



QAI's position statement on the Forensic Disability Service

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

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

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 in this state, and through individual advocacy.

We believe that all humans are equally important, unique and of intrinsic value and that all people should be seen and valued, first and foremost, as a whole person. We should embrace difference and diversity, rather than aspiring to an ideal of uniformity of appearance and behaviour.

Central to this, and consistent with our core values and beliefs, QAI will not perpetuate use of language that stereotypes or makes projections based on a particular feature or attribute of a person or detracts from the worth and status of a person with disability. We consider that the use of appropriate language and discourse is fundamental to protecting the rights and dignity, and elevating the status, of people with disability.

QAI considers that the Forensic Disability Service (FDS) has the potential to offer a viable habilitative alternative for persons with an intellectual or cognitive impairment with forensic issues. Appropriately implemented, the FDS could help to habilitate persons with an intellectual or cognitive impairment who have come into contact with the criminal justice system as suspects or offenders, by addressing any underlying factors that increase the likelihood of recidivism and strengthening social and community supports.

QAI holds grave concerns that, in its present form, the Forensic Disability Service is not offering a viable habilitative alternative to the mainstream criminal justice system. QAI considers that the imposition of Forensic Orders (Disability) that are not time limited has many detrimental effects and is not consistent with our international obligations, whilst offering scant habilitative benefits. The imposition of an indefinite, restrictive order denies certainty for the future, can be inconsistent with habilitation and can keep people enmeshed in the system beyond the point at which it is appropriate or beneficial.

Further, we consider that the indefinite detention of persons within the Forensic Disability Service Unit:

1. contravenes our commitments under international humanitarian law, including under the *Convention on the Rights of Persons with Disabilities* (CRPD) and the *United Nations Convention Against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment* (UN CAT)
2. contravenes the requirements of natural justice
3. is not carried out in a way that is consistent with the spirit and intent of the relevant Queensland legislation
4. violates the human rights and dignities of the persons subjected to incarceration within the FDS
5. further marginalises and disempowers an already highly vulnerable group of persons in our society.

The FDS was not intended to operate on a retributive mandate – its stated function is not to punish but rather to minimise the risk that persons placed under a Forensic Order (Disability)

allegedly pose to themselves and to others, and to provide care for those held in detention, with a view to ultimately releasing them from the order and fully reintegrating them within the community. Both the non-retributive and transitional features of the FDS are important to acknowledge. Persons under a Forensic Order (Disability) have been *charged* with an indictable offence but this charge has never been tested in a court of law and therefore whether in fact the offence was committed at all, and if so by the relevant person, has not been proven to the requisite standard (which is the criminal standard of proof – ‘beyond reasonable doubt’). Further, a person cannot be found criminally responsible for an offence committed while the person was of ‘unsound mind’. This means that even if the person did commit the offence, they cannot be held criminally culpable for it if their intellectual or cognitive impairment impairs their capacity to the requisite extent. From this viewpoint, indefinite restrictive orders and/or incarceration of persons with an intellectual or cognitive impairment within the FDS entails multiple breaches of their human rights.

The mandate of the FDS is that each person should progress along an individualised development plan that is designed with input from the person and their family, professionals and supporters and sets out the educational and training programs that will assist them to transition back into the community. However, the reality is starkly different. In reality, Forensic Orders (Disability) operate indefinitely and significantly fetter autonomy and habilitation.

For those whose orders require detention within the FDS Unit or an Authorised Mental Health Service (AMHS), there are very limited opportunities for social and community interaction and involvement. This appears to result from a reticence to approve community involvement because of the risk assessment-based model that the FDS operates on, which places a heavy emphasis on the risk component. From this perspective, the prospect of community engagement is considered to pose unduly high levels of risk and, particularly for some residents, be excessively resource-intensive and difficult to arrange. The image of the FDS as a ‘transitional’ facility is challenged by the reality that, since it opened in 2011, no resident has yet been discharged. We query whether this reality is not created, at least in part, by the lack of motivation by the Department to create vacancies in the FDS Unit given that it is highly costly to run and therefore its continued operation is difficult to justify in the absence of full utilisation? The culture of the FDS Unit is highly institutionalised in an age where institutionalisation is no longer considered appropriate and social and community inclusiveness is instead the recognised goal for persons with intellectual or cognitive disability.

The FDS has not fulfilled its obligation to people with disability (whose care and lives they have been entrusted with), to their families and supporters or to society. Despite the time that has passed since its inception and the significant funding that has been invested into it, the FDS Unit is a failed prototype, the trialling of which has been at significant cost to the persons incarcerated within it

QAI believes that the FDS Unit should be redesigned to operate as a resource centre offering training to specialised support staff to enable them to work effectively within the community and detention centres. Within the community, staff should be appropriately trained and resourced to deliver habilitative and educational services to assist people with an intellectual or cognitive disability and forensic issues to live within the community with appropriate support. The FDS should also provide prison in-reach services, delivering tailored, inclusive education and training to prisoners with intellectual or cognitive impairment to facilitate their habilitation and rehabilitation and ultimately help to facilitate their transition from detention and reduce the likelihood of recidivism.