Communities, Child Safety and Disability Services in June 2014. This paper was presented by Michelle O'Flynn, David Manwaring and Nick Collyer. QAI received positive feedback on this presentation, both at the conference and by later email correspondence.
- I have recently worked with James Farrell, Director of Queensland Association of Independent Legal Services Inc (QAILS), to prepare two articles for publication. The articles have been developed from our research into increasing access to specialist legal services. The following articles are presently submitted for consideration in academic journals:
  - "Educating Australia's next generation of community lawyers: some suggestions" (Deakin Law Review); and
  - "Queensland community legal centres' use of information technology to deliver access to justice" (International Journal of Law and Information Technology).

# Systems Advocacy – Nick Collyer

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## Submissions on Policy Issues

1. August 2014: Submission to the Mental Health Act Review (All QAI submission)
2. 6 August 2014: Inquiry on strategies to prevent and reduce criminal activity in Queensland (Verbal presentation to the Committee + submission)
3. 20 July 2014: Submission to the Review of the Disability Standards for Accessible Public Transport
4. 11 July 2014- Support Comments To DANA about DANA
5. June 2014: Submission to the Senate Inquiry into need for Speech Therapy services
6. 19 June 2014: Presentation - People With Intellectual Disability & The Criminal Justice System - presentation at the conference at ADCQ rooms convened by ADCQ, Office of the Public Advocate & Endeavour Foundation.
7. June 2014: Verbal submission to the Office of the Public Advocate inquiry into Complaints by Disability Services
8. 2014- Submission to the Senate Inquiry into the provision of Speech Therapy Services nationwide
9. 21 May 2014- Second Submission to Productivity Commission's Access to Justice draft discussion paper
10. 9 May 2014 - Transport Standards Survey for Department Transport (Qld) Disability Action Plan
11. 9 May 2014- Submission on Development of Mobility Scooter Guidelines (to Australian Human Rights Commission)
12. 20 January 2014ALRC - Submission on Access to Justice -
13. 4 November 2014 Productivity Commission Submission on Access to Justice
14. January 2014- Review of the Disability Services Act 2006 (With David Manwaring, Michelle O'Flynn)
15. 14 July 2013 Two Wheelchairs per Flight Policy Submission to the Aviation Secretariat- submitted

## Community Education

Dec 2013 Talk to Kyabra Parents Group on Advocacy

## Correspondence

- |               |   |
|---------------|---|
| 9 May 2014    | Letter to Senator Mitch Fifield promoting advocacy and enclosing submission on Advocacy and the NDIS  |
| 5 March 2014  | Letter to Minister for Police and Emergency Services re screening of and support for people with capacity impairments in the criminal justice system  |
| 28 April 2014 | Letter to Premier Newman re: support for independent advocacy in Queensland   |
| 30 April 2014 | Nomination for Savvy Hunt to receive financial support to attend the 7 <sup>th</sup> Session of the ad hoc Committee (UN) on the <i>Convention on the Rights of Persons with Disabilities</i> |

## Events Convened

Restrictive Practices Forum- August 2013

The team working on this included David, Ken, Karlie and I.

## Hearings before Parliamentary Committees

- 17 December 2013- Health and Community Services Committee hearing on the proposed amendments to the *Disability Services Act 2006* (Qld)

## Media Releases

17 October 2013-	'Attorney-General to Turn Back the Clock'- Criminal Sentencing
27 September 2013-	The Newman government's plan to 'name and shame' juvenile offenders and to put 17 year olds in adult jails
August 2014-	Media release on A New System for Better Employment and Social Outcomes - Interim Report of the Reference Group on Welfare Reform to the Minister of Social Services (with Emma & Michelle)

## Events, Seminars, Forums, Meetings Attended

1. Aboriginal Disability Justice Campaign (ADJC) Working Group
2. CAGQ Annual Event preparation
3. CAGQ Monthly meetings
4. Community Safeguards Coalition Monthly Meetings (alt with Michelle O'Flynn)
5. July 2014: Opening Office of the Public Guardian, Melbourne Street South Brisbane
6. 4 June 2014- National Disability Insurance Scheme learnings about Trial Sites
7. Renaissance Forum (deinstitutionalisation) ADCQ
8. 25 June 2014: co-Presentation with Michelle & David @ Centre of Excellence Symposium
9. 20 June 2014- Advocacy Presentation FSG Beenleigh
10. 11 June 2014: Jess Cadwallader People With Disability re: Royal Commission into Institutional Abuse of Children
11. 28 April 2014- Roundtable on people with intellectual disability and mental illness @ Broncos Leagues Club.
12. 5 May 2014- Ian Freckleton QCAT on Mental Health legislation (at Gardens Theatre)
13. 16 April 2014- Webinar –on National Disability Insurance Scheme with Bruce Bonyhady and Mitch Fifield
14. 3 Feb 2014WILD- Seminar on People with Intellectual Disability and Sex/Sexuality
15. 5 Nov 2013: Meeting with the Australian Law Reform Commission to discuss capacity before the law - President Professor Rosalind Croucher, Part-Time ALRC Commissioner Her Honour Justice Berna Collier and Legal Officer Sonya Kim.
16. 6 Nov 2013: - Human Rights Issues workshop Mental Health Act Review - - Human Rights Issues workshop Mental Health Act Review –
17. 2 Dec 13- David and Nick - Public Briefing - RP Amendment Bill- Parliamentary Annexe
18. 3 Dec 13- Nick, David, Bek meet w/ Camille @ Caxton and James @ QAILS re ALRC Issues Paper 44 + other matters

## Disabled Justice Meetings

- 10 August 2014: Coleen and John Avery, here @ QAI
- 12 August 2014: Anti-Discrimination Commissioner Kevin Cocks
- 17 July 2014: Nagadeva Higgins & Mark Reimers @ Endeavour Foundation Cannon Hill
- 4 July 2014: Dr Kate van Dooren @ QCIID
- Dr Ed Heffernan and anor @ Forensic Mental Health Service
- Lex Wardell @ Woodridge Legal Aid
- Janet Wight @ Youth Advocacy Centre
- Sue Gordon @ TASC
- Nancy Grevis-James @ QUT
- Prof Heather Douglas @ University of Queensland
- Jim Simpson @ NSW Council for Intellectual Disabilities
- 12 Nov 2013- Tina Riveros LIB Bayside Community Legal Service
- 6 Dec 2013 - Linda Steele, University of Wollongong

### **Reports/Docs/Discussion Papers - Other**

Discussion Paper and recommendations - *Advocacy and the National Disability Insurance Scheme* with Michelle.

Discussion Paper- Supported decision-making and the NDIS with Michelle and David.

### **Volunteer Supervision**

Research volunteer Larissa Knetsukova - July 2013 – November 2013

Research volunteer Marryam Kahloon February - April 2014

Research Volunteer Carin Mattar August 2013 – Dec 2013

### **Other**

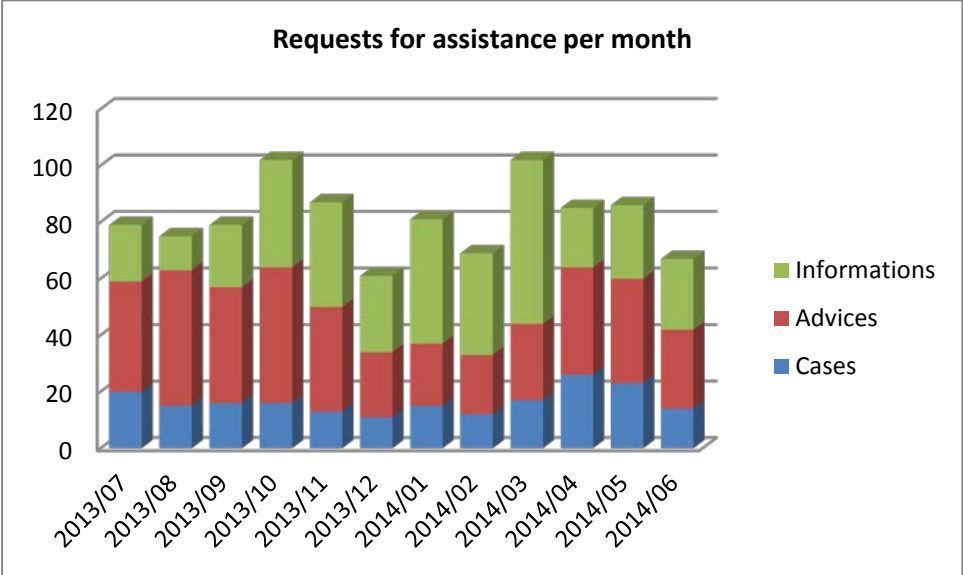
5 Feb 2014: Suicide Prevention Training with all staff.

July 2014: Briefing for ADJC Policy Reference Group On Detention Of Persons With Capacity Impairments Held Without Conviction In Qld

# Principal Solicitor

QAI has provided individual advocacy services since 2008, when the Human Rights Legal Service was established to promote and protect the fundamental human rights of people with disability in Queensland. The Justice Support Program followed in 2009, providing non-legal advocacy for vulnerable people navigating the criminal justice system. In 2010, the Mental Health Legal Service commenced to provide legal advice and assistance for people subject to involuntary mental health treatment and detention. Over this time, we have assisted **1666 clients**, opened **1054 cases** and provided **1619 advices**.

2013-14 has been another busy year for QAI’s individual advocacy services. Each month we receive an average of 80 requests for assistance: 58% are provided with advice or representation. Of the 42% turned away, at least 27% are referred away due to capacity issues. This does not take into account the clients whom we book in for an advice only, as we do not presently have the resources to provide them with representation.



### Other work

Given the scope of QAI’s work, we are constantly faced with the ethical question of whether clients have capacity to provide us with competent instructions. It is also a concern that many private practitioners, when confronted with the complex ethical issues of representing a client with disability, may simply choose not to, leaving an already disadvantaged and vulnerable client group without access to proper legal advice and representation.

In order to address the lack of clear Queensland based guidance on this issue, with the pro bono assistance of **Allens**, QAI has drafted a handbook on capacity for legal practitioners in Queensland. We anticipate publication before the end of 2014. We also presented a QAILS webinar on this issue on 18/03/14.

This year, QAI was also heavily involved with the development of the Queensland Association and Independent Legal Services (**QAILS**) Community Legal Services Plan, to ensure a strategic, client-focussed and collaborative approach to providing community-based legal assistance services across Queensland. The plan was published in April 2014, and QAI plays an ongoing role as convenor of the Mental Health Law Network and the Clients with Disability or Mental Illness Network, and plays an active role in the Guardianship and Administration Network.

## Funding

Until recently, the Human Rights Legal Service has been recurrently funded through the Community Legal Service Program, while the Mental Health Legal Service and Justice Support Program received year to year project funding from the Legal Practitioner Interest on Trust Accounts Fund.

From 1 July 2014, all services are funded for 3 years from the Legal Practitioner Interest on Trust Accounts Fund and State service delivery funding. We thank the Department of Justice and Attorney-General for their ongoing support.

## Pro bono and volunteers

QAI could not achieve the quantity or quality of services without the generous support of volunteers and pro bono assistance. In 2013-14, we thank the following for their ongoing assistance and support:

<b>Firms</b>	<b>Barristers and solicitors</b>	<b>Other</b>
<ul style="list-style-type: none"><li>• Allens</li><li>• Ashurst</li><li>• DLA Piper Australia</li><li>• Minter Ellison</li><li>• Sparke Helmore</li></ul>	<ul style="list-style-type: none"><li>• David Cormack</li><li>• Janice Cowan</li><li>• Karen Williams</li><li>• Michael Smith</li><li>• Nannette Noble</li><li>• Nicholas Tucker</li><li>• Sally Robb</li></ul>	<ul style="list-style-type: none"><li>• Office of the Public Advocate</li></ul>

We also thank the senior law students who volunteer their time, one day per week over a 12 week period, to assist both individual advocates and systems advocates at QAI.

<b>Semester 2, 2013</b>	<b>Christmas break</b>	<b>Semester 1, 2014</b>
Tammy McConochie Ustina Boules Peter King Cameron Jang Keith Sun Naomi Dickson	Emily Boller Madeline Ryan	Khi Prasser Deborah Stafford Kirstie Gibson Miranda Nelson Tenika Vakauta Alicia Dodemont

Rebekah Leong

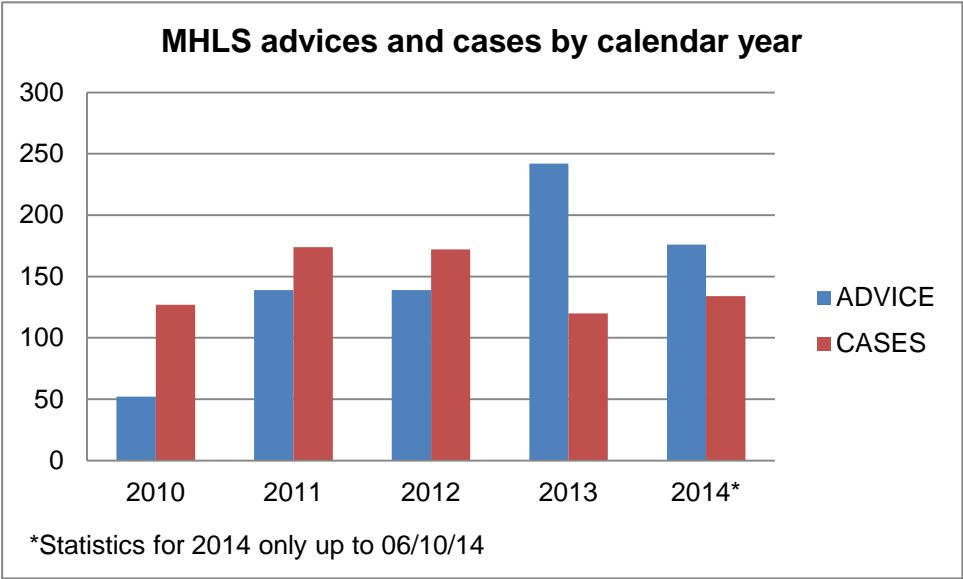
# Mental Health Legal Service

## Background

Mental health laws in Queensland enable the forcible detention and treatment of people with mental illness, impacting on basic human rights. The Mental Health Review Tribunal provides an important safeguard against the unlawful or arbitrary use of these powers. In 2013-14, only 2.4% (285 matters) of the 12078 matters before the Tribunal were attended by a lawyer representing the patient, the lowest rate in Australia. In contrast, of the 1637 matters relating to forensic order reviews 56% (910 matters) were attended by the Attorney-General's representative, an increase of 6% from last year.<sup>1</sup>

Since 2010, QAI's Mental Health Legal Service (**MHLS**) has been providing quality legal advice and representation to people receiving involuntary treatment for mental illness under the *Mental Health Act 2000* (Qld). The MHLS aims to empower their clients to meaningfully participate in treatment decisions made about them. While we attend many Tribunal hearings each year, much success achieved occurs outside the hearing room.

Given the overwhelming demand for services, the MHLS began to focus its attention on representing forensic patients, given the vulnerability of this client group and the lack of other legal services providing representation in this area. Due to the greater complexity of these matters, and the changes in laws over the past 18 months which increase restrictions over forensic patients, over the years, this has meant a drop in casework numbers and an increase in advice work.



With funding through the Legal Practitioner Interest on Trust Accounts Fund secured until June 2017, the MHLS continues to search for further funding from other sources to supplement their 1.6 worker team to fill the gap in services for this vulnerable client group.

## Legal Advice and Casework

In 2013-14, the MHLS provided **239 advices** and opened **147 cases**, which included:

- Representation by QAI workers at **91 Mental Health Review Tribunal hearings**, and **2 Mental Health Court appeals**;
- Instructing counsel in **40 matters** referred to us from the Mental Health Review Tribunal;
- Referral of **2 matters** to a private law firm for pro bono legal assistance.

<sup>1</sup> See Mental Health Review Tribunal, Annual Report 2013-14



Thank you to **DLA Piper Australia** who accepted referrals for assistance on a pro bono basis, and to **Allens** for providing strategic litigation advice. We also thank barristers **Sally Robb, Janice Cowan, Nicholas Tucker** for their invaluable pro bono support during the year.

Type of matter	Hearings attended by QAI worker	Hearings attended by counsel/pro bono lawyer
Forensic orders	67	7**
Involuntary treatment orders	17	2 + 2**
Electroconvulsive therapy applications	7	-
Confidentiality order applications	3*	40
Fitness for trial	3*	-
<b>TOTAL</b>	<b>91</b>	<b>42</b>

\* hearing combined with forensic order review

\*\* hearing combined with confidentiality order application

Our greatest source of referral continues to be health workers which made up 14% of matters referred. 20% of matters involved repeat clients.

In 2013-14, most matters came from The Park (16%), followed by Townsville (13%), Gold Coast (12%), the Princess Alexandra Hospital (11%), the Royal Brisbane and Women's Hospital (11%), Cairns (7%) and The Prince Charles Hospital (6%). This is in contrast to last year where the top 3 services were the Royal Brisbane and Women's Hospital, Townsville and The Prince Charles Hospital.

### Representation highlights and systemic issues

- For years, the case manager could not convince the client to attend her Tribunal hearings and she had never attended because she found the process very intimidating. With QAI's assistance, the client was supported in attending her forensic order review hearing and the forensic order was revoked.
- We assisted a client who had been detained in a mental health facility for the first time. The Tribunal revoked the involuntary treatment order at the first review and the client was discharged into the community immediately.
- We assisted a forensic patient whose access to leave was prevented for 18 months through an administrative process put in place by the health facility. In order to progress his leave, we were successful in obtaining an *order* from the Tribunal for leave which was implemented by the health service.
- We were successful in arguing against an application for electroconvulsive therapy on the basis it was not the most clinically appropriate treatment.
- We assisted a forensic patient in their application to move out of Queensland, which involved technical legal arguments and practical coordination with the receiving State.
- More and more we are coming across forensic patients whose access to leave is prevented due to delays in having their leave "approved" by the Director of Mental Health. We continue to assist clients in these matters which are resource intensive.
- In 2013, the Director of Mental Health was empowered to impose monitoring conditions, including the wearing of GPS tracking devices, on forensic patients accessing leave from the authorised mental health service. We have represented 5 clients in relation to these conditions before the Tribunal and the Mental Health Court.

### Tribunal referrals

From time to time, the Mental Health Review Tribunal refers important matters to QAI for legal representation. QAI coordinates and instructs a panel of barristers who have agreed to take on these types of matters and whose fees are paid by the MHRT. In 2013-14, 40 matters were referred to QAI. We thank the following counsel for their involvement: **David Cormack, Nannette Noble, Nicholas Tucker, and Karen Williams.**

### Pro bono referral scheme

On 8/08/12, QAI and law firm DLA Piper Australia entered into an agreement under which QAI could refer community ITO patients to DLA Piper for pro bono legal representation before the MHRT. We successfully referred 21 matters under this scheme, before it was deferred in 2013. We thank **DLA Piper Australia** for their support.

In order to further increase the capacity of the MHLS, on 22/04/14, law firm Allens seconded lawyer **Tegan Ayling** for 36 days over 12 weeks, with the goal of establishing a pro bono referral scheme in which Allens lawyers would provide free representation to involuntary treatment order patients as volunteers of QAI. Since commencing on 1/07/14, 12 referrals have been made under the new scheme. We are grateful to **Allens** for their interest in this project and thank Tegan for all her hard work.

The establishment of such programs benefits both practitioners and clients by expanding the knowledge of the legal sector about mental health law and increasing access to pro bono legal representation.

### Other activities

In 2013-14, QAI was funded through LPITAF to deliver the Specialist Service Accessibility Project. This provided the MHLS with the opportunity to travel to Mackay, Townsville, Rockhampton and Cairns to provide face-to-face training to community legal centres and advocacy groups in mental health law, develop relationships with local mental health services, and commence development of a guide for legal advocates in relation to the review of involuntary treatment orders before the MHRT.

As one of the few legal services providing regular representation before the MHRT, we participated in the review of the *Mental Health Act 2000* (Qld) by attending forums, familiarising ourselves with the amendments proposed and providing feedback on the review. Thanks to **Allens** for their assistance with research on this project.

We also presented continuing legal education (**CLE**) seminars including:

- QPILCH seminar identifying legal issues relating to people with mental illness (13/03/14)
- QAILS webinar on Mental Health Review Tribunal practice and procedure (26/02/14)
- QAILS conference on mental health law (18/06/14)

**Queensland Aged and Disability Advocacy Inc** and QAI were successful in an application for funding from the CLE Collaboration Fund to provide training to mental health consumers and their families about the guardianship framework. Training is to be rolled out over the next 2 years.

### Staffing

The MHLS is funded for 1 solicitor and 0.6 paralegal, under the supervision of a part time principal solicitor and supported by administrative staff. During 2013-14, positions within the MHLS have been held by:

Senior Solicitor: Julie Hearnden

Paralegal: Natalia Nash, Imogen Coates-Marnane, Roba Rayan.

# Human Rights Legal Service

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## Background

The Human Rights Legal Service (**HRLS**) was established in 2008 and implements a framework promoting the four key principles of human rights, namely freedom, respect, equality and dignity. The service also endorses the rights as set out in the Convention on the Rights of Persons with Disabilities (**CRPD**).

The function of the HRLS is to promote and protect the fundamental human rights of people with disability in Queensland, in particular;

- The right to life, liberty and security
- Freedom from torture or cruel, inhuman treatment or punishment; and
- The right to equality before the law and equal protection of the law

The HRLS lawyer achieves this by providing specialist legal advice, representation or referral when these rights are threatened or disregarded.

The work of the HRLS encompasses the following areas;

- Restrictive practices including the use of seclusion, containment and chemical, mechanical and/or physical restraint;
- Guardianship and Administration;
- Forensic Orders and Forensic Orders – Disability;
- Health care and life sustaining measures;
- Funding and/or support issues; and
- Abuse/neglect and serious injury of people with disabilities.

## Staffing

The HRLS is funded for 1 full time solicitor who is supervised by a part time principal solicitor and also supported by administrative staff.

## Funding

From 1 July 2014 the funding process for HRLS has changed. Prior to this date funding was recurrent through the Community Legal Service Program (**CLSP**). Under the new Legal Practitioner Interest on Trust Accounts Fund (**LPITAF**) funding arrangements funding has been secured until June 2017.

We also received pecuniary support from the University of Queensland for operating the Disability Law Clinic (**DLC**).

## HRLS Operation in 2013-2014

The HRLS continues to use the same operational strategy as in previous years, this being to provide legal advice and casework on a range of matters as well as to provide representation in guardianship, restrictive practices, Forensic Orders and Forensic Order – Disability matters.

## Casework

Casework is where the HRLS lawyer provides ongoing assistance and/or acts on behalf of a client in respect of a matter. A matter consists of a single problem or a group of related problems, or a group of problems which may be unrelated, but are dealt with together. Casework can extend out over several months with hours of legal and non-legal work invested into the matter. Representation at a QCAT hearing is an example of a matter.

Throughout 2013-2014 the HRLS opened **20 cases**.

## Representation

HRLS provided representation at **7** Mental Health Review Tribunal (**MHRT**) hearings re forensic orders and forensic orders - disability. HRLS also provided legal representation at **9** Queensland Civil and Administrative Tribunal (**QCAT**) hearings in relation to guardianship, administration and restrictive practice matters. QCAT appointed David Manwaring as separate representative in **1** matter.

## HRLS casework examples

### **Example 1**

HRLS are representing a client residing at FDS. This person had LCT approved by the MHRT over 18 months ago however FDS are still to progress this. FDS have adopted a punitive approach and require this person to be compliant with internal leave before accessing LCT – internal leave consists of walking around the inside of the perimeter fence – this is of little interest to the person. As a result of the lack of meaningful activities the person is bored which negatively affects their behaviour further compounding the matter. FDS acknowledge this but have failed to change their approach. At the most recent MHRT hearing, after strong advocacy, the hearing was adjourned whilst a second opinion was obtained around rehabilitation opportunities. This was in response to 1) treating medical officer saying the person had no capacity to learn and would not benefit from LCT and 2) recommendation by the Mental Health Court that the treating team should have a fresh look at the case.

#### **Systemic issues identified:**

- 1. Resourcing issues impacting on appropriate rehabilitation*
- 2. Medical model still exists and operates – this view preventing LCT*
- 3. Lack of transition planning at FDS.*
- 4. Need for parallel system of specialist support services for people with Disability*

### **Example 2**

HRLS were appointed as separate representative for a client residing in a Q Health facility. This client had inherited a house from her father, the property had not yet been transferred to the client and the adult had expressed a wish to live in the house. Yet the PT had indicated that when the house was transferred to the adult they would sell it and invest proceeds into a superannuation fund. A stay of decision was applied for and granted and at a follow up hearing the PT made a commitment not to try and force sale of the house. With our advocacy a gradual transition process was developed and alternate support options were sourced which has enabled the adult to be able to undertake a transition to the house. To date this has been successful.

#### **Systemic issues identified:**

- 1. Lack of respect for rights of the client.*
- 2. PT acting against client's wishes.*
- 3. Silo thinking, lack of collaboration between Health, Housing or Communities.*

### Telephone advices (non- casework)

Supervised by the HRLS lawyer the Telephone Legal Advice Service (TLAS) is operated by volunteer lawyers from Sparke Helmore and Office of Public Advocate every Thursday. Additionally law students from the Disability Law Clinic provide advices on Tuesday, again under the supervision of the HRLS lawyer.

Telephone advice is not simply a dialogue delivering generic advice on the law, all advice provided by the HRLS/TLAS is specific to the person's unique situation. Advice is defined as when the lawyer explains the law in relation to the client's circumstances and helps them to select between options about their problem. Advice extends to assisting with the drafting of simple letters or documents, making phone calls on the client's behalf and referral to other agencies.

During **2013-2014** the HRLS/TLAS provided legal advices to **98 clients**. Areas of law covered were predominantly guardianship and administration, complaints about government processes/procedures (funding & accommodation), disability discrimination, restrictive practices and forensic orders. Other areas included tenancy, wills and power of attorneys.

*The statistics fail to show that many hours can be devoted to one advice, as time is required to adequately research the issue, provide the actual advice and write up the advice letter. The average length of time provided on an advice is between 2 – 3 hours.*

### Extra curricula activities

In addition to casework, the HRLS advocated more broadly for clients' rights particularly those espoused in the CRPD. This included liaising with delegates of the Adult Guardian, QCAT & Department of Communities and non-government organisations.

The HRLS lawyer also

- Completed chapter rewrite/editing in the *Lawyers Practice Manual*.
- Completed rewrite/editing of Chapter 18 of Caxton Legal Centre publication *The Queensland Law Handbook*.
- Assisted in QAI's submission on the 'Review of the Regulation of Restrictive Practices in the Disability Services Act 2006 and the Guardianship and Administration Act 2000'.
- Assisted in QAI's submission to Jodie Cook, Public Advocate on 'People with Disabilities in Long-Stay Health Facilities'.
- Participated in making written and oral submissions with regard to amendments to Restrictive Practice Framework in the Disability Services Act and the Guardianship and Administration Act.
- Participated in QAI's PII Cross check.
- Provided CLE session to Health and Legal Clinic at St Vincent's Hospital.
- Participated in SLASS State Conference on Supported Decision Making.
- Presented paper at Centre of Excellence Symposium with Nick Collyer and Michelle O'Flynn.
- Met with QCAT President & Senior Member to discuss referral of restrictive practices matters to QAI.
- Participated in Mental Health Roundtable re Mental Health Act review.
- Made submissions in regard to Anti-libidinal medication being included in restrictive practices regime or as healthcare.

### Disability Law Clinic (University of Queensland)

The Disability Law Clinic (**DLC**) commenced operation on 30 July 2013 and is run during each university semester (13 weeks). DLC is in partnership with University of Queensland Pro Bono Centre as part of their Clinical Legal Education Program. Students are supervised by the HRLS lawyer. Six (6) students have completed this clinic to date and there are three (3) students presently undertaking placement. Feedback from UQ Co-ordinator (Monica Taylor) and students has been positive. This semester students will author an article about their experience with DLC which will go into QAI's newsletter.

QAI & HRLS would like to thank the following students for their contribution to DLC.

Semester 2 - 2013	Semester 1- 2014	Semester 2 -2014
Emily Anderson-James Linley Ezzy Daren Tan	Jelena Rakic Vanessa Brown Kate-lyn Ah Shay	Hannah Baldry Alexander Merritt Whan Hee Cho (Linda)

### Committee Membership

#### QAILS Human Rights Social Justice sub-committee

The HRLS Lawyer continues to be an active member of this sub-committee. The work of QAI is also promoted through this forum.

#### Queensland Law Society Health and Disability Committee

The HRLS Lawyer has been a member of this committee since its inauguration on 28.05.2014. The committee provides a forum for legal, medical and health professionals and the government to raise, identify, debate and resolve issues in disability and health law.

### Pro bono assistance

HRLS would like to thank the involvement of the following Counsel:

**Karen Williams** - who continues to accept on a pro bono basis to be briefed in relation to representation at QCAT hearings. Ms Williams also provides significant and ongoing support and advice to HRLS in the carriage of matters.

**Micheal Smith** – has provided pro bono assistance and advice in relation to a personal injury proceeding under the *Personal Injuries and Proceedings Act* (PIPA).

HRLS also thanks **Ashurst** for providing advice around duty of care issues arising under the *Disability Service Act (2006)* and *Disability Service Regulations (2006)*. QAI thanks **Sparke Helmore** & the **Office Public Advocate** in providing volunteer lawyers for TLAS. These lawyers are Tom Dalton, Benjamin Di Marco, Matthew Hawker, Stefanie Luhrs, Dominique Mayo, Ewa Cholinska, Laura Reagan, Andrew Ross and Elise Nolan.

David Manwaring



# Justice Support Program

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The Justice Support Program (**JSP**) was established in response to QAI's report "Disabled Justice: The barriers to justice for persons with disability in Queensland" (2007), which highlighted the overrepresentation of people with disability in the criminal justice system and made recommendations for reform.

Today, the Justice Support Program provides non-legal advocacy for vulnerable people who have been charged with a criminal offence, by identifying their legal and social issues, linking them with appropriate legal and support services, helping them to comply with Court orders and providing other assistance to help prevent further entrenchment into the criminal justice system.

## Advice and casework

JSP provided **72 non-legal advices and minor assistance** and opened **31 cases** in the 2013-14 financial year. Charges range from minor wilful damage and public nuisance to serious sexual and physical assault. Since commencement in September 2009, JSP has assisted **289 people** and to our knowledge only 3 clients have re-offended.

JSP clients included people with psychiatric illness (42%), intellectual disability (16%), profound physical disabilities (12%), autism spectrum disorder (7%) and acquired brain injury (6%).

Most JSP clients find out about the service through brochures which are available throughout court registries and police stations in the greater Brisbane area. Other clients are referred through internet searches, community organisations and Legal Aid Queensland.

## Scope of work and case studies

We prefer to advise or assist the client directly or jointly in the company of their parent, support worker or friend. Invariably the first contact with JSP is because the client has been charged, has to go to court and has no idea as to what to expect at court or how to get legal help. We explain in very broad terms the court process and provide detailed advice and instructions on how to access legal advice or representation, and the importance of accessing the duty lawyer service at the court. We refer clients to community services and supports that will help to change the client's behaviour that brought him or her to the attention of the police.

If the client lives outside the greater Brisbane area or has someone who is willing and able to support them through the process then we manage by providing advice over the phone. If the client or his/her carer is not an effective advocate then we open a case and prepare to provide active support at court, in making appointments and in arranging ongoing community supports.

All advices and cases vary when it comes to assessing the nature of the client's impairment, the type of support he or she needs and how or where to access that support. The simplest advice last year arose from an email from a government department employee requesting assistance on behalf of a client: the response was easy, the address of the nearest Legal Aid office. However, more importantly, the JSP advocate was able to point out the need to link the client up with the department's specialist therapists who could assess or diagnose the client's problem and then refer to the appropriate support service from within the department.

In another case, a client had previously been charged with an offence because of his behavioural problems. The charge was discontinued when it went to a case conference in



the Magistrates Court and it became apparent that he did not have capacity to instruct his solicitor. His solicitor had commissioned a psychologist's report that comprehensively outlined the extent of his impairment and the strategies that could be followed to help him overcome his behavioural problems. However because the report described the offence in detail and was considered to be part of his legal file, the service provider had locked it away in a secure place.

When the client allegedly reoffended, the JSP advocate identified the psychologist's report from the bundle of documents requested from the service provider. It became apparent that very few of the recommendations had been followed. JSP assisted the client to access skilled and targeted therapeutic counselling in an effort to address his offending behaviour and to train his support staff to reinforce the therapies throughout the day. The client has already gained some insight into the inappropriateness of his actions and with time and intensive therapy his outlook can only improve. JSP also assisted the client to retain a skilled criminal lawyer and the charges were eventually withdrawn by the DPP.

### **Staffing**

The JSP budget is enough to employ an advocate for the equivalent of 6 working days per week. Since it is not practical to try to recruit an adequately experienced and capable Advocate for 1 day a week, JSP and QAI's Mental Health Legal Service combine resources and share a Paralegal/Advocate position.

JSP was staffed by Liz Francis, Natalia Nash, Imogen Coates-Marnane and Roba Rayan

### **Promotion of the service and networking**

#### **Information Sessions Attended**

- WWILD Paperbag Lunch - Relationships and Sexual Education for People with Intellectual Disability
- Queensland Disability Conference
- Queensland Roundtable on the Mental Health of People with Intellectual Disability
- Public Guardian information session
- Criminal Justice Symposium (Endeavour Foundation) - Intellectual Disability and the Criminal Justice System

#### **Training Sessions Attended**

- WWILD - Supporting people who have an intellectual disability through the justice system
- 'Towards a Better Life' Introductory SRV training

#### **Meetings Attended:**

- Legal Aid Queensland anti-discrimination and civil law team
- State Penalties Enforcement Registry (SPER) regarding the Community Engagement Team which provides assistance to vulnerable and disadvantaged people who have unpaid fines registered at SPER
- Mental Health Court Liaison Service team leader
- Court Network State Manager
- Queensland Courts Referral Program
- Indigenous Sentencing List (formerly known as the Murri Court)
- Accommodation Support and Respite Services (Wacol Service Centre)

#### **Presentations to:**

- QAILS conference
- Community Justice Groups (organised by QAILS)

Elizabeth Francis



QAI Staff with Terri Butler MP



Imogen and Roba



HRLS Lawyer David Manwaring his law clinic students



Students from Cambodia learning about the CRPD



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