
**Written Submission to the Queensland
Parliament Human Rights Inquiry**



Submitted To:
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Contents

Who we are	3
What we believe and value	3
Why the rights of people with disability matters to us all	4
The right to make own lives with equality under the law	6
Access to advocacy and practical, timely remedy	7
Our recommendations	10

Who we are

Queenslanders with Disability Network, PTY (QDN) is an organisation of, for, and with people with disability. The QDN's motto is 'nothing about us without us'.

QDN exists to empower people with disability to be fully included as citizens in the social and economic life of the community. To do this, we work to promote and maintain active, vibrant networks that inform our work, and ensure those with limited or no voice are heard and valued.

The strength of QDN is the collective voice of Queenslanders with disability of every age, ethnicity, indigeneity, identification, orientation, belief and experience. The authenticity and validity of our experience is due to our differences and diversity as well as what we share in common. Together we bring the experience of people with physical, intellectual or sensory disability living in urban, regional, rural and remote Queensland.

We work together to learn from the collective experiences, values and wisdom of people with disability. Our mission, motto, values and beliefs drive the work of QDN and determine which issues to take up, and where to best direct energy and resources. They also decide which issues and activities we don't do.

Through the QDN our voices are organised through a state-wide member's network where we are able to receive information, provide feedback and develop collective views from a consumer perspective to inform systemic policy feedback to Government and peak bodies. QDN also provides information and referral support to people with disability. In other words, our work is aimed at helping one another as well as those within the Queensland communities in which we live. We value human difference and diversity and build mutual respect through openness and fellowship.

What we believe and value

QDN's work in providing feedback and input into systemic policy issues is based upon the organisation's core values and the place of people with disability in an inclusive Australian society.

We, the members of QDN believe that:

- all people with disability have a right to a place in the community and have contributions to make to community. This is as empowered, free citizens who are as valued, present, participating and welcomed as members of any dynamic and diverse society
- the place of people with disability in the community is not just about people with disability having a house in the community. Core to this is that they are welcomed in the community as ordinary citizens, where they are genuinely given opportunities to

contribute and actively participate. People with disability need to be in communities where their individuality, their talents and their lived experiences of disability are recognised and acknowledged

- culturally and historically, people with disability are not afforded the same value, opportunities or access to community life
- any inclusion in community for people with disability is conditional and vulnerable to withdrawal
- many people with disability in Queensland are excluded from the most basic experiences of ordinary lives
- current exclusionary practices are unacceptable and must be challenged
- these issues affect not only people with disability but the whole community
- the responsibility is shared. It lies within government (federal, state and local) and the community at large, to ensure that people with disability have a place and are resourced to belong in community.

Above all, we believe in, and seek to model, a human rights approach that recognises disability as a social issue. We seek to make positive change in the lives of every individual as the ideal would be a Queensland where Human Rights are accorded to all Queenslanders equally and fairly. Though we are far from reaching this ideal, we are hopeful, even about the most complex challenges and are here for the long term.

It is through the power and validity of this collective voice and these interests that this submission is made.

Why the rights of people with disability matters to us all

The United Nation Convention of the Rights of People with Disability (2006) (CRPD) provides the international context for safeguarding and upholding the rights of people with disability. The principles of the CPRD and articles form the basis for national and state based policy frameworks for disability, and a foundation for building a framework that has developmental, preventative and corrective measures to safeguard the rights of people within the scheme and ensure access to quality supports and services.

In reviewing the progress made through the United Nations Convention on the Rights of People with Disability, the Office of the High Commissioner for Human Rights recalled that historically, disability had been considered a 'personal condition' or 'individual deficit' which justified a societal response to limit access to participation in social life. The Commission stated that;

'When disability is perceived in this way, society's responses are restricted to only one of two paths: individuals can be; 'fixed" through medicine or rehabilitation (medical

approach) or they can be cared for, through charity or welfare programmes (charity approach);

... According to this old model, the lives of persons with disabilities are handed over to professionals who control such fundamental decisions as where they will go to school, what support they will receive and where they will live....

The decision to add a universal human rights instrument specific to people with disability was borne of the fact that, despite being theoretically entitled to all human rights, people with disability are still, in practice, denied those basic rights and fundamental freedoms that most people take for granted....”¹

We now understand disability to be a social issue, and believe that to address the Human Rights of people with disability; this understanding must be recognised in legislation. The practicality and usefulness of any Human Rights legislation in relation to our needs as individuals with disability can only be measured by how these Rights enhance access to opportunity to make of our lives what we will:

- to make our own decisions, choices and even mistakes - to have access to the opportunities and experiences that most would consider ordinary;
- to live where, how, and with whom we choose; and to have our potential valued and cultivated through education, training and employment;
- to have access to the supports and resources necessary to allow us to manage the limits a disability can impose, so as to be able to engage our time and interests to contribute to the economy and society as a person of value.

Viewing disability from a human rights perspective will involve an evolution in thinking and acting by the State of Queensland and all sectors of society. Its implementation will in time foster an attitudinal and cultural change, whereby persons with disability may no longer be considered as being recipients of charity, government services or objects of others’ decisions, but holders of rights. It will foster respect, support and celebrate human diversity by creating the conditions that allow meaningful participation to issues that affect them personally by a wide range of persons, including persons with disability or who are also disadvantaged or marginalised.

There is strong evidence a human rights approach can:

- empower marginalised and vulnerable individuals, communities and groups;

¹ From Exclusion to Equality: Realizing the rights of persons with disabilities – UN OHCHR IPU Handbook for Parliamentarians No 14 2007

- provide a framework for the development of more effective, efficient and holistic public and social policy;
- promote more flexible, responsive, individualised and 'consumer friendly' public and social services;
- challenge 'poor treatment' and thereby improve the quality of life of marginalised and disadvantaged individuals and groups; and assist in the development of more effective social inclusion and poverty reduction strategies

The right to make own lives with equality under the law

The National Disability Strategy 2010-2020 endorsed by all levels of government, provides the national policy framework and building blocks to achieve the vision of an inclusive Australian society that enables people with disability to fulfil their potential as equal citizens.

The National Disability Advocacy Framework (NDAF) is the structure governments' work within to provide advocacy and advocacy support to people with disability in Australia.

The NDAF is guided by principles set out in the Convention on the Rights of Persons with Disabilities (CRPD), the National Disability Strategy, the National Disability Agreement and Commonwealth, State and Territory Disability Services legislation. The Framework is particularly relevant now due to the significant changes to the disability landscape being brought about by the National Disability Insurance Scheme.

Our greatest hope for the implementation of the National Disability Insurance is that it brings not only the transformation of the economic and social environment within which the supports and services we need are in place and accessible, but that it also helps to bring about the cultural, social, and perceptual changes needed to bring about a more inclusive society. It is through a change to individual and collective perceptions that the consciousness of the whole will be raised.

However, without a Human Rights legal instrument to specifically address legal definitions of personhood, legal capacity and substantive rights; these changes will not be sufficient to transform the fundamental assumptions on which laws, policies, programmes and procedural administrative practices are based. Furthermore, a Human Rights Act for Queensland must be accompanied by a system of advocacy and support to assure access to practical and timely remedy to those whose rights have been breached.

A leading authority on international and comparative disability law and policy, Professor Gerard Quinn explains that 'legal capacity' is key to the realisation of equal recognition before the law (Article 12 of the CRPD) for people with disability as it:

'enables persons to sculpt their own legal universe – a web of mutual rights and obligations voluntarily entered into with others. So it allows for an expression of the will in the lifeworld. That is the primary positive role of legal capacity. Legal capacity opens up zones of personal freedom. It facilitates uncoerced interactions....And this has been largely denied to persons with disabilities throughout the world. It follows to me that this is the primary added value of Article 12 – to bulldoze away barriers to the lifeworld in the form of outdated legal incapacity laws

I see Article 12.2. – which secures a right to enjoy legal capacity on an equal basis with others in all aspects of life' as advancing personhood both positively and negatively. Positively in the sense that it should be used to open up opportunities for free interaction in the life world through contract. To me this is the most important constructive function of Article 12.2. And of course it plays a role to fend off unwarranted intrusions of third parties and indeed the State itself. This is also achieved by other Articles in the convention.²

The need for advocacy and practical, timely remedy

Victoria and the ACT are currently the only states in Australia that have a Human Rights Act. The experience of these states is useful in piloting the work of the Queensland in devising an Act with sufficient access to practical, timely remedy to Queenslanders whose rights have been breached. On 26 July 2016, the ACT Commissioner of Human Rights, Helen Watchirs addressed this matter in an article she co-wrote with Sean Costello originally published in the Canberra Times³:

We are frequently contacted by people alleging that a Government agency has breached the Human Rights Act. The only assistance we can offer is to talk them through a complex and expensive Supreme Court legal process. A more accessible resolution process would truly embed a human rights culture in the ACT community.

Courts and tribunals below the Supreme Court offer applicants and the Government more cost-effective paths to dispute resolution. They are familiar with specific subject matter, and are thus able to weigh up the impact of an agency's human rights breach in light of all relevant factors in the proceeding. In creating the ACT Civil and Administrative Tribunal, Attorney-General Simon Corbell noted that it would promote access to justice, and reduce costs for a range of legal issues including tenancy,

² Quinn, Gerard; Personhood & Legal Capacity. Perspectives on the Paradigm Shift of Article 12 - CRPD

³ Courts' role in safeguarding human rights is missing piece of the puzzle. ACT Human Rights Commission. Sourced 13 April 2016 [hr.act.gov.au/humanrights/courts-role-safeguarding-human-rights-missing-piece-puzzle/]

discrimination, sexual harassment, small civil claims, guardianship and mental health. Allowing individuals to commence human rights complaints in ACAT would make the process simpler, cheaper and easier.

Our experience demonstrates the most common breach of our rights is committed through the actions and decisions of government agencies, organisations and entities whose business and responsibility is the provision of support to people with disability.

Often the hours of our day are consumed fighting battles with government agencies and their contracted providers, whose allocation processes and decisions have profound impact on our lives, often confining us to arrangements and environments which we do not want and would not choose. Often we find that the imposition on our rights is due to the execution of process designed to afford the prioritisation of the agency's interests over our own interests, or assuming the right to make those decisions on our behalf. Sometimes, we find it is due to a decision made without affording the barest of access to administrative decision making principles that would permit us to examine the reasons and information on which the decision was made. Occasionally, we find it is the discretionary treatment of an employee, whose actions belie a culture of values and perceptions set by the employer.

Queensland Human Rights legislation must provide practical, timely remedy to the individual whose rights have been breached. Without this access, the Human Rights Act will fail to affect the most fundamental of its aims – to afford the individual a simple means to remedy the over-reach that systems, organisations, agencies and entities impose upon their human rights. The presence of such legislation is all the more urgent with the ongoing roll-out of the National Disability Insurance Scheme (NDIS); where the pressures of cost and changing political priorities will predictably come up against the rights of the people with disability it is intended to support.

To be recognised as a human person with 'legal capacity' in a legislative Human Rights framework, each of us have the right to an expression of will and preference. To avail the equality and expression of will to people experiencing marginalisation and disadvantage, however, the legislation must be supported by a system of advocacy that can 'lift' the odds for those with the least power to do so for themselves.

Finally, to afford the individual the means to address an imbalance of power, the endowment of Human Rights must accord to the individual human person. Legislation and law must prohibit the redefining of the human person, so as to prevent the usurping of these Rights by corporations, agencies, entities and organisations.

To end with the words of ACT Commissioner Watchirs:

It is a sign of the robust human rights culture we have in the ACT that the government and Legislative Assembly not only allow, but encourage, transparent debates about how we make our laws. However, that is only part of the potential rights protection we are entitled to enjoy. Until the ACT's courts and tribunals provide an accessible and meaningful avenue for our parents, children, neighbours and friends to test how well they have been treated by our government, we won't fully realise the potential of human rights legislation.

We thank you for the opportunity to make submissions to this Inquiry, and support the adoption of a Human Rights Act for Queensland, provided that the mechanisms, structures and supports that accompany the Act afford the individual to evoke his or her rights through practical, timely remedy.

In summary we ask that the proposed legislation and its supporting systems:

- a) ensures that we, as people with disability are recognised as citizens with legal capacity and substantive human rights, active in the decisions that affect our lives, empowered to participate as valued members of society with equality under law.
- b) addresses societal barriers that confront us as the main obstacles to the full enjoyment of our human rights. Such confronting barriers include physical obstacles, the attitudes and prejudices of society, policies and practices of Governments and their contractors and state owned subsidiaries and the structures of the health, welfare and education systems.
- c) clarifies the obligations and legal duties of the State of Queensland and State owned entities and their contractors to respect and ensure the equal enjoyment of all human rights by all people with disability, and provides to those with greatest disadvantage or marginalisation the advocacy and supports necessary to ensure their rights and preferences contribute to the decisions that affect their lives.
- d) creates appropriate mechanisms for the collection of data and for review relating to the identification of adaptations that need to be made to legislation, policies and practices and to identify and reinforce areas where protection of our rights as people with disability are being adversely affected.

Please review and consider our submission and our Recommendations

Queenslanders with Disability Network

Our recommendations

That the Act:

- 1) Restricts the powers of the executive to behave in a way that unjustifiably limits our rights as people with disability, also
- 2) Ensures that Parliament has regard to us as people with disability when making law.
- 3) Guarantees rights under law and supports our Human Rights as people with disability through consistent, coordinated and continued actions across all ministries, persons, bodies and/or all forms of state owned enterprises, in the performance of any public function, power or duty under the Act,
 - i. *The obligation to respect* – the State of Queensland, its contractors and state owned subsidiaries to be obliged to respect the inherent dignity⁴ and individual autonomy⁵ of people with disability and refrain from interfering with the enjoyment of the rights of people with disability without adequate cause. (For example, the Housing Authority must not compel persons with disabilities to move house without their consent to a different house for no other reason than departmental priorities or efficiencies, or exclude a person from school on the basis of a disability)
 - ii. *The obligation to protect* – the State of Queensland to be obliged to be diligent in protecting people with disability from mistreatment or abuse including prevent violations of our rights by third parties. (For example, the State must require private employers to provide just and favourable working conditions for persons with disabilities, or require a state owned enterprise such as electricity to negotiate with a person

⁴ **Inherent dignity** refers to the worth of every person. When the dignity of persons with disability is respected, their experiences and opinions are valued and are formed without fear of physical, psychological or emotional harm.

⁵ **Individual autonomy** means to be in charge of one's own life and to have the freedom to make one's own choices. Respect for the individual autonomy of persons with disability means that persons with disabilities have, on an equal basis with others, reasonable life choices, are subject to minimum interference in their private life and can make their own decisions, with adequate support where required. The principle underpins many of the freedoms that it explicitly recognises, such as the freedom from non-consensual medical intervention and the requirement that health care should be provided on the basis of free and informed consent. From this perspective, for example, a person with mental disabilities should be offered a range of options for mental health care such as psychotherapy, counselling, peer support and psychiatric medication, and should have the freedom to make a meaningful choice based on personal preferences.

with disability without the threat of electricity disconnection used to ensure compliance).

- iii. *The obligation to consult* – All the State of Queensland, its contractors and state owned subsidiaries to be obliged to consult with persons with disability and/or through their representative organisations, when developing and implementing legislation and policies that affects our rights as people with disability;
- iv. *The obligation to fulfil* – All the State of Queensland, its contractors and state owned subsidiaries to be accountable for how legislative, administrative, budgetary, judicial and other actions have contributed to the full realisation of our Human Rights in Queensland to include our right to⁶:
 - a) The right to equal recognition before the law;⁷
 - b) The right to liberty and security of the person;⁸
 - c) Freedom from torture;⁹
 - d) Freedom of movement;¹⁰
 - e) The right to education;¹¹
 - f) The right to health;¹²

⁶ The following reflect the convention set by the “Monitoring the Convention on the Rights of Persons with Disabilities Guidance for human rights monitors: Professional training series No. 17”. Office of the High Commissioner for Human Rights, New York and Geneva, 2010

⁷ **The right to equal recognition before the law** requires, inter alia, eliminating disability as a ground for depriving someone of his or her legal capacity—for example, by allowing unexamined the practice of appointing guardians who make decisions on behalf of persons with disabilities and, instead, providing support to persons with disabilities so that they can make their own decisions;

⁸ **The right to liberty and security of the person** requires, inter alia, monitoring psychiatric and other institutions to ensure that no one is placed there on the basis of their disability, including mental and intellectual disabilities, unless with their free and informed consent

⁹ **Freedom from torture** to require, inter alia, examining whether institutions resort to practices and treatments such as electroshock therapy and/or restrictive practices for persons with disabilities, or impose intrusive or irreversible medical treatments aimed at correcting the disability against a person’s will;

¹⁰ **Freedom of movement** to require, inter alia, examining whether the State withholds travel documents from someone on the basis of his or her disability;

¹¹ **The right to education** to require, inter alia, examining whether pupils and students with disability are not excluded from the general education system on the basis of their disability, that reasonable accommodation of the pupil’s requirements is provided in the general education system and that effective individualised support measures are provided to maximise academic and social development consistent with the goal of inclusion;

¹² **The right to health** to require, inter alia, not only an examination of whether there is access to essential medicines but also whether treatments are provided on the basis of the free and informed consent of the person with a disability;

- g) The right to work;¹³
 - h) The right to an adequate standard of living;¹⁴
 - i) The right to participate in public and political life;¹⁵
 - j) The right to participate in cultural life.¹⁶
- 4) ensures that relevant legal institutions enforce respect for our Human Rights as persons with disability in ways that include:
- a) a clear and unambiguous discretionary provision for Courts to make formal Declarations of Incompatibility in circumstances that a Bill is inconsistent with the Human Rights Act, or that it imposes limits or that it unjustifiably infringes on human rights and particularly the rights of people with disability, requiring that the Parliament or the relevant decision-maker responds to a Declaration within a time specified by the Act;
 - b) Provision for the Courts to invalidate or refuse to apply any Parliamentary enactment it finds inconsistent with the Human Rights Act;
 - c) provision for an appropriately and adequately resourced Parliamentary joint standing committee to review all legislation to identify compliance or noncompliance with Human Rights and particularly the Human Rights of persons with disability, for the purpose of informing Parliament;
 - d) provision for independent scrutiny by officials within the Department of Justice of all Bills that are about to enter Parliament, with the purpose of providing a report of their conclusions to the Attorney General, who will subsequently determine its compatibility with Human Rights and

¹³ **The right to work** to require, inter alia, examining whether labour laws prohibit discrimination in the workplace and require employers to take positive steps to ensure physically accessible buildings as well as accessible technology such as computer and Internet technology for those persons with disability that may require it;

¹⁴ **The right to an adequate standard of living** to require, inter alia, an examination of social programmes and policy frameworks, poverty reduction strategies, national development plans and projects, to ensure that they include the promotion and protection of the right to food, clothing, housing and other rights of people with disability

¹⁵ **The right to participate in public and political life** to require, inter alia, election monitoring to ensure that election materials are provided in accessible formats (such as written materials in Braille and television advertisements with sign-language interpretation) and that voting booths are accessible (for example, with ramp access);

¹⁶ **The right to participate in cultural life** to require, inter alia, examining whether sign languages and deaf culture are explicitly recognised and supported and whether copyright protection does not inhibit access to cultural materials such as talking books.

particularly the Human Rights of persons with disability, and report any such inconsistency by means of Parliamentary Paper;

- e) the obligation of Parliament to amend legislation or proposed legislation referred to it to be consistent with Human Rights and particularly the Human Rights of persons with disability
- f) provision for a cause of action on Human Rights for people with disability to be brought before the Courts for any alleged breaches of human rights;
- g) provision for self-representing litigants to champion their own cause before a court (or a lesser court similar to the small claims court);
- h) the granting of wide-ranging discretionary power for the Courts to determine Human Rights matters from a wide range of appropriate remedies;
- i) establishing an adequately resourced independent Queensland Human Rights Commission with powers to investigate human rights violations at its own direction, bring action in relation to human rights violations, advocate on Human Rights for people with disability and provide responses to the Executive and state instrumentalities on the consequences of their actions or activities in relation to the Human Rights of people with disability;
- j) the non-discriminatory treatment and equality in access to justice, in treatment by the courts and by the police