

20 September 2017

Acting Committee Secretary  
Legal Affairs and Community Safety Committee  
Parliament House  
George Street  
BRISBANE QLD 4000

By email to: [lacsc@parliament.qld.gov.au](mailto:lacsc@parliament.qld.gov.au)

Dear Acting Committee Secretary

**Re: Guardianship and Administration and Other Legislation Amendment Bill 2017**

The Royal Australian and New Zealand College of Psychiatrists, Queensland Branch (QLD Branch) would like to thank you for the invitation to respond to the Guardianship and Administration and Other Legislation Amendment Bill 2017 (the Bill). The QLD Branch welcomes the opportunity to assist in improving the efficiency and clarity of the guardianship system for Queenslanders.

The QLD Branch provided feedback directly to the Attorney-General on the draft Bill earlier this year. As previously indicated, the QLD Branch supports the proposed amendments to Queensland's guardianship legislation with greater emphasis on human rights for adults with impaired capacity.

During consultation on the draft Bill we raised a number of concerns around determining capacity. We anticipate that these concerns will be addressed in the guidelines that the Minister is required to prepare to assist in making assessments about the capacity of adults to make decisions (Clause 41). The Department of Justice and Attorney-General has confirmed that the Capacity Guidelines will be developed once the Bill is passed, and that we will be engaged as a stakeholder in their development. The Department has also indicated that it intends to delay the commencement of the Bill until the Guidelines are developed. The QLD Branch is supportive of this approach, and looks forward to the opportunity to work with the Department on this matter.

However, until the Capacity Guidelines are developed, we would like to reiterate the following concerns with the Bill:

*Decision making capacity*

The QLD Branch supports-in-principle expanding the definition of 'capacity' in the *Guardianship and Administration Act 2000* (Schedule 4) and *Powers of Attorney Act 1998* (Schedule 3) to ensure that the Queensland Civil and Administrative Tribunal (QCAT) investigates the use of all reasonable ways of facilitating communication, before a person is treated as unable to communicate. We are concerned as to how this would apply in urgent situations, and consider it would be beneficial if clear guidance is provided on what constitutes 'all reasonable means to facilitate communication'. The assessor must be certain



that the principal has a sufficient comprehension of the English language to understand the information being presented to them, and if not an interpreter should be arranged. Also the information should be communicated using clear, plain language wherever possible, and relevant information should be repeated. For instance, evidence shows that for people with schizophrenia, repeating consent-related information improves their understanding of that information (Ryan et al., 2015).

We strongly support the development of guidelines for individuals or entities who are required to assess an adult's capacity, and consider it essential that the guidelines are clear and concise and written for the appropriate audiences. The guidelines should incorporate how environmental factors may contribute to incapacity, and how care should be taken to ensure the principal is not overwhelmed by noise, or other distractions and that they have sufficient time to process the information they are presented with (Ryan et al., 2015). In addition, any reference to the term 'intellectual disability' should explicitly state whether it refers to intellectual disability acquired after the period of childhood or adolescence, for instance traumatic brain injury, severe mental illness, and dementia.

Further, in the Capacity Guidelines we also recommend there is an explanation of the scope and purpose of the *Guardianship and Administration Act 2000* and the *Powers of Attorney Act 1998* in relation to the *Mental Health Act 2016*.

#### *Advance health directives*

The QLD Branch supports-in-principle clause 61 which recognises interstate advance health directives. The only concern being if the expectations of service and care made on the advance health directive are not available in Queensland, making it difficult to follow the directive absolutely.

#### *Enduring powers of attorney*

The QLD Branch agrees that additional eligibility requirements for appointing an attorney should be introduced (clause 57); however, the recommendation that an eligible attorney have the 'capacity' for a matter raises concerns as to the criteria used to assess a potential attorney's capacity and the qualifications of the person assessing their capacity. For instance, would the capacity criteria and assessment be consistent with what is used to assess the capacity of principals? This requires clarification to ensure there is no confusion and potential non-compliance with the legislation. Apart from this point the eligibility requirements are appropriate and reasonable.

If you would like any further information or would like to discuss any of the topics raised in this letter, please do not hesitate to contact me through the QLD Branch Policy Officer, [REDACTED] on [REDACTED] or via [REDACTED].

Yours sincerely



A/Prof Brett Emmerson AM  
Chair, RANZCP Queensland Branch



## Reference

Ryan C, Callaghan S, Peisah C (2015) The capacity to refuse psychiatric treatment: A guide to the law for clinicians and tribunal members. *Australian and New Zealand Journal of Psychiatry* 49(4): 324–33.