



Disability Advocacy and Human Rights

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Queensland Advocacy Incorporated



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Systems and Legal Advocacy for vulnerable people with Disability

Disclaimer

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

About QAI

Queensland Advocacy Incorporated (**QAI**) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability.

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

QAI's board is comprised of a majority of persons with disability, whose wisdom and lived experience of disability is our foundation and guide.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state.

Systems advocacy

Key projects:

- Implementation of international human rights treaties & shadow reporting on them – eg CRPD, CAT
- Human Rights Act campaigns
- Issues impacting on the human rights of the most vulnerable people with disability:
 - Indefinite detention
 - Violence, abuse and neglect (note DRC)
 - Restrictive Practices
 - De-institutionalisation
 - Guardianship and administration
 - Involuntary treatment
 - Discrimination

How we agitate for systemic change:

- Research and policy papers
- Senate inquiries and public hearings
- Raising awareness and understanding
- Lobbying politicians and decision-makers

Individual advocacy

QAI's individual advocacy services:

- ❖ Human Rights Legal Service
- ❖ Mental Health Legal Service
- ❖ Justice Support Program
- ❖ NDIS Appeals Advocacy Support Program
- ❖ NDAP Decision-Support Pilot Program
- ❖ DRC advocacy program
- ❖ Education advocacy service
- ❖ Social work service

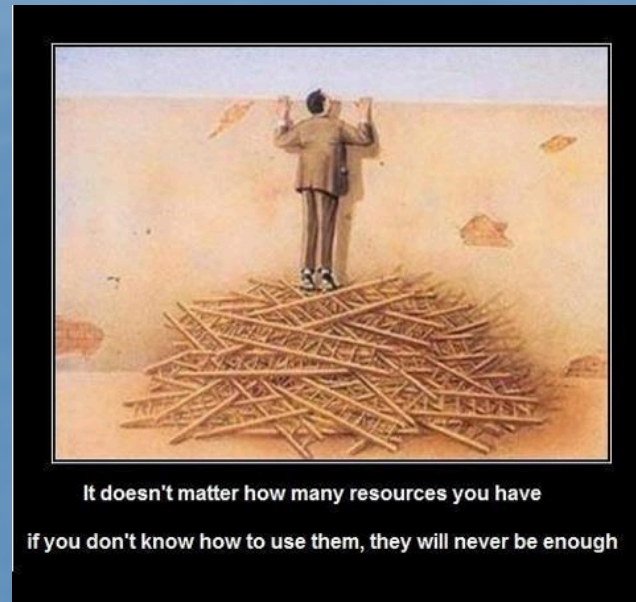
Tina's* story

* name has been changed to protect identity



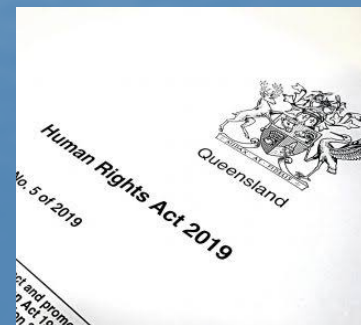
Human Rights Act 2019 (Qld)

- ⇒ 5 year grassroots campaign, involving over 40 community organisations
- ⇒ 27 February 2019: Human Rights Bill passed by Queensland Parliament
- ⇒ Human Rights Act commenced in two phases:
 - ❖ 1 July 2019: rebranding of Commission; educative functions commence
 - ❖ 1 January 2020: commencement of obligations under Act



How the HRA operates

1. **Legislative:** all new and existing state legislation will be scrutinised for compliance with the Act.
2. **Judicial:** courts & tribunals will be required to interpret legislation in a way that is compatible with human rights
3. **Administrative:** public entities must consider and not limit a person's human rights in making decision



Key features of the Act

- ❑ It protects human rights → the basic rights that belong to every person, regardless of age, race, sex, social status or other characteristic
- ❑ Most human rights are individual, some belong to groups (eg cultural rights)
- ❑ Protects the human rights of all people in Queensland
- ❑ Binds “public entities” (Qld Government and organisations performing public functions)
- ❑ Accessible complaints mechanism
- ❑ Protects a range of human rights that Australia has agreed to protect at international law

What human rights are protected?

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

Complaints mechanisms under the Act

Mechanisms for addressing a human rights issue:

- 1. Raise issue directly with public entity**
- 2. Lodge a complaint with QHRC (after 45 days) – conciliation of complaint if accepted**
- 3. Include human rights complaint as part of court action to protect another legal right**

Human rights legislation has a valuable role in:

- ❖ Addressing power imbalances**
- ❖ Resolving issues while keeping relationships intact**



Building a human rights culture

- The passage of the Human Rights Act gives us an opportunity to start to develop a human rights culture in Queensland
- Human Rights Acts can require different departments to develop reference guides and training for staff, which fosters the development of a human rights culture
- Greatest value of the Act won't be in litigated outcomes, but in changes in the culture of government



How have Human Rights Acts been used to help people with disability?

- ❑ The right to privacy has been relied on to require the provision of a shower curtain, to enable a woman with disability in a group home to shower with privacy and dignity
- ❑ The right to family has helped to keep families intact with appropriate support and prevented the forced removal of children from parents with disabilities
- ❑ The right to freedom of movement has been relied on to oppose involuntary treatment for mental illness provided without full, free and informed consent in circumstances where it is not considered proportionate having regard to the risk of not providing treatment
- ❑ The right to privacy has been successfully used to challenge the use of CCTV cameras in the home of a couple with disability, including in their bedroom, to monitor them performing their parental duties
- ❑ The right to recognition and equality before the law has been used to provide students with access to the supports and services they need to enjoy an inclusive education