



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

Corrective Services (Parole Board) and Other Legislation Amendment Bill 2017

**Submission by Queensland Advocacy
Incorporated**

Legal Affairs and Community Safety Committee

8 March 2017

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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 Queensland Advocacy Incorporated

Queensland Advocacy Incorporated (QAI) is an independent, community-based systems and individual advocacy organisation and a community legal service for people with disability. Our mission is to promote, protect and defend, through systems and individual advocacy, the fundamental needs and rights and lives of the most vulnerable people with disability in Queensland.

QAI has an exemplary track record of effective systems advocacy, with thirty years' experience advocating for systems change, through campaigns directed to attitudinal, law and policy reform and by supporting the development of a range of advocacy initiatives in this state. We have provided, for almost a decade, highly in-demand individual advocacy through our three individual advocacy services – the Human Rights Legal Service, the Mental Health Legal Service and the Justice Support Program. Our expertise 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 challenges, issues, needs and concerns of individuals who are the focus of this inquiry.

QAI deems 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. Further, QAI believes that all communities 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.

As QAI's core objectives centre around the protection of the rights and lives of people with disability, we will limit our submission to responding to those issues which are relevant in this regard.

Establishment of the Parole Board of Queensland

QAI recommends that:

1. Membership of the Parole Board should include a person with either lived experience of disability or disability-specific expertise and experience.
2. 'Relevant information' provided to the Parole Board to assist in its decision-making should include all information necessary to understand and address the needs, especially support needs, of persons with disability.
3. Programs for rehabilitation and parole should be delivered in a variety of teaching methods and supports to ensure accessibility for all people including those with disability.
4. Persons with disability and mental illness should be provided with additional supports upon release from prison.
5. There should be specific contact between the Parole Board and the National Disability Insurance Agency, in circumstances where a person is eligible for NDIS funding, to facilitate this.
6. Queensland Corrective Services and Department of Housing and Public Works cooperate to:
 - a) pilot a comprehensive program of housing and support for exiting prisoners with disabilities (The NSW Justice Support Program may provide a useful example); and
 - b) give prisoners the option to maintain public or community housing for a reasonable time while they serve in prison.
7. Prisoners who apply for public or community housing must be eligible for priority housing on release from prison.
8. In the weighing of personal autonomy (successful reintegration of a person into the community) and potential risk to community safety, it is imperative to cease the inaccurate and damaging stereotypes that misconstrue mental illness and/or disability with a propensity to violence.

The need for a disability-specific response

In the second reading speech of the Bill, the Hon. MT Ryan, Minister for Police, Fire and Emergency Services and Minister for Corrective Services, noted that, as recommended in Mr Sofronoff QC's report, membership of the Board is to be comprised of 'professional members who may be drawn from a diversity of backgrounds and whose university or professional qualifications are relevant to the functions of the Parole Board, including lawyers, medical

practitioners and psychiatrists'. QAI supports this proposal for the Board members to have relevant professional expertise, and additionally, we note the importance of the Board including membership of a person(s) with expertise in the areas of disability and mental health and, preferably, a person with lived experience of disability.

In his report, Mr Sofronoff QC also noted the significant problems that flow from the disorganised and incomplete nature of materials made available to the Parole Board. QAI considers that this is an important area where the needs of persons with disability must be specifically considered – it is imperative that Parole Boards are provided with all relevant information pertaining to a person's disability and their support and other needs prior to reaching a decision.

Relevantly in this regard, we also emphasise the importance of providing appropriate assistance for persons with disability, in preparing their applications for parole and in appearing before the Parole Board. The relevance of conscious support in building and maintaining the capacity of persons with disability is well recognised. It is essential that this aid is made available to persons with disability at all stages throughout this process, to ensure that they are not inequitably denied access to justice.

The over-representation of people with disability and mental illness within the Queensland criminal justice system is well recognised. In QAI's recent publication, *dis-Abled Justice: Reforms to Justice for Persons with Disability in Queensland*, we referred to extensive scholarship and empirical research documenting the phenomena, which we summarised as follows:¹

It is now widely acknowledged that people with disability are over-represented, and often adversely differentially treated, within the criminal justice system... [This is a] fundamental human rights concern that requires redress as a matter of urgent priority. Recent research has confirmed the systemic nature of the problems at the intersection of criminal culpability and disability. Many people with intellectual or cognitive disability or mental health disorders are socio-economically and educationally disadvantaged and marginalised from an early age. This disadvantage compounds the effects of their disability or condition.

The Queensland government has increased funding for police and prison-building, but has not invested in ways to address over-representation; it has invested in bricks and mortar for prisons while ignoring more remedial approaches to addressing support needs. It is of grave concern that people who are overlooked for support are among the most vulnerable, disempowered and marginalised members of our society.

We provided the following specific evidence of this over-representation, as follows:²

People with intellectual disabilities are imprisoned at approximately five times the rate of the general population. Queensland Corrective Services conducted a general

¹ Queensland Advocacy Incorporated. 2015. *dis-Abled Justice: Reforms to Justice for Persons with Disability in Queensland*, 5.

² Queensland Advocacy Incorporated. 2015. *dis-Abled Justice: Reforms to Justice for Persons with Disability in Queensland*, 15.

survey of Queensland prisoners in 2002 and determined that 10% of the prison population at that time had IQs indicative of intellectual disability (below IQ 70) and that a further 29 per cent of prisoners were in the borderline range (IQ 70-79). The significance of the overrepresentation is illustrated by these figures, when considering people with intellectual disability make up only 2% of the general population.

This over-representation has been consistent notwithstanding the overall downward trend in crime in Queensland.³

We also know that overrepresentation of young people with intellectual disability facing custodial sentences is even greater than for adults. While we are not aware of specific Queensland data, Victoria's Parole and Youth Residential Board noted that between 14 and 27 percent of young people who appeared before it in the 2010-11 year presented with an intellectual disability.⁴ Those with mental health disorders and/or cognitive impairment are even more highly over-represented – they are at least six times more likely to be in prison than young people without disability in the general NSW population.⁵

The specific vulnerabilities and needs of people with disability and mental illness who come into contact with the criminal justice system are also well recognised. In his endorsement of *dis-Abled Justice*, The Hon Michael Kirby, former Justice of the High Court of Australia, stated:

In my role as patron of the Community Restorative Centre in New South Wales, I have come to understand the particular impact of intellectual disability on many people who end up with custodial sentences.

Also endorsing this publication, Prof. Gillian Triggs, President of the Australian Human Rights Commission, noted:

Among the most vulnerable in our community, people with disability experience a variety of challenges when it comes to their interaction with the criminal justice system.

QAI submits that the introduction of wide-sweeping reforms to the Queensland parole system is an ideal opportunity to introduce disability-specific expertise and understanding at one of the key points of the criminal justice system where it is urgently needed – moving towards exiting from the system. It is specifically timely to do so, with the current roll-out of the National Disability Insurance Scheme throughout Australia. QAI submits that there should be specific provisions introduced to necessitate contact between the Parole Board and the National Disability Insurance Agency, in circumstances where a person is eligible for NDIS funding, to help to facilitate this. The process requires that the person apply first, and it is then decided whether they are eligible or not. Who will do this in the prison system before

³ Queensland Advocacy Incorporated. 2015. *dis-Abled Justice: Reforms to Justice for Persons with Disability in Queensland*, 16.

⁴ Department of Human Services, Youth Parole Board and Youth Residential Board. Annual report 2010-11. Melbourne: DHS, 20.

⁵ R McCausland, et al. 2013. People with mental health disorders and cognitive impairment in the criminal justice system Cost-benefit analysis of early support and diversion. University of NSW.

parole is even considered? Further to this, QAI submits that all people with disability in the criminal justice systems must be linked with a local independent advocacy organisation to assist in the application process for the NDIS whether they are thought to be eligible or not.

People with disability face specific problems when it comes to parole, including:

1. Difficulties applying for parole – Queensland law requires that parole applications are hand-written, which can pose difficulties for some people with an intellectual or cognitive disability that impacts on their ability to read and write.
2. Prejudicial attitudes by members of the Parole Board, based on stereotypes linking disability or mental illness with a propensity to violence.⁶
3. Difficulty satisfying the Parole Board that they have appropriate accommodation to go to upon release – while there is no causal link between disability and crime, there is a strong causal link between disability and incarceration and this is partly attributable to heightened difficulties people with disability can face in having access to appropriate support networks and appropriate accommodation to go to upon release from prison. Research informs us that prisoners with intellectual disabilities tend to get fewer outside visitors, due to a lack of strong family and friendship networks outside prison.⁷ This not only results in heightened risk of social isolation and difficulties reintegrating into society upon release from incarceration, it also raises additional hurdles when trying to qualify for parole. Lack of support and appropriate accommodation prejudices parole applications and extends the term of imprisonment. In order to gain parole, the applicant must provide the Parole Board with an address which the Board then assesses for suitability. Many prisoners with capacity impairments have no home to go to.
4. Increased difficulty completing prison programs – successful completion of prison programs can be a means to early release, yet these programs are rarely designed to meet the needs of prisoners with an intellectual or cognitive disability, with the result that it is not uncommon for prisoners with intellectual or cognitive disability to find it difficult or impossible to complete these programs. (Participation in general criminogenic rehabilitation programs offered by Corrective Services requires that participants be ‘responsive’,⁸ making it difficult for some prisoners with intellectual impairments to take part in those programs, gain early release and transition back to the community when they are released.)
5. Increased likelihood of being placed in separate maximum security units for their protection, denying them the opportunity to have the least restrictive environment and

⁶ NSW Law Reform Commission. 1994. People with Intellectual disability and the Criminal Justice System. Issues paper # 35. Courts and Sentencing Issues.

⁷ Australian Institute of Health and Welfare, The Health of Australia’s Prisoners 2012, Cat. No. PHE 170, Australian Institute of Health and Welfare: Canberra, 2013, pages x-xv.

⁸ T Walsh. 2004. Incorrections: Investigating prison release practice and policy in Queensland and its impact on community safety. Brisbane: Queensland University of Technology.

to participate in rehabilitation programs (as would happen in a lower grade security setting).⁹

Mr Sofronoff QC's report directly touched upon some of these concerns, as he noted:¹⁰

There is no active case management of prisoner applications or effort directed towards assisting prisoners through the application process. The resources are limited to fact sheets, manuals, forms and checklists. These are of limited assistance to prisoners, particularly those from diverse cultural backgrounds, those with a significant disability or limited literacy. The QCS submission notes that the chief inspector has concerns that many prisoners... have a general lack of understanding of the parole process.

The work of the Prisoners' Legal Service, the Catholic Prison Ministry¹¹ and the Queensland Centre for Intellectual and Developmental Disability demonstrates that ex-prisoners are most likely to reoffend in the first fraught weeks out of jail. Ex-prisoners often have nowhere to live, little money, few friends or supporters and scant prospects. For some, a return to prison is an alternative to poverty, loneliness and homelessness. Piecemeal changes are not enough: the first step is for government to initiate a coordinated cross-government approach to post-release services to ex-offenders with disabilities so that they are better equipped to reintegrate and live fulfilling lives.

The Queensland Government has promised to embrace the opportunity created by this review to 'reshape and improve the parole system in Queensland. If this is to be delivered through enduring changes to the management and rehabilitation of prisoners and offenders generally', it is imperative that the Government address, as an urgent priority, the needs of the significant number of people with disability in incarceration.

Electronic Monitoring

QAI recommends that:

1. Any electronic monitoring must occur within a robust human rights framework that safeguards the rights of all persons to privacy.
2. The Queensland Government should conduct a cost-benefit analysis of the respective merits of funding electronic monitoring and appropriate support and welfare for persons with disability.

The issue of electronic monitoring of parolees is an important issue which engages the human right to privacy and the private and public interests relevant to the length of

⁹ W Glaser & W 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): 338-56.

¹⁰ Sofronoff, W, QC. *Queensland Parole System Review: Final Report*. November 2016, at [616].

¹¹ M Alexander & D Martin. 2013. *Queensland Prison Report 2013*. Prisoners' Legal Service & Catholic Prison Ministry.

incarceration as well as consideration of potential benefits for community safety. QAI submits that it is an issue that must be considered within a human rights framework.

Electronic monitoring is a direct interference with a person's privacy. The Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights provide:¹²

No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interferences or attacks.

Article 22 of the Convention on the Rights of Persons with Disabilities establishes the international human rights to privacy for persons with disabilities, as follows:

1. *No person with disabilities, regardless of place of residence or living arrangements, shall be subjected to arbitrary or unlawful interference with his or her privacy, family, home or correspondence or other types of communication or to unlawful attacks on his or her honour and reputation. Persons with disabilities have the right to the protection of the law against such interference or attacks.*
2. *States Parties shall protect the privacy of personal, health and rehabilitation information of persons with disabilities on an equal basis with others.*

In a different context, serious privacy concerns have been raised about the electronic monitoring of people living in disability support accommodation in Queensland, whether with or without consent. This practice, though considered in the context of concerns to safeguard persons with disabilities from accidents and protect their health, was considered to create 'the potential for significant breaches of privacy'.¹³ The Report from the OPA into that issue notes:¹⁴

From a human rights perspective, the invasion of privacy represented by electronic monitoring cannot be justified for issues related to lack of resources, such as insufficient support staff...

The Australian Law Reform Commission (ALRC) has recognised that the common law is still developing in Australia in terms of recognising the right to personal privacy and is subject to some uncertainty. The ALRC is currently undertaking an inquiry in relation to whether there should be a statutory cause of action for serious invasions of personal privacy. In some cases however, a person may be able to bring an action for trespass to protect themselves from physical intrusions, serious breaches or nuisance in relation to invasions of privacy.

¹² Articles 12 and 17 respectively.

¹³ Office of the Public Advocate. *Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland: A systemic advocacy report*. May 2014.

¹⁴ Office of the Public Advocate. *Inquiry into the use of electronic monitoring at disability accommodation sites in Queensland: A systemic advocacy report*. May 2014.

In a press release by the Queensland Government on 14 June 2016, Minister for Corrective Services Bill Byrne endorsed the benefits for community safety of electronic monitoring of sexual offenders. However, QAI queries whether the funding committed to this endeavour (\$5.1 million over four years and ongoing funding of \$1.3 million a year) could be better invested in appropriate programs designed to holistically address some of the issues that contribute to offending, such as the multiple disadvantage many people with disability face across their lifetime. An investment of funding in this way would progress the dual aims of increasing community safety and habilitating vulnerable offenders. This recommendation addresses the proposal made by Mr Sofronoff QC in his report, when he notes:¹⁵

Many submissions received by the review recommended that the government increase the funding directed to rehabilitation programs. This is an uncontroversial proposition.

The report also noted the ‘major deficit in staffing’ of the Queensland Health, Prison Mental Health Service,¹⁶ which is responsible for assessing and treating prisoners with mental illness. This deficit cannot and should not be met with a dependency on electronic monitoring.

Impending Ratification of the OPCAT

QAI recommends that:

1. QAI endorses the proposal by the Queensland Government to establish an independent inspectorate of correctional services.
2. QAI submits that this independent inspectorate must be specifically training in and tasked to consider disability-specific issues.

Australia signed the OPCAT on 19 May 2009 yet has failed enliven the rights contained in it by ratifying it. The Federal Government has recently announced its intention to ratify the Optional Protocol to the Convention Against Torture (OPCAT) before the end of 2017. Ratification of the OPCAT would have significant practical implications for Australia, importantly by committing Australia to establishing National Preventive Mechanisms (NPMs) to prevent torture and other forms of cruel, inhuman or degrading treatment or punishment falling short of torture. In practice, what this means is that Australia would be committed to opening up all places of detention in Australia, including prisons and corrective centres, to scrutiny by independent bodies established as National Preventative Mechanisms.¹⁷ Transparency and public scrutiny not only protects and safeguards detainees, but signifies to them that the public cares about them, and those who work there. This increased scrutiny on places of detentions, including Queensland prisons, is expected to have positive benefits for

¹⁵ Sofronoff, W, QC. Queensland Parole System Review: Final Report. November 2016, at [664].

¹⁶ Sofronoff, W, QC. Queensland Parole System Review: Final Report. November 2016, at [730].

¹⁷ <https://www.attorneygeneral.gov.au/Mediareleases/Pages/2017/FirstQuarter/Improving-oversight-and-conditions-in-detention.aspx>.

those in detention, including by improving the conditions, safety, transparency and accountability of these facilities. For people with disability who are incarcerated, it will hopefully help to improve the access they have to programs and services that improve their prospects of achieving parole and ultimately reduce recidivism.

QAI fully supports the proposal by the Queensland Government to accept Mr Sofronoff's recommendation of the review to establish an independent inspectorate of correctional services, and welcomes the Queensland Government's announcement of its intention to independently open up its prisons to scrutiny.¹⁸ QAI submits that this independent inspectorate must be specifically training in and tasked to consider disability-specific issues.

Conclusion

QAI congratulates the Committee for considering appropriate law reform in this area.

Given the significant over-representation of people with disability within the criminal justice system in Queensland, a disability-specific response to issues pertaining to their treatment within and exiting from the criminal justice system is long-overdue.

¹⁸ Recommendation 88, <https://parolereview.premiers.qld.gov.au>.