

ENDEAVOUR
FOUNDATION
Opportunities for people with a disability

Submission to the Queensland Parliament's Health and Community Services Committee

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

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8 January 2014

Endeavour Foundation's response to the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013

Introduction

Endeavour Foundation is one of the largest non-government disability service providers in Australia. We provide support to more than 4,000 people with a disability from more than 230 locations in Queensland, New South Wales and Victoria. We are one of Queensland's oldest charities, founded in 1951 by a group of parents who refused to accept their children with an intellectual disability couldn't be educated.

Overview

Endeavour Foundation would like to thank The Health and Community Services' Committee for the opportunity to submit a written submission commenting on the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013.

This legislation and the amendments provide critical protections for the identified people with a disability that are subject to restrictive practice. Since its introduction in 2006 *The Disability Services Act* which includes clauses that cover restrictive practices has created an environment of awareness, a renewed focus on the human rights of the people in our services, and as a consequence increased identification of restrictive practice and reduction in its use.

At Endeavour Foundation the use of identified restrictive practice cases has reduced from over 900 cases at the introduction of the legislation to under 70 currently. The commitment of service providers in the disability sector to identify, monitor and reduce the use of restrictive practice is evidenced by this dramatic reduction. Our goal is to reduce that figure to nil, to maximise the opportunities, choices and life outcomes of people in our services based on a best practice positive behavioural support model.

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We believe the legislation, which outlines human rights principles and the appropriate and regulated use of restrictive practice, has improved the quality of people's lives. We also note that low levels in the use of restrictive practices in services are commensurate with higher levels of community access, participation and appropriate accommodation supports. On the whole the amendments outlined in the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013 (the Bill) is the next practical step in supporting the quality of life of people with disability and at the same time reducing some unnecessary regulation for disability service organisations.

Responses to proposed amendments

Broadly Endeavour Foundation supports the current proposed amendments and provides the following comments referencing Clauses from the Bill.

Clause 7: Introduces principles for providing disability services to particular adults "*with an intellectual or cognitive disability if the adult's behaviour causes harm to the adult or others.*" This includes ensuring that services respond to the adult's needs, involves their families and friends in strategy development, uses best practice, person centred planning, positive behaviour support responses. The principles also confirm that restrictive practices are not to be used in a punitive manner and have the ultimate goal of reducing their frequency or eliminating them all together.

Response: Endeavour Foundation welcomes increased clarity within the legislation to outline the principles and practices which will reduce the use of restrictive practices.

Clauses 8, 9, 10 & 11: Provides clearer definitions for what constitutes a restrictive practice within the legislation. Clause 8 specifically focusses on positive behaviour support planning for those people with other complex behaviour support needs not just those subject to restrictive practice(s) recognising the need for early intervention in order to prevent the use of any restrictive practice.

Response: Endeavour Foundation notes the difficulty of interpretation and definition at the outset of the restrictive practices amendments to the *Disability Service Act in 2006* and welcomes clearer guidelines.

Clause 16: Removes the requirement for short term restrictive practice positive behaviour support plans.

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Response: Endeavour Foundation welcomes the removal of an unnecessary administrative process which brings no benefit to people with a disability or to service providers.

Clauses 17, 22 & 30: Provides immunity to service providers from prosecution of up to 30 days (to cover possible delays by any appointed or informal guardian) when a restrictive practice plan has not been approved or fallen out of consent.

Response: Endeavour Foundation welcomes this amendment as an important protection for service providers. There is no obligation on the guardian to complete the authorisation process within a required timeframe and therefore, the service provider has been carrying the risk of breaching the legislation through no fault of its own. Endeavour Foundation will continue to monitor this issue as in the event of delays from guardians over and above 30 days service providers will remain technically in breach through no fault of their own. Endeavour Foundation also recognises and supports the current process by which consents are given from guardians in ensuring the rights of people with a disability subject to a restrictive practice.

Clause 18: Reduces the prescriptive requirements for Positive Behaviour Support Plans (PBSPs) with the intention of reducing the size of plans to re-focus on the client.

Response: Endeavour Foundation supports the goal of reducing the number of ineffective PBSPs to ensure a reduction in restrictive practices and better life outcomes for people with a disability. We also acknowledge that PBSPs must be accessible, understandable and readable to maximise their usage by staff, family and clients.

However the size of PBSPs should be relative to the complexity of the case. Some PBSPs may only need to be short but in the most complex cases involving multidisciplinary team input, high risk behaviour and complex client needs, the plan needs to contain the necessary elements and support staff must be able to be trained in an effective way.

Recent research findings indicate what needs to be included in an effective PBSP which includes a restrictive practice.¹ The legislation and/or regulation needs to reflect these minimum standards to achieve the desired outcomes for the person subject to a restrictive practice. A common-sense approach needs to be taken in PBSP approval that ensures

¹ Webber, L; Richardson, B; Lambrick, F; Fester, T, The impact of the quality of behaviour support plans on the use of restraint and seclusion in disability services, International Journal of Positive Behavioural Support, Volume 2, Number 2, Autumn 2012, pp. 3-11(9)

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guardians and service providers are in agreement with regard to the necessary details and inclusions based on the minimum requirement from the proven research. The actual length of the PBSP is a secondary consideration.

Recommendations:

Endeavour Foundation supports further amendments or responses to the use of restrictive practice as provided below:

Recommendation 1: That there is a qualification to allow the person subject to restrictive practice to exercise some choice about whether their information is given as a matter of course to family members and others.

The new requirement to provide a statement about the use of restrictive practice to the adult and "*a person with a sufficient and continuing interest in the adult*" is welcomed. Endeavour Foundation believes that communication to inform the individual affected by restrictive practice is good general practice. A further improvement would be to add a qualification that allows the person subject to the restrictive practice to exercise some choice about whether their information is given as a matter of course to family members and others. We acknowledge that this may be difficult to balance with ensuring that every effort is made to provide the statement however believe that it is worth considering the consent issue. [Clause 31]

Recommendation 2: That the quality and implementation of PBSPs is monitored in terms of outcomes for people subject to restrictive practice.

Endeavour Foundation supports the monitoring of the use of PBSPs however a further improvement would be that the regulators monitor the quality and implementation of PBSPs in terms of outcomes for people subject to restrictive practice. Recent research evidence from Victoria also suggests that the quality of the PBSPs is associated with reductions in restrictive practices.² These findings are important because they suggest that monitoring the quality of plans has a direct bearing on positive outcomes for the person subject to that plan. It is acknowledged that progress and outcomes from PBSPs may be difficult to identify but this could be partly achieved by undertaking random reviews of

² Webber, L; Richardson, B; Lambrick, F; Fester, T, The impact of the quality of behaviour support plans on the use of restraint and seclusion in disability services, International Journal of Positive Behavioural Support, Volume 2, Number 2, Autumn 2012, pp. 3-11(9)

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progress; focusing on measurable key elements that contribute to the success of the PBSPs implementation, such as: increased skill development, reduction in frequency, duration and intensity of behaviours and greater community access and engagement. It has been Endeavour Foundation's experience that the implementation of the plan and the individual's quality of life outcomes, especially initially; is reflective of the positive communication and engagement with and between the individual, the family, parents, support workers and other stakeholders. [*Disability Services Act 2006; Division 6; s123ZV*]

Recommendation 3: That the requirement for service providers to hold a policy and procedure under the legislation is not removed.

Endeavour Foundation supports on-site policies and procedures, as with occupational health and safety policies and procedures, to keep the critical messages about working to reduce restrictive practice, human rights principles and best practice approaches in the minds of all employees and at the forefront of their day to day interactions and work practices. [Clauses 12 & 32]

Recommendation 4: That further consideration is given to the issues of identification and reduction of chemical restraints by medical practitioners.

The bill does not address the concerns of service providers, people with a disability, families and advocates regarding the use of medications which may reasonably be assumed to be prescribed as a chemical restraint. Endeavour Foundation believes that this requires improved communication and education about restrictive practice that could be provided by all involved stakeholders: government, peak organisations and service organisations. [Related to Clause 9 and *Disability Services Act 2006 S123S*]

Recommendation 5: Providing a more specific definition of what an 'Appropriately Qualified or Experience Person' is under the legislation.

The legislation identifies that the author of a PBSP be an Appropriately Qualified or Experienced Person. A more specific definition that includes the minimum qualification and the level of appropriate experience to assess and design behaviour support strategies would assist to ensure a consistent industry standard. There is an example in the *Disability Services Act 2006, s123J(4) Assessment of an Adult*, where the type of professional qualification is identified to advise of containment and seclusion restrictive practice. The inclusion of professional qualifications or experience is helpful to ensure the most appropriately qualified person is authoring PBSPs in all organisations.

Recommendation 6: That government consults with service providers prior to detailing the requirements for legislated reporting and data collection.

The introduction of a legislated requirement to provide data and report regularly about restrictive practice (to be defined in the regulation) is supported. It is noted that reporting to government currently occurs on a quarterly basis without a legislative requirement.

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Nevertheless, Endeavour Foundation would request that any reporting process considers collecting the most useful data and in the least onerous way to ensure that the information meets the needs of all stakeholders and the impost on organisations is minimised. [Clause 36].



Conclusion

Endeavour Foundation broadly supports the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013 and would like to acknowledge the efforts of the government to improve the administration of the use of restrictive practices with the goal of improving life outcomes for people with disability.


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