



# QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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Sub# 23

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HEALTH AND COMMUNITY  
SERVICES COMMITTEE

Please accept this submission on behalf of the QCCL in relation to the Queensland Mental Health Commission Bill 2012.

The QCCL is a purely voluntary organisation established in 1967 which has, as its principle purpose, the implementation in Queensland and Australia of Human Rights.

The following articles of the Universal Declaration require consideration in the context of this submission:

#### Article 1.

*All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.*

It is also important to note that stated in the Bill, section 5, Guiding Principles subsection 2b) a guiding principle is that people should be treated with respect and dignity.

The proposed amendment to section 131A does not necessarily protect a patient's freedom or dignity in accordance with the purpose with the Act and the Universal Declaration of Human Rights. Being required to constantly report changes in location or wear a monitoring device suggests that the patient is not free to move around at will and being made to wear a monitoring device would certainly strip a patient of his/her dignity.

In the QCCL's view the issue of electronic monitoring and similar restraints needs to be addressed more fully. The Council accepts the case can be made for electronic monitoring or tagging on the basis that it involves a slight loss of liberty in return for a significant increase in safety for the ill person and other members of the public. It is indeed becoming a significant area of controversy relating to dementia patients.

However, it is our starting point that the paramount principle ought to be respect for the personal autonomy of the person involved. We say that having regard to the following factors:

1. the fact that a person has been committed does not mean that they lack all capacity to make decisions;
2. capacity is very much a situational matter;
3. doctors and other medical practitioners have a conflict of interest in that they desire peace and quiet;
4. institutions have an interest in maintaining control and reducing costs.

At all times the starting point should be respect for the personal autonomy of the person involved. The legislation should specifically prescribe a set of criteria for decision making which makes that proposition the starting point. The legislation should require the risks and restrictions of alternatives to tagging including the loss of privacy entailed in benign surveillance to be assessed.

It should be made clear that what is being assessed is the person's best interests which is not necessarily the person's best medical interests.

The proposed amendment in section 493AD subsection (2) (ii) states that

*the director must – if a patient is a child act in accordance with the best interests and needs of a child.*

In accordance with article 1, all people are born free and equal therefore the section should apply equally to adults as it does to children and at all times a decision must be made with the best interest of the patient in mind regardless of age.

### **Article 3.**

*Everyone has the right to life, liberty and security of person.*

Equally the proposed amendment does not protect article 3 of the Declaration in that it does not adequately protect a patient's right to liberty.

Section 493AE subsection 2A and E allows the director the ability to remove a patient from community treatment back in to care and to make any other such order s/he sees fit, which contravenes this right to liberty because it can be so easily removed at the will of the director.

### **Article 5.**

*No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment.*

Proposed Section 131A allows for a director to make an order monitoring a patient with a device for monitoring the patient's location. The Council submits that such a device is considered degrading treatment and monitoring is proposed as in the format outlined previously.

### **Article 12.**

*No one shall be subjected to arbitrary interference with his privacy, family, home or correspondence, nor to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks.*

Proposed section 75 Amendment of s526 (Publication of Information Disclosing identity of parties to proceedings), the section states that the Director may authorise the publication of private material if s/he believes on reasonable grounds that:

*a) the publication is necessary to assist in lessening or preventing a serious risk to*


- (i) the life, health or safety of a person, including the person to whom the information relates*
- (ii) public safety*

*b) the publication is in the public interest.*

It is submitted that this power is overbroad in two respects. It should be limited “an imminent serious risk”. Subsection (b) ought to be removed altogether as it invests too wide a discretion in the Director. It seems to us that items a) (i) and a) (ii) identify the only public interest that might justify such a disclosure.

We thank Tina Rivero for preparing this submission.

We trust that this is of assistance to you in your deliberations.



Andrew Sinclair  
President  
Queensland Council for Civil Liberties  
1 February 2013