



**Community
Legal Centres
Queensland**

Using the Human Rights Act to advocate for clients with a disability

30 January 2020

Acknowledgement of country

Community Legal Centres Queensland acknowledges the traditional owners of the land on which we are holding this presentation, the Turrbul and Jaggara people.

We pay our respects to their elders, past, present and emerging, and acknowledge the important role Aboriginal and Torres Strait Islanders continue to play in our society.

As this presentation is being viewed throughout Queensland, we also pay respect to the traditional owners of the land throughout the country and extend a warm welcome to any First Australians listening to this presentation.

GoToWebinar housekeeping

- Facilitator:
 - Carly Hanson, Sector Sustainability Coordinator, Community Legal Centres Queensland
- Recording:
 - This webinar is being recorded and will be available on the Staff Training page of our website:
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- PowerPoint / webinar materials:
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Details of presenter & organisation

Emma Phillips, Principal Solicitor at Queensland Advocacy Incorporated (QAI).

QAI is a disability advocacy organisation and specialist community legal centre. QAI advocates for the rights and lives of the most vulnerable people with disability in Queensland.

- ❑ Systems advocacy – law, policy and practice reform
- ❑ Individual legal advocacy
- ❑ Individual non-legal advocacy



Aim of this webinar

- This webinar will consider how the new *Human Rights Act 2019* (Qld) (**HRA**) can be used as an advocacy tool to protect and defend the rights of people with disability in Queensland.
- This is important for advocates and lawyers who specialise in disability advocacy and for CLC lawyers – given that one in five Australians have a disability and people with disability make up a significant portion of CLC clients.
- By the end of today's session, you should have a greater understanding of the rights in the new legislation that are particularly relevant for people with disability and how to use the HRA as an advocacy tool in practice.

What this webinar covers

- The changes introduced by the HRA, with a focus on the implications for people with disability
- Rights in the HRA that are particularly relevant for people with disability
- Practical tips and hints for using the HRA in advocacy for people with disability
- Strategic considerations for using the new legislation



Key things to know about the HRA



- ❑ HRA 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 (Qld Government and organisations performing public functions)
- ❑ Dialogue model – human rights are taken into account across the three arms of government: the legislature, the executive and the judiciary
- ❑ 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 |



Human rights that are of particular significance for people with disability

Human Rights



- Recognition and equality before the law
- Right to life
- Protection from torture and cruel, inhuman or degrading treatment
- Privacy and reputation
- Protection of families and children
- Right to liberty and security of person
- Humane treatment when deprived of liberty
- Right to education
- Right to health services
- Freedom from forced work
- Freedom of movement
- Taking part in public life
- Property rights

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)).

Right to recognition and equality before the law

Section 15: Every person has the right, without discrimination, to:

- 1) be recognised as a person before the law;
- 2) enjoy their human rights;
- 3) be equal before the law and receive equal protection of the law; and
- 4) receive equal and effective protection against discrimination.

Note: A person who seeks to assist or advance people who are disadvantaged because of discrimination is not considered to be discriminatory (s 15(5)).

The right to life

Section 16: Every person has the right to:

- life; and
- not to be arbitrarily deprived of life.

Note: specifically exempts laws relating to termination of pregnancy or the killing of an unborn child.

Because the right to life is concerned with preventing the arbitrary deprivation of life it can be relevant in situations such as:

- the use of force by public authorities;
- the delivery of medical treatment; and
- the investigation of the conduct of public entities, particularly when a person dies while in their care.

This right imposes positive and negative duties on public entities.

Protection from torture and cruel, inhuman or degrading treatment

Section 17: A person must not be:

- (a) subjected to torture;
- (b) treated or punished in a cruel, inhuman or degrading way; or
- (c) subjected to experimentation or treatment without consent.

Cruel, inhuman or degrading treatment is broader than torture and may cover practices such as solitary confinement, restraint, lockdowns, fear and threats by staff, lack of space and amenities, limited opportunity for education, particularly when a person is being subject to many of these practices.

Privacy and reputation

Section 25: A person has the right:

- (a) not to have their privacy, family, home or correspondence unlawfully or arbitrarily interfered with; and
- (b) not to have their reputation unlawfully attacked.

This right has been relied upon under HRs legislation in other jurisdictions, for example to:

- require provision of a shower curtain, to enable a woman with disability in a group home to shower with privacy and dignity (Vic);
- to challenge the use of CCTV cameras in the bedroom of a couple with disability (UK).

Protection of families and children

Section 26:

- (1) Families are entitled to be protected by society and the State;
- (2) Every child has the right, without discrimination, to the level of protection they require in their best interests; and
- (3) Every person born in Queensland has the right to a name and to be registered as soon as practicable after their birth.

This right has been relied upon to help to keep families intact with appropriate support and to prevent the forced removal of children from parents with disabilities.

Right to liberty and security of person

Section 29: A person has the right to:

- (1) Liberty and security;
- (2) Not be subjected to arbitrary arrest or detention;
- (3) Not be deprived of their liberty, except on legal grounds or procedures;
- (4) Information, if arrested or detained, as to the reason why and whether there'll be any proceedings brought against them;
- (5) Be, if arrested or detained on a criminal charge, promptly brought before a court or to trial without unreasonable delay;
- (6) A release from custody, if awaiting trial, provided that their ability to appear for any stage of the judicial proceeding is not in question;
- (7) Apply to a court, if arrested or detained, for a declaration order regards the lawfulness of their situation;
- (8) Not be imprisoned only because they failed to perform a contractual obligation.



Humane treatment when deprived of liberty

Section 30: An accused person, while deprived of liberty, has the right to be:

- (1) Treated with humanity and dignity;
- (2) Segregated from people who have been convicted, unless reasonably necessary; and
- (3) Treated in a way that is appropriate for a person who has not been convicted.

Right to education

Section 36:

- (1) Every child has the right to access primary and secondary education appropriate to their needs; and
- (2) Every person has the right to access, based on their abilities, further vocational education and training that is equally accessible to all.

Right to health services

Section 37: Every person has the right to:

- (a) Access health services without discrimination; and
- (b) Not be refused emergency medical treatment immediately necessary to save their life or prevent serious impairment.

Other relevant rights to note

❖ **Section 18: Freedom from forced work:**

A person must not be held in slavery or servitude or made to perform forced or compulsory labour.

❖ **Section 19: Freedom of movement:**

Every person, who lives lawfully in Queensland, has the right to enter, leave and move around the state as they wish – in addition to the freedom to choose where to live.

❖ **Section 23: Taking part in public life:**

Every person has the right to participate, without discrimination, in the direct or represented conduct of public affairs (including in State and local elections, public service and public life).

❖ **Section 24: Property rights:**

Every person has the right to own property (independently or jointly) and not be arbitrarily deprived of their property.

Building a human rights culture

Human rights legislation has a valuable role in promoting development of a human rights culture

Specifically:

- Recognising fundamental rights that can be raised in decision-making processes that engage a person's human rights, as a means of addressing power imbalances
- Resolving issues while keeping relationships intact
- Allowing for complaints where necessary
- Training and education of the public sector

The greatest value of the Act won't be in litigated outcomes, but in changes in the culture of government



Tips for human rights advocacy

- ❖ Raise the HRA at earliest opportunity (eg in initial meetings with Department)
- ❖ Use the HRA in a positive way, not only to protect clients from rights breaches but to call for positive action (eg right to support needed to ensure a properly inclusive education; right to support needed for a person with disability to parent)
- ❖ Raise human rights arguments in relevant forums



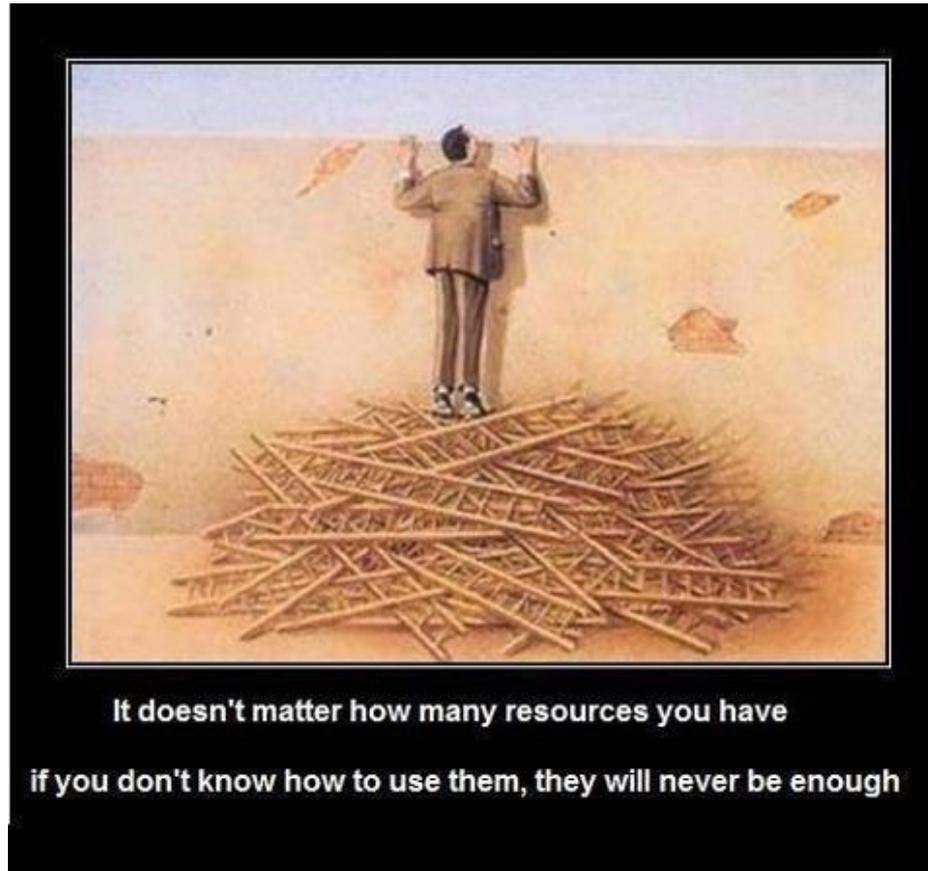
Strategic considerations



- ❑ The need to use the HRA wisely
 - Ordinary Act of Parliament (not constitutionally-entrenched), can be amended or repealed
 - A strong collection of stories will help to protect our HRA – to show its use and value
 - Rely on it to compel decision-makers to consider human rights, challenge power imbalance and the unthinking application of bad policy
 - BUT we also need to be careful about which cases we litigate
 - In Victoria, early cases are still authoritative in shaping interpretation

- ❑ Importance of building a human rights culture in Queensland
 - The passage of the HRA 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

The reality of the CLC sector – limited resources, high demand



**It doesn't matter how many resources you have
if you don't know how to use them, they will never be enough**

Important points from this webinar

- The HRA is a powerful advocacy tool to protect the rights and lives of people with disability in Queensland
- A number of the new rights can be used to target some of the human rights breaches experienced by people with disability
- Use it wisely, in a positive, proactive way, as the foundation for rights-based arguments





Useful contacts/additional resources

QAI: www.qai.org.au; p: (07) 3844 4200

Qld Human Rights Commission: www.qhrc.qld.gov.au; p: 1300 130 670

QAI's individual advocacy services:

- ❖ Human Rights Legal Service
- ❖ Mental Health Legal Service
- ❖ Justice Support Program
- ❖ NDIS Appeals Advocacy Program
- ❖ NDAP Decision-Support Pilot Program
- ❖ DRC Advocacy Program
- ❖ Educational Advocacy Program



**Community
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Thank you.

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