



# Queensland Advocacy Incorporated

Our 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.

*Systems and Legal Advocacy for vulnerable people with Disability*

24 February 2017

Policy and Legislation

Department of Communities, Child Safety and Disability Services

Dear Sir/Madam

Thank you for accepting QAI's submission for the 'Towards an All Abilities Queensland' consultation.

Yours sincerely,

Michelle O'Flynn, Director

**Ph:** (07) 3844 4200 or 1300 130 582 **Fax:** (07) 3844 4220 **Email:** [qai@qai.org.au](mailto:qai@qai.org.au) **Website:** [www.qai.org.au](http://www.qai.org.au)

2nd Floor, South Central, 43 Peel Street, STH BRISBANE QLD 4101

QAI endorses the objectives, and promotes the principles, of the Convention on the Rights of Persons with Disabilities.

Patron: His Excellency The Honorable Paul de Jersey AC

## About Queensland Advocacy Incorporated

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

QAI does this by engaging in systems advocacy work, through campaigns directed to attitudinal, law and policy change, and by supporting the development of a range of advocacy initiatives nationally and in this state.

QAI also provides three individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program. Our experiences in providing legal and advocacy services and support for individuals within these programs has provided us with a wealth of knowledge and understanding about the experiences, needs and concerns of individuals who are the focus of this inquiry.

## Recommendations

- Develop a **Disability Justice Strategy** (Strategy) consistent with Australia's obligations as a States Party to the Convention on the Rights of Persons with Disabilities (CRPD). People with disabilities, Parliament, the Department of Justice and Attorney-General, the Queensland Police Service, the judiciary, Corrective Services, Legal Aid, Community Legal Services and other stakeholders should develop the Strategy.
- In the Strategy, enunciate a core set of principles and actions that will guide appropriate communication, early intervention, diversion, training, accountability and monitoring.
- Address anachronistic language in the Criminal Code. Terms such as 'unsoundness of mind', 'natural mental infirmity' and the conflation of intellectual disability and 'insanity' are inaccurate and misleading.
- The Attorney-General should refer section 216 of the Criminal Code to parliament or to the Queensland Law Reform Commission for inquiry.
- The QPS should develop further its disability awareness training, as detailed in this chapter.

- The QPS should update its Vulnerable Persons Policy to include specific directions regarding the treatment of persons with intellectual impairments and other people with disability.
- The QPS should renew its focus on early and repeated police training in mental health awareness and crisis de-escalation.
- Government must coordinate communication between front-line services.
- The QPS should amend its Operational Procedures Manual, with the assistance of Disability Services and the Office of the Public Advocate and in consultation with the Anti-Discrimination Commissioner, to provide enhanced guidance on how police can improve communications with people with an intellectual disability or cognitive impairment.
- Police take a proactive and preventive approach to dealing with people with intellectual disability, on the basis that accommodation and support are more appropriate and successful than court and custodial sentences.

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#### **A Plan for Accessible Tourism.**

- That Tourism Queensland raises awareness of disability access issues and promotes accessible and disability-friendly destinations with tourism operators and ancillary services, particularly booking aggregators like Booking.com, Agoda, AirBnB and Expedia, and related tourism resources like Google Maps, Trip Advisor and Planet Earth.

That Tourism Queensland provides -

- education to the tourist industry to ensure provision of safe and dignified service for people with impairments
- marketing and destination information in auditory and tactile formats
- improved navigation services
- specialised travel agent/websites for people with vision impairment and/or incentives for private services.
- a holistic approach to the elimination of disability discrimination with a zero tolerance for such treatment
- with COAG, incentives for travel, airline and airport peak industry groups to eliminate disability discrimination.

### **A Disability Employment Plan.**

- Provide support for social enterprises that offer inclusive workplaces.
- A campaign that challenges employer myths about employing people with disabilities.

### **Education**

- Promote opportunities for education providers and participants to plan collaboratively vis-à-vis the NDIS .
- Protect the rights of students and teachers by an independent system of reporting and monitoring, transparent data analysis, and quality improvement mechanisms that support schools to manage challenging behaviours.

### **Transport**

- That the state government scrutinises all transport procurement for consistency with our human rights obligations.
- That the state government halts work on the New Generation Rollingstock until it addresses these discrimination and access challenges.
- That the state government assists the BCC and other bus transport providers to explore safe bus travel options, including anchors, clamps, tracks or floor mounted slots.

### **Decision-making**

- That in all areas of decision-making, Queensland endorses and promotes the goals of the [Montreal Declaration on Intellectual Disabilities](#).

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# 1. General Introduction

People with disabilities experience social barriers in every life arena and field of endeavour. They experience discrimination, segregation or exclusion in early learning, compulsory schooling, higher education and vocational education and training. People with disabilities have fewer employment opportunities too, and separation from education and employment makes it more difficult for people with disabilities to establish the social connections and networks most people find there.

Low rates of participation and inclusion in social activities, education and work reinforce social prejudices and *vice versa* in a vicious circle. Segregation by design or default denies people with disabilities a place in community events, activities, schools and workplaces, and supports a common prejudice that people with disabilities cannot and should not participate in those things.

Disability discrimination accounts for as many complaints to the Human Rights Commission as those about race and sex discrimination together:<sup>1</sup> people using wheelchairs are refused boarding on airplanes,<sup>2</sup> taxi drivers turn away people with assistance dogs, indigenous people with intellectual impairments languish on remand for months or years awaiting pre-trial psych reports, public buildings and shops still have step-only access, institutions use accessible toilets for storage, children are locked out of classrooms, and websites are poorly designed for people with vision or intellectual impairments.

The 'soft bigotry of low expectations' applies alike to people with disability in Queensland as it does to indigenous Australians,<sup>3</sup> or poor Americans,<sup>4</sup> and explains the community-wide tendency to accept disability-related double standards. This discrimination manifests in measures as diverse as section 216 of the Queensland Criminal Code, which makes intimate relationships unlawful for people with 'mental impairment', the failure of the state government to deliver accessibility when it commissioned \$4.3 b worth of trains in 2013, or the indefinite detention of people on forensic orders, often prolonged because people are denied the housing and reasonable and necessary supports they need to move beyond their confinement.

While societal discrimination reduces participation, people with disability are subjects as well as the objects of it. Discrimination has created a fear factor that reduces people's willingness to participate. Some people with disability self-select, pre-empting disappointment by opting out. Knowing that they are likely to experience it, more than a third (35.1%) of women and a quarter (28.1%) of men have had avoided situations because of their disability.<sup>5</sup>

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<sup>1</sup> Australian Human Rights Commission. 2012. *Annual Report 2011-2012*. Appendix 3.

<sup>2</sup> *King v Jetstar Airways Pty Ltd (No 2)* [2012] FCA 8

<sup>3</sup> NB Although these categories are not mutually exclusive, and rates of disability are twice as high amongst indigenous Australians as the rest of the population.

<sup>4</sup> David Gerson for George W. Bush in speech delivered at the NAACP's 91st annual convention

<<http://www.washingtonpost.com/wp-srv/onpolitics/elections/bushtext071000.htm>>

<sup>5</sup> Australian Bureau of Statistics. 2016. *4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015*.

The NDIS will provide reasonable and necessary supports to tens of thousands of people with disabilities in Queensland, providing many with the freedoms they have never had before to potentially undertake education, work and social opportunities, provided that abuse, neglect, discrimination and accessibility issues do not discourage this. Our communities are increasingly exposed to the full diversity of people, which will help breakdown mainstream prejudices, but barriers still exist that that funded support alone will not overcome.

There will still be the obvious physical access barriers: public transport is still not fully accessible or affordable; most homes are not fully accessible in ways that support a person's needs including those beyond physical access; education and learning provision is not authentically inclusive; workplaces are not fully accessible or inclusive; civic obligations (and rights) like voting or jury duty are not wholly accessible for people with intellectual impairments or who are hearing impaired. We will talk more about these in the relevant sections.



Sexuality is an important part of life, no less for people with intellectual impairment, yet for them a double standard makes the expression of sexuality difficult, even unlawful.

**Repeal s 216 in Queensland**

## 2. Personal and Community Relationships

'People of all abilities have strong relationships across all parts of life and are valued members of their communities.'

What has helped you to build and sustain strong relationships with people and with your community?

What barriers prevent you having strong connections and valued roles in your community?

What else can be done to address these barriers?

### 2.1 Introduction

People with disabilities disproportionately experience loneliness and isolation linked to their impairment. They may be congregated into group homes and other institutions which, although sometimes providing residents with a ready-made sense of community, are nevertheless artificial, closed, isolated and inward-looking communities that have little connection with everyday life. Some of these living arrangements enable a culture of abuse, neglect and exploitation that inevitably alters the person's life perspective, experience, and outward view. Often people who experience such trauma either retreat in fear from social connections, or instead absorb such behaviours as a learned practice, repelling the very people who may have become potential relationships.

The most common residential setting for people with disabilities, however, is to live alone or in a family home. Even as adults many people with disability live with a parent or parents who also function as primary caregivers, an arrangement which despite the obvious conflicts of interest, suits many people with disabilities, though it is often one of necessity rather than choice, and less conducive to broader social connection. One of the principal reasons many people with disabilities do not participate is because of insufficient support to enable them to get out of their homes even when they do have somewhere to go.

More community development programs are necessary to facilitate inclusion of all people with disability in all aspects of life. 'Programs' should be replaced with specific 'inclusivity support' and should not be disability-focussed, in that any disability-focussed program is self-defeating if it promotes segregation.

Drop-in centres and neighbourhood centres provide an inclusive venue with outwardly focussed activities. Most are under-funded, yet can provide an important sense of belonging and purpose for people living in cramped lightless boarding houses. Similarly, community-focused support f to help young people with disability to engage with others, and elderly people with disability to engage with every-day senior activities that are already supported and sponsored by local councils should adopt an 'inclusivity of support' approach.

Community development is not the primary focus of QAI's work or expertise, which centres instead on the most disadvantaged people with disabilities in Queensland, particularly people who are imposed involuntary treatment orders, forensic orders, guardianship or administration orders, or who are at risk of or trapped in the criminal justice system. The criminal justice system is a barrier to inclusion, but like any citizen, people with disabilities that system have the need and right to be a part of community life.

Community in general is fast becoming more factionalized and wary of diversity and people who are shunned to the edge of society are less welcomed and rarely invited – instead labelled as 'unfit for trial' and 'unsound of mind'; the 'other' that are removed behind prison bars and high secure asylums and sterile forensic facilities away from the public eye.

There is no mention of the criminal justice system in the *Towards an All Abilities Queensland* consultation paper, but as we suggest in the following section, the challenges faced by people with disabilities in the Queensland criminal justice system have their genesis in people's life experiences that long predate their involvement in that system. The problem of criminal justice for people with disabilities as victims and suspects, defendants and prisoners is a community-wide problem, and cannot be siloed as a problem for the Attorney-general and Corrections alone.

For someone with intellectual impairment from a disadvantaged background, getting out of the criminal justice system is just as much an access and discrimination issue as universal design for a person who uses a wheelchair. The criminal justice system is a social barrier preventing people with disability from participating as equal citizens. Rights protection, justice and legislation is the second of the six policy areas of the *National Disability Strategy 2010-2020*. A Queensland Disability Justice Plan should be part of Queensland's commitment to that strategy.

## **2.2 Design a Queensland Disability Justice Plan**

A Queensland Disability Justice Plan would redress the anomalies and inconsistencies of laws, policies and practices that unnecessarily and unfairly infringe on the rights and opportunities to enable people with disability to live a good but typical life as other members of our society. As mentioned in the introduction, relationships of all kinds are what facilitate the interactions of everyday life for us all. Neighbours, employers, co-workers, gym-buddies, friends and family are the fabric that enrich lives and are the sources of freely-given natural supports. Love and intimacy are the most desired human interactions: they inspire poets, novelists, movie makers and artists, and are desired just as much by people with disability.

### **2.2.1 Sexuality and the Queensland Criminal Code**

Sexuality is as important a part of the lives of people with intellectual impairment as it is for anyone else, but a legislative contradiction makes the expression of sexuality difficult, even unlawful. Over-protective, paternalistic attitudes deny many people with intellectual disabilities opportunities for personal intimate relationships, friendships, and sexual expression.

Many people with intellectual impairment are forced together in group homes, boarding houses, hostels and institutions to share care or support services. Support agreements, tenancy contracts and social expectations make it difficult to share one another's lives let

alone private intimacy. Even if they could do so, section 216 of the Queensland Criminal Code exposes them and their sexual partners to prosecution.<sup>6</sup> It is an anomaly that in some cases, consensual intimate relationships are denied, while on the other, people forced into co-tenancy arrangements can be subjected to rape and abuse and have their allegations ignored.

Section 216 of the Queensland Criminal Code<sup>7</sup> makes it an offence to have unlawful carnal knowledge of a person with 'impairment of the mind'. Section 216 was designed to protect people with intellectual impairments from sexual exploitation. In extending an established provision for the protection of children, parliament made naturally formed and informed sexual and intimate relationships unlawful.

Parliament's rationale in framing section 216 in its current form reflected a perhaps well-meaning but condescending misapprehension that people with intellectual impairment are unable to decide matters of sexuality for themselves. Less excusably, it also reflected the commonly held view that people with intellectual impairment, particularly women, have no sexuality at all. When it is in doubt, sexual consent should be determined case by case, and without preemption by outright prohibition.

An independent party or informal supporter can assist with decision making. Regardless of cognitive impairment, any person can be deemed to have capacity to make a decision if they understand the nature and effect of the decision, can make the decision freely, and can communicate the decision in any way feasible for them.

In line with the United Nations *Convention on the Rights of Persons with a Disability* (UNCRPD) and the *Guardianship and Administration Act 2000* (Qld) and by reference to the following principles, we seek changes to the Queensland Criminal Code (229-348) concerning capacity to consent to consensual sexually intimate relationships:

1. **Presumption of capacity** – In assuming capacity, people supporting the adult with intellectual impairment considers the person's function in society.
2. **Right to Inclusion** - The UNCRPD Principle of full inclusion and participation in the community asks us to strive for genuine inclusion of people with disabilities.
3. **Same human rights** – International conventions protect the rights of adults with intellectual impairment to a full life, including that of sexual expression.
4. **Individual value** - International conventions promote the intrinsic human value of adults with intellectual impairment, in participating in community life, and encouraging self-reliance in daily living and decision making.

Section 218 is likewise problematic. It prohibits procurement, but at the same time makes it unlawful for friends or supporters of people with disabilities to help them to engage a sex worker.

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<sup>6</sup> For example, *R v Libke* [2006] QCA 242

<sup>7</sup> *Criminal Code Act 1899* (Qld) ('CCQ')

## 2.2.2 Criminal Justice System

Criminal defence lawyers will acknowledge what research confirms: many people who are charged with 'street offences' have intellectual or psychiatric impairments.<sup>8</sup> People with disabilities are overrepresented across the spectrum of offenders and throughout the justice system, as victims, suspects, defendants and prisoners. Approximately 10% of people in Queensland prisons, for example, have intellectual disability.<sup>9</sup> The 2010 national prisoner health census determined that 33% of people in Australian prisons had a mental illness<sup>10</sup> and there is reason to believe that Queensland would have similar numbers. In fact it is most likely that these statistics are conservative.

People with intellectual and psychiatric impairments experience myriad disadvantages in life that can result in their engagement and or detention in watch houses, at courts, remand centres, jails, secure psychiatric and forensic facilities. International<sup>11</sup> and Australian research<sup>12</sup> confirms that offenders with intellectual and psychiatric impairments often have common experiences of childhood neglect or abuse, often are unemployed, poor and/or from an indigenous minority, to have limitations to social and communication skills, and may experience psychiatric conditions or exhibit behaviours of concern that are related to communication methods used in situations of extreme duress and anxiety.

The circumstances in which people with disability become enmeshed in the criminal justice system are bound in a competitive society that values and rewards excellence and high achievement and often has no time or appreciation for people at the other end of the spectrum. Educational institutions are typical, rewarding those who succeed, excluding and stigmatizing those who do not.<sup>13</sup> Special education classes, special schools, part-time placements and other 'visiting students' send a powerful message of exclusion and devaluation - setting many people with intellectual or psychiatric impairments on a descending life path. Offending behaviour must be understood in that context.

Justice should be blind, but the equal treatment of unequals may render injustice.<sup>14</sup> Prisoners with diminished capacity, for example, are defined as criminals *and* among the most vulnerable and disadvantaged groups in our society, yet the justice process tends to be systemically if not deliberately careless of the criminogenic<sup>15</sup> factors that lead to their imprisonment at more than five times the rate of the general population.<sup>16</sup>

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<sup>8</sup> For example, see Howard Posner, Assistant Director - Legal Aid Criminal Law Services. 2012. *Five Criminal Law Issues Raised By Recent Appellate CJS Cases*. Legal Aid Queensland, <https://elo.legalaid.qld.gov.au/webdocs/dbtextdocs/internal/irregseries/cle/2012/fivecriminal.pdf>. - and see Chapter 3, 'Overrepresentation'.

<sup>9</sup> Based on figures from the most recent comprehensive survey (Corrective Services Queensland. 2002. *Intellectual Disability Survey*) and on comparable data from a number of NSW studies.

<sup>10</sup> Australian Institute of Health and Welfare. 2011. *The Health of Australia's Prisoners 2010*. Australian Institute of Health and Welfare.

<sup>11</sup> William Glaser & Kristen Deane. 1999. 'Normalisation in an Abnormal World: A Study of Prisoners with an Intellectual Disability' *International Journal of Offender Therapy and Comparative Criminology*. 43(3): 338.

<sup>12</sup> See, for example, S Hayes. 2005. *Prison Services and offenders with intellectual disability – the current state of knowledge and future directions*. 4th International Conference on the Care and Treatment of Offenders with a Learning Disability, 2005 April 6-8, University of Central Lancashire, Preston, UK.

<sup>13</sup> How many school mottos, for example, purport to value students for themselves, as opposed to extolling excellence, achievement, knowledge etc.?

<sup>14</sup> '[T]here is no greater inequality than the equal treatment of unequals': Frankfurter J in dissent in *Dennis v United States* (1950) 339 US 162.

<sup>15</sup> Criminogenic means causing or likely to cause criminal behaviour.

<sup>16</sup> People with intellectual disability make up approximately 2% of the population.

Those factors that contribute to the inevitability of criminalized behaviours in some people with disability include the totality of the offender's life circumstances from birth, and particularly the person's living arrangements at the time of the offence. People with intellectual impairment, for example, are at risk of offending because many lack adequate support to live in the community.<sup>17</sup> The homeless population is comprised of an over-representation of people with cognitive and or intellectual impairment and mental illness, are more vulnerable than other homeless and unemployed populations; often 'invisible' to government services that rely on people to actively approach them;<sup>18</sup> have significant health needs that are inadequately met;<sup>19</sup> and are more at risk for criminal victimization than the general population.<sup>20</sup> Persons with capacity impairments and other disabilities often have earlier, ongoing and more intense police, juvenile justice, court and corrections episodes and events.

Support, employment, housing, training and educational opportunities that integrate people with their communities and remove barriers to social inclusion are the most effective way of breaking the criminal justice cycle. Early holistic supports are crucial for the development and well-being of children and young people with mental health disorders and cognitive impairment, particularly Aboriginal children, young people and others from disadvantaged backgrounds.

Without such early intervention and diversion, the costs to individuals with mental health disorders and cognitive impairments, to their families and communities and to government are high, and increase over time as people become entrenched in the criminal justice system, becoming ever more marginalized from the community. Case studies of different life paths of NSW residents with capacity impairments presented in Baldry's cost/benefit analysis illustrate that the lifetime costs of prison and crisis supports can be as high as \$1 million per annum per person.

A number of small but successful initiatives appear to improve well-being and other outcomes for people with mental health disorders and cognitive impairment and result in diversion from the criminal justice system, with favourable cost-benefit ratios.<sup>21</sup>

However, for the purposes of *Towards and All Abilities Queensland*, which has no pretension to providing a reform blueprint for the criminal justice system, we suggest a modest package of proposals that together could form the basis of a Queensland Disability Justice Plan.

### **2.2.1 Statewide Justice Support**

The evidence is overwhelming that policing practices and court processes impact negatively on persons with disability and significantly contribute to over-representation. Police may be unable to conduct effective interviews with persons with cognitive disability particularly if the person is unsupported, and may fail to make the accommodations necessary to ensure

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<sup>17</sup> National Research Council. 2001. *Crime victims with developmental disabilities: report of a workshop*. Washington DC: National Academy Press.

<sup>18</sup> M O'Connor & A Coleman. 1995. "Particularly Vulnerable": Homeless Young People with an Intellectual Disability' *Interaction* 9(1): 8-14.

<sup>19</sup> K Van Dooren, R Ware, K Brooker & N Lennox. 2012. *Out of sight, out of mind: People with intellectual disability in public health research*. 2012 IASSID World Congress, Halifax, Nova Scotia, 749.

<sup>20</sup> T Nettlebeck & C Wilson. 2002. 'Personal vulnerability to victimization of people with mental retardation' *Trauma, Violence and Abuse* 3(4): 289-306.

<sup>21</sup> Ruth McCausland, Sarah Johnson, Eileen Baldry & Anna Cohen. 2013. *People with mental health disorders and cognitive impairment in the criminal justice system Cost-benefit analysis of early support and diversion*. University of New South Wales.

investigations are conducted fairly. Court processes may fail to identify persons with disability, or make accommodations necessary for a fair trial. While there have been substantial recent improvements to Court processes in Queensland, attending Court and giving evidence can be very stressful and intimidating for victims with disability. Courts may also fail to make the accommodations necessary to facilitate the effective participation of persons with disability in the Court process. These factors can also result in the failure of prosecutions.

Individual Advocates of a Justice Support Program can marshal legal and community services to support people who have been charged, help them to remain in the community and prevent any further entrenchment into the criminal justice system. QAI's Justice Support Program has been in effect since 2007, but the current model since 2010 has supported many people with disability with a holistic approach, examining the factors that have contributed to the person's offences, including addressing the lack of social supports and services. Since 2010 only 4 individuals have re-offended.

## **2.2.2 Communication Support in the Jury Room**

Gaye Lyons, who is profoundly deaf, took action when bailiffs excluded her from an Ipswich District Court jury in 2012. The Queensland Government had treated her less favorably, she claimed, in refusing to provide her with an Auslan interpreter in the jury room. The retiree, who at the time worked for Deaf Australia, has been in a four-year legal battle to win the case. She unsuccessfully sued Queensland in the Supreme Court of Appeal in 2015, so she took the matter to Canberra, winning an application for Special Leave to Appeal to the High Court.

In a unanimous ruling in October 2016, the High Court determined that the *Jury Act 1995* (Qld) does not permit an Auslan interpreter to assist in the jury room. Gaye Lyons therefore would not be capable of performing the functions of a juror. "The decision not to include the appellant in a jury panel did not constitute unlawful discrimination in the performance of her functions or the exercise of her powers under Queensland law," the ruling said.

"People with disabilities need to participate in society more" said Ms Lyons. "We have to pay equal taxes yet we are not treated equally and allowed to serve our society. We're the same as everybody else, we're human, we have kids, we go to work, we drive cars, we pay mortgages — I was just fuming because I could not have equal access to this".

The solution is to reform the *Jury Act 1995* (Qld) and to employ a jury communications supporter as needed, as they are in the UK, USA and New Zealand. The Australian Law Reform Commission made a recommendation for similar reform of the *Federal Court of Australia Act 1976* (Cth) in 2014,<sup>22</sup> and the NSW Law Reform Commission in 2006.<sup>23</sup>

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<sup>22</sup> Australian Law Reform Commission. 2014. *Equality, Capacity and Disability in Commonwealth Laws* (ALRC Report 124) Recommendation 7–14: The *Federal Court of Australia Act 1976* (Cth) should be amended to provide that communication assistants, allowed by the trial judge to assist a juror, should: (a) swear an oath or affirm to faithfully communicate the proceedings or jury deliberations; and (b) be permitted in the jury room during deliberations without breaching jury secrecy principles, providing they are subject to and comply with requirements for the secrecy of jury deliberations

<sup>23</sup> NSW Law Reform Commission. *Blind or Deaf Jurors, Final Report No 114* (2006) rec 1(d)–(e).

## 2.2.4 Mental Health Awareness Training for Queensland Police

In late 2014 there was a spate of fatal shootings by Queensland police, including three in one week. Each of the deceased had mental illness and actions of each were linked to their condition. According to the *Courier Mail*, Laval Zimmer was 'a lovable and loyal mate who struggled with mental health issues and chronic epilepsy'. In a 2008 interview, the 33-year-old Laval said he wanted to turn his life around, secure long-term housing and finish his school education.<sup>24</sup> He didn't go back to school or get a job, but he found a home at Kippa-Ring that he shared with a loyal family of mates. It was the place where he was killed by police when they cornered him in darkness and he threatened them with a knife.

Statistics show that police officers deal with people with mental health on a regular basis, and that both parties have fear of one another. This can lead to pre-emptive escalation of conflict. The QPS must train first response officers about mental health issues, and how to de-escalate potentially violent situations. The Coroner will hand down his findings in the Zimmer and other shootings inquiries later this year.

## 2.2.5 Discriminatory & Anachronistic Criminal Code

Last year, the *Health and Other Legislation Amendment Act 2016* removed the term 'sodomy' from the Criminal Code when an expert advisory panel recommended that using the term sodomy could stigmatise this form of intercourse, and homosexual relationships in particular. QAI recommends amendment of the Criminal Code to remove similarly misleading and anachronistic language used in relation to disabilities.

Section 27 of the Criminal Code is the 'Insanity' provision and uses expressions such 'natural mental infirmity' to describe intellectual impairment. Apart from section 216 discussed above, a number of cognate sections discriminate against people with 'impairment of the mind'.

## 2.2.6 Forensic Leave

QAI operates a Mental Health Legal Service and a Human Rights Legal Service that represent clients in Mental Health Review Tribunal matters, including those to determine eligibility for leave for people who are on Involuntary Treatment or Forensic Orders and are in detention. QAI has represented clients whose clinicians have made the client's leave contingent on 'good behaviour'. Clinicians have used denial of leave as a punishment for infraction. Apart from the obvious cruelty, this practice is in breach of Article 30 of the *Convention on the Rights of Persons with Disabilities* and in particular, Part 5 of this Article.<sup>25</sup>

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<sup>24</sup> Tom Snowdon & Tom Chamberlin. 'Laval Zimmer shot dead by police at home in Kippa-Ring' *The Courier-Mail*, 18 November, 2014.

<sup>25</sup> 5. With a view to enabling persons with disabilities to participate on an equal basis with others in recreational, leisure and sporting activities, States Parties shall take appropriate measures:

- To encourage and promote the participation, to the fullest extent possible, of persons with disabilities in mainstream sporting activities at all levels;
- To ensure that persons with disabilities have an opportunity to organize, develop and participate in disability-specific sporting and recreational activities and, to this end, encourage the provision, on an equal basis with others, of appropriate instruction, training and resources;
- To ensure that persons with disabilities have access to sporting, recreational and tourism venues;
- To ensure that children with disabilities have equal access with other children to participation in play, recreation and leisure and sporting activities, including those activities in the school system;

## 2.3 Recommendations

QAI recommends that the Minister refers section 216 CCQ to parliament for inquiry or to the Queensland Law Reform Commission.

- Develop a Disability Justice Strategy (Strategy) consistent with Australia's obligations as a States Party to the Convention on the Rights of Persons with Disabilities (CRPD). People with disabilities, Parliament, the Department of Justice and Attorney-General, the Queensland Police Service, the judiciary, Corrective Services, Legal Aid, Community Legal Services and other stakeholders should develop the Strategy.
- In the Strategy, enunciate a core set of principles and actions that will guide appropriate communication, early intervention, diversion, training, accountability and monitoring.
- Address anachronistic language in the Criminal Code. Terms such as 'unsoundness of mind', 'natural mental infirmity' and the conflation of intellectual disability and 'insanity' are inaccurate and misleading.
- The QPS should develop further its disability awareness training, as detailed in this chapter.
- The QPS should update its Vulnerable Persons Policy to include specific directions regarding the treatment of persons with intellectual impairments and other people with disability.
- The QPS should renew its focus on early and repeated police training in mental health awareness and crisis de-escalation.
- Government must coordinate communication between front-line services.
- The QPS should amend its Operational Procedures Manual, with the assistance of Disability Services and the Office of the Public Advocate and in consultation with the Anti-Discrimination Commissioner, to provide enhanced guidance on how police can improve communications with people with an intellectual disability or cognitive impairment.
- We recommend that police take a proactive and preventive approach in dealing with people with intellectual disability, on the basis that accommodation and support are more appropriate and successful than court and custodial sentences.
- QAI recommends that the Mental Health Review Tribunal does not support clinicians' denial of leave as leverage for good behavior.

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(e) To ensure that persons with disabilities have access to services from those involved in the organization of recreational, tourism, leisure and sporting activities.

### 3. Recreation and tourism

‘Queenslanders of all abilities can participate in recreational activities of their choice.’

What recreational activities are important to you?

What has assisted you to participate in these activities?

What other actions would make a difference to your participation in recreational activities of your choice?

#### **For organisations, businesses and local governments**

What has worked well for you in promoting inclusion and participation of people with disability?

What barriers have you faced?

What else can you do to encourage people with disability to participate?

#### **3.1 Introduction**

When people require extra support for mobility or additional supports for high and complex needs, there is an increase in exclusion and discrimination. In 2015, the rates of social participation for people with profound or severe limitation were lower than for those with moderate or mild limitation.<sup>26</sup> Fewer people with a profound or severe limitation attended a movie or performing arts event,<sup>27</sup> went out with relatives or friends,<sup>28</sup> or went on holidays or camping with others.<sup>29</sup>

The social model says that disability is a product of impairment and the person’s social and physical environment. Nowhere is this truer than when a person with mobility impairment tries to arrange a holiday. Someone who has arranged their everyday life to encounter relatively few accessibility challenges will still find that the holiday experience is an obstacle race from start to finish.

#### **3.2 Tourism**

The great majority of people with disabilities wish to have similar tourist experiences to everyone else—they have similar travel motivation, pleasures, benefits and anxieties; stay in the same types of accommodation; use the same trains, ships, planes and automobiles; go to the same attractions; and do the most of the same activities; but then again, their tourist experiences are very different. For a person with vision impairment, or one who uses a

<sup>26</sup> Australian Bureau of Statistics. 2016. 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015.

<sup>27</sup> 42.1% for people with profound or severe compared with 53.6% for people with moderate or mild limitations.

<sup>28</sup> 58.1% for people with profound or severe compared with 68.5% for people with moderate or mild limitations.

<sup>29</sup> 18.0% for people with profound or severe limitation compared with 26.1% for moderate or mild. Australian Bureau of Statistics. 2016. 4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015.

wheelchair, 'little things are big things'. We group tourism challenges into three broad categories: information and planning; accessing the physical environment; and safety, knowledge and attitudes of others.

### **3.2.1 Information and Trip Planning**

No matter what the person's impairment, whether it be intellectual, sensory, mobility or other, it is essential to have detailed information for trip planning. There is no point driving or flying thousands of kilometers only to find that while the guesthouse listed on Booking dot com has the promised lift-access to your room, it has none to the balcony view over the sea; or, that your rainforest bungalow is a wonderful base for exploration, but the nearby National Park has no graded accessible track.

Sites like Booking dot com, Agoda or Expedia say little about accessibility beyond the bare information that a particular hotel/guest-house/holiday-home/chalet/resort/apartment/B&B/farmstay *etcetera* has 'facilities for disabled guests', which invariably is relevant only to people who use wheelchairs. The information is rarely any more specific than that, and so effectively it is useless. Does that mean the place has a lift? A ramp? Accessible bath rooms? Wheelchair accessible airport pickup? Facilities for assistance dogs? A hearing loop?

Frequently guests can arrive to find that while the door access is level and accessible, or that the doorways and corridors are wide enough, the turn space is inadequate to access the toilet. These are major obstacles that are even more challenging for people requiring the assistance of a hoist.

There is no law or regulation that compels accommodation services to advertise their facilities in the first place, let alone to specify details about accessibility, but few, if any of the big aggregating booking sites have drop-down fields where an establishment could specify those details, even if they wanted to do so.

### **3.2.2 Access Physical Environment**

No matter how far in advance they buy a ticket, a person who uses wheelchairs must compete for one of only two seats available to them on any major flight. The big Australian carriers have unofficially adopted a 'two wheelchairs' policy. Sheila King from Hervey Bay has campaigned long and hard on this issue, but so far without success.

***"It's these frustrations that make the difference between a successful holiday or business trip, or make you wish you had not gone at all"***

Despite booking well in advance, people still find they have to wait on standby for the next available flight, or fly an indirect route. Returning home to Brisbane from a disability-related conference in Canberra, a QAI member had wait on standby in Canberra, fly to Melbourne and stay at the airport hotel, and then to Brisbane next day.

Another person with cerebral palsy was told each time by Virgin and Jetstar that he must have a carer or support worker with him, even though he has demonstrated that he is able to put on the drop down mask, eat unaided and otherwise travel independently.

One airline requires a person with an assistance dog to complete a series of documents a minimum of 7 days in advance and each time they fly. They must prove they have a disability, that the dog has been trained, and for how long.

### **3.3.3 Safety Knowledge Attitudes**

There is a range of operational factors that frame airlines' decisions as to whether a person can take a particular flight: the size of the cargo hold on smaller aircraft can prevent an airline from accepting a wheelchair on board; baggage handlers may need to manually lift wheelchairs in remote locations; airlines incur additional costs associated with transporting passenger's personal wheelchairs, and may need to employ extra staff to assist passengers from check-in to their aircraft seat.

The airline anecdotes above suggest that the primary challenge has less to do with operational necessities and a lot to do with shoddy treatment by the people who provide those services. It is not acceptable, for example, for a flight attendant to announce to passengers, "We apologise for the delay, but we've been assisting a disabled person get on the flight". This reflects the widespread prejudice that people with disabilities are a burden. It is unlikely that parents travelling with children would be subjected to similar humiliation.

The anecdotal statements have an unequivocal message. Airlines have much to do to get to a point where people feel valued and respected customers, as opposed to barely tolerated burdens.

Many people who use wheelchairs are angry about their interactions with airlines as a whole, but particularly with the budget airlines favoured by people with disability because they are the only affordable choice. (People with disability are more than twice as likely as those without disabilities to be living near or below the poverty line.)<sup>30</sup>

***"I had one attendant raise her voice to ask me personal questions about toileting.***

***Other passengers were all around.***

***When she told me I'd better 'go toilet' before boarding I had to explain I had a spill proof bottle."***

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<sup>30</sup> Price Waterhouse Coopers. 2011. *Disability Expectations, Investing in a Better Life, a Stronger Australia.*

Disability awareness training may go some way to improving interactions. If airline staff were to experience what it is like to be the person who has had to -

- pay extra wages and buy an extra ticket so that a support person can accompany them on a flight
- turn up for the flight an hour before the other passengers

***Qantas staff have learned to say 'How can I best help you?'***

***It leaves it up to me. But you still encounter ignorance among check-in staff. There is need for all staff to be trained in disability awareness and in the precise disability policy of their airline.***

- be transferred into a push chair in preparation for boarding before being hoisted *via* a machine lift
- board first and deplane last
- be placed on a special vehicle together with hoists and baggage and other sundry bits and pieces just to get onto the plane in the first place
- wait while their motorized wheel chair is returned to them so that they can go through the hoisting process again
- discover that their chair has (occasionally) been damaged in the process

Airline and airport staff may better understand and appreciate what it is like to be told that you are the cause of everyone else's delay, or that the quota has been filled and you will have to stay at the airport hotel for a night and get a flight in the morning, or fly to a different city to the one you had planned for a stopover so that your needs can be accommodated, even though you booked the correct flight two months ago, or get bumped from flights because another wheel chair user who can transfer to manual has taken one of the wheel chair spots.

The Australian and Queensland governments and related Tourism Departments must recognise that these discriminatory practices in our country and our state are serious international embarrassments for travellers and guests from overseas countries.

### **3.3 Recommendations:**

That the relevant Minister meets with his interstate and Federal counterparts to develop a Plan for Accessible Tourism.

That Tourism Queensland raises awareness of disability access issues and promotes accessible and disability-friendly destinations with tourism operators and ancillary services,

particularly booking aggregators like Booking.com, Agoda, AirBnB and Expedia, and related tourism resources like Google Maps, Trip Advisor and Planet Earth.

That Tourism Queensland provides -

- education to the tourist industry to ensure provision of safe and dignified service for people with impairments
- marketing and destination information in auditory and tactile formats
- improved navigation services
- specialised travel agent/websites for people with vision impairment and/or incentives for private services.
- a holistic approach to the elimination of disability discrimination with a zero tolerance for such treatment
- With COAG, works with travel, airline and airport peak industry groups to eliminate disability discrimination.

## 4. Working and Learning

‘Queensland provides better learning and work opportunities for people of all abilities.’

What has helped you achieve your education and work goals?

What barriers have you faced in relation to education and work?

What other actions do you think would help you achieve your education and work goals? For organisations, businesses, local governments and educators

What has helped you to be more inclusive of people with disability?

What barriers have you faced?

What else can you do to improve access for people with disability to education and/or work?’

### 4.1 Working

‘What do you do for a living?’ We don’t always ask, but when we are introduced to someone new at a party, BBQ or the pub, this is a question that often comes to mind. Our jobs define us, conferring identity, status, and membership of social networks. Unemployment, conversely, is about low status, poverty and loneliness.

If you are a Queenslanders with disability, it is likely that you rely on a government pension or allowance and face seemingly insurmountable barriers to paid employment. While more than half of working-age people with disability participate in the labour force (53.4%), this is a considerably smaller proportion than those without disability (83.2%).<sup>31</sup> Income levels, too, are lower, and about half of people with disability live in households that are in the bottom two quintiles<sup>32</sup> for income.<sup>33</sup> At the other end of the income spectrum, just one in seven people with disability live in households in the top quintile.<sup>34</sup>

<sup>31</sup> Australian Bureau of Statistics. 2016. *4430.0 - Disability, Ageing and Carers, Australia: Summary of Findings, 2015.*

<sup>32</sup> This is the bottom two-fifths of the income range.

<sup>33</sup> 49.4% *ibid.*

<sup>34</sup> In 2015, the median gross income for a person with disability aged 15 to 64 years was less than half the \$950 per week income of a person without disability. Source: ABS 4430.0 *Disability, Ageing and Carers, Australia – Summary of Findings*

The unemployment rate for people with disability is approximately 10%, about double the rate for people who do not have disabilities.<sup>35</sup> Just over 25% of people with disability are working full-time, compared with 53.8% of those who do not have disability. Almost 50% of people with disability were not in the labour force, compared with about 17% of those without disability.

For many people with disability, occupation may be a difficult and even taboo subject. It is embarrassing to admit that you are unemployed. Lack of a job is a powerful reason to avoid social interaction. It is one of the reasons that many people with disability are not keen to go to social gatherings where they may feel like second class citizens.

Then again, if you are one of the 30 to 40 thousand people in Queensland who use the TSS<sup>36</sup> because you use a wheelchair or have severe ambulatory problems, the venue for the party or BBQ may not be accessible anyway. Or perhaps you went to special school instead of the local schools that the other party-goers attended, so you did not receive an invitation in the first place.

If these attitudinal, physical and social barriers are not deterrent enough, the stigma associated with disability may be the last straw. No-one wants to be the subject of pity, or to be treated as an embarrassment.

The average, well-meaning 'normal' observer feels sorry for that disabled person, feels awkward about relating to the person, believes that the government or charity should provide special services, and gives thanks for not being disabled.<sup>37</sup>

Community-based employment, as opposed to, for example, sheltered workshops known as 'disability enterprises', is the critical gateway to social and economic participation. Everyone, regardless of the severity of their impairment, can work in their community if they have the right type and level of support. With appropriate support and opportunity, many people with disability have significant, untapped potential to contribute to the labour market.

State-wide, we need a shift in mindset that flips the perspective from a system that devalues people and focuses on their disability to one that values people and their ability. The focus

**Unemployment** for people with intellectual or psychological disabilities is high compared with other disability groups, regardless of severity, according to ABS data. Those with moderate or mild intellectual disability (20%) or psychological disability (18.9%) had higher unemployment rates than those with moderate or mild physical disability (8.8%) or the general population (5.5%). These figures reflect the unique barriers that people with intellectual or psychological disabilities face in accessing education and work.

Australian Bureau of Statistics. *Australian Social Trends*. 4102.0; March Quarter 2012.

<sup>35</sup> 5.3% Australia-wide in 2015: Source *ABS Disability, Ageing and Carers, Australia* 4430.0

<sup>36</sup> Queensland government taxi subsidy scheme.

<sup>37</sup> Lennard J. Davis, 1995. *Enforcing Normalcy: Disability, Deafness, and the Body*. Verso.

should be the type and level of support required to remove barriers to work, and the discussion should be framed in a rights discourse – the basic human right to work. It is the job of government to ensure the right is upheld.

Negative employer attitudes to people with disability are an obstacle. Government must encourage employers to embrace opportunities for diverse and flexible working arrangements that accommodate the varying needs of people with disability.

#### **4.1.1 Attitudinal Shifts**

‘People with disability are a workplace liability’. That is a myth going around, but Australian and international studies demonstrate the contrary. People with disability are productive, loyal and flexible workers, if given the opportunity. According to a University of Massachusetts survey, 92% of the American public view companies that hire people with disability more favourably than those that do not, and 87% of the public also agree that they would prefer to give their business to companies that hire people with disability.<sup>38</sup>

Employees with disability are reliable. They take fewer days off, take less sick leave, and they have a higher retention rate than other workers. The costs to business of absenteeism and sick leave for employees with disability can be as low as 34 per cent of the cost incurred by their colleagues.<sup>39</sup> Once in the right job, people with disability are more productive and perform equally as well as other employees.<sup>40</sup>

People with disability have fewer compensation incidents and accidents at work in comparison to other employees and therefore they are more affordable because their recruitment, insurance cover and compensation costs are lower.<sup>41</sup> People with disability build strong relationships with customers, and boost staff morale and loyalty by helping create a diverse workforce. That makes people with disability good for business.

Employing people with disability means savings through reduced turnover, recruitment and retraining costs. Employing people with disability contributes to organisations’ overall diversity. It enhances the company image among staff, customers and the community and this has positive benefits for the employer brand. Being a diversity-friendly organisation is a good way to promote a business.

Dismantling negative mindsets towards people with disability in employment is paramount given the obstacles faced by people with disability in their childhood and youth, well before labour market participation becomes a challenge. In education, for example, people with disability are likely to have been subject to onerous assessment and appraisal requirements not applicable to people without disability.

Employer attitudes are not necessarily prejudiced, but reflect an inability to conceive how to include or support a person with disability in the workplace. Employers may not know what

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<sup>38</sup> Gary N. Sipersteina, Neil Romanob, Amanda Mohlera and Robin Parker. 2006. ‘A national survey of consumer attitudes towards companies that hire people with disabilities’ in *Journal of Vocational Rehabilitation* 24 pp 3–9.

<sup>39</sup> Australian Safety & Compensation Council report “Are People with disability at Risk at work? May 2007

<sup>40</sup> Australian Human Rights and Equal Opportunity Commission. 2005. *People with Disability in the Open Workplace: Interim Report of the National Inquiry into Employment and Disability*. Chapter 6.

<sup>41</sup> International Labor Office “Disability in the workplace: Company practices” 2010

supports are available or the benefits of inclusivity. They may not be willing to take a risk or may be reluctant to innovate.

Business strongly resists government interference, so disability employment quotas would be costly. Supply-side subsidies temporarily boost employment, but businesses have little incentive to continue to employ a person with disability if they did not need to employ anyone in the first place.

Government can support disability employment by supporting social enterprises - and by 'social enterprises' we do not mean sheltered workshops (a.k.a. 'disability employment enterprises'). Social enterprises are simply not-for-profit businesses, or more broadly, business with a social purpose.

Surf life-saving clubs, rugby league clubs, and RSLs are all social enterprises, usually companies limited by guarantee, and they all subsidize their less-profitable activities by trading in liquor and gambling. State governments make enormous revenue through issuing licenses to them, and through excise and other duties. State governments have sufficient leverage to insist on disability employment quotas.

Government can also invest in social enterprise support, capital and planning. Most small businesses fail because they do not have sufficient capital to tide them over for the first year or two, and because business owners do not develop sustainable business plans.

Some impairments do affect an individual's ability to perform work. It is vital to measure contribution in other ways than only in units produced per hour, and focus on the quality of work a person is able to deliver.

Some companies are leading the way by modelling an alternative work paradigm: one that does not merely tolerate but embraces workers who do not fit the 'ideal worker' norm, yet have much to contribute to the workplace. Westpac and IBM have collaborated with the Australian Network on Disability, fostering a successful, contemporary approach to a diverse, inclusive and productive workforce. They still find commercial success in a competitive market. These models highlight the possibilities and provide industrial leadership for other workplaces.

New pathways to employment for people with mental health conditions or physical or intellectual impairments must support the right to self-determination. People with disabilities have the same right to make decisions about their own lives and should be supported to do so.

There is an important distinction between initiatives designed to assist a person with a disability that are purported to be in the best interests of that person but are really didactic initiatives; and those that support a person by explaining and helping the person to understand and communicate their decision, whilst ensuring ownership of the decision remains with the person. QAI endorses the latter approach and considers this particularly important in the realm of employment, as this is fundamental to self-definition and independence. Mentors can be good, but anyone involved in employment-related decision-making must be wanted by the person with the disability, and it must be open to the person to draw upon support from other, informal support networks.

Technology can assist people with disabilities to interact with others and it needs to be affordable and accessible: subsidies for people with disability to purchase and install information technology and training for people with disabilities. The funding must come from government, rather than the employer, to address the financial disincentive.

Volunteer work is a way for people with disabilities to build links with an employer, make a contribution to the workplace, demonstrate capabilities and develop skills, and government can financially back unpaid work.

Wage subsidies are one means by which the government has sought to increase the employment of people with disability, but they may decrease the status of a person with disability. It is better for employers to create niche roles.

Affirmative action and quotas will help. Government should lead the way by increasing quotas and by raising awareness of the benefits of employing people with disabilities.

The 'Back to Work Regional Employment Package is a great start. Government should consider extending eligibility to people throughout the state.

## **4.2 Learning**

Children with disabilities have a wide spectrum of capabilities. Confining them to special schools deprives them of the opportunity to grow, to achieve their potential, and to be valuable members of society. Our schools should be the pathway to their active participation as members of our communities. Putting children with a disability into a special school is shutting the gate before they can set foot on that pathway.

The difference between good news stories and the horror stories we hear too often, is all down to the teachers and teacher aides. With proper professional staff to assist children with autism to settle into schools, teachers can help these children flourish. That cannot be done by just a single teacher, with minimal training, who has to look after 30 other students; it is unfair for both teacher and students. Because of the behavioural difficulties children with autism sometimes face, autism is part of the front line in the battle for disabilities in schools. For decades the systemic neglect of children with autism has been bad enough, but the outright abuse revealed on an intermittent basis demands we change the way we shape the lives of these children, and soon.

The *Disability Standards for Education* were implemented by Federal law in 2005 to ensure that students with disability are able to access and participate in education without experiencing discrimination. Those dozen years since implementation have not yet corrected the historical imbalance caused by decades of segregation and neglect, when many people with disability were denied opportunities to learn and socialize with their age peers at school. In 2015, approximately 2 of every 5 people with disabilities had completed Year 12 or equivalent compared to more than 3 in 5 people without disability.<sup>42</sup>

Even now, lack of appropriate teacher training and monitoring and above all lack of community and political will to change means that the quality of that schooling for people with disabilities is still often inferior. Lack of resources, particularly human resources,

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<sup>42</sup> *Ibid.*

overcrowding, high student-teacher ratios, inadequate supervision and teacher ignorance and frustration mitigate against safe, inclusive and productive learning spaces.

In 2015 the *Courier Mail* reported that Hervey Bay School locked a student with autism 'inside a small room with the windows boarded up'.<sup>43</sup> His teacher said he needed "time out". If any school used such a restrictive intervention on a child without disability there would be no suggestion the school is trying its best.

A restrictive intervention is any intervention which effectively restricts a person's freedom of movement. They can include mechanical, chemical (drugs), physical restraint and seclusion, such as the confinement of a person in a room or place where they are unable to leave or interact with other people. In institutional or residential settings providing for people with disabilities, restrictive interventions may be used as tools to manage so-called 'challenging behaviours'.<sup>44</sup>

QAI opposes the use of restrictive interventions and the victim-blaming terminology that reduces a social context to personal behaviour. Expressions like 'behaviours of concern' and 'challenging behaviour' place people with disability at a moral disadvantage. They imply that the source of behaviour and by implication the 'fault' lies with the person with disability. The fault lies in the context: the group home where a service has placed 3 or 4 strangers in a forced co-tenancy, or the noisy classroom where the school has placed the student with autism along with 20 – 30 other students and inadequate support.

Restrictive interventions constitute a significant incursion on a person's liberty and engage a number of human rights articulated in the *Convention on the Rights of Persons with Disabilities*, including, rights of recognition and equality before the law; and in the *Convention Against Torture*, which protects people from torture and cruel, inhuman or degrading treatment'. Government schools have an obligation to consider, promote and protect human rights when they deliver services. As signatory to the *Convention on the Rights of the Child*, Australia must 'take all appropriate legislative, administrative, social and educational measures to protect the child from all forms of physical or mental violence, injury or abuse, neglect or negligent treatment, maltreatment or exploitation'.<sup>45</sup>

In Queensland, the use of restrictive interventions in disability residential settings is regulated through the *Disability Services Act 2006*. There are limits on how and when<sup>46</sup> restrictive interventions can be used, there are reporting requirements, procedural safeguards and an independent body, the Office of the Chief Practitioner, which monitors the use of restrictive interventions.<sup>47</sup> But in Queensland educational settings, there is a lack of legislative or policy

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<sup>43</sup> Brittany Vonow. 2015. 'School puts autistic boy in "cell like" room'. *The Courier Mail*, 28 October.

<sup>44</sup> Where the behaviour of a person with a cognitive impairment or a mental illness in residential care poses a threat to their own or other people's safety, the person may be described as having 'challenging behaviours' or 'behaviours of concern'.

<sup>45</sup> United Nations *Convention on the Rights of the Child*, entered into force 2 September 1990, Article 19.

<sup>46</sup> Where the behaviour of a person with a disability poses a threat to their own or other people's safety, under the *Disability Services Act 2006*, ('the Act') disability service providers may propose the use of restrictive interventions as part of that person's behaviour support plan.

<sup>47</sup> Under the *Disability Services Act 2006*, restraint or seclusion can only be used if their use is necessary to prevent the person from causing physical harm to themselves or any other person to prevent the person from destroying property where to do so could involve the risk of harm to themselves or any other person. They must be the least restrictive of the person as is possible in the circumstances. The Act prescribes a range of procedural safeguards relating to the use of restraint and seclusion in disability services. A disability service provider who proposes to use restrictive interventions must apply for approval and any proposed use of restraint and seclusion must be outlined in a behaviour support plan.

guidance around the use of restrictive interventions. There is no independent oversight or monitoring of the use of seclusion and restraint and there is no legal requirement for a teacher or school in Queensland to report the use of restrictive interventions, other than in the case of the use of 'physical restraint'. This discrepancy must be corrected to protect the rights, interests, freedom and dignity of children with disabilities in schools.

#### 4.2.1 Restrictive Interventions in Schools

The Department of Education and Training Queensland has a policy directive on the use of 'physical restraint' as an immediate or emergency response. School staff are responsible for using physical restraint as an immediate or emergency response as part of student's individual plan, including prevention of self-harming behaviours when other options have been considered such as allowing the student to withdraw or move away, or moving other people from the situation after considering the welfare of student, staff and other students, with such force as is reasonable under the circumstances and in conjunction with teaching and reinforcement of alternative appropriate behaviour.<sup>48</sup>

The Australian (National) *Disability Standards for Education 2005* include standards for harassment and victimisation.<sup>49</sup> The Standards require educators to take steps to prevent, respond and enable complaints about harassment and victimisation. A 2012 review of the Standards found that 'in spite of the intent of the Standards, some reported that ongoing discrimination and a lack of awareness across all areas of education continues to be an extremely significant area of concern for students with a disability and their families. Many families reported that, through their education experiences, their children are subjected to: limited opportunities; low expectations; exclusion; bullying; discrimination; assault and violation of human rights.'<sup>50</sup>

The 2012 Standards review identifies the use of restrictive practices as a key area for attention. The review reported that 'teachers are not well equipped to deal with the challenges associated with children who have complex needs ... this is increasingly leading to the use of restrictive practices such as the unplanned use of medications, physical, mechanical and special restraints'.<sup>51</sup>

Children with Disability Australia (CDA), a peak national body for children with disabilities agree, saying that 'there is a clear need for further research and policy attention to the experience of children and young people in inclusive and special schools, home schools and other educational settings'<sup>52</sup>, particularly as there is no data on how frequently restraint and seclusion practices occur.

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<sup>48</sup> Department of Education and Training Queensland. 2017. 'Safe, supportive and disciplined school environment' <http://ppr.det.qld.gov.au/education/learning/Procedure%20Attachments/Safe,%20Supportive%20and%20Disciplined%20School%20Environment/safe-supportive-disciplined-school-environment.pdf>

<sup>49</sup> Harassment is defined as 'an action taken in relation to the person's disability that is reasonably likely, in all the circumstances, to humiliate, offend, intimidate or distress the person.'

<sup>50</sup> Australian Government, Department of Education, Employment and Workplace Relations, *Report on the review of the Disability Standards for Education 2005*, 2012.

<sup>51</sup> As cited above by VEOHRC, p107

<sup>52</sup> Children with Disability Australia, 2012, *Enabling and protecting: proactive approaches to addressing the abuse and neglect of children and young people with disability*, Issues Paper, p29

#### 4.2.2 Restraint and Seclusion in Schools

The survey from Children and Young People with a Disability Australia (CYDA), the peak body representing people under 25 with a disability, reveals that one in five children with a disability have experienced restraint and seclusion at Queensland schools.

According to the survey of more than 300 Queensland parents, 20 per cent claimed their child had been restrained at school, while another 20 per cent stated their child had experienced seclusion.

“(My child) has been pinned down physically, kept in a locked classroom,” one parent said. Another parent said: “(My child) would be locked out in an outdoor fenced garden area at the Special Ed Unit. (They) would be extremely hysterical and distressed.”

One parent complained their child was “given medicine to restrict movement”.

CYDA chief executive Stephanie Gotlib said her organization had received a number of complaints about disabled children being forced into seclusion rooms, as well as the use of seat restraints for long periods of time to control children.

The shadow report to the United Nations from Australian non-government organisations that ‘children with disability continue to experience restrictive practices in both mainstream and *special* schools including being locked in isolation rooms, being physically restrained and penned in outside areas, and chemical restraint.’<sup>53</sup>

#### 4.3 Higher Education and VET

People with disability are underrepresented in higher education. 200% of people without disabilities attain a bachelor degree,<sup>54</sup> in comparison to people with disability whose educational aspirations tend to a Certificate level qualification (28.4%) than those without disability (22.5%).<sup>55</sup>

The Principles to Determine the Responsibilities of the NDIS and Other Services (‘the Principles’) identify health, mental health, early childhood development, schooling, Higher Education and Vocational Education and Training, Employment, Housing and Community Infrastructure, Transport, Justice and Aged Care as established ‘mainstream services’, many of which are protected areas of public life that are required to make reasonable adjustments to ensure equitable treatment of people with disabilities pursuant to the provisions of the *Disability Discrimination Act 1992* (Cth), the various disability standards, or similar legislation in jurisdictions.

NDIA participants will not be funded for costs that should be borne by mainstream services pursuant to their obligations under the Commonwealth Disability Standards for Education to make reasonable adjustments for equitable treatment.

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<sup>53</sup> CDA, p20

<sup>54</sup> Of people with disability to 65 years, 17.0% have a Bachelor Degree, compared to 30.1% of those without disabilities.

<sup>55</sup> *Ibid.*

Of the mainstream services, people with disabilities are most likely to engage strongly with education, yet the Principles' strong demarcation between mainstream and NDIS provision will discourage cooperative planning and diminish opportunities for lifelong learning.

In higher education, the federally funded Higher Education Disability Support Program provides funding to some eligible providers to offset the costs associated with access for students with disabilities. This program is not made available, however, to providers of vocational education.

While in compulsory schooling specific disability training is not offered to educational staff, there is scope to integrate this into funding in vocational and higher education. At the same time the NDIA commits the scheme to funding supports "not directly related to educational attainment" but rather to the impact of the person's impairment on functional capacity, relating to personal care and transport.

The Principles ensure that education providers and participants cannot plan collaboratively. By keeping education providers and participants apart, participants will be kept from receiving a coordinated program that will incorporate all of his or her needs.

Young people with autism, for example, are the highest proportion of NDIS funded participants, but the demarcation between NDIS and mainstream obligations makes for an anomaly: while there is no disability training for staff in compulsory education settings, it could be available to further and higher education providers. Ironically, many of the young people won't get there because of the lack of support in the earlier, compulsory sector.

#### **4.4 Recommendations**

- Government support for social enterprises that offer inclusive workplaces.
- A campaign that challenges employer myths about employing people with disabilities.
- Promote opportunities for education providers and participants to plan collaboratively vis-à-vis the NDIS .
- Protect the rights of students and teachers by an independent system of reporting and monitoring, transparent data analysis, and quality improvement mechanisms that support schools to manage challenging behaviours.

## 5. Key services

'Services are accessible to all Queenslanders'

What makes it easy for you to access services?

What makes it hard for you to access services?

What else would make a difference for you to better access services?

How do you want to access information in the future?

How can technology help you access the services you want to use?

How can information about Queensland Government services be more personalised for you?

### **For organisations, businesses and local governments**

What has worked well for you in making your services more accessible and inclusive?

What barriers have you faced?

What more could you do to improve access to your service?

There remain all sorts of accessibility challenges. We have discussed some of the physical accessibility challenges in the section on tourism, and here we mention only the two physical access barriers on which QAI has campaigned recently:

- the not fully accessible New Generation Rollingstock;
- the accessibility of buses and need for anchoring points.

### **5.1 New Generation Rollingstock (NGR)**

The NGR is being delivered under an Availability Public Private Partnership (PPP), awarded to the Bombardier-led consortium Qtectic in 2013. Qtectic is made up of Bombardier Transportation, John Laing, Itochu and Aberdeen Infrastructure Investments Limited.

The Newman government (Department of Transport) signed the procurement contract for these trains prior to public consultation. Had there been consultation with people with disabilities the matters we raise below could have been flagged and dealt with in the design stage.

The decision to procure was made by the previous government, but it is folly to continue the roll out without considering the long term risks and costs. There is potential for injury to passengers, and an associated risk of litigation. Transport is a vital need for all commuters. These trains will be in service for decades, and the costs of injury and litigation could well exceed the cost of making the trains accessible.

## **5.2 Wheelchair Stability on Public Transport**

The absence of wheelchair anchor points or other wheelchair stability solutions for bus passengers is a perennial access problem. QAI has been approached by a number bus passengers who have been injured or know of others who have been injured.

QAI favours a user-optional universal anchor point for both safety reasons, and to provide some people with disabilities with a feeling of security.

The relevant Disability Standard for Accessible Public Transport is –

9.11 - ‘movement must be constrained to keep mobility aid from moving’.

Buses currently have an exemption because of unjustifiable hardship. Straps are used in cabs, but they are easier for a cabbie to access. In a bus the driver must stop, switch off and secure the bus, and then fasten the straps on each side of the wheel chair.

The aim is to make public transport attractive and safe for people with disability. Anchors, and the process of using them (driver secures, and driver releases at destination) are not inclusive if compulsory, as the anchor obligation would apply only to people with disability and not to other passengers. Accessibility goals are as much about normalising public transport use by people with disability as they are about safety and people with disability do not want to be treated differently to other passengers.

A permanent solution to this challenge will benefit a variety of passengers including parents with prams and people who use mobility scooters.

## **5.3 Recommendations:**

- That the state government scrutinises all transport procurement for consistency with our human rights obligations.
- That the state government halts work on the New Generation Rollingstock until it addresses these discrimination and access challenges.
- That the state government assists the BCC and other bus transport providers to explore safe bus travel options, including anchors, clamps, tracks or floor mounted slots.

## 6. Leadership and contribution

'Queenslanders of all abilities are leaders, participants and contributors to decisions and issues that are important to them and to the whole community.'

What has helped you participate in leadership and/or decision making in your community?

What barriers have prevented your participation in leadership and/or decision making?

What else would help you get more involved in shaping and leading important decisions in the community and the state? For organisations, businesses and local governments

What have you done to facilitate representation of Queenslanders with disability on your boards or committees, and/or seek the views of people with disability in improving access to your services?

What barriers have you faced?

What else can you do to improve access to decision making and leadership opportunities?

In all areas of decision-making, QAI endorses and promotes the goals of the [Montreal Declaration on Intellectual Disabilities](#), particularly Part 6:

6. a) Persons with intellectual disabilities have the same right as other people to make decisions about their own lives. Even persons who have difficulty making choices, formulating decisions and communicating their preferences can make positive choices and decisions that further their personal development, relationships and participation in their communities. Consistent with the duty to accommodate in paragraph 5b,<sup>56</sup> persons with intellectual disabilities should be supported to make their choices and decisions, to communicate them and to have them respected. Accordingly, where individuals have difficulty making independent choices and decisions, laws and policies should promote and recognise supported decisionmaking. States should provide the services and the necessary support to facilitate persons with intellectual disabilities in making meaningful decisions about their own lives;

<sup>56</sup> Montreal Declaration 5 b) The right to equality for persons with intellectual disabilities is thus not only of opportunity, but may also require, when they chose so, appropriate measures, positive actions, accommodations and supports. States must guarantee the presence, the availability, the access and the enjoyment of adequate services based on the needs and the free and informed consent of persons with intellectual disabilities;

b) Under no circumstance should an individual with an intellectual disability be considered completely incompetent to make decisions because of his or her disability. It is only under the most extraordinary of circumstances that the legal right of persons with intellectual disabilities to make their own decisions can be lawfully interrupted. Any such interruption can only be for a limited period of time, subject to periodic review, and pertaining only to those specific decisions for which the individual has been found by an independent and competent authority to lack legal capacity;

c) That independent and competent authority must find by clear and convincing evidence that, even with adequate and appropriate supports, all less restrictive alternatives to the appointment of a surrogate decision-maker have been exhausted. That authority must be guided by due process, including the individual's right to: notice; be heard; present evidence; identify experts to testify on his or her behalf; be represented by one or more well-informed individuals who he or she trusts and chooses; challenge any evidence at the hearing; and appeal any adverse finding to a higher court. Any surrogate decision-maker must take account of the person's preferences and strive to make the decision that the person with an intellectual disability would make if he or she were able to do so.

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