

8 January 2014

Trevor Ruthenberg MP  
Health and Community Services Committee  
Parliament House  
George Street  
BRISBANE QLD 4001  
hcsc@parliament.qld.gov.au/hcsc

Dear Mr Ruthenberg

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

Life Without Barriers appreciates the opportunity to provide feedback to the Health and Community Services Committee on the *Disability Services (Restrictive Practices) and other Legislation Amendment Bill 2013*.

**About Life Without Barriers**

Life Without Barriers is a not-for-profit organisation, providing care and support services across Australia in urban, rural and remote locations, and in New Zealand.

Our community-based programs assist children, young people, adults, families and communities. We provide family support and out-of-home care, disability services, home and community care, and support to refugees and asylum seekers. We also work in the areas of mental health, homelessness and youth justice. We have a strong commitment to reconciliation and delivering culturally sensitive programs.

Life Without Barriers' disability services focus on the individual – to empower people to realise their full potential.

We provide quality support services to people with disability through our flexible, person-centred approach.

Life Without Barriers encourages people to be the key decision maker in every aspect of the support they receive, and we ensure their voice shapes the design and delivery of our services.

Our innovative programs support positive relationships, valued roles and inclusive communities. We develop people's skills and abilities, adapt to changing needs, and promote resilience and independence.

## Feedback

### Introduction

While we welcome many of the proposed amendments included in the Bill, we remain of the view that a more explicitly whole of government approach which includes responsibilities of a range of government and non government agencies supporting individuals subject to Restrictive Practices is required. In our original submission, we documented the complex needs that this group of individuals experience and how these require multi agency, holistic responses. We continue to work closely with other agencies who are engaged with individuals who are subject to Restrictive Practices and, at times, experience very different professional attitudes regarding Positive Behaviour Support and the imperative for Restrictive Practices to be the least restrictive alternative. We continue to advocate for a more inclusive and expansive regulatory system that details the roles and responsibilities of a range of agencies, not just disability services, in relation to Restrictive Practices.

Life Without Barriers was involved extensively in the consultation process regarding the review of the legislation. We have some concerns that the legislative amendments which were designed to reduce the 'red tape' actually increase the requirements for relevant service providers. For example, the proposed legislation includes additional bureaucratic requirements regarding the Positive Behaviour Support Plan, requests for ongoing approval and statements regarding the use of Restrictive Practices. We note that clauses 17, 24 and 31 address the work volume concerns reported by the Chief Executive and Adult Guardian by increasing the time available to enact their legislative responsibilities, however these same clauses increase the demands for relevant service providers by making short term approval contingent on the implementation of a full positive behaviour support plan, as opposed to a short term plan. As indicated in our original submission, there is a danger that by making the legislative requirements too onerous for disability services providers, compliance will become a bureaucratic process as opposed to one that genuinely seeks to enhance the lives and rights of individuals with a disability.

### Clause 6 - Section 1243B Service providers to which section 10A applies

Life without Barriers is a registered host provider under the Your Life Your Choice scheme. The applicability of the legislative requirements to self directed disability support packages under the Your Life Your Choice initiative poses issues which require further consideration. Where a service is using a restrictive practice during the course of providing self directed disability services the service would be required to undertake an assessment, develop a Positive Behaviour Support Plan, train staff regarding Restrictive Practices etc. This requires that the service has the capacity and expertise to undertake this and may therefore limit the choice of services an individual can access. In addition maintaining compliance with the Restrictive Practice requirements requires resources that would need to be allocated from the individual's self directed funding, therefore diminishing the amount available for direct support. This places individual's accessing Your Life Your Choice and subject to Restrictive Practices at a financial disadvantage and may prove a disincentive to individual's and their families in opting for self direction. It would be an unfortunate consequence if this section served to reduce the choice and control available to individuals with a disability and subject to Restrictive Practices.

### Clause 8 - Definitions

Section 123E - Defines a model Positive Behaviour Support Plan to which service providers must have regard when developing plans for individuals subject to Restrictive Practices. Life Without Barriers has reviewed the draft 'Model Behaviour Support Plan' and have significant concerns regarding the document which does not meet current or proposed legislation and would not, in our view, provide adequate information or sufficient strategies to assist an individual to acquire

functionally equivalent behaviour and achieve an enhanced quality of life. If the model Positive Behaviour Support Plan remains in the legislation, we urge that further consultation is conducted by the department of communities - disability services to ensure improvements are made to the model plan.

### **Clause 13 - Section 123L-What is a Positive Behaviour Support Plan**

In our original submission we indicated that we felt the Positive Behaviour Support Plan requirements regarding the use of Restrictive Practices had become overly complex. As mentioned, we note that the legislation proposes a model Positive Behaviour Support Plan and have some concerns regarding the draft document which has been circulated for consultation. We welcome the additional requirements for plans that require specific consideration be given as to how the plan will provide opportunities for skill development, enhanced quality of life and the measures that will be taken to safeguard the adult from abuse, neglect and exploitation. We consider these additional requirements will have considerable potential benefit for individuals subject to Restrictive Practices and should promote the reduced reliance on the use of Restrictive Practices.

### **Clause 17 - Amendment of Section 123OA Containing or Secluding an adult before decision on short term approval**

Life Without Barriers welcomes the amendment which provides immunity for 30 days for relevant service providers who have requested Short Term Approval from the Adult Guardian. As indicated in our original submission, we had experienced delays in this process and were concerned at the lack of immunity for service providers during this period. However, in order to obtain immunity under the proposed legislation we note that subsection 1 (c) requires that:

‘a positive behaviour support plan, or a respite or community access plan for the adult is being implemented’

There are several circumstances in which this will not be possible. For example if an individual has recently commenced service with a provider having transitioned from informal care or an alternative service, or if the use of containment and seclusion is urgently required due to emergent behaviour. In both cases it is unlikely that a Positive Behaviour Support Plan that fulfils the legislative requirements of a S123L could be developed within such a short period. While this amendment therefore provides additional time for the Adult Guardian to consider approvals, it reduces the time for relevant service providers to comply as this previously required a short term plan only. It is our view that this subsection therefore increases the risks that relevant service providers will not obtain immunity against prosecution and may discourage services from accepting referrals where Restrictive Practices are indicated.

### **Clause 22 - Insertion of Section 123ZCA-Using chemical, mechanical or physical restraint, or restricting access, if consent ended.**

While Life without Barriers welcomes the amendment which provides immunity for 30 days for relevant service providers using Restrictive Practices after consent has expired, we note that subsection 2 (a) places an additional bureaucratic burden on relevant service providers to request ongoing consent 30 days prior to the expiry of the current consent. In addition, this provision only applies where the Adult Guardian is appointed, other Guardians may experience difficulty in considering and providing consent for the use of Restrictive Practice within the required time frames, for example due to illness or family circumstances. We would recommend that the proposed legislation consider applying this provision for individuals who have guardians other than the Adult Guardian appointed.

**Clause 24 - Section 123ZDA Using chemical, mechanical or physical restraint, or restricting access, before decision on Short Term Approval**

As with clause 17, Life without Barriers welcomes the amendment which provides immunity for 30 days for relevant service providers who have requested Short Term Approval from the Chief Executive Guardian, as previously however we note that subsection 1 (c) requires that

‘a positive behaviour support plan, or a respite or community access plan for the adult is being implemented’

As previously there are multiple instances where it may not be possible for a relevant service provider to have developed, and be implementing a Positive Behaviour Support Plan which complies with section 123L within this time period and therefore if requirement remains in place it is likely to reduce, rather than increase, the capacity for relevant service providers to obtain immunity.

**Clause 31 - Section 123ZZCA Requirement to give statement about use of Restrictive Practices**

Life Without Barriers supports the need for individuals subject to Restrictive Practices, and those close to them, to be involved in decisions regarding these restrictive practices to the maximum possible extent. We also recognise that the use of Restrictive Practices represents a fundamental infringement on the rights of an individual with a disability and, as such, individuals must be supported to enact their right to have these practices reviewed. We remain uncertain however, as to whether a statement is the most effective mechanism to fulfil this. We envisage some practical difficulties in translating this information into accessible communication appropriate to the individual’s age, disability and community ability. We would also contend, that by separating this process of from that of plan development and approval, there is a risk that this could become a purely bureaucratic exercise which detracts from this important area of responsibility.

**Clause Section 123ZZJ - Requirement to give information about use of restrictive practice to Chief Executive**

Life Without Barriers considers that the reporting of Restrictive Practices is essential in order to promote transparency, accountability and to safeguard the rights of individuals with a disability. However, we would consider more specific clarification should be provided in the legislation regarding the minimum data that will be reported. Without this clarification this is a risk that the reporting requirements could impose additional and onerous demands on service providers. As indicated in our original submission, we feel it is important that in considering the reporting mechanism, the Chief Executive should have regard to existing reporting procedures in order to minimise duplication. In addition, we remain of the view that reporting on the use of Restrictive Practices alone does not necessarily indicate the success of Positive Behaviour Support or the quality of life experienced by individuals subject to Restrictive Practices.

**Clause 43 - Amendment of section 80ZD of Guardianship and Administration Act 2000**

Life Without Barriers supports the amendment to increase the duration of Guardianship appointments for Restrictive Practices from 12 months to 2 years. We would suggest however that the circumstances which would initiate a review by the tribunal within that period should be more explicitly stated, for example, if a Guardian is not complying with section 80ZE. Given the extension of the duration of appointment, we would also welcome an amendment to the Guardianship and Administration Act 2000 which includes the requirement for face to face hearings to be convened as opposed to reviews based on written information.

**Clause 44 - Amendment of Section 80ZE Requirements for giving consent-Guardian for restrictive practice (general) matter.**

In our original submission we recommended that the wording of this section be simplified due to our experience that many guardians found the requirements for giving consent complex and difficult to navigate. We note that the wording of this section has not been simplified and additional requirements have been added for the guardian to consider when deciding if to consent to the use of a restrictive practice. It is our view, that in particular subsection b of this section may cause some difficulties for guardians and there is a danger therefore that an increased number of family members will be discouraged from enacting this area of decision making resulting in further 'split appointments' with the Adult Guardian. This would be an unfortunate consequence given the central role many family members play in the lives of individuals with a disability and the interconnectedness of Restrictive Practice decisions from those family members continue to make e.g. health decisions.

Thank you again for the opportunity to provide feedback on the Disability Services (Restrictive Practices) and other Legislation Amendment Bill 2013.

For any questions regarding this feedback, please contact  
Brad Swan State Director-Queensland on [REDACTED] or [REDACTED] or  
Ellen Rhodes State Clinical Services Manager on [REDACTED] or  
[REDACTED].

Sincerely,

[REDACTED]

Claire Robbs  
Chief Executive