



Carers Queensland Inc.

**Submission to the
Health and Community Services Committee –
Disability Services (Restrictive Practices) and
Other Legislation Amendment Bill 2013**

January 2014

Submission Title: Submission to the Queensland Government
Health and Community Services Committee –
Disability Services (Restrictive Practices) and Other Legislation
Amendment Bill 2013

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Family carers provide unpaid care and support to family members and friends who have a disability, mental illness, chronic medical condition, terminal illness or are frail aged.

The activity and impact of providing care is best understood in terms of its context; as a relationship between two or more individuals, rooted in family, friendship or community. Caring is a role rarely chosen by most, nor does it discriminate. Children and young people, people of working age and older people, people with a disability, people who identify as culturally and linguistically diverse, indigenous Australians and those living in rural and remote Queensland provide care to a family member or friends on a daily basis. For some caring is a short term commitment whilst for others it is a role that literally lasts a lifetime.

Carers Queensland Inc. is the peak body representing the diverse concerns, needs and interests of carers in Queensland. Carers Queensland believes that all carers regardless of their age, disability, gender identification, sexuality, religion, socioeconomic status, geographical location or their cultural and linguistic differences should have the same rights, choices and opportunities and be able to enjoy optimum health, social and economic wellbeing and participate in family and community life, employment and education like other citizens of the State. Carers Queensland's mission is to improve the quality of life of all carers throughout Queensland.

We believe we are in a unique position to advocate on behalf of, the 484,400¹ carers living in Queensland. We aspire to provide an independent platform from which to advance the issues and concerns of carers and believe our knowledge and expertise in carer issues means that we are able to provide the Government with relevant and trusted information that will ensure that the needs of carers will be recognised, respected and acted upon. Our ambition is to ensure that carers are recognised and included as active partners in the development of government health and social policy, legislation and service delivery practices.

This submission reflects the concerns of Queensland's carers, those citizens who provide unpaid care and support to, and advocate on behalf of, vulnerable family members and friends. This submission has been informed by consultation with Queensland's carers and Australian and international research.

OVERVIEW

Carers Queensland recognises and upholds the tenets of the United Nations Convention on the Rights of Persons with Disabilities² and the seven core United Nations human rights treaties to which Australia is signatory.³

From a personal/family level, carers believe that the person(s) they care for and support have the same human rights as other citizens and anticipate that those rights will be recognised and respected by society, and in particular in the disability services sector. Carers believe that the primary focus of governments and government funded service providers is to uphold those rights and ensure the well-being, safety and quality of life of people with an intellectual or cognitive disability and challenging behaviours.

Carers Queensland believes and upholds that:

1. Feeling safe is a priority for all citizens including people with disability (and yet anecdotally we know many people with disability feel unsafe).
2. Much behaviour seen as being 'of concern' can be understood better as adaptive behaviours, forms of resistance or protest, to maladaptive environments and systems.
3. Behaviours of resistance and protest should be understood as legitimate responses to difficult environments and circumstances, and not a reason for unnecessary restrictions designed to change an individual or their behaviour.
4. Unnecessary restrictive practices challenge human rights and give rise to concerns over social justice.⁴

SUMMARY OF RECOMMENDATIONS

1. The establishment of a State sector-wide code of conduct for the elimination of restrictive practices.
2. Amend the draft legislation to **mandate** that service providers **will not** use restrictive practices as a form of punishment at any time.
3. Removal of the 30 day period of civil and criminal indemnity clause.
4. Positive behaviour and restrictive practice plans to contain all the information required by disability service providers to competently, appropriately and effectively implement the plans as specified.
5. The establishment of a contemporaneous State-wide 'protection framework' and independent agency who has the responsibility for, and the capacity and resources, to fund investigations of allegations of the inappropriate use of restrictive practices and/or unacceptable practitioner/service provider behaviour or actions.
6. The mandatory reporting of all incidences of restrictive practices implemented and the incidences that initiated their implementation to independent agency (detailed in point 5) for monitoring and review.
7. The protection of 'whistleblowers' of the inappropriate use or abuse of restrictive practices from prosecution and vilification.

In summary Carers Queensland is concerned that this Bill has been drafted from the perspective of, and supports, the State funded service providers - "to ensure the safe operation" of their business - as opposed to the perspective of the individual client, that is the most vulnerable citizens in our society - those who are in need of protection, care and support and for whom such services and service providers exist.

CARERS QUEENSLAND'S POSITION

Carers Queensland Inc. commends the Department of Communities, Child Safety and Disability Services on initiating the recent inquiry into the restrictive practices legislation and policy and welcomes the opportunity to provide meaningful input into the review of the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013.

Our experiences as an advocacy service for carers supports the latest research findings.⁵ That is, the power rests, to a substantial degree, with the service providers and, in particular, the direct support workers and not the clients. The necessity for service providers to meet contractual requirements and practitioners organisational needs can occur at the expense of the client's dignity and human rights.

The use of restrictive practices can only be justified when they are used as a last resort to prevent the significant harm of an individual with impaired cognitive functioning or others, and in the least restrictive manner possible. The use and type of restrictive practices permitted should be clearly specified in the client's positive behaviour support plan.

DETAILED SUBMISSION

It is with these concerns that Carers Queensland respectfully makes the following recommendations.

1. Reduce and eliminate the use of restrictive practices

Whilst there will be many changes to the sector with the implementation of the NDIS in 2016 including the implementation of a national framework for reducing restrictive practices, there remains a necessity to implement a robust framework now to afford protection against the unwarranted or unjustified use of restrictive practices against current and potential service users of disability service providers including those who will not transition to the NDIS but who as clients, remain the responsibility of the State system.

Carers Queensland commends the Government on its stated commitment to the reduction and elimination of restrictive practices in this sector, however, it is of concern to Carers Queensland that the proposed changes may expose a client to unnecessary and preventable harm or distress.

Carers Queensland supports a policy and operational framework that ensures greater visibility and transparency of policies and operational practices by all parties involved in the care of a vulnerable adult.

Recommendations:

Carers Queensland recommends:

- i. the Department of Communities, Child Safety and Disability Services develop, implement and publically report against a State sector-wide code of conduct for the elimination of restrictive practices.
- ii. that the sector-wide code of practice is compliant with and supports the National Framework for Reducing Restrictive Practices in the Disability Sector. This will ensure policy consistency between the State and Commonwealth provision, facilitate transparent accountability and cross-jurisdictional reporting and reduce the administrative or compliance burden on service providers and other agencies.
- iii. that the State wide code of conduct is regularly reviewed to ensure it reflects contemporaneous research and policy; to ensure 'best practice' service delivery.
- iv. contracts are issued to only those disability sector service providers that 'sign up' to and comply with the agreed current State wide disability sector code of conduct.

2. Red tape reduction

Carers Queensland supports the minimisation of duplicative administrative processes but does not endorse the reduction in administrative requirements or processes that are necessary for the objective, competent decision making or for competent, professional and culturally responsive service delivery.

Recommendations:

- i. positive behaviour and restrictive practice plans contains all the information and details required by disability service providers to competently, appropriately and effectively implement the plans as specified and that
- ii. will enable carers and/or families to ensure the competent and consistent implementation of the agreed plans within the formal service provider setting and that
- iii. will enable carers and/or families to ensure the competent implementation of agreed plans in environments outside of formal service provision.

3. Use of restrictive practices as punishment and time-limited immunity from civil or criminal liability

Carers Queensland appreciates the inherent complexity of and the time required to undertake a comprehensive assessment of an individual with an intellectual disability or cognitive behaviour with challenging behaviours, develop an effective positive behaviours support plan and identify and approve appropriate restrictive practices.

Any inappropriate action perpetrated by a service provider intentionally or otherwise, or the failure of a service provider to take action where necessary intentionally or otherwise, constitutes an abuse of the client. The fact that the abuse has occurred and its impact on the individual and/or their carers/family should not be minimised or disregarded because it occurred during a period of 'civil and criminal indemnity'. People with disability should not have their ability to exercise legal capacity denied or diminished.⁶

Carers Queensland firmly believes that all service providers should be held accountable for their actions or omissions. The Carers Queensland Family Support and Advocacy Service is aware of many substantiated instances where the behaviour of a service provider and/or practitioner has not been ethical or professional and individual clients have been placed 'at-risk'. The Carers Queensland Family Support and Advocacy Service has assisted many carers to advocate for a change in service provider or specified practices.⁷

Carers Queensland is concerned that the draft legislation is not sufficiently robust to afford vulnerable clients with sufficient and appropriate protection at all times whilst in the care of State funded disability service providers.

Recommendations:

Carers Queensland is of the opinion that the legislation is over reliant on the anticipated ethical and professional conduct of service providers to ensure the protection of some of the most vulnerable in our society and recommends:

- i. that the draft legislation should be amended to '**mandate** that service providers **will not** use restrictive practices as a form of punishment'
- ii. the removal of the 30 day immunity against civil or criminal liability clause
- iii. the development and implementation of a contemporaneous State-wide 'protection framework' and independent agency who has the capacity and resources to fund investigations of allegations of the inappropriate use of restrictive practices, including the use of such practices as punishment, and

make recommendations to the Department on relevant policy and procedures⁸

- iv. that integral to the protection framework is the requirement for the mandatory reporting of concerns of the inappropriate use of restrictive practices noted by the management committee, management, staff and volunteers and carers/ families of State funded disability service providers to the independent protection agency
- v. that integral to the protection policy and framework is the capacity of the independent protection agency to recommend the suspension or de-funding of service providers who use restrictive practices inappropriately or alternatively, the withdrawal of an individual employees 'Blue Card', preventing them from working in the sector
- vi. that the protection policy and framework has policies and structures to ensure the protection of whistleblowers from harassment, vilification and prosecution⁹

REFERENCES

¹ Australian Bureau of Statistics. (2012). *Survey of Disability, Ageing and Carers 2012: Summary of findings. No. 4430.0*. Canberra: Australian Bureau of Statistics.

² Disability Rights Now. (2012). Civil society report to the United Nations Committee on the rights of person with disabilities. Compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations.

³ Commonwealth of Australia. (2010). *Australia's Human Rights Framework*. Canberra: Author

⁴ Office of the Senior Practitioner. (2009). *Experiences of restrictive practices: A view from people with disabilities and family carers. A final research report to the Office of the Senior Practitioner*. Melbourne: Australian Human Rights Education: RMIT University

⁵ Ibid

⁶ Disability Rights Now. (2012). Civil society report to the United Nations Committee on the rights of person with disabilities. Compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations.

⁷ Please refer to Carers Queensland's previous submissions. Submission to the review of restrictive practices (August 2013) and Submission to the Department of Justice and Attorney General – Review of the allocation of funds from the Legal Practitioner Interest on Trust Accounts Funds (November 2012).

⁸ Refer to the Protection of Vulnerable Adults Policy and the Protection of Vulnerable Adult list of England and Wales for further information

⁹ Roberts, P., Brown, A.J., & Olsen, J. (2011). *Whistling while they work. A good practice guide for managing internal reporting of wrong doing in public sector organisations*. Canberra: Australian National University.

Office of the Public Advocate (Queensland Systems Advocacy). (2013). *Submission to Department of Families, Housing, Community Services and Indigenous Affairs. Proposed National framework for reducing the use of restrictive practices in the disability service sector*.