

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
Brisbane QLD 4000

By email: lasc@parliament.qld.gov.au

Dear Research Director

Human Rights Inquiry

Thank you for the opportunity to make a submission to the Queensland's Human Rights Inquiry.

In summary Mamre Association Incorporated (Mamre) submits that:

1. The introduction of a Human Rights Act for Queensland is both appropriate and desirable;
2. The human rights of people with disability in Queensland are not adequately protected;
3. People with disability have a heightened risk of experiencing human rights abuses because:
 - a. their lives are often characterised by interactions with and reliance on government agencies and service providers;
 - b. there is often an immense power imbalance between a person with disability who is depending upon a service and those delivering the service; and
 - c. because of factors that may be associated with the person's disability;
4. There is currently no enforceable obligation that government agencies and disability service providers deliver their services in way that is compatible with human rights standards;
5. The introduction of the National Disability Insurance Scheme in Queensland will mean that many of the functions that have been performed by the Queensland Government will be outsourced to the private and not-for-profit sector and it is essential that these service providers are required to act compatibly with human rights standards;

6. The Australian Capital Territory and Victoria provide examples of how state-based universally applied human rights legislation will provide a quality assurance safeguard to people with disability in those jurisdictions when they deal with service providers, including in connection with the National Disability Insurance Scheme.

About Mamre

Mamre has provided support services for people with disability and their families in Brisbane since 1982. Our values are Christian based and they include the need to stand by marginalised people and to work towards upholding the rights, dignity and self-determination of all people. We seek to provide services that respect the inherent freedom, equality and dignity of all people.

Mamre believes that the introduction of a Human Rights Act in Queensland is an essential part of the quality assurance framework that should be applied to the provision of services for people with disability in Queensland.

Human rights issues experienced by people with disability in Queensland

Here we will respond to the following terms of reference with particular focus on the experiences of people with disability:

1. The effectiveness of current laws and mechanisms for protecting human rights in Queensland; and
2. The effectiveness of human rights legislation in Victoria, the Australian Capital Territory and by ordinary statute internationally.

Violence, abuse and neglect of people with disability in Queensland

Human rights issues experienced by people with disability in Queensland are well documented. Examples were provided to the recent Senate Committee Inquiry "*Violence, abuse and neglect against people with disability in institutional and residential settings*".¹ The submission of the Queensland Office of the Public Advocate to that inquiry provides a short historical overview of the abuse and neglect of people with disability in institutional and residential settings in Queensland.²

¹ The Senate Community Affairs References Committee "*Violence, abuse and neglect against people with disability in institutional and residential settings, including the gender and age related dimensions, and the particular situation of Aboriginal and Torres Strait Islander people with disability, and culturally and linguistically diverse people with disability*", November 2015.

² Office of the Public Advocate (Qld) Systems Advocacy "*Submission to the Senate Standing Committee on Community Affairs – Violence, abuse and neglect against people with disability in institutional and residential settings*", June 2015.

Despite the closure of many institutional living environments for people with disability and the development of the Disability Service Quality System, people with disability continue to experience human rights abuses, including:

- Many Queenslanders with disability continue to live in institutional settings. It is often the case that these people are not provided with support that aims to ensure that the person's capacity is sustained and developed;
- People with disability continue to experience high levels of abuse and neglect at the hands of service providers. Some relevant case studies from our work and from the work of other agencies are included as "Annexure A" with this submission;
- Many service providers use restrictive practices in their work with people with disability. Examples of restrictive practices include seclusion and using physical and chemical restraint. Despite recent amendments to the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* we continue to see service providers inappropriately use and administer restrictive practices.³

Many of our senior staff members have worked in the disability sector in Queensland over long careers. These staff members are willing to provide the Committee with further information about the ongoing human rights issues experienced by people with disability during public hearings.

The effectiveness of human rights legislation in Victoria, the Australian Capital Territory

Human rights jurisdictions such as the ACT and Victoria provide better human rights protections to people with disability. Relevant examples include:

1. In Victoria, Art 12 of the *Charter of Human Rights and Responsibilities 2006* ('the Charter') protects the right of freedom of movement (including freedom to choose where to live). Art 13 protects the right to privacy. Art 21 protects the right to liberty and security of person. Art 24 protects the right to a fair hearing. Art 25 protects the presumption of innocence – the right to be presumed innocent until proven guilty.

A practical effect of this is that legislation in Victoria requires that for a person to be charged with an offence it must be proven to the requisite criminal standard. There is also a fixed end date of detention (contrast the potential for indefinite detention in Queensland as illustrated in Peter's story in Annexure A).

2. When disability services are scrutinised in a human rights jurisdiction the scrutiny is based on quality frameworks and standards as well as human rights legislation. For example, when the

³ See <http://www.scribd.com/doc/287338662/School-Puts-Autistic-Boy-in-Cell-Like-Room-QLD> for a recent reported incident involving a child with autism.

Office of the Senior Practitioner in Victoria examined the use of restrictive practices, the *Victorian Charter of Human Rights and Responsibilities 2006* ('the Charter') was used as a framework.⁴

3. The ACT Disability and Human Services Commissioner is one of the three commissioners within the ACT Human Rights Commission. This commissioner is mandated to consider complaints about the provision of services for people with disability and/or for their carers.
4. With the introduction of the National Disability Insurance Scheme in the ACT the territory government made it clear that the ACT is a human rights jurisdiction and human rights protections will continue to be available in the absence of funding relationships between the ACT Government and service providers.⁵

The potential of human rights legislation to improve the lives of people with disability

Here we will respond to the following terms of reference with particular focus on the potential for human rights legislation to provide a quality assurance safeguard for people with disability when interacting with service providers:

1. Possible improvements to current laws and mechanisms for protecting human rights in Queensland;
2. The effectiveness of human rights legislation in Victoria and the Australian Capital Territory;
3. How the legislation would apply to public authorities and other entities.

Illustration of the benefits of human rights legislation to people with disability

In "Annexure C" of this submission we have included a table that outlines case examples from our experiences working in the disability services sector (labelled 'our experiences') and comparative situations drawn from jurisdictions ('labelled other jurisdictions') that have human right legislation as well as the key rights that were used to ensure better outcomes for people with disability.

This table illustrates the benefits of human rights legislation to people with disability.

Public authorities

Human rights legislation in other jurisdictions imposes obligations on each arm of government to give consideration to human rights. The Executive arm of government is described as 'public authorities'. Public authorities are defined to include non-government organisations that are exercising functions of a public nature. This means that private bodies acting as a result of privatisation of government

⁴ See Office of the Senior Practitioner, *'Experiences of restrictive practices: a view from people with disabilities and family carers. A final research report to the Office of the Senior Practitioner,* http://www.dhs.vic.gov.au/___data/assets/pdf_file/0008/608588/osp_experiencesofrestrictivepractices_pdf_0509.pdf.

⁵ See the Explanatory Statement to the *Disability Services (Disability Service Providers) Amendment Bill 2014*.

services are required to comply with the legislation. An example of a public authority given in the Victorian Charter is a private company that is managing a prison.⁶

We understand that both the definition of public authority and also the obligation imposed on public authorities is not sufficiently clear in other jurisdictions.⁷ However, disability service providers have at times been considered to be public authorities. Examples of where the Victorian Charter has been used to ensure that services provided to people with disability are consistent with human rights standards is “Annexure B” to this submission.

As outlined in this submission, many human rights abuses concerning people with disability occur in the context of service provision. Accordingly, we believe that it is essential that services that deliver disability support services, such as Mamre, should be required to comply with Queensland’s Human Rights Act.

We submit that within Queensland’s Human Rights Act:

1. The definition of public authority should be broadly defined, that it include a non-exhaustive list of functions of a public nature and that this list include the provision of disability support services;
2. It should be clear that it is unlawful for a public authority to act in a way or make a decision that is incompatible with human rights.

An accessible dispute resolution process

Here we will respond the following terms of reference with a focus on ensuring that people with disability are able to access a remedy when their human rights are unreasonably limited:

1. The implications of decisions not being consistent with the legislation;
2. The implications of the legislation for existing statutory complaints processes; and
3. The functions and responsibilities under the legislation.

The operation of human rights legislation in other jurisdictions in Australia has provided valuable lessons in relation to ensuring that when people’s rights are unjustifiably limited they have recourse. When considering the experiences of people with disability it is essential that this recourse is accessible, affordable and that it provides a remedy.

As found by the Australian Human Rights Commission and reported in *‘Equality Before the Law: Towards Disability Justice Strategies’*, people with disability face significant barriers when attempting

⁶ See section 4(2)(b) of the Charter.

⁷ See Michael Brett Young, *From Commitment to Culture: The 2015 Review of the Charter of Human Rights and Responsibilities Act 2006* (September 2015), page 55 – 72.

to access justice.⁸ Because of these barriers it is essential that any complaints and redress mechanism relating to Queensland's Human Rights Act should be accessible, affordable and easy to navigate.

We endorse the views of the Human Rights Law Centre in relation to this point and submit that Queensland's Human Rights Act should include:

- (a) A separate cause of action for breaches of the human rights enshrined in the Act;
- (b) The ability to make a complaint to the Anti-Discrimination Commission and for the complaint to be conciliated by the Commission;
- (c) Power for the Anti-Discrimination Commission to investigate and report on systemic human rights issues that it identifies;
- (d) Provision for the Queensland Civil and Administrative Tribunal to receive applications alleging breaches of the Act;
- (e) the full range of judicial remedies, including declarations, injunctions, orders to cease the offending conduct and damages.⁹

Clearly it is essential that the introduction of a Human Rights Act for Queensland be accompanied by a properly resourced education campaign for the public, legislators, judges and public servants. Increased resources will also need to be provided to the Anti-Discrimination Commission.

Conclusion

Mamre strongly supports the introduction of a Human Rights Act for Queensland, we encourage you to actively seek the views of people with disability including people living in institutional settings and we welcome the opportunity to provide further evidence to you at a public hearing.

Thank you again for the opportunity to provide our views to this historic inquiry.

Yours faithfully,



Rachel Drew
Director

⁸ February 2014, www.humanrights.gov.au/our-work/disability-rights/publications/equal-law, accessed 15 April 2016.

⁹ Human Rights Law Centre, "It's time for a Queensland Human Rights Act" Submission to the Legal Affairs and Community Safety Committee's Human Rights Inquiry, 24 March 2016.

Annexure A

The names in the stories below have been changed.

Jeremy's story

Jeremy is a young man with down syndrome. Jeremy was housed in a co-tenancy arrangement. He was given no opportunity to meet his co-tenants prior to moving in. The service provider responsible for managing the house would not allow Jeremy to use video conferencing so that he could have contact with his family (he is non-verbal so the phone is not appropriate).

While living in this house Jeremy was hit, punched and slapped by other tenants. This was reported to the service provider who simply dismissed the reports as normal 'sibling-like' behaviour.

When Jeremy's father complained about not being able to communicate with his son, the abuse and the lack of action from support workers to protect Jeremy from further abuse, the service provider withdrew support and gave notice to Jeremy to leave within 2 weeks. This effectively made Jeremy homeless.

Alice's story

Alice lives in a small town in north Queensland. She is autistic and has been receiving support from the same service provider for approximately 9 years. Alice's behaviour had deteriorated due to ill health and the service provider asked Alice's mother to attend a meeting to talk about it. Alice's mother asked whether Alice could attend the meeting and the service provider agreed saying that it was an informal meeting.

Alice and her mother attended the meeting with the service provider. 6 staff members attended the meeting and a 6-page document detailing Alice's behaviour was read out. The service provider said that they would cease providing services to Alice unless she was medicated. At no time during the meeting was there any indication that anyone was conscious of Alice's presence in the room or of the impact that the complaints would have on Alice.

Robert's story

Robert went to live in a purpose built house with 4 other men. All of these men were labelled as having 'challenging behaviour'. A service provider provided support. The men and their families were given no input into the selection of staff. The families were not encouraged to visit the men. To visit they were required to make an appointment.

Robert came home to his family once a fortnight. It was on one of these visits that his mother noticed Robert seemed to be in some discomfort. When she looked she found large "railroad track" type bruises all the way down his back and bruising all over his body. This was immediately reported to the service provider. No action was taken – they said, "he must have fallen over."

Janet's story

A staff member of a service provider in regional Queensland dragged Janet, a young woman with physical disability, along the ground. Janet sustained significant injuries as a result of this treatment. When Janet's Mum complained to the service provider and the Department they did nothing about it. Janet's Mum's only choice was to find another service provider.

Peter's story

Peter is a Queenslanders with an intellectual disability who has been detained against his will for 35 years, initially at The Park at Wacol and since its opening in 2011, within the Forensic Disability Service (FDS) at Wacol.

Peter has never been convicted of an offence. Peter loves the outdoors and as a young person would sometimes go wandering in the bush, a behaviour that was labelled 'absconding' by authorities and resulted in his incarceration in a mental health, and subsequently a forensic disability, facility (Peter has an intellectual disability and does not have a mental illness or a dual diagnosis).

Frank's story

Frank is a 37 year old man diagnosed with an Intellectual Disability. Family are not involved in Frank's life. He has no friends or unpaid support in his life. He lives in a home with two other people with disabilities, supported in all activities of daily living by a service provider. The two people Frank lives with have some complex health issues. They have difficulty with eating safely and require all of their food to be pureed. Frank has no problems with eating, yet is fed pureed food when eating at home as it is an inconvenience to have to prepare separate meals for the household.

Bob's story

Bob is a 43 year old man with a diagnosis of autism spectrum disorder. He spent his late teens and early adult years residing in a large institutional setting within Queensland. Staff working in the institution were aware that Bob was being repeatedly sexually assaulted by a co-tenant and reported this to their superiors. Bob's behaviour changed and was labelled as "challenging" and a "part of his autism". In his mid-twenties Bob moved out of the institution into a house in the community. He had no say in where he lived or who he lived with. He was placed in a home with the same person who had been repeatedly sexually abusing him. Upon being reconnected with an augmentative communication system a couple of years after moving into the community, Bob expressed that he needed to move out of his home and would hurt the person abusing him. Two weeks later he pushed the abusers head through a wall in his home. It was not until several years later that Bob was supported to move away from his abuser, when a staff member broke the silence and informed Bob's parents.

Angela's story

Angela is a 34 year old lady with a diagnosis of autism spectrum disorder. She has no speech, yet is able to communicate her thoughts clearly using an augmentative communication system. She is being supported to live in a house with two other people with disabilities in a house in the community. Only one of Angela's support workers provides the opportunity for her to be able to communicate. This equates to being able to express herself three mornings a week. Angela loves animals and wanted a pet bird for her room. The service provider did not allow Angela to have a pet, as it was perceived to be too much of an imposition on staff.

Annexure B

1. A person in a supported accommodation unit was not been provided appropriate services. In particular, he was unable to leave the unit to integrate with the community. The advocate invoked the Charter on his behalf, claiming that failure to provide this service was a breach of his freedom of movement. Consequently, services were provided to enable his integration into the community (Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006).
2. A physically disabled person in a corrections facility was frequently deprived of his aids while being moved from one part of the correction facility to another. This would result in him being without aids for weeks at a time and consequently suffering a great amount of pain. The advocate invoked the Charter, specifically right to humane treatment when deprived of liberty. As a consequence, the aids were returned to him and it was assured that they would remain for the period of his sentence (Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006).
3. A physically disabled tenant in public housing objected to work being carried out on his house on a holy day due to his religious beliefs. The contractors threatened to claim a breach of the Residential Tenancies Act. The advocate invoked the Charter on the tenant's behalf and claimed that the threat was in contravention of freedom of thought, conscience, religion and belief. As a consequence, the threat was withdrawn and the work rescheduled (Disability Justice Advocacy: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006).
4. A centre for people with disability was seeking to discharge a number of young people suffering from brain injury on the basis that their two-year term in the Centre had come to an end. The plan was to relocate them to an aged care facility, which would not provide the appropriate services or environment for the young people. The disability advocate raised Charter rights in negotiations with the Care Centre and as a result, the Centre agreed to take into consideration their obligations under the Charter when determining what action should be taken with regard to these young people (Australian Lawyers for Human Rights: Submission for Review of the Victorian Charter of Human Rights and Responsibilities Act 2006).