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SPEAKING UP FOR YOU INC protects and defends vulnerable people with disability through individual advocacy to address injustices and to make a positive and sustainable difference to their lives.

Introduction

Speaking Up For You (SUFY) is an Individual Advocacy organisation for people with a disability in Brisbane and the Moreton Region. SUFY's mission is to protect and defend people with a disability through individual advocacy to address injustices and make a positive and sustainable difference to their lives.

SUFY supports a Human Rights Act.

SUFY was of the belief that the Convention on the Rights of Persons with a Disability that dealt specifically with the rights of persons with a disability would make a significant difference to people with a disability who have been marginalised and discriminated against in our societies. Australian Governments have played a key role in drafting and signing many of the International human rights conventions however a weakness of Human Rights protection for people with a disability in Australia is evident. Some examples that show that human rights protection has not been consistent in Australia are as follows:

Speaking Up For You continues to advocate for individuals with acquired brain injury in health institutions. These institutions are located 20km and 30km respectively from central Brisbane. One has 43 patients and the other 13. In 2006 the Health Minister stated that two facilities operated on a budget of \$ 8 million with \$7.4 million provided by Queensland health and \$600 000 by Disability Services. This equated to \$146 000 per resident. With inflation this equates to \$175 000 in today's money.

SUFY has advocated for 14 people in Jacana since 2005. 12 of these people have been able to leave with adequate housing and support and are living in the community. Their ages ranged from 17 to mid-

**SUFY IS AN INDEPENDENT INDIVIDUAL SOCIAL ADVOCACY
ORGANISATION FOR PEOPLE WITH DISABILITY IN BRISBANE and THE
MORETON BAY REGION**

fifties. One had resided at Jacana for 1 year others had resided there for 13years. These people now live good lives in different situations in the community. Some live with family, some live with other people in the community and some live alone. Our experience has been that some people with an ABI can often live successively in the community without 24 hour supports one-on-one support

Around 2011 our advocacy efforts for individuals in Health Institutions were becoming ineffectual as Disability Services (DS) were no longer prepared to fund supports to these persons in health institutions even if public housing was offered to them. Public Housing was declining to offer housing if (DS) had not offered support.

Five individuals who had completed their rehabilitation had been declined assistance from DS. SUFY was aware that the Convention on the Rights of Persons with Disabilities (CRPD) had been signed by Australia in 2007 and ratified in 2008 with the Optional Protocol signed in 2009. SUFY was hoping that this Convention would assist these individuals in raising their profile and assisting them to exit the institutions in which they were confined. SUFY approached the Australian Centre for Disability Law (ACDL) in New South Wales and asked if they felt that the individual's circumstances warranted a complaint to the United Nations Committee Body under the CRPD. ACDL felt that it did and that they would be willing to assist individuals to make a complaint. The five people and their guardians and families were asked if they wished to participate in a complaint based on the CRPD. All were very interested. The ACDL Director flew to Brisbane to meet the individuals, their families and to see the health institutions. Since the complaint was first undertaken two individuals have withdrawn and have no part in it. The three other individuals proceeded with their complaint. They remain in the health institutions.

Steps must have been taken to Exhaust Domestic Remedies

To bring a communication under the optional protocol it is necessary to establish that steps have been taken to exhaust all domestic remedies. Article 2 of the Optional Protocol states that: The Committee shall consider a communication inadmissible when (d) All available domestic remedies have not been exhausted.

Domestic Remedy, Access to Housing

The individuals had all been assessed by Department of Housing as being eligible for housing on the basis of very high need. Under Australian / Queensland social housing policy guidelines they were deemed to be experiencing tertiary homelessness as living in a hospital and not able to be discharged. Whilst eligible for housing, the Housing Department stated that they had been notified by DS that DS was unable to fund supports to these people. This meant that their application for housing was deferred and no action was taken to source appropriate housing for them. In 2012 one person was actually eventually offered suitable accommodation by Public Housing but when DS stated that there was no capacity to fund disability supports for them, they were advised that the offer of housing was withdrawn. No supports: no housing. No housing: no supports.

The Solicitor acting for the two of the men lodged two separate complaints with the Australian Human Rights Commission alleging that they had been discriminated against on the basis of their disability by the Queensland and Australian Governments in accommodation. Hence in 2012 two of the people and their solicitor and SUFY advocates attended a conciliation meeting with the Queensland Government. The issue of housing and support was not resolved at this meeting as the Queensland Government stated that:

- Discrimination against the men occurred in a program that was a "special measure" in that they only applied to people with a disability. Special measures are exempt from claims of disability discrimination pursuant to s 45 of the DDA Special measures is a program that:
 - (a) *ensure that persons who have a disability have equal opportunities with other persons*
 - (b) *afford persons who have a disability or a particular disability, goods or access to facilities, services or opportunities to meet their special needs in relation to :(i)*
 - (c) *afford persons who have a disability or a particular disability, grants, benefits or programs, whether direct or indirect, to meet their special needs in relation to:*
 - (i) *employment, education, accommodation, clubs or sport; or*

Their solicitor stated that a claim of direct disability discrimination was likely to fail because the men's circumstances were materially different to other social housing applicants because they required disability supports to take up social housing.

- Even if the direct discrimination could be made out under the DDA, the Queensland government would be able to argue that the immediate provision of disability support services would be an unjustifiable hardship on the State.
- It was the case that the men had no ability to pursue the discrimination claim further as they were subject to an administration order and only the Public Trustee could initiate (or authorise such a claim).

Breaches of the CRPD

The solicitor submitted that the 3 individuals were alleging that their human rights had were being violated. In particular Article 14, 18, 19, 22, 26 and 28 of the CRPD.

Alleged Violation of Article 14

Liberty and security of person

1. *States Parties shall ensure that persons with disabilities, on an equal basis with others:*
 - (a) *Enjoy the right to liberty and security of person;*
 - (b) *Are not deprived of their liberty unlawfully or arbitrarily, and that any deprivation of liberty is in conformity with the law, and that the existence of a disability shall in no case justify deprivation of liberty.*

The claim was that article 14, was derived from Article 9 and 10 of the ICCPR and therefore the legal advice was that they were immediately recognisable and came into effect with the CRPD. The persons in health institutions were obliged to live there often because of Guardianship or Administration orders and unable to choose to live elsewhere. The State had refused to provide them with community based accommodation and support services. The State would only provide them with accommodation and support services at the health institution. The allegation of the complainants was that they were segregated and isolated from the community on the basis of their disability. And that this amounted to arbitrary detention.

Alleged Violation of Article 18

Liberty of movement and nationality

1. States Parties shall recognize the rights of persons with disabilities to liberty of movement, to freedom to choose their residence and to a nationality, on an equal basis with others...

Similar to Article 14, it came into force immediately. When the CRPD came into force the persons were deprived of their liberty. The right to choose their residence was in violation of Article 18 and they were compelled to live in a health institution against their wishes.

Alleged Violation of Article 19

Living independently and being included in the community

States Parties to the present Convention recognize the equal right of all persons with disabilities to live in the community, with choices equal to others, and shall take effective and appropriate measures to facilitate full enjoyment by persons with disabilities of this right and their full inclusion and participation in the community, including by ensuring that:

- (a) Persons with disabilities have the opportunity to choose their place of residence and where and with whom they live on an equal basis with others and are not obliged to live in a particular living arrangement;*
- (b) Persons with disabilities have access to a range of in-home, residential and other community support services, including personal assistance necessary to support living and inclusion in the community, and to prevent isolation or segregation from the community;*

Their solicitor stated that article 19 was derived from article 9 and 12 of the ICCPR and applied these pre-existing rights to one of the most pervasive human rights abuses experienced by persons with disability, their segregation and isolation from the community in institutional environments. Immediately realisable. The solicitor states that the individuals were accommodated against their will in a large medically oriented residential institution. Australia was responsible for these violations in spite of its obligations in Article 19.

Alleged Violation of Article 22**Respect for privacy**

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.*

The solicitor alleged that this article was derived from Article 17 of the ICCPR so immediately recognisable. Their solicitor claimed that detention at a health institution on the basis of disability was inherently discriminatory and therefore arbitrary. The individuals are subject to constant interference at the health institution. While they have a single room they have very little privacy from staff and other residents, who are able to and do, enter their rooms at any time whether they are invited or not. Most areas are communal and possessions are at risk of theft. Australia is responsible for these violations and has responsibility to adopt all legislation and other measures so that the rights recognised in the CRPD can be implemented (Article 4).

Alleged Violation of Article 26**Habituation and rehabilitation**

1. *States Parties shall take effective and appropriate measures, including through peer support, to enable persons with disabilities to attain and maintain maximum independence, full physical, mental, social and vocational ability, and full inclusion and participation in all aspects of life. To that end, States Parties shall organize, strengthen and extend comprehensive habilitation and rehabilitation services and programmes, particularly in the areas of health, employment, education and social services, in such a way that these services and programmes:*
 - (a) *Begin at the earliest possible stage, and are based on the multidisciplinary assessment of individual needs and strengths;*
 - (b) *Support participation and inclusion in the community and all aspects of society, are voluntary, and are available to persons with disabilities as close as possible to their own communities;*

Their solicitor alleged that the individuals have completed their initial rehabilitation and do not receive further ongoing rehabilitation services directed to the attainment and maintenance of their abilities. Health Institutions are environments in which all tasks of daily living are done for the individuals and in which they are prevented in performing many self care and daily living tasks resulting in progressive loss of self-care and daily living skills. Some of the individuals have become passive, dependent and institutionalised, due to continued detention in health institutions.

The solicitor stated that the men had been warehoused in health institutions due to lack of availability of community support services. Thus deprived of the right to attain and maintain maximum independence, full physical, mental social and vocational ability and full inclusion and participation in all aspects of life.

Alleged Violation of Article 28

Adequate standard of living and social protection

1. *States Parties recognize the right of persons with disabilities to an adequate standard of living for themselves and their families, including adequate food, clothing and housing, and to the continuous improvement of living conditions, and shall take appropriate steps to safeguard and promote the realization of this right without discrimination on the basis of disability.*
2. *States Parties recognize the right of persons with disabilities to social protection and to the enjoyment of that right without discrimination on the basis of disability, and shall take appropriate steps to safeguard and promote the realization of this right, including measures:*
 - (a) To ensure equal access by persons with disabilities to ...to appropriate and affordable services, devices and other assistance for disability-related needs;*
 - (b) To ensure access by persons with disabilities, in particular women and girls with disabilities and older persons with disabilities, to social protection programmes and poverty reduction programmes;*
 - (c) To ensure access by persons with disabilities and their families living in situations of poverty to assistance from the State with disability related expenses, including adequate training, counselling, financial assistance and respite care;*
 - (d) To ensure access by persons with disabilities to public housing programmes;*

The individual's solicitor alleged to the UN Committee that the individual's right to an adequate standard of living have been subject to ongoing violation due to their detention in a health institution and their inability to maintain and secure appropriate housing and support services that would facilitate their inclusion and participation in the community. The solicitor alleged that their forced accommodation in a health institution does not constitute an adequate standard of living or housing. Article 28 is a progressively recognisable right and in claiming it the solicitor (and the residents) placed reliance on the fact that in spite of Australia's relative wealth and capacity it spends less than half of the amount per person than Sweden or Norway on long term disability related supports.

The UK spend almost double per person. The individual's solicitor states that approximately \$146 000 per annum per resident to operate the health institution and that this is a very substantial allocation of resources that are currently directed, the solicitor submitted to the violation of their human rights. The individuals submitted to the UN that they call for the health institution be closed and the funds currently spent on its operation be spent of community based disability supports that would facilitate their inclusion and participation in the community.

Commonwealth Response

- **The Commonwealth denied that it was involved in violation of any of the individual's human rights.**
- **FACSIA stated that it was not responsible for the men's claim of discrimination because it did not administer Queensland Housing and Homeless services**
- **Federal Department of Health and ageing stated that it was not responsible for the individuals human rights claim. DHA stated that the Queensland Government is not an agent for the Commonwealth for the purposes of administering Commonwealth funding for health and rehabilitation services.**

The complaint has been accepted by the committee body for the CRPD. It has written to the Australian Government and is waiting for its reply. After the Australian Government replies the UN Committee body will make its finding.

Convention on the Rights of People with Disability (CRPD) is a human rights treaty adopted by the United Nations General Assembly in December 2006

The CRPD purpose' is to promote & protect the rights of persons with disability & ensure that these rights are fulfilled

CRPD also aims to promote respect for inherent dignity of persons with disability

"The impetus of deinstitutionalisation of people with disability has lost momentum. With the potential risk of former efforts being lost in the turbulent political climate, it is vital to reignite this agenda and to launch an effective campaign that will serve vulnerable people with disability the best opportunity in the light of the impending NDIS.

A Human Rights Act would take a unified approach to maximise cultural change and educative function. It is evident that cultural change and education is required to ensure people with disability have the opportunity to choose where, how and with whom they live, similar to other people. However many people with disability are forced to live with people they do not know, like or are a threat to them. A series of housing grants, including the Supported Accommodation Innovation Fund, Specialist Disability Accommodation Fund, Accessible and Sustainable Accommodation for people in Residential Aged Care and Elderly Parent Carer Innovation Initiative have resulted in congregate care models (group homes and facilities) for people with a disability. A Human Rights Act that required compliance with human rights at all levels of government policy would provide a safeguard so that Governments cannot simply overlook Human Rights considerations when making policies, programs and funding decisions. A Human Rights Act would be a powerful tool for protecting the human rights of all Queenslanders and for ensuring a more responsive and accountable government.

Case Study

Two best friends anxiously continue to wait for the NDIS, knowing that until it is implemented, their lives remain vulnerable and unpredictable. They both lost the house they shared together when they could no longer cope with the third cotenant who had behaviours of concern. The two women are residing in temporary accommodation and are technically homeless and seriously underfunded.

For years although Mary and Jane both had the same rights as their co-tenant to live in quiet enjoyment of their home under their lease with the Department of Housing, they were powerless to change their co-tenancy arrangement established by the Department of Communities and Disability Services. They also could not change their service provider who did nothing to intervene in the situation caused by the third tenant's behaviours of concern. Even the Community Visitor who confirmed in reports that this situation was serious, could not change the living arrangements.

Giving up their own home in order to find a safe place to live, meant they lost their personal belongings and money they invested over time to make their house a home. It also meant that Mary's high support needs would no longer be adequately funded as the funding was block funded and attached to the house and the service provider rather than to her as an individual. Mary could not take this funding with her.

The Department of Communities and Disabilities advised Mary and Jane that they were not sufficiently funded to enable them to live together and offered only Jane a place in a different co-tenancy. But this required Jane to relinquish her individualized funding and she did not wish to become separated from her best friend.

Mary had always believed she held an individualized allocation of funding for at least 65 hours plus 7 sleepovers. She believed she and Jane who also has a disability could have shared their funding and managed in a home of their own.

Mary was devastated to learn from the Department of Communities and Disability Services in an email that she had never been actually assessed appropriately for any individualized funding package, despite being a client with the Department of Communities and Disability Services for more than a twenty years. Although the Department said she could take a small individualized allocation of less than \$28,000, this could not in any way meet Mary's true needs. Mary has complex support needs.

With the assistance of their advocate Mary and Jane were able to stay together and to convert what little funding they had to a self-directed package in order to get some funded supports while in their interim accommodation. They now rely on informal and unsustainable support.

SUFY supports a Human Rights Act that would be an indicator that both political parties and the community were serious about protecting our key Human Rights obligations, including civil, political,

economic, social and cultural rights. We believe that a Human Rights Act would provide a safeguard so that our politicians don't overlook human rights considerations when making laws. The regulation of restrictive practices in Queensland that allows for persons with intellectual or psychosocial disabilities to be subjected to restrictive practices such as chemical, mechanical, and physical restraints and seclusion may infringe a person's human rights. The United Nations Committee on the Rights of Persons with a Disability recommended that the State party take immediate steps to end such practices

Case Study

Fred has an Intellectual Disability and chronic health conditions including Diabetes and polydipsia which has been identified as a contributing factor of Fred's behavioural outbursts.

Fred had spent many years living in private hostel accommodation with up to 40 other residents, various shared accommodation placements while being supported by a non-government service provider and in a locked facility where he received support through AS&RS. The living environments that Fred has been subjected to over the years has had a significant role in contributing to Fred's behavioural outbursts.

Fred was placed under restrictive practices in 2005 while being support in a group home; however documentation suggests that the service provider did not implement the strategies outlined in the positive behavioural support plan. Fred's behavioural outbursts continued and in 2009 he was placed at Wacol; In a locked facility with another person who presented with challenging behaviours. It became evident that this living environment was not conducive to meeting Fred's social, physical and mental wellbeing Fred experienced severe anxiety and began to self-harm.

Despite this Fred remained in this situation for over 12 months and was subjected to containment, seclusion restricted access to objects, physical restrain and chemical restrain. In 2010 Fred was moved into a separate unit within the TEAS complex. Fred's situation greatly improved as he was now living on his own with a separate living area with one on one support. It was noted by support workers that Fred stopped exhibiting many of the previous negative behaviours and started to access the community on a regular basis. A decision was then made by Fred's guardian that he trial a co tenancy arrangement in the community This decision was not supported by Fred's advocate as the advocate obtained information prior to the trial that the person Fred would be living with displayed behaviours that would place Fred at risk of physical abuse. This placement lasted less than a week following an incident where Fred was physically abused by his cotenant. Fred was placed back in TEAS.

Because of the administrative priorities of Disability Services Fred was moved from this living situation to another vacancy within TEAS. This placement lasted 7 days and then Fred was again Fred was moved into yet another vacancy within the TEAS environment but this time he was required to share his accommodation with another young man. Fred was subjected to violent and intrusive behaviour from his cotenant. Fred became intimidated by his cotenant and was often found in his bed room not wanting to come out. He lost a considerable amount of weight and began to show signs of increased anxiety.

After 3 years of being entering the TEAS a decision was made by QCAT that Fred no longer required any restrictive practices. However Fred continued to reside at the Wacol TEAS isolated from the community and sharing a co tenancy where he is subjected to violent and intrusive behaviour from his cotenant. In 2014 Fred died never having an opportunity to leave the TEAS environment as Disability Services could not find funding to support Fred in the community.

Five individuals who had completed their rehabilitation had been declined assistance from DS. SUFY was aware that the Convention on the Rights of Persons with Disabilities (CRPD) had been signed by Australia in 2007 and ratified in 2008 with the Optional Protocol signed in 2009. SUFY was hoping that this Convention would assist these individuals in raising their profile and assisting them to exit the institutions in which they were confined. SUFY approached the Australian Centre for Disability Law (ACDL) in New South Wales and asked if they felt that the individual's circumstances warranted a complaint to the United Nations Committee Body under the CRPD. ACDL felt that it did and that they would be willing to assist individuals to make a complaint. The five people and their guardians and families were asked if they wished to participate in a complaint based on the CRPD. All were very interested. The ACDL Director flew to Brisbane to meet the individuals, their families and to see the health institutions. Since the complaint was first undertaken two individuals have withdrawn and have no part in it. The three other individuals proceeded with their complaint. They remain in the health institutions.