



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

Justice & OLAB 2014
Submission 017

The Research Director
Legal Affairs and Community Safety Committee
Parliament House
George Street
Brisbane Qld 4000

Email: lacsc@parliament.qld.gov.au

18 December 2014

Dear Sir/Madam

Queensland Advocacy Incorporated thanks the Legal Affairs and Community Safety Committee for this opportunity to contribute to the Committee's detailed consideration of the **Justice and Other Legislation Amendment Bill 2014**.

Queensland Advocacy Incorporated has based this submission on its extensive casework and other experience working with people with disability, and on our own research, observations, interactions and conversations with people with disability.

Yours sincerely,

Michelle O'Flynn

Director

Ph: (07) 3844 4200 or 1300 130 582 Fax: (07) 3844 4220 Email: qai@qai.org.au Website: www.qai.org.au

2nd Floor, South Central, 43 Peel Street, STH BRISBANE QLD 4101

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

Summary of Recommendations

- Clause 80 should be redrafted to allow the Minister to allocate funds to law reform activities.
- Law reform continues to be a critical need for people with disability
- Law reform is optimal utilisation of resources
- Law reform is integral to frontline service delivery
- Legal professionals and paralegals in CLCs are in a prime position to observe patterns of disadvantage, bottlenecks, inequities and injustices that can only be addressed by legislative and policy reform.
- By alerting government that a particular problem is widespread, a service can assist to remedy a problem faced by many individuals throughout the same jurisdiction, delivering or obviating the need for that same frontline service to thousands, or more.
- Failing to utilise and capitalise on that information is not only inefficient, and ineffective, it is failure to be accountable to government and to the public.
- Targeted law reform *reduces* the need for frontline services and makes economic and social logic.

Dear Committee,

Re: Justice and Other Legislation Amendment Bill 2014 – Clause 80

We offer the following points in relation to the Justice and Other Legislation Amendment Bill 2014 (Bill) currently before the Queensland Parliament, particularly in relation to Clause 80, which seeks to amend s 289 of *the Legal Profession Act 2007* (Qld).

Background

The *Legal Profession Act 2007 (Qld)* currently provides:

Section 289 {1) The chief executive may make payments from the fund to or for any of the following-

{h) grants approved by the Minister for any of the following purposes-

{i) the advancement of law reform;

{ii) the collection, assessment and dissemination of information concerning legal education, the law, the legal system, law reform, the legal profession and legal services;

{iii) facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community.

The Bill would amend the current sub-section (h) by removing sub-sections (h)(i) and (h)(ii) and retaining h(iii) only, so that it would read as follows:

Section 289 (1) The chief executive may make payments from the fund to or for any of the following-

(h) facilitating access to the legal system, legal information and education and legal services for members of the community, particularly economically or socially disadvantaged members of the community.

As drafted, the proposed amendment will prevent the Minister from the grant of funds to community organisations, including community legal centres, for the purpose of undertaking law reform, policy and consultation work.

Law reform continues to be a critical need for people with disability

The National Disability Insurance Scheme promises much but it will by no means put an end to discrimination and inequity. Systemic advocacy for law reform will still be necessary so that people with disability can access the whole world of employment, education, recreation, appropriate and affordable housing, health and citizenship. The Productivity Commission's 2014 *Access to Justice Arrangements Report No. 72* acknowledges this need for advocacy and law reform in its recommendation 21.1:

The Australian, State and Territory Governments should provide funding for strategic advocacy and law reform activities that seek to identify and remedy systemic issues and so reduce demand for frontline services.

Organisations like QAI monitor disability service delivery and the implementation and application of disability-specific laws and policies. We listen to what people with disability tell us about their lives and how they interact with institutions and services that provide education, housing, income support, personal care and support, guardianship, administration and with the criminal justice system. QAI utilises a combination of human rights standards, statistical data, case studies and everyday experiences of people with disability of discrimination and inequity to convince others that reform is desirable, possible and necessary.

There are few disability organisations in a better position to advocate for law and policy reform than ones that provide direct legal and advocacy services to people with disability. Queensland Advocacy Incorporated has two legal services: the Human Rights Legal Service that specialises in guardianship, administration and advocacy in relation to restrictive practices and disability forensic orders, and the Mental Health Legal Service, that provides advice and representation to clients on Involuntary Treatment Orders and Forensic Orders. In addition QAI runs the LPITAF-funded Justice Support Service, providing advocacy and support to vulnerable clients with intellectual disabilities and other forms of capacity impairment.

QAI is host for the teleconferences of the Combined Advocacy Groups of Queensland, with member organisations involved in frontline advocacy and legal support to people with disability all over Queensland. Some of those organisations are also funded to perform systemic advocacy and some are accredited CLCs.

Through this wealth of direct and indirect contact QAI is in a unique position to gather data, develop insights and identify gaps and oversights in the operation of legislation and policy that is relevant to our clients. By taking those insights and using them to formulate law and policy reform proposals for government we can contribute to the prevention of harm as well as to its symptoms.

We therefore offer the following points in relation to the Justice and Other Legislation Amendment Bill 2014 (Bill) currently before the Queensland Parliament, particularly in relation to Clause 80, which seeks to amend s 289 of *the Legal Profession Act 2007* (Qld).

The Review does not expressly recommend it.

One of the justifications given in the Bill's Explanatory notes for removing the law reform provision from the *Legal Profession Act 2007* (Qld) is 'to facilitate the implementation of recommendations resulting from the Review of the allocation of funds from the Legal Practitioner Interest on Trust Accounts Fund'. With respect to the drafters of the Bill, the Review makes no express recommendation that LPITAF funds be directed away from law reform.

The Review makes recommendations for strengthening frontline service delivery to vulnerable people, based on submissions to the Review by Caxton Legal Centre, the Queensland Association of Independent Legal Services (QAILS), Youth Advocacy Centre (YAC) and a number of other CLCs currently receiving LPITAF funding, and in line with the Qld Government's Strategic Objectives and those of the Department of Justice and Attorney-General stated in the Review document.

Neither the Review recommendations¹ nor the review itself² suggest that law reform should not be part of LPITAF-funded CLC activity. The recommendations stress that the Strategic Objectives for the allocation of LPITAF funds should be 'Frontline Service Delivery' and 'Accountability', including the promotion of efficiency, effectiveness, and cost effectiveness.

Law reform is integral to frontline service delivery

We submit that law reform activities are no less a part of frontline service delivery than meeting with and advocating for clients and appearing in court. Making submissions and representations to government are both critical to and a natural extension of frontline service delivery:

- A single instance or a few instances of a particular legal issue, problem, bottleneck etc revealed through direct client contact may indicate that the particular problem affects many more individuals on a much larger scale. When acting individually a service can provide assistance to perhaps a few hundred clients per annum. By alerting government that a particular problem is widespread, and by legislators responding accordingly - i.e. by acting systemically - that same service can help to remedy a problem faced by many individuals throughout the same jurisdiction, delivering or obviating the need for that same frontline service to thousands, or more.
- Clients have their own views about how their legal issues may best be dealt with, but they may not be proficient in articulating those views to government. CLCs can assist clients to articulate those views that may otherwise be lost.
- Clients are commonly aware of the nature of their own legal issues but generally are not aware that other clients are in the same or similar situation. CLCs are in a position to identify when a personal problem becomes a community problem and communicate it to government.

¹ http://www.justice.qld.gov.au/__data/assets/pdf_file/0006/178719/lpitaf-review-recommendations.pdf

² <http://www.justice.qld.gov.au/corporate/sponsorships-and-grants/funding/legal-assistance-services/2012-review-of-the-allocation-of-funds-from-the-legal-practitioner-interest-on-trust-accounts-fund>

- Legal professionals and paralegals in CLCs are in a prime position to observe patterns of disadvantage, bottlenecks, inequities and injustices that can only be addressed by legislative reform. It is an inefficient use of resources and a lost opportunity when legal professionals and services in general are not permitted to analyse and synthesise information gleaned from client contact.

Law reform is optimal utilisation of resources

It is financially irresponsible not to utilise knowledge and resources gained from the casework done by CLCs. Federal and state governments invest an enormous amount of money in providing equitable access to legal resources, but to exclude those CLCs from engaging in law reform activities is to squander the benefits from that investment.

From time to time government seeks information and advice that can only be gleaned from its consultation with those who work at the coal-face. To discontinue that practice would exclude those be placed to provide expert advice and case examples.

Making submissions and representations to government is efficient and cost effective and in line with the Strategic Objectives promotes the accountability of CLC's:

- The provision of advice and representation to clients generates valuable capital in the form of facts, figures, statistics, data and synthetic analysis and judgements gleaned from that data.
- Law reform activity is appropriate and efficient use of that data
- Failing to utilise and capitalise on that information is not only inefficient, and ineffective, it is failure to be accountable to government and to the public.
- Targeted law reform *reduces* the need for frontline services.

Rights, justice and equity above politics.

Community Legal Centres engage in law reform not to advance any party political agenda. They are concerned with the advancement of justice and equity. QAI is not aligned to any political party. QAI endeavours to contribute to legislative and policy processes without fear or favour, and for the advancement of the interests of people with disabilities. QAI gives credit where credit is due, and makes critical contributions to legislative processes where relevant to our mission. QAI's contributions always focus on micro-reforms to particular laws and particular policies rather than on the governments who formulate those laws on policies.

While in opposition the state LNP argued strongly in favour of maintaining the separation of the Public Advocate and the Adult Guardian. QAI supported the opposition's position. Through QAI's extensive casework assisting clients in matters relating to guardianship, administration, forensic disability and the use of restrictive practices and involuntary treatment orders, we were acutely aware of the need for accountability in relation to the delivery of services to people with diminished capacity in Queensland. Only an independent Public Advocate could resolve the conflict of interest we witnessed in other states where the Public Guardian has the dual advocacy/guardianship function. The Public Advocate continues to maintain its statutory independence.

Conclusion

The proposed amendment will severely hamper efforts to improve laws and policies that impact negatively upon the lives of vulnerable people, and will become costly to individuals and communities in the long term.

Law reform work can take a variety of forms, from undertaking test cases to individual advocacy that broadens systemic advocacy, the development of position statements, submissions of research papers, collaboration and reference group participation and the running of public campaigns. All these techniques can help to improve the lives of vulnerable people and CLCs have a future in furthering this outcome.

More broadly, targeted law reform plays an important part in the development of Australia as a civil society. As a result of systemic reform advocacy the following reforms have been implemented.

- Queensland's guardianship legislation - firmly based in principles of self-determination and the envy of other jurisdictions
- the Commonwealth and State and Territory Disability Agreement
- the Queensland Government's scrapping of its plan to make substantial cuts to the TSS (taxi subsidy to people with disability) - cuts that would have confined thousands of Queenslanders to their homes for all but a handful of days each year
- the Queensland Government's introduction of legislative protection for tenants (1994) and rooming house residents (2008)
- the introduction of the Domestic Violence (Family Protection) Act 1989
- changes to the Coroners Act to allow Coroners to investigate systemic issues, including the requirement that any death in an institution be investigated
- making social security payments available to people in psychiatric confinement
- ending mandatory use of long-term solitary confinement in prisons
- police investigations into various criminal acts in hostels, including suspicious deaths, theft, torture and people being forced to work and being used as sex slaves.
- Australia's signing to and Queensland's adoption of the Convention on the Rights of Persons with Disabilities
- the NDIS - a bipartisan Federal Government initiative to introduce 'no fault' funding for self-directed disability support
- the Queensland Government retention of the Public Advocate and the Adult Guardian as separate statutory entities
- bi-partisan support and the rollout of a National Disability Insurance Scheme

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