

SPEECH TO QUEENSLAND ADVOCACY INCORPORATED  
ANNUAL FUND BREAKFAST  
7 A.M., FRIDAY, 20 NOVEMBER 1998

MERCURE HOTEL, NORTH QUAY, BRISBANE

I am happy and honoured to have the opportunity to launch QAI's annual appeal at this the inaugural annual fund breakfast. It is delightful to see so many of you here, competing as I am with John Snow and Terry Jenner speaking at the Cricketers Club on the first day of an Ashes test!

What is advocacy? Who better to ask than the advocates themselves, the lawyers?

To lawyers, advocacy involves pleading and arguing a case, usually in courts or tribunals, on behalf of their clients. Through advocacy, the rights of the citizen are protected against a heavy handed police force or State. By becoming an advocate for a particular client, a lawyer can, with the help of an independent judiciary, ensure the existence and protection of the rule of law and all that flows from it: the protection of our rights and freedoms that, like clean air and safe water, we take for granted - unless you have the misfortune to live in Sydney! Pause and reflect momentarily on whether, if you were intellectually or physically disabled, quite so many of the freedoms and opportunities you currently regard as second nature would be available to you. As a mother some years ago with twin babies in a double stroller and a 2 and a half year old toddler in tow, I gained some minor insight into the difficulties of the physically disabled obtaining access to many buildings and public places. I suspect the public is more obliging to mothers with children than people in wheelchairs - but on reflection I am not entirely sure about this!

Advocacy does not just include the lawyer-advocate, but also lobbyists, whether professional institutes, unions or community groups who represent special interests, such as the Victims of Crime Association or Citizens Against Road Slaughter, together with Queensland Advocacy Incorporated.

The term "advocacy" is used in its widest sense in Queensland *Advocacy Inc.*: it includes Social Advocacy, the process of functioning (speaking, acting, writing) on behalf of the perceived interests of persons with disability and Systems Advocacy, advocacy that focuses on influencing and changing "the system" (society and the systems operating within society) for the benefit of people with a disability. Systems Advocacy includes matters such as policy and law reform.

QAI is an association of persons with concern for the needs of people with disabilities. Last year's membership was 450, not all of whom were financial. QAI

undertakes systems of advocacy aimed at changing policies, laws and attitudes that impact adversely on the disabled to benefit groups of people with disability, rather than specific individuals.

Its 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". Included in its objects are "to do systems and legal advocacy and to take an active supportive and accountable leadership role on behalf of people with disability". QAI recognises that "all human life has intrinsic dignity and worth. People with disability must positively and actively be accorded worth, dignity, meaning and purpose through being included in and with their community."

QAI s objectives include:

1. Systems Advocacy
2. An active leadership role in the development of advocacy
3. The provision of appropriate individual legal advocacy to ensure that more and more people with disability are effectively represented by lawyers outside QAI and
4. conducting an efficient and accountable organisation. This objective is directly relevant to this morning s breakfast. QAI believes it essential to develop financial independence for a number of obvious reasons, including, importantly, independence to pursue its aims without the possibility of government control and influence by a tightening of the purse strings when politically unpopular causes are undertaken.

QAI is a non-profit organisation run by a management committee of its members. Membership of the management committee must always contain a majority of people with a disability: the organisation importantly is run for people with a disability by people with a disability, recognising the need to empower the disabled and allowing them to decide where their greatest need for advocacy lies.

QAI has an impressive history since its beginnings with a steering committee in July 1987. It employed 3 fulltime staff, a lawyer, a community worker and an administrator in February 1988 and was incorporated the following month. It has operated continually since. In the 1997-98 financial year, QAI employed two fulltime staff and seven part-time staff with additional cleaning and filing staff. QAI s funding, and especially in those early years, has always been insecure: QAI needs resources to achieve outcomes and does not want lack of resources and government fundings to set constraints. That is why QAI wishes to raise funds to free it of close to total reliance on government funding and the conflict of interest that inevitably arises.

Since QAI's inception, the *Anti-Discrimination Act 1991*, the *Disability Services Act 1992* and the *Freedom of Information Act 1992* have been enacted in Queensland with considerable impact on disabled Queenslanders. QAI has responded appropriately.

In August 1992, QAI formulated its policy on Closure of Institutions and in October 1992 its policy on Inclusive Education, two issues in respect of which it has become a fearsome advocate for the disabled. In 1993, policies were developed on Advocacy Support and Development; Social Advocacy; Sanctity of Life (now the Bioethics Project); and Sterilisation. In January 1994, the CJC inquiry into the Basil Stafford Training Centre commenced. QAI, with the assistance of barrister, Mr Stephen Keim, pursued in the courts QAI's right to represent the residents of the Basil Stafford Centre. Initially, the Honourable D.G. Stewart, who inquired into allegations of misconduct at the Basil Stafford Centre for the CJC, refused to allow QAI to appear at the hearing to represent the interests of the residents of the Centre. This order was set aside on judicial review by the Hon. Justice White who declared that QAI could represent the interests of those residents at the inquiry. White J. noted:

"... that QAI is a vigorous organisation involved throughout Queensland in promoting the rights of people with disability, both by way of submissions to government for funding and improved services and by raising consciousness amongst members of the community of the worth of such people. There can be no doubt that its objects are entirely worthwhile and seek only to promote the wellbeing of those persons in the community with disability."

On appeal, the majority, comprising Macrossan C.J. and Demack J., set aside White J.'s declaration. Commenting on QAI, Demack J. noted:

"It is apparent that it is a body recognised by the appropriate Commonwealth department as one which pursues the goals of the *Disability Services Act 1986*. Almost 90% of its income is from grants given for the purposes of that Act. It would be an unreasonable burden to require the small number of members (\$235 in membership fees in 1993) to bear the costs of this litigation."

Despite being unsuccessful, unusually no order for costs was made against QAI. Davis J.A. dissenting, agreed in large part with White J.

In his report of inquiry into allegations of official misconduct at the Basil Stafford Centre for the CJC, the Hon. D.G. Stewart noted in March 1995:

"I am satisfied that a person with intellectual disabilities stands to greatly benefit if there is a concerned individual, or preferably, individuals, involved in their affairs. Such persons can act as advocates for the clients, who cannot speak up for themselves. Such advocates should also be independent of the service provider, which in the present context is the Centre, as administered by the Division and the Department. The element of independence, in this context, is essential. ... I agree with QAI's submission that strong, independent advocacy must be available to people who need it. ... That advocacy must be independent of the facility providing residential services and the like, to the intellectually disabled person, whether that facility is, in the present case, the Centre itself, or in the future, upon the Centre's closure, some other form of direct service provision. It must also be independent of the Division and the Department. The relevant advocacy must be provided on an individual basis, for the purposes of achieving the greatest efficiency. That is not to say that organisations such as QAI, who informed me that they were engaged primarily in law reform and system advocacy work, do not have a place in the advocacy process. From the evidence of their contributions to this Inquiry, I am satisfied that the involvement of organisations such as QAI in the collective affairs of intellectually disabled persons who are clients of the Division, will ultimately be to the benefit of all parties involved. It is unnecessary for me, in this Report, to attempt to address the specific requirements of implementing any such view, rather, it is necessary for the Department and QAI, or other concerned and reputable advocacy organisations, to consult and agree upon ways in which the resources and abilities of such community-based organisations can best be deployed for the benefit of people with intellectual disabilities."

Mr Stewart, in concluding that the Basis Stafford Centre should be closed as part of the process of de-institutionalisation and the sooner the better, referred to the submissions made by QAI:

"Extensive and documented research of more than 25 years points to the fact that institutions and institutionalised living in themselves, are causal factors in the presence and perpetration of frequent and sustained forms of abuse and neglect of persons who are devalued and vulnerable. Some of the worst offences are as follows:

- By keeping people away, out of circulation, institutions perpetuate and enforce the image of severely disabled people as oddities.
- By definition, institutions deny people community living

experiences, and so the skills needed for community life wither away or are never learned.

- An ideology of custodialism pervades the institution.
- Personal possessions (e.g., clothes and shoes) are quickly lost or destroyed.
- Congregation ensures the worst effects of modelling, with one maladaptive behaviour yielding another.
- Incidents of physical abuse reach epidemic proportions, as do communicable diseases.
- Hours upon hours of each day are spent waiting for activities."

Mr Stewart noted:

"... that there is overwhelming evidence supporting the views and conclusions, concerning institutionalisation of people with intellectual disabilities, expressed within the abovementioned submission of QAI."

More recently, Mr Stewart has noted that:

"Unacceptable behaviour on the part of carers can and will still occur outside institutions just as it does within them. Irrespective of the nature of the particular residential environment, it is critical that only suitable persons be employed to care for people with intellectual disabilities."

Thank heavens for QAI!

QAI played an active and brave role in the closure of the Basil Stafford Centre. Members of Parliament, and especially the Hon. Mrs Cunningham, the Member for Gladstone, were lobbied. When the notice of motion to close the Basil Stafford Centre was debated before Parliament, QAI organised and held a Parliament House vigil which was attended by 75 people, most of whom then witnessed the debate in the public gallery.

QAI supported several Basil Stafford families who wished to exercise their choice of community based living for their family member with disability but could not do so because of lack of government funding. This was publicised in "A Current Affair", broadcast on 14 November 1996. By early 1997, the family members had

been moved from Basil Stafford into a home of their own in the community: an example of Social Systems Advocacy achieving a successful outcome for individuals.

During 1996-1997, QAI gained considerable media coverage on the unpopular and little understood issue of the problems of institutions for the vulnerable and unprotected. It played a significant role in the 4 Corners program "Asylum" which was broadcast in August 1996, exposing past and current instances of abuse and neglect at the Challinor Centre and the consequences of institutionalisation.

QAI used its advocacy skills to the full to secure the closure of the Maryborough Disabled Persons Ward (DPW) on 30 June 1997. The 24 residents who were in that ward are now living in community based accommodation arrangements throughout the State.

QAI played an active role in submissions to the Queensland Law Reform Commission, noted in the Commission's Report on Assisted and Substituted Decisions tabled in Parliament by the then Attorney-General, the Hon. Mr Beanland, in July 1996. QAI continues to lobby for the introduction of the Law Reform Commission's recommendations in full, something which has not yet been achieved.

QAI was concerned that the Northern Territory euthanasia legislation's definition of "terminal illness" was so broad that it could apply to many conditions of disabled people and as such supported the Euthanasia Laws Bill 1996 (Northern Territory) through its submissions to the Australian Senate Legal and Constitutional Legislation Committee.

In July 1997, QAI co-hosted with Action for Advocacy Development "A Social Advocacies Event", a 7 day presentation on advocacy by recognised world expert, Dr Wolf Wolfensberger from Syracuse University, U.S.A.

QAI has developed and continues to refine and expand the Legal Advocacy Development Project to advocate for improved access to the legal system for people with disability by developing a training package to the legal profession, especially the Legal Aid Office, which is the largest supplier of legal services to people with disability, as well as community legal services and the DPP.

In the 1997-1998 year, QAI provided free legal advice, assistance and referral to people with disability in 75 cases. Interestingly but perhaps not surprisingly, most queries related to education and guardianship issues and the accountability of service-providers.

Exciting matters dealt with by QAI during the last financial year include work on the Bioethics Project from the perspective of those with a disability; lobbying for

appropriate guardianship legislation; the continuing development of the Legal Advisory Development Program to train lawyers: lobbying for the closure of the Challinor Centre which has been effected; making FOI applications on issues of concern to QAI and surveying politicians and political parties about issues of concern to QAI prior to recent elections.

QAI recognises there is much yet to be done. Many of these projects are ongoing. Of particular importance are the Bioethics Project and the updating of QAI's book on Disability Rights and the Law in Queensland - *Include Me In*. Other areas I perceive as worthy of consideration are investigating improved ways for intellectually handicapped people to give evidence, including unsworn evidence. QAI trained staff could address judges and magistrates at their annual conferences on the difficulties for the disabled in the court room and suggest improvements and solutions.

The measure of a civilised society is how it treats its most vulnerable members: the intellectually and physically disabled are undoubtedly amongst that disempowered group. How well are we doing? Is there not room for great improvement? If you are in doubt, remember it is only since 1989 in Queensland that charges involving sexual offences against persons with intellectual disability no longer refer to "idiots" or "imbeciles". Our laws still make no special provision for the giving of evidence by intellectually disabled people. Advocacy plays an essential function in our society in protecting the rights of individuals and groups. If we claim to be a civilised and just society, we must ensure that advocacy also protects the interests of the vulnerable and disempowered, which includes the physically and intellectually disabled.

Organisations like QAI are not unique to Brisbane, Queensland. The Chicago Bar Association supports the Legal Clinic for the Disabled Inc. and lawyer, William C. Graft, an Associate at Keck Mahin and Gate who practises general and transactional corporate and real estate law, wrote of the great joy he found in working with a severely intellectually handicapped 12 year old girl through pro bono work ensuring that she as a developmentally disabled child had access to appropriate education under Illinois law. He noted:

"As practising attorneys, in the very broad spectrum of the work attorneys provide, we all serve the public and the profession. In spending our time and intellect without remuneration, our efforts seem more human, and we become free to feel compassion, to provide solutions and to empathise. I now understand more fully that attorneys do help people. Susie's L.C.D. pro bono case provided me with some wisdom, much humility, and a more tangible connection to the community."

New York for many years has had a State Advocate for the disabled who acts as a focal point for disabled persons, seeking information and guidance to avoid the shuffling from one agency to another to determine the appropriate rights, benefits,

services or opportunities available. It provides ombudsman-type services for one of the largest minorities on whose behalf there was no speaker. David H. Vickers, an internationally renowned lawyer specialising in the rights of the handicapped, noted:

"The pressures for guardianship rules can and will be reduced if we, in our role as advocates for people with a handicap, demand that comprehensive services be developed to meet individual needs of all handicapped persons in our communities. Our strength and our success as advocates will go a long way in reducing the need for guardianship rules. ... Let me remind you that appropriate guardianship legislation does not seek to control, nor is it paternalistic. It seeks to understand and to protect, where protection is necessary. ... Remember that rules made by lawyers, judges and law makers are not a complete panacea to the ills of the world. Abuses of mentally handicapped individuals will not be solved by court orders granting plenary or partial guardianship or, indeed, by any such professional answer to human social problems."

As lawyers, we are heartily sick of our usually undeserved presentation in the media as obsessed only with the almighty dollar. I am confident that depiction is inapplicable to those here today. Lawyers do much good in the community, both professionally, and outside working hours.

The presence today of the Hon. the Attorney-General Matt Foley, the support of QAI by the Queensland Law Society, and Mr Gotterson Q.C.'s chairing of today's breakfast demonstrate the commitment of lawyers to the work of advocacy and QAI. Lawyers, I would hope, more than any other group in the community, recognise and treasure the value of advocacy in our society and know what it can achieve. Advocacy can be instrumental in maintaining the rule of law, providing an avenue whereby the abuse of power by the legislature and/or the executive can be curtailed by the third arm of government, the courts. Access to effective advocacy has long been recognised as a relevant factor to success in the criminal and civil courts. Advocacy also has its important wider meaning in terms of social and systems advocacy. As lawyers, ever conscious of the value and importance of advocacy, we must also appreciate how important access to advocacy, in its widest sense, is to one of the most vulnerable groups in our community, those with physical and/or intellectual disabilities. As lawyers, we must take a leadership role in ensuring that there is access to advocacy for the disabled.

I can do no better than repeat Brennan J.'s powerfully articulate comments in *Marions case*:

"The history of intellectually disabled people contains a surfeit of examples of degrading treatment administered under laws which reflected the standards of the time - standards which were a



reproach to the civilisation then enjoyed. If equality under the law, human rights and the protection of minorities are more than a mere incantation of legal rhetoric, it is in this area of law that they have real work to do."

The value of advocacy is a jurisprudential, intellectual and largely intangible concept: it is not a concept for which it is easy to raise funds. People like to donate money to achieve something visible, like a wheelchair, a hospital bed, or even a holiday in Disneyland for a sick child. The work done through donations to QAI cannot be held up to be seen or touched, but in many ways the value of that work is priceless.

Like the air we breathe and the water we drink, we take so much for granted until we, or someone close to us, becomes disabled or unless we are blessed with empathy to ride a mile in a wheelchair of a disabled person. In terms of any economic rationalist argument, it is difficult for QAI to demonstrate its achievements, the greatest of which is to subtly aid in breaking down the barriers in the community between those without and those with disability, allowing the latter to reach their full potential within the community. This is a gradual process of educating and informing through social and systems advocacy: through a process of osmosis, people with disability take their rightful place within the community and we get used to each other. We all breathe the same air and drink the same water and as we do this together, going about our daily lives, it becomes second nature to us to accept each other, realising how much we have in common and how much we can offer each other and the community.

Lawyers have long recognised, despite the black picture drawn of them in the media, that it is worthwhile to help others through the law. Many lawyers, including most of you here today, have taken on cases pro bono, either completely without payment, at reduced legal aid rates or "specing" matters with the prospect of payment only if your client is successful. Others of you may find your work and family responsibilities such that you are unable to help in this way but are nevertheless conscious of the need to do what you can: *noblesse oblige* - "privilege entails responsibility". QAI is deserving of your consideration.

I commend to you the work that has been done by QAI to date. I stress the desirability for QAI to be able to continue this work in the future. It is an organisation which empowers people with disability, ensuring they have control of their organisation through a majority of members on its management committee. I commend to you the rationale behind QAI's push for economic independence: it needs to be financially and in all other ways independent of government to enable it to properly fulfil its functions. Personally, I wish QAI continued success in the important and exciting projects and struggles ahead. QAI's annual appeal is launched!

