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

SUBMISSION

Senate Community Affairs References Committee

Impact on service quality, efficiency and sustainability of recent Commonwealth community service tendering processes by the Department of Social Services

"The goals of our public welfare program must be positive and constructive. [The welfare program] must stress the integrity and preservation of the family unit. It must contribute to the attack on dependency, juvenile delinquency, family breakdown, illegitimacy, ill health, and disability. It must reduce the incidence of these problems, prevent their occurrence and recurrence, and strengthen and protect the vulnerable in a highly competitive world."

John Fitzgerald Kennedy

"Every man, every woman who has to take up the service of government, must ask themselves two questions: 'Do I love my people in order to serve them better? Am I humble and do I listen to everybody, to diverse opinions in order to choose the best path?' If you don't ask those questions, your governance will not be good."

Pope Francis

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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 QAI – our values and beliefs

Queensland Advocacy Incorporated (QAI) is an independent community-based advocacy organisation that has for over twenty-five years campaigned for the rights of vulnerable people with disability in Queensland. With a focus on the fundamental needs of the most vulnerable people in our community, QAI has a history of avant-garde advocacy for people with disability to have supports to live an inclusive life in the community.

At QAI, we believe that all human beings are equally important, unique and of intrinsic value. Everyone should be seen and valued as a whole person, first and foremost. The human condition is such that societies tend to devalue those who do not fit within their models of perfection. These groups, including people with disability, are socially marginalised. As an organisation we seek to bring about a common vision where all human beings are equally valued.

We thank the Senate Community Affairs Committee for the opportunity to present our submission to the following terms of reference.

a. the extent of consultation with service providers concerning the size, scope and nature of services tendered, determination of outcomes and other elements of service and contract design;

To date there has been no consultation by the Department of Social Services (DSS) with advocacy organisations regarding tendering processes for DSS funding grants. Thankfully the Minister has announced the extension of the funding for a range of programmes transitioning to the National Disability Insurance Scheme (NDIS) including the National Disability Advocacy Program.

However, while the Minister and others may see advocacy as a service this notion is a narrow and short-sighted misconception about advocacy. Most people with disability who require assistance from advocacy organisations experience issues that are either ongoing, or related to several factors that require ongoing advocacy engagement. Advocacy must have fidelity to the person and their fundamental needs, be partisan and vigorous, and be mindful of other more vulnerable parties as well as be as free as possible from conflicts of interests.

DSS has stated that advocacy organisations will be required to comply with **National Standards for Disability Services.** QAI is funded by DSS to perform systems advocacy. This model of social advocacy does not fit entirely within the standards for service design. However, QAI does have three state funded services which are compliant with the standards under the National Association for Community Legal Services. QAI like many other organisations is accredited under this scheme and then achieved accreditation under the National Disability Advocacy Standards. This was achieved within twelve months of each other. The pressure applied to small organisations to achieve yet another set of standards is not only onerous but in the instance of advocacy incongruent as well.

b. the effect of the tendering timeframe and lack of notice on service collaboration, consortia and the opportunity for innovative service design and delivery;

We reiterate that the proposal for tendering for advocacy is not appropriate. QAI is deeply concerned that once again advocacy is viewed within the area of ‘savings measures’ when there is a dearth of access to advocacy for many people across our state. Even in Brisbane’s greater metropolitan area, Redlands City has no advocacy services at all, while the rest of the state has limited advocacy organisations which are stretched to their limits due to funding constraints and based generally in regional areas.

Furthermore QAI is disturbed by the notion of merging or amalgamation with other advocacy agencies. In many instances this could produce conflicts of interest, and also promotes the mistaken conception that a “one stop shop’ for advocacy is effective and economical. We are aware that with the rollout of the NDIS many new service providers are emerging – some with distinctly dubious services on offer including “fee for service for Support for Decision Making” and also “Advocacy”. This is clearly not independent advocacy and we would vehemently oppose any suggestions that service providers can or should offer advocacy services just as we would oppose any proposition for advocacy to be delivered by a call centre.

Our organisation hosts six weekly teleconferences with individual advocacy organisations across our state to which an interstate counterpart also participates. We cooperate in partnership with our Public Advocate on mutual areas of interest, and have partnered with other advocacy organisations from all across Australia in systemic areas of advocacy regarding human rights. QAI is often sought as a partner for our expertise in these areas particularly in relation to the use of restrictive practices, involuntary treatment and forensic detention. It is clear that no one group or alliance can achieve complete service or systemic responses to all the issues that impact on people with disability.

QAI has a focus on the fundamental needs of the most vulnerable people with disability in order to work within our funding grants. As much as possible, as systemic issues arise that extends our purview but is topical and timely, QAI will engage in matters outside our usual scope if the benefits of doing so are justified. In the past five years QAI has only received indexation of a total of 2.8%. This has not covered costs in terms of increases in overheads or wage increases.

In relation to the following terms of reference that do not apply to advocacy QAI suggests the following in regard to optimal service design:-

Large services to date have not delivered choice and control to vulnerable people with disability despite the vast sums of money available to them. It is hardly encouraging that middle to large organisations are promoting the idea of merges and amalgamations to remain viable under the NDIS rather than breaking up their overly top-heavy service infrastructures to smaller geographically located ‘neighbourhood’ services.

Merges and amalgamations will limit choice and opportunities to people with disability and this will come at a terrible cost to those who live in rural and remote areas where there is often only one service, located at a vast distance.

We assert that small person-centred, flexible and local services are best placed to respond to the needs, wants and aspirations of people with disability. However, we recognise that there is merit in providing block funding to organisations that provide aids, equipment or specialised training for assistance and guide dogs etcetera.

Optimal service design is where the person (client) is the director of how those supports are delivered, when and by whom they are delivered. For people who are considered to exhibit behaviours of concern, the types of service delivery that they have experienced is not remotely under their direction or control. Instead they have been controlled by those employed to support them. It is therefore not at all surprising that the manifestation of those behaviours inevitably escalates. It is acknowledged that the changes required of traditional services in order to deliver responsive and intentionally person-centred service will be difficult for many. We recommend that services funded to support people with disability that are not designed or directed by the people themselves should at least be modelled on the “model coherency analysis” pioneered by Dr. Wolf Wolfensberger and have conducted the "Program Analysis of Service Systems' Implementation of Normalization Goals" (PASSING)[1].

These services should have a focus on the following:-

- The nature of quality
- The role of assumptions in determining needs
- Meeting needs normatively
- Defining “person-centredness”
- Appropriate and supported use of generic and natural supports
- The role of personal vulnerabilities and intentional safeguards
- Understanding how empowerment can be put into operation rather than calling it ‘self-advocacy’
- Understanding how service design can done “with” individual people, families and cultural groups rather than done “to” or “at” them
- Building in the capacity to modify service practice on an ongoing basis
- Exploring the ethics of “right relationship”
- Tailoring supports and services to the changes in the person’s life rather than stagnant and perennial.

I. the impact on advocacy services across the sector;

There has never been sufficient advocacy to meet the needs of all those who require advocacy. Referrals often mean that people cannot find the advocacy that suits their needs or their location. However, it is apparent that those who receive advocacy have much improved lives and better outcomes than if they had not received advocacy service. Every

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[1] (Wolfensberger & Thomas, 1983, 1988)

organisation will have evidence of this. QAI like every other advocacy service would prefer to extend the services we offer as we are acutely aware of the vast numbers of people that go without our services.
QAI has three state-funded services and they provide

1. Legal advocacy to people with mental illness who live with Involuntary Treatment Orders ~~.~~(ITO). QAI’s Mental Health Legal Service (MHLS) works with the most vulnerable and the more complex matters such as electroconvulsive therapies, forensic orders (FO) and those who live in seclusion or with physical restraints. MHLS refers simple matters to other agencies and provides advice to them. People who have had representation at their ITO and FO hearings have had much better outcomes and many have their orders revoked.
2. Legal representation and separate representation for people who are subjected to guardianship orders in the area of financial administration, personal matters (such as accommodation or supports) and the use of Restrictive Practices. The Queensland Civil and Administration Tribunal preside over 800 hearings for the use of Restrictive Practices per annum yet our service (the only of its kind in Queensland) can only represent about 15 people per year.
3. Non legal advocacy for people with disability and or mental illness who are in contact with the criminal justice system who are charged with a criminal offence. This service has supported 327 people over the past 4.5 years and only two of these people have re-offended. In both instances this would have been averted if their other support needs were being met. The advocate has done her utmost to secure additional supports for these people and to date the barriers are more related to the adverse response from the police.

However, in relation to the funds provided by DSS our organisation concentrates on systems advocacy around the issues that affect the most vulnerable people with disability. Efforts in systems advocacy are long-term and in some instances the benefits are not clearly evident for some time.

The Convention on the Rights of Persons with Disabilities (CRPD) is an example of systems advocacy of the highest order, and the Civil Society in Australia (including QAI) has made a subsequent 'shadow report' - **“Disability Rights Now”** - reporting how Australia is performing in bringing this document to life in every aspect of Australian life for people with disabilities.

For many years, people with disability and their families, supporters and advocates have called for a mechanism that would enable people with disabilities by a responsive system that supported them when and how they required and as they directed. Finally after many decades the **National Disability Insurance Scheme (NDIS)** is being trialled and tested and some 10,000 people are becoming accustomed to citizen-hood.

Queensland Advocacy Incorporated has expert knowledge of some of the most serious threats that bring harm and demean vulnerable people with disabilities. However the state of Queensland also has developed the most stringent and controlling legislation regarding the use of heinous restrictive practices. QAI's systemic work in this area is highly valued and as a result of this was successful in attending the **United Nations Convention Against Torture** last year as part of the NGO delegation with the focus of **restrictive practices and involuntary treatment** of people with mental illness. Our Human Rights Lawyer has been referred cases for reviews of restrictive practice orders because of the systemic work and expertise of QAI.

The **deinstitutionalisation** of people with disability has been a perennial agenda item for QAI. We extend our efforts to promote the long term benefits to individuals, their families, neighbours, friends, and local communities when all people are included in the fabric of local life. As people have moved from the harsh and often listless existence of institutional or congregate care arrangements into homes of their own, they contribute to the richness of their communities by being neighbours, employees, employers, and customers. These ordinary but important roles are not often available to people who are secluded from the rest of our society.

More importantly, as the recent expose of Yooralla and many other institutions will attest, congregate care and control is not only dysfunctional but also lends itself to the propagation of abuse and neglect, learned helpless and loss of capacity.

When all people with disability (regardless of perceived level of support needed) are included in the community of their choice, supported to live their lives in the manner of their design, our nation is healthier, happier and economically more viable – undoing the vast oppressive regimes that bind and control and saving lives, saving funds that are best expended in support. This advocacy is the foundation that has led to the development of the CRPD and the NDIS.

Our state has the most progressive **guardianship legislation** with excellent principles recognising the value of supports for decision making (yet unfortunately is rarely practiced by those very statutory bodies entrusted to ensure this.) The mechanism of '**support for decision making**' will be especially important with the impending NDIS rollout, and more broadly has the potential to free people from unnecessary guardianship orders, enable people to exercise autonomy with support and release our administration tribunals from an overburden of hearings, saving valuable fiscal resources.

Law reform in the criminal justice system has been high on the QAI agenda for many years. In 2007 QAI release a publication titled "Disabled Justice – the barriers to justice for persons with disability in Queensland" which gives a complete overview of the issues within this system. We will later this year, release a second version of this publication **"dis-Abled Justice II: Addressing the fractured interface between disability and the criminal justice system in Queensland"** which unlike the former edition will have a focus on recommended micro-reforms as both a useful resource and lobby tool.

Our organisation has strong collaborative approaches with individual advocacy organisations, the Office of the Public Advocate and state government on areas of common interest and importance. Our links to individual advocacy organisations, and our own connections with people with disability as members, clients and board members, keeps us informed and provides authentic authoritative evidence for our systemic work.

I draw your attention to the **National Disability Advocacy Framework (2008)** areas that specifically apply to the need for vigorous systemic advocacy.

> **Principle (c)** Disability advocacy seeks to influence positive systemic changes in legislation, policy and service practice and works towards promoting inclusive communities and awareness of disability issues;
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> **Objective:** People with disability have access to effective disability advocacy that promotes, protects and ensures their full and equal enjoyment of all human rights enabling full community participation.
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> **Outcomes** (a) people with disability are accorded the rights and freedoms described in the United Nations Convention on the Rights of People with Disabilities and other relevant United Nations Rights Treaties;
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> (b) Disability advocacy that is informed by an evidence base and is provided in an accountable and transparent manner;
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> (c) Disability advocacy that is planned and delivered in a coordinated manner and supports communication between disability advocacy support, disability services, mainstream services and governments;
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> (d) Disability advocacy that promotes community education and awareness of disability issues and rights;
>
> (e) Systemic advocacy that positively contributes to legislation, policy and practice that will support the agreed outcomes.
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> (a) **Reform and Policy Directions** (f) Improving coordination and communication between the disability advocacy, mainstream sector and governments to develop the overall capacity of the sector, including promoting linkages between individual and systemic advocacy.

It is often the loudest and biggest voice that attracts the attention of government agencies. In this respect it is the voice of service providers that has to its advantage the collective lobby of the National Disability Services along with branches in every state. Not only do service providers garner the ear of state government ministers and bureaucrats, but also cultivate relationships with statutory guardians and administrative tribunal members, and to a large degree obliterate the voice of the person with disability and their supporter/s.

Vulnerable people with disability often have no family, no friends or supporters and are best supported by individual advocates. However, the issues for this group and others (even with family and supporters) are frequently systemic and require attentive and rigorous advocacy to address legislative, policy and practical reform.

It is a logical conclusion that when laws, policies and or practices oppress, harm or demean people with disabilities, that harm and diminishment extends to families and therefore our communities and society in general. QAI aims to help our law-makers draft improved laws and design better policies and create excellent practices that will nurture and enable people with disability and thus enrich our community.

m. factors relating to the efficient and effective collection and sharing of data on outcomes within and across program streams to allow actuarial analysis of program, cohort and population outcomes to be measured and evaluated;

QAI like other organisations funded within the National Disability Advocacy Program collect and record data that is the evidence for our systems advocacy. Some of this is captured from our state funded individual advocacy services; from referrals for other sources including other advocacy organisations; state government departments and or statutory bodies; community legal centres; peak bodies; and from disability service providers. We record numbers and types of issues impacting on the lives of people with disability and this is forwarded to DSS.

Given the systemic nature of our work, the outcomes are somewhat difficult to measure and evaluate. At times the outcome will be a small adjustment to a policy or practice and at others it may be a complete review with major amendments to legislation. QAI has influenced the way service providers and direct support workers, bureaucrats, politicians, government officials, lawyers, other advocacy groups, doctors, case managers, and most importantly people with disability themselves and their families across a range of matters. These include the way people with disability are portrayed in community; authentic relationships between the person and their supports; community living and supports; human rights; what advocacy is and isn’t; how laws, policies and practices may cause harm, oppress or deny people a decent life; and conversely the successes of people who are supported to attain that good but ordinary life.