



QUEENSLAND COUNCIL FOR CIVIL LIBERTIES

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The Health and Community Services Committee

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

Dear Madam / Sir

The Council is asked to comment on the *Disability Services (Restrictive Practices) and other Legislation Amendment Bill 2013* and the proposed amendments it makes to the Disability Services Act 2006.

This submission is the work of QCCL Assistant Secretary Tina Riveros.

The Council is committed to the protection of Human Rights and notes that in particular the following internationally recognised Human Rights must be considered when reviewing the proposed legislation regarding the treatment of some of the most vulnerable members of society:

The Universal Declaration of Human Rights

Article 1

All human beings are born free and equal in **dignity** and rights.

Article 3

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

Article 5

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

Article 9

No one shall be subjected to arbitrary arrest, **detention** or exile.

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.

The United Nations Convention on the Rights of People with Disabilities

Article 15

Watching them while they are watching you!

States must guarantee freedom from torture and **from cruel, inhuman or degrading treatment** or punishment

Article 16

States must enact laws and administrative measures to **guarantee freedom from exploitation, violence and abuse.**

Article 17

States must protect the **physical and mental integrity** of persons with disabilities, just as for everyone else.

In order to ensure that these rights are protected, the primary legislative goal should be the elimination rather than the regulation and normalisation of restrictive practices. It is recommended that this purpose be incorporated into the proposed clause 5.

Whilst one of the main purposes of the Act is of course to protect adults with either an intellectual or cognitive disability by restricting and regulating the use of certain practices, the overriding goal should be a commitment to the reduction and elimination of the use of restrictive practices and this must be entrenched in the Act.

It is the submission of the Council that where restrictive practices do occur they should:

- 1) be the action of last resort
- 2) be independently approved and monitored
- 3) be accompanied by a comprehensive plan to reduce, and ideally eliminate the need for such restrictive practices in the longer-term
- 4) be strictly time limited and subject to regular review
- 5) be accompanied by strategies that promote positive alternatives

The QCCL submits that items 1, 3 and 5 are largely satisfied by the amendments proposed in the bill but has some concerns with regards to items 2 and 4.

2) The use of restrictive practices be independently approved and monitored.

Council's concern relates specifically to the use of chemical restraint.

Clause 13 of the Bill outlines the introduction of an alternative definition to a "Positive Behaviour Support Plan" under S1 23L and in particular Subsection 2(e) refers to the possibility of having a chemical restraint as part of this plan. However this subsection does not specifically state who will be administering the chemical restraint or make any allowance for the approval by an independent doctor before the administration of a chemical restraint. If restrictive practices are to be independently approved and monitored then the section needs to be amended to specifically state that an assessment by an independent and appropriately QUALIFIED physician be conducted prior to the administration of any chemical restraint and that the independent physician and the treating physician be in agreement on the particular course of chemical restraint to be administered to the adult prior to any restraint being performed. If the independent physician and the treating physician are not in

agreement then a third physician would need to be consulted. This is the only way to ensure that the chemical restraint being administered is “independently approved”, and ensuring that such an action is indeed an action of last resort.

4) The use of restrictive practices be time limited and subject to regular review.

Council’s concern relates specifically to the lack of general maximum time limits. With reference again to Clause 13 amending s123L – “Positive Behaviour Support Plan”, it is stated in Subsection 2 (d) and (f) the Positive Behaviour Support Plan must specify what the maximum period of seclusion or restraint will be for use at any one time but neither the Bill nor the Act makes any references to general maximum time frames for the use of restrictive practices, making it possible for a restrictive practice to be used indefinitely or for unnecessarily lengthy periods of time.

Furthermore Clause 17 refers to “Containing or Secluding an Adult Before Decision on Short Term Approval” and subsection 2 of the proposed amendment to 123OA states:

The relevant service provider may only contain or seclude the adult until the earlier of the following-

- a) the relevant service provider is given notice about the adult guardian’s decision on the request*
- b) 30 days after the relevant service provider asks for the short term approval*

Subsection b clearly outlines then that an adult could easily be contained or secluded for a period of OVER 30 days as it is implied that the service provider would only make the request once the adult has already been placed in seclusion. (The same concern is raised with regards to Clause 22 amending s123ZCA 2 a, which also refers to a 30 day period and Clause 24 amending 124ZDA 2 b.)

In CMS Psychiatric Residential Treatment facilities throughout the US the national standards for restraint and seclusion apply which require that:

Each written order for seclusion or restraint is limited to 4 hours for adults, 2 hours for children and adolescents 9 to 17, and 1 hour for patients under 9.

The original order may only be renewed in accordance with these rules for up to 24 hours.

These standards are implemented on the basis that restraint or seclusion should only be used as a last resort and only until such time as a treating physician has been able to reassess the clients needs and implement a new system of treatment, be it chemical or otherwise and be able to have the adults behaviour monitored and controlled which should be able to occur in that timeframe.

If it is asserted that an adult requires seclusion for a period exceeding this or potentially for up to 30 days or more then it can be inferred that an adult is not receiving the treatment required under the positive behaviour plan and certainly not receiving it in a timely manner therefore none of the proposed goals and purposes of the legislation are actually being fulfilled. The QCCL sees no justification for ever

having to seclude or restrain an adult with a disability for any extended period of time without regular independent review.

We recommend that maximum time frames for seclusion and restraint be introduced into the legislation and that these timeframes be more in line with those mandated in psychiatric facilities and that the review periods be regular and conducted by independent bodies. This is the only way to ensure that the practices are being used as a last resort and only when absolutely necessary.

Mental Health Tribunal

It would be our submission that the Mental Health Tribunal ought to have the power to review a seclusion order during the period of seclusion and after the period of seclusion it should have the power to award compensation should it find that the seclusion was not justified.

Human Rights Principles in the Bill

Finally council wishes to note that the Disability Services Act section 18 - **Persons encouraged to have regard to human rights principle** states:

Persons are encouraged to have regard to the human rights principle in matters relating to people with a disability.

It is Council's submission that this should read:

Persons are **required** to have regard to human rights principles **at all times** in matters relating to people with a disability.

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

Yours faithfully



Michael Cope
President
For and on behalf of the
Queensland Council for Civil Liberties
8 January 2014