



ANTI DISCRIMINATION
COMMISSION QUEENSLAND

2 January 2014

Health and Community Services Committee
Parliament House
George Street
Brisbane Qld 4000

By email: hcsc@parliament.qld.gov.au

Dear Health and Community Services Committee

Re: *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013*

The ADCQ thanks the Health and Community Services Committee for its invitation to provide a submission in its examination of the *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013*.

The Bill amends the regulatory framework in the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* that applies to restrictive practices such as seclusion and restraint.

The Minister for Communities, Child Safety and Disability Services in introducing the Bill emphasised the importance of understanding what restrictive practices are and why they are regulated. She reflected on the background to the Bill in saying-

Legislation to regulate the use of restrictive practices was first introduced in 2008 in response to a report by the Hon. William Carter. This report identified an overreliance on the use of restrictive practices by service providers. It also identified that restrictive practices may infringe on the rights of the person subject to them. Legislation was subsequently put in place to regulate restrictive practices so that these practices are only used when absolutely necessary.¹

The rights that can be infringed when restrictive practices are imposed on a person without their consent are the human rights that all of us are entitled to have respected, the rights to:

- Equal Recognition before the law²
- Access to Justice³
- Liberty and security of the person⁴
- Freedom from exploitation, violence and abuse⁵
- Integrity of the person and⁶
- Privacy⁷

¹ Hansard Queensland Parliament, 20 November 2013, p 4053

² Article 12 of Convention on the Rights for People with Disabilities(CRPD)

³ Article 13 CRPD

⁴ Article 14 CRPD

⁵ Article 15 CPRD

⁶ Article 17 CPRD

⁷ Article 22 CPRD

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The ADCQ commends the government for undertaking a five year review of the legislation and for seeking to amend it so it better achieves its policy objectives of addressing the needs of adults with intellectual or cognitive disability and challenging behaviour, improving their quality of life, and reducing and eliminating the use of restrictive practices. Of course legislation alone cannot fully achieve these policy objectives. It must be accompanied by a deliberate and sustained change of culture by service providers, as well as improved practice informed by both quality training and independent evaluation and review.

The ADCQ supports the improvements to the regulatory regime for restrictive practices contained within the Bill. The ADCQ's comments and concerns in relation to particular matters raised by the Bill follow.

Positive support approach and positive behaviour plans

The ADCQ supports the emphasis on the need for a positive behaviour support approach for all adults with intellectual or cognitive disability and challenging behaviour in funded disability services not just where restrictive practices are required. The insertion of a provision in the Bill outlining that service providers should not use restrictive practices as a form of punishment is also commendable.

The ADCQ supports the development and use of positive behaviour plans as a means to maximise the opportunity for positive outcomes, with an aim to reduce or eliminate the need for the use of restrictive practices. The reduction of red tape in relation to the development of plans is a positive development, and the ADCQ also endorses the requirement for service providers to have regard to a model positive behaviour plan in developing a plan for an adult.⁸

Evidence is emerging that the quality of a positive behaviour plan in relation to the needs of a particular person, along with a commitment to both implementation of the plan, and review of its effectiveness at regular intervals, can lead to a reduction in the use of restrictive practices.⁹

When the restrictive practices legislation was first introduced in Queensland in 2008, the ADCQ expressed concern for the potential for positive behaviour support plans to be developed in order to get approval for restrictive practices, and then to be put to one side and either forgotten or ignored in the daily life of the individual concerned.¹⁰ That this may occur in practice was affirmed by the evidence of a social worker from the Endeavour Foundation given before the public hearing of the Health and Community Services Committee on 17 December 2013. His evidence was that nothing in the legislation requires a plan to be implemented by the service provider, there is no external monitoring of whether or not the plans are being implemented by service providers, and no requirement for internal or external evaluation of the plan to ascertain whether it is effective in reducing an individual's challenging behaviour. The ADCQ is of the view that this is a deficiency in the existing restrictive practices regime.

The explanatory notes to the Bill state that the requirement for service providers to keep and implement policies about the use of restrictive practices will be dealt with administratively as follows:

⁸ Section 123S and s123ZF of the *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013*.

⁹ Lynne Webber PhD, Ben Richardson PhD, Frank Lambrick PhD and Tarryn Fester, B. App Sci, The impact of the quality of behaviour support plans on the use of restraint and seclusion in disability services BILD, *International Journal of Positive Behavioural Support*, 2,2, 3-11

¹⁰ Article 13 CRPD

Compliance with requirements to keep and implement acceptable restrictive practices policies is subject to rigorous and periodic third-party audits under the Human Services Quality Framework (HSQF). These third-party audits are conducted by certification bodies which must be accredited by the Joint Accreditation Scheme of Australia and New Zealand. Audits are undertaken over a three-year cycle, with a mid-term maintenance audit at 18 months and include technical experts who must engage the participation of service users.

Auditors require evidence that service providers have policies relating to restrictive practices that are consistent with the department's policies. Auditors will continue to monitor whether service providers adhere to the HSQF after Division 6 is removed from the legislation. As a result, there will still be a requirement for service providers to have policies consistent with the department's policies.

The ADCQ is concerned that this process does not provide a sufficient level of scrutiny that positive support plans are being implemented or monitored for effectiveness for a particular individual, and there needs to be a more robust system to ensure this occurs. In Victoria, the Disability Act 2006 specifies that all people who receive a Government-funded disability service, and who are subjected to restrictive intervention (chemical or mechanical restraint and seclusion), must have a behaviour support plan. Disability service providers are required by law to provide a copy of the plan to the Senior Practitioner and also to report the use of chemical, mechanical restraint and seclusion to this government office which is responsible for monitoring and reviewing the plans to ensure that people's human rights are protected.¹¹ The restrictive practices regime in Queensland requires a similar system to help ensure service providers implement, monitor for effectiveness and regularly review each client's positive support plan.

Reporting, Evaluation and Review

It is encouraging to observe that the Bill inserts a new 'Reporting and provision of particular information' subdivision 'that inserts a requirement for service providers to provide information regarding the use of restrictive practices in a way and at times prescribed under a regulation. This new subdivision also allows the Chief Executive to give this information to QCAT, the Adult Guardian, the Public Advocate and the service provider who provided the information to the Chief Executive.'¹² The ADCQ suggests there would be a greater level of robustness, and transparency in the system if the material was made available to QCAT, the Adult Guardian, and the Public Advocate as of right upon request by those agencies. As these agencies are independent of the Department Communities, Child Safety and Disability Services, they could provide a level of independent scrutiny to the operation of the restrictive practices regime at both a systems and individual level.¹³

Regular reporting and data collection and effective evaluation is an important safeguard to track and monitor both the effectiveness of positive behaviour plans, and the use of restrictive practices and the quality of life outcomes for adults subject to them. We understand that there is considerable expertise in this area within the office of the Senior Practitioner, in the Victorian Department of Human Services, Victoria. The ADCQ encourages the Queensland Government to examine the effectiveness of reporting and evaluation mechanisms of other jurisdictions in order to implement the most effective system in Queensland, with a goal to achieving best practice in reducing the use of restrictive practices.

¹¹ Disability Act 2006, section 23).

¹² Explanatory Notes, page 14 referring to clause 36

¹³ This would require amendments to clause 36.

So there is transparency and public confidence in the restrictive practices regime, it is also important for relevant de-identified information about the restrictive practices that are being permitted to occur each year to be available to the public of Queensland, through both the Department's annual report and the right to information laws and processes.

Delays in decisions for approvals to use restrictive practices.

The ADCQ is concerned that it is considered necessary for immunity provisions to be provided to service providers under clauses 17, 22 and 24 of the Bill, when delays have occurred in the processes established to consider whether approvals for the use of restrictive practices should be granted. The ADCQ's preference would be for sufficient resources to be provided to both the decision making bodies, and to those making the applications, to ensure that sufficient information and adequate resources are available for timely decisions to be made, without permitting a period of unsupervised restrictive practices to occur. A further safeguard would be to appoint an independent advocate (legal/social) to represent the adult subject to restrictive practices.

In relation to clause 26 which deals with a change in service provider, the ADCQ suggests an order permitting restrictive practices to occur should attach to the adult, rather than to the service provider, to allow for seamless and red tape free opportunities for adults to change from one provider to another. This will be of particular importance once the NDIS is implemented in Queensland.

Training

The ADCQ is encouraged that a new requirement is to be inserted into the DSA for service providers to have procedures in place to ensure an individual acting for the relevant service provider has sufficient knowledge of the requirements for lawful use of restrictive practices; and has the skills and knowledge required to use the restrictive practices appropriately.¹⁴ Training of staff in how to effectively support positive behaviours, and how to ensure restrictive practices are used safely and only as a last resort is essential. Research also indicates that 'other important factors that impact on restrictive intervention use that have been identified in the literature include strong leadership for prevention, workforce development and the use of debriefing (both clients and staff) following the application of restrictive interventions.'¹⁵

Advocacy

Effective independent advocacy on behalf of all adults with intellectual or cognitive disability and challenging behaviours is essential to ensure their human rights are protected, and that they are subjected to restrictive practices only when absolutely necessary.

The ADCQ is supportive of the insertion of the provision in the Bill that if a service provider is considering using restrictive practices, a requirement for service providers to provide a statement to the adult and those close to the adult about the use of restrictive practices to enable them to understand the framework, avenues for complaints and redress, and how they can participate in planning and decision making.¹⁶ However, the ADCQ would like to see this provision strengthened

¹⁴ Clause 32

¹⁵ Lynne Webber PhD, Ben Richardson PhD, Frank Lambrick PhD and Tarryn Fester, B. App Sci, The impact of the quality of behaviour support plans on the use of restraint and seclusion in disability services BILD, *International Journal of Positive Behavioural Support*, 2,2, 3 11, p10

¹⁶ Clause 31

to allow for independent advocates (legal/social) to also be involved in the planning and decision making process on behalf of the adult.

Thank you again for the opportunity to comment on this Bill.

Yours sincerely



NEROLI HOLMES
Acting Anti-Discrimination Commissioner
Queensland