

**Submission to the Senate Committee on the Commonwealth Funding and Administration of  
Mental Health Services**

**Queensland Advocacy Incorporated  
8 August 2011**

**Terms of reference**

1. This submission relates in particular to the following terms of reference:
  - (f) the adequacy of mental health funding and services for disadvantaged groups, including ... people with disabilities;
  - (j) any other related matter.

**Summary**

2. The evidence in Queensland suggests that patients subject to involuntary treatment orders and forensic orders are under-supported in the legal processes they must endure. This can lead to adverse legal and treatment outcomes.
3. Funding for mental health services must include support for advocacy and legal services for patients if a holistic outcome is to be achieved. By supporting basic human rights, these services provide equality and dignity to patients, and help to support their recovery.

**About Queensland Advocacy Incorporated**

4. Queensland Advocacy Incorporated (**QAI**) is a not for profit systems and individual advocacy organisation for vulnerable people with disability.
5. In January 2010, QAI established the Mental Health Legal Service (**MHLS**), which provides advice and representation to people receiving involuntary treatment under the *Mental Health Act 2000* (Qld). We regularly represent patients appearing before the Mental Health Review Tribunal. The aims of the MHLS are to, among other things:
  - a. Provide legal representation in a legal process that has the potential to seriously impact fundamental human rights;
  - b. Empower patients to meaningfully participate in their own treatment decisions;
  - c. Insist on compliance with the *Mental Health Act 2000* (Qld);
  - d. Advocate for treatment that promotes recovery, communication and community-based care, and adheres to the Convention on the Rights of Persons with Disabilities.
6. We are the only community legal centre in Queensland providing dedicated legal services in mental health law. There are similar community services operating in other states.

7. The MHLS is now two years old and is project funded by the Queensland Department of Justice and Attorney-General out of the Legal Practitioner Interest on Trust Accounts Fund. We do not receive any funding from government sources. Our funding is insecure and does not meet current operational requirements.

#### **Need for legal advice and representation**

8. In Queensland, the *Mental Health Act 2000* (Qld) (**MHA**) provides the mechanisms and safeguards by which a person may receive involuntary treatment for mental illness. Involuntary treatment risks violating fundamental human rights such as the right to liberty and self-determination. Its use is rationalised by the right of a person to treatment and protecting the rights and freedoms of the community.
9. In order for the safeguards enshrined in the MHA to have effect, vulnerable patients must have legal advice and representation. Without legal advice and representation, patients may be unable to participate in the mechanisms and hearings under the MHA for reviewing their detention and involuntary treatment.
10. It is of the utmost importance to individual patients and to the community as a whole that the MHA, and the policies which flow from it, are applied in a just and equitable manner.

#### *Involuntary treatment orders*

11. A patient may be subject to involuntary treatment if placed under an involuntary treatment order (**ITO**). An ITO may be made by a doctor if they are satisfied that the patient meets all the treatment criteria as set out in the MHA. As a safeguard, the MHA requires review of an ITO by the Mental Health Review Tribunal within the first 6 weeks of it being made and every 6 months thereafter.
12. ITO review hearings are poorly attended, by both patients and legal representatives. In 2009-10, of 8393 ITO review hearings in Queensland, less than 53% were attended by the patient, and less than 2% were attended by the patient's lawyer.<sup>1</sup>
13. While the Tribunal practices "therapeutic jurisprudence" and does not encourage the presence of legal representation, there are certainly cases where legal representation is helpful if not necessary to ensure that the rights of vulnerable people are upheld. Some examples which QAI has come across:
  - a. A client who was held at a hospital under an ITO for many years with a sole diagnosis of autism which is not a mental illness for the purpose of the MHA;
  - b. Clients with a history of violent behaviour giving rise to the complex issue of future risk;

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<sup>1</sup> *Annual Report 2009-2010*, Mental Health Review Tribunal. There were no statistics available on the number of people and their legal representatives who attended ITO review hearings, as separate from other types of hearings. The statistics quoted here refer to patient and legal representative attendance at all 10,298 Tribunal hearings for 2009-10.

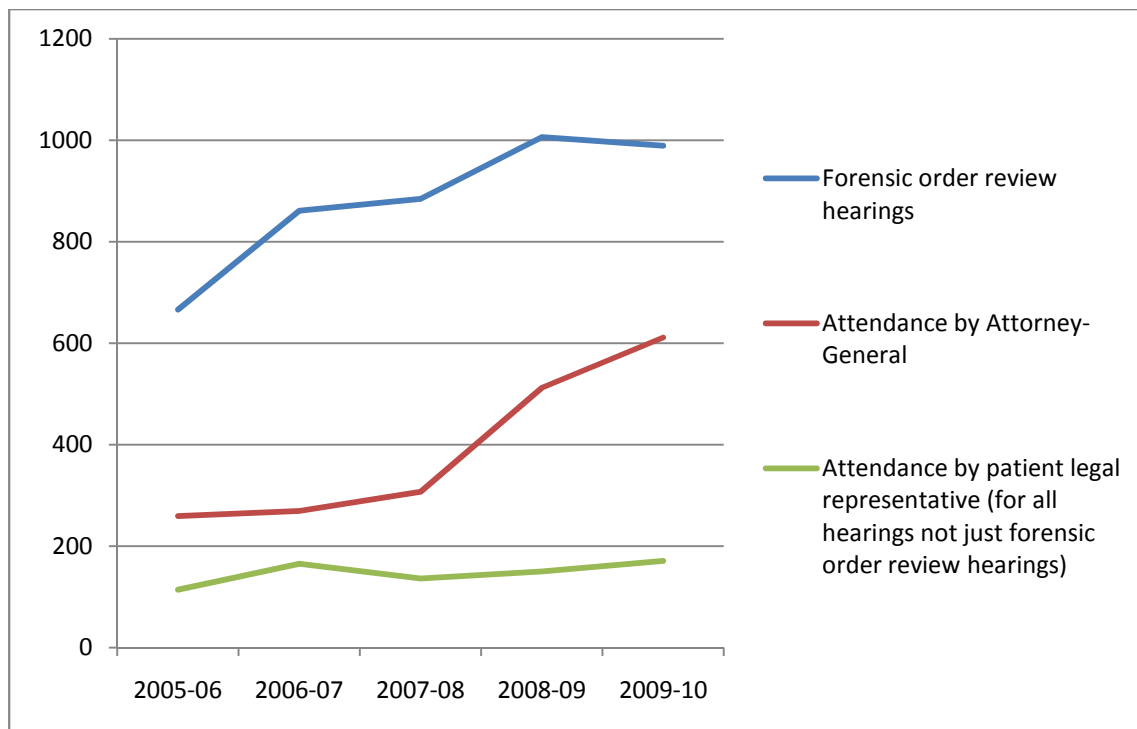
- c. Clients who are unable to attend their hearing because they are held in seclusion or restraint at the time of the hearing.
14. QAI believes that legal representation is particularly important where the issue of whether to administer electro-convulsive therapy is being determined.
15. Outside of the Tribunal process, there are a whole range of issues for which a person receiving mental health services may need a legal advocate. These include:
- use of seclusion and restraint;
  - detention in inappropriate facilities;
  - complaints about specific treatment or treating teams;
  - access to clinical files;
  - negotiating pre-ITO processes, for example, emergency examination orders, justice examination orders and involuntary assessment.

#### *Forensic orders*

16. Involuntary treatment can also arise as a result of the criminal justice process. A person with a mental illness or an intellectual disability who has been charged with an indictable offence may find themselves before Queensland's Mental Health Court. If they are found of unsound mind at the time of the offence or presently unfit for trial, then the Court has the power to place them on a forensic order, authorising their detention at an authorised mental health service and requiring their submission to mental health treatment.
17. A forensic order may only be revoked by the Mental Health Review Tribunal, which generally reviews forensic orders every six months. The Mental Health Review Tribunal also decides what level of access to the community a forensic patient may have and on what conditions. In determining revocation or leave, the Tribunal applies a legal test of whether the person would represent an "unacceptable risk" if leave was granted or the forensic order was revoked.
18. Very few patients on forensic orders are legally represented at the review of their forensic orders in Queensland. For example, in 2009-2010, of the 989 forensic order review hearings, fewer than 171 were attended by a patient's legal representative.<sup>2</sup>
19. The past 3 years have also seen a 130% increase in attendances by the Queensland Attorney-General at forensic order review hearings, compared to an almost negligible increase in patient representation over the same period. The result is hearings at which patients must self-represent against a legally trained representative of the Attorney-General, who increasingly press for more restrictive conditions, to the frustration of treating teams who are unable to progress the patient's treatment. Patients with a sole or dual diagnosis of intellectual disability are even more at risk than patients with a sole diagnosis of mental illness.

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<sup>2</sup> *Annual Report 2009-2010*, Mental Health Review Tribunal. 171 represents the number of patients represented at all 10,298 hearings heard by the Tribunal in 2009-10. See Note 1 above.



**Graph 1: Representation at Forensic Order Review hearings**

#### **Adequacy of mental health funding for legal services**

20. In Queensland, government funding of legal services for people experiencing involuntary treatment is wholly inadequate.
21. Legal Aid Queensland is not funded to provide representation before the Mental Health Review Tribunal.
22. QAI's Mental Health Legal Service (**MHLS**) is one small service, comprising of 2 full time solicitors, trying to fill the gap. It can only attend a small proportion of the 10,000 plus hearings before the Mental Health Review Tribunal each year and its reach is limited to the south-east corner of Queensland. Despite its importance, the MHLS continues to be project funded only and is not in receipt of recurrent government funding.
23. A large proportion of involuntary patients are unable to afford legal services at commercial rates. Anecdotally, out of a sample of 204 MHLS clients who stated their income source and scale, 189 (93%) stated their income was below \$33,000 per year, and 184 (90%) indicated the source of that income as being a government pension, benefit or allowance.
24. More funding is necessary to ensure that much needed legal advice and representation is accessible to people receiving involuntary treatment for mental illness.

#### **Conclusion**

25. Individuals without access to legal services are often not receiving the crucial advice and support they require, and have little avenue for ensuring that their rights are protected.

26. Failure to uphold the legal rights of patients is detrimental not only to their legal outcome but also to their treatment outcome. Rights protection is recognised as an essential component of recovery-oriented service provision.<sup>3</sup>
27. There needs to be more funding for mental health legal services in Queensland, to ensure the effective protection of rights for involuntary patients.

**QUEENSLAND ADVOCACY INCORPORATED**

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<sup>3</sup> Anthony W (2000) A Recovery-Oriented Service System: Setting Some System Level Standards, *Psychiatric Rehabilitation Journal*, 24 (2), 159-168