



adult guardian

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19 December 2013

Mr Trevor Ruthenberg MP
Chair
Health and Community Services Committee
Parliament House
George Street
BRISBANE Qld 4000



Dear Mr Ruthenberg,

Thank you for your letter of 22 November 2013 whereby you advised me that the Health and Community Services Committee is examining the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013.

The Office of the Adult Guardian was actively consulted during the development of this Bill and made active inputs into the policy development that underpins the Bill. Whilst the Bill does not fully reflect all the policy suggestions that were advanced by the Office of the Adult Guardian during the policy development process, nevertheless the Bill does represent, in the opinion of the Office of the Adult Guardian, a practical compromise that should achieve the policy objectives that were sought.

Passage of the Bill through Parliament and its subsequent commencement will require the Office of the Adult Guardian to modify a number of its internal practices and procedures. Work has commenced to modify those practices and procedures so that implementation should not create any practical problems.

The Office of the Adult Guardian will need to continue to work closely with the Department of Communities, Child Safety and Disabilities Services in relation to the implementation of many of the changes presaged by this Bill. In particular the Office of the Adult Guardian will remain vigilant in order to ensure that the "model positive behaviour support plan" –see Clause 8- and the "positive behaviour support plan" for an individual –see clause 13- is always reflective of principles that should be fundamental to the way in which

1

an individual's fundamental human rights are protected and reflect the fundamental principle that Restrictive Practices should only be applied in defined and limited circumstances and for the minimum period necessary for their utilisation.

The Office of the Adult Guardian continues to remain concerned, however, about one fundamental element of the whole of the Restrictive Practices regime in Queensland namely that the current legislative regime is confined to the actions of funded service providers and fails to provide protection for the human rights of individuals who are subject to practices that come within the definition of a Restrictive Practice but which are applied by persons or organizations other than a funded service provider. This group, whose human rights are not protected by the current legislative scheme, includes children below the age of 18 years and adults who are under the care of their family. The Office of the Adult Guardian can see no reason why the human rights of those individuals should receive any less protection at law than the human rights of individuals who are supported by funded service providers. It is acknowledged that this position, of course, raises issues of broad policy that it is for Government to consider. However the experience of the Office of the Adult Guardian in being appointed as Guardian for Restrictive Practices upon a person obtaining adulthood ie turning 18 where that person has previously been the subject of Restrictive Practices whilst a child has been difficult.

Whilst the Bill in Clause 6 seeks to ensure that the legislated Restrictive Practices Regime will continue to apply to individuals who move from funded service providers to the Queensland self directed funding model of Your Life Your Choice the long term move to the self directed funding model inherent in the National Disability Insurance Scheme will pose challenges to the basis on which the current Queensland Restrictive Practices Scheme is based.

It is the view of the Office of the Adult Guardian that, on balance, the legislative initiative to remove the necessity to prepare a Short Term Plan as an accompaniment to an application for a Short Term Approval should result in increased efficiency for funded service providers in implementing Restrictive Practices particularly in the context of a change in service providers. The Office will, however, have to take care to ensure that the Positive Behaviour Support Plan for a particular individual remains relevant and implementable for the individual in light of any Short Term Approval that might be granted. Co-operation and information flows between the Office of the Adult Guardian and Funded Service Providers will remain essential to achieving the objective behind this legislative initiative.

Changes to definitions outlined in Clause 8 should assist in achieving greater clarity of understanding by all parties and are supported by the Office of the Adult Guardian.

The Office of the adult Guardian also supports the clarification by Clause 9 of the use of sedatives in order to permit appropriate treatment of a person subject to a Restrictive Practice regime thus avoiding questions as to whether the sedation constitutes a Restrictive Practice that must be approved or not. This should provide greater clarity of intent for all parties involved. Similarly

Clause 10 clarifies issues that have arisen in relation to the prevention of egress from sites where an individual would be at risk of physical harm.

Clause 13 introduces a proposed new Section 123L as to what are the minimum requirements of a Positive Behaviour Support Plan. In relation to clients of the OAG action will be taken to monitor how such plans are developed in practice in the future in order to ensure that minimum standards and matters to be addressed in a PBSP are not in practice regarded as maximum requirements. OAG remains firmly of the view that the PBSP must be individually tailored to suit the interests and requirements of each individual for whom such a plan is required. Accordingly, proposed Section 123L must not be permitted to become the only standard for such plans.

Clauses 17 and 22 represents an attempt to address a disconnect that occurs from time to time where, because of the failure by service providers in applications to provide sufficient information or the necessity to clarify issues that have arisen in an application, the period of approval for the use of a Restrictive Practice expires prior to a decision being able to be made by the Office of the Adult Guardian as to whether to grant approval or not. By granting in effect a 30 day continuation of approval it is hoped that the risk which Service Providers run when applying Restrictive Practices without appropriate approval might be reduced or eliminated. The success of the provisions in practice will require active work by both service providers and the Office of the Adult Guardian.

Clause 29 raises issues, so far as the Office of the Adult Guardian is concerned, with the effectiveness of a Quality Framework and Auditing approach to the necessity to ensure that appropriate professional skill levels and standards are maintained by all involved in the delivery of services in this area. It is acknowledged that this approach can be argued to constitute a less prescriptive [less red tape] approach to the maintenance of acceptable standards of service delivery. On the other hand this Office remains concerned that, given the nature of the clients to whom such an approach is to be applied, an auditing approach and the 18 month to 3 year cycle that is proposed creates a potentiality for instances of abuse, misuse of powers, etc to remain undetected for long periods of time or at all. This in the view of the Office raises issues of risk that the community needs to debate and consider.

Office of the Adult Guardian supports the principle behind proposed Clause 32 which places an obligation on service providers to keep and implement procedures that ensures persons acting for the service provider have sufficient knowledge and skills to provide the Restrictive Practice. Some concern however is felt about the capacity of some of the smaller service providers [particularly in rural and remote areas] to maintain the administrative infrastructure necessary to implement this objective. These difficulties may be exacerbated by the nature of employment practices in the industry which utilize high levels of part-time staff with relatively rapid staff turnover.

Should the Committee require this office to expand on these comments or any other aspect of the Bill Office of the Adult Guardian would be only too happy to do so.

Yours sincerely,



Kevin Martin
Adult Guardian