

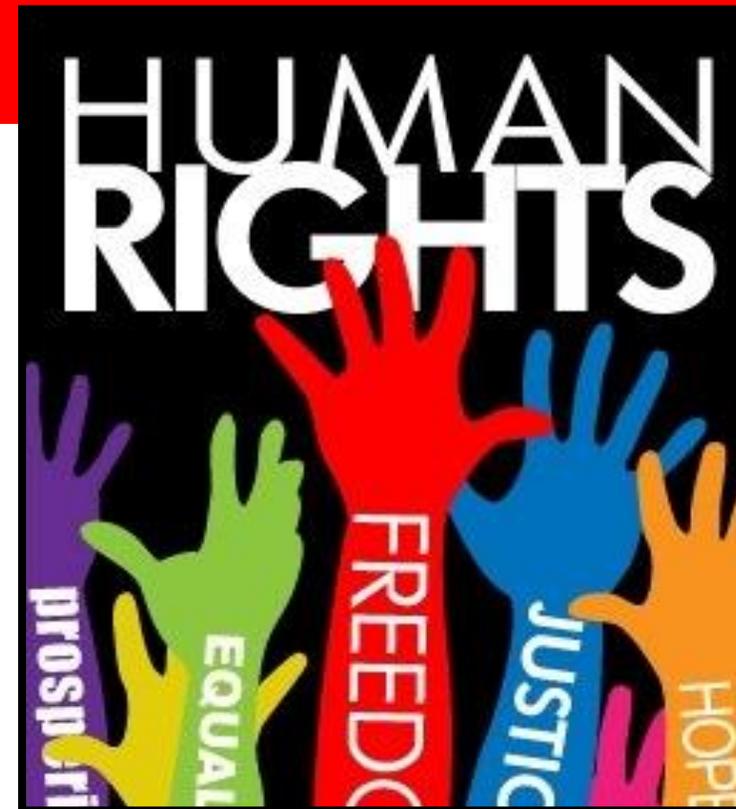
# Using the Human Rights Act to Protect the Rights of Students with Disabilities in QLD

Online workshop for parents

Presented by ~ Emma Phillips & Nikki Parker (QAI)



Expanding Ideas; Creating Change



# Who is CRU?

CRU exists to support the development of leadership and authentic change which enhances the possibilities for people with disabilities to belong to and participate in community life. It aims to:



Challenge ideas and practices which limit the lives of people with disabilities and;



Inspire and encourage individuals and organisations to pursue better lives for people with disabilities.



## Disclaimer

This PowerPoint Presentation contains general information about legal matters. The information is not legal advice and should not be treated as such.

# Content of this workshop

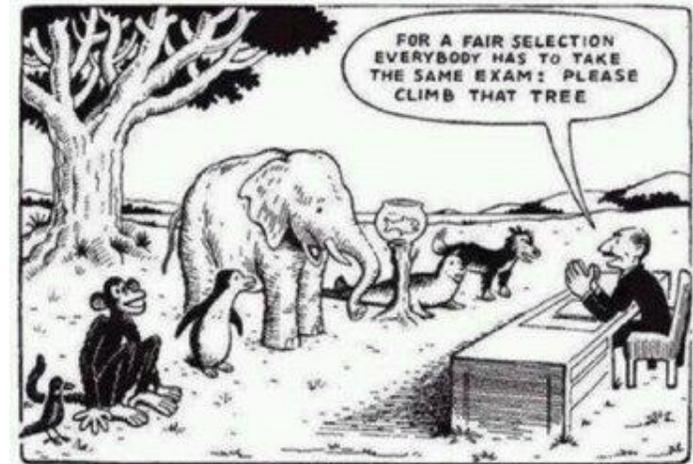
- Human rights protections in Queensland and the right to education
- Avenues of complaint for human rights breaches and discrimination (including costs and risks)
- Other available avenues for resolution of issues with a school
- Options to achieve systemic change and improvement
- Resources
- Questions

# Human rights protection in Queensland and avenues of complaint



# Laws to protect children with disabilities in the Queensland education system

- *Human Rights Act 2019 (Qld)*
- *Anti-Discrimination Act 1991 (Qld)*
- *Disability Discrimination Act 1992 (Cth)*
- *Education (General Provisions) Act 2006 (Qld)*
- *Disability Standards for Education (Cth)*



## Our Education System

*Everybody is a genius. But if you judge a fish by its ability to climb a tree, it will live its whole life believing that it is stupid.*

# *Human Rights Act 2019 (Qld) ('HRA')*

- It protects human rights → the basic rights that belong to every person, regardless of age, race, sex, social status or other characteristic
- Protects the human rights of all people in Queensland
- Binds “public entities” → core and functional
- Dialogue model – human rights are taken into account across the three arms of government
- Accessible complaints mechanism
- Protects a range of human rights that Australia has agreed to protect at international law
- Most human rights are individual, some belong to groups (eg cultural rights)

# Rights protected by the HRA

Civil and political rights	
Recognition and equality before the law	Right to life
Protection from torture and cruel, inhuman or degrading treatment	Freedom from forced work
Freedom of movement	Freedom of thought, conscience, religion and belief
Freedom of expression	Peaceful assembly and freedom of association
Taking part in public life	Property rights
Privacy and reputation	Protection of families and children
Cultural rights – generally	Right to liberty and security of person
Humane treatment when deprived of liberty	Fair hearing
Rights in criminal proceedings	Children in the criminal process
Right not to be tried or punished more than once	Retrospective criminal laws
Cultural rights of Aboriginal and Torres Strait Islander peoples	
Economic, social and cultural rights	
Right to education	Right to health services

# The right to education

1. Every child has the right to have access to primary and secondary education appropriate to the child's needs.
2. Every person has the right to have access, based on the person's abilities, to further vocational education and training that is equally accessible to all.

# The origins of the right to education in international & domestic law

- Article 13 of the International Covenant on Economic, Social and Cultural Rights (ICESCR)
- Article 28 of the Convention on the Rights of the Child (CRC)
- Article 24 of the Convention on the Rights of Persons with Disabilities (CRPD)
- World Declaration on Education for All
- UN Standard Rules on Equalization of Opportunities for Persons with Disabilities
- Salamanca Declaration and Framework for Action
- Council of Australian Government's National Disability Strategy (2011)
- Australian Curriculum
- Australian Professional Standards for Teachers
- National Quality Framework
- Early Years Learning Framework for Australia
- Queensland Department of Education Inclusive Education Policy 2020

# Obligations of public entities

- To make decisions compatible with human rights
- To give proper consideration to relevant human rights in making decisions, which includes:
  - Identifying the human rights that may be affected by the decision; and
  - Considering whether the decision would be compatible with human rights.
- *Certain Children v Minister for Families and Children & Ors [2016] VSC 796*
- *Minister for Families and Children v Certain Children [2016] VSCA 343*
- *Certain Children v Minister for Families and Children (No 2) [2017] VSC 251*

# Limits to human rights

- The HRA allows for reasonable limits to be placed on human rights, which may be justified in a “free and democratic society based on human dignity, equality and freedom”.
- “Proportionality test” used to determine whether limitation is reasonable and justifiable. This test considers:
  - nature of human right;
  - purpose of limitation;
  - relationship between limitation and purpose;
  - whether there are less restrictive and reasonably available options;
  - importance of purpose of limitation; and
  - importance of safeguarding the human right.
- HRA permits decisions and actions that are not compatible with human rights if the decision maker ‘could not reasonably have acted differently or made a different decision’ because of that other law (s58(2)).

# Complaints mechanisms

1. Raise issue directly with public entity (not required for discrimination complaints)
2. Lodge a written complaint with QHRC (after 45 days) - 12 month timeframe (discrimination complaints can be lodged with QHRC or AHRC)
3. Conciliation of complaint if accepted

## Additional options

- Option for referral of discrimination complaints (and note s 75 HRA)
- Option to include human rights complaint as part of court action to protect another legal right

# Costs and risks of taking legal action

- No cost to lodge complaint with QHRC – costs (financial and other) involved in legal advice
- Risk that complaint will not be accepted by QHRC
- Risk that complaint will not be resolved in conciliation and require further litigation
- Collateral – breakdown of relationship with school

Avenues for resolution of issues with a school and options to achieve systemic change



# Available avenues for resolution

- Support network and support groups – e.g. QCIE, Carers Qld
- CRU: Families for Inclusive Education, resources,
- Raise issues with school Principal and request action
- Engage with regional office
- Department of Education complaints process
  - Can lead to human rights/discrimination complaint

# Department of Education complaints process

- <https://qed.qld.gov.au/contact/customer-compliments-complaints>
- Can use the complaints process to attempt to resolve issues
- Submitting a complaint (and asking that it be treated as a human rights complaint) is the first step for a complaint to the QHRC
- Complaint to:
  - principal if about school staff member
  - regional office if about principal

# Department of Education complaints process

- Written complaint
- Response
- If not satisfied with the response:
  - QHRC complaint
  - Internal review (within Department of Education)
- If not satisfied with internal review response, external options include QCAT or Office of the Queensland Ombudsman

# Complaint to Department of Education

- State issues clearly and succinctly
- If you are able, refer to:
  - Disability Standards for Education
  - Departmental policies and procedures
  - Human Rights Act
- Include evidence of complaint
- Resolutions sought
- Request that it be treated as a human rights complaint, and as a complaint under the complaints framework

# Systemic change and improvement

- Power of community to create change through networks of individuals and groups
- Australian Coalition for Inclusive Education
- QAI – systems advocacy
- Queensland Collective for Inclusive Education
- Engagement with the Disability Royal Commission

Scenario – failure to implement reasonable adjustments

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# Resources

- Queensland human rights case notes:
  - <https://law.uq.edu.au/research/human-rights/case-notes>
- QHRC:
  - <https://www.qhrc.qld.gov.au/your-rights/human-rights-law/right-to-education>
  - <https://www.qhrc.qld.gov.au/your-rights/discrimination-law/discrimination-in-education>
- QAI:
  - Human Rights Legal Service
  - Education Advocacy Service

# Resources (continued)

- CRU:
  - Families for Inclusive Education Project
- QCIE:
  - Peer support Facebook group
- Caxton Legal Centre:
  - <https://caxton.org.au/unlocking-the-human-rights-act-2019-for-your-clients-the-right-to-education/>

# Families for Inclusive Education Resources



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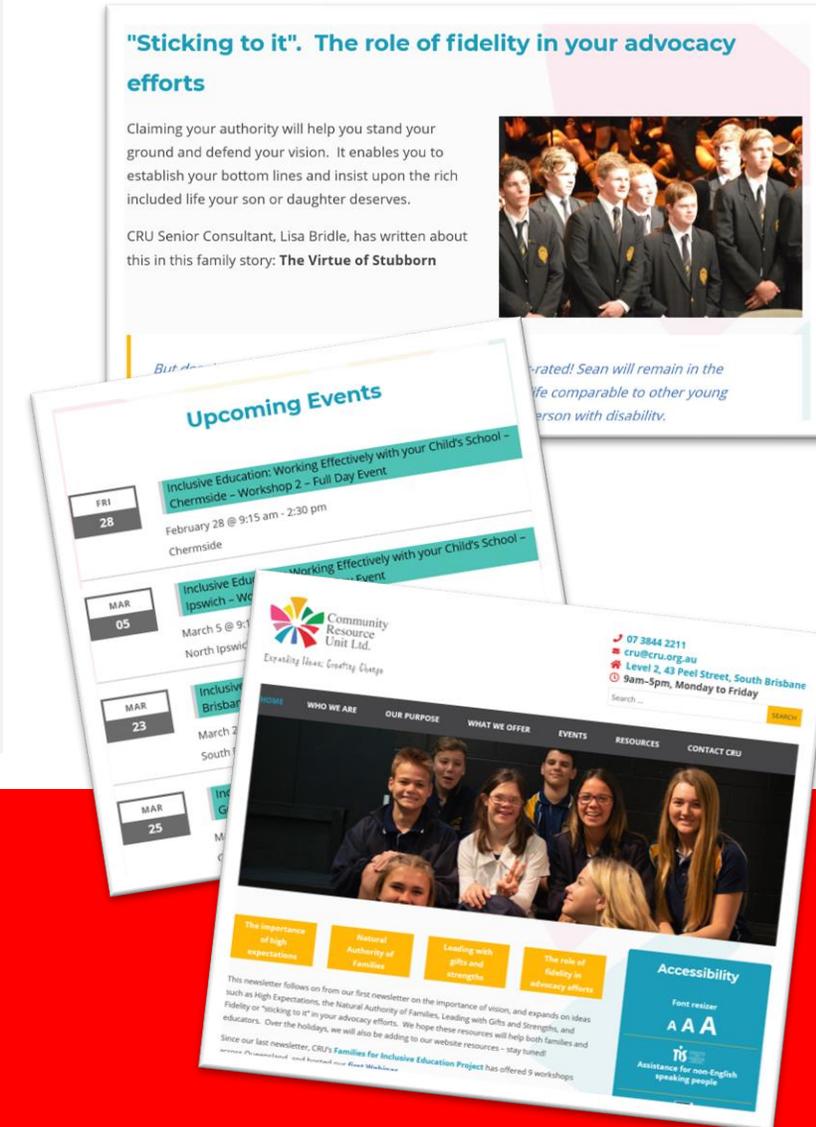
## Resources:

Families for Inclusive Education ~ CRU website



## Activities:

Workshops, Resource Development, Individual Consultations, Webinars, Peer Support Development



*Stand Strong –  
our schools and communities  
are better when everyone belongs*

# Families for Inclusive Education

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Community  
Resource  
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*Expanding Ideas; Creating Change*

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the Queensland Government  
through the  
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Questions ?