

Your Ref: Mr Ross Dowling

Quote in reply: Criminal Law Committee

15 October 2010

Mr Ross Dowling
Legal Policy, Policy and Performance
Department of Communities
GPO Box 806
Brisbane QLD 4001

By Post and Email: Ross.Dowling@communities.qld.gov.au

Dear Mr Dowling

INFORMATION PAPER - FORENSIC DISABILITY BILL 2010

Thank you for the opportunity to meet with you and to provide comments on the Information Paper discussing the *Forensic Disability Bill 2010* (the Paper). The Paper has been reviewed by the Criminal Law Committee of the Queensland Law Society and it is upon their advice that I make the following observations.

1. Introduction

The Queensland Law Society commends the Department of Communities for its efforts to enact legislation to establish a forensic disability service model to provide for involuntary detention, care and protection of persons with intellectual disabilities.

As an organisation, the Society supports efforts to amend laws based on empirical data and findings that indicate change is needed. We commend the Department in this instance, for basing the rationale for change on the well researched and learned findings of the Carter Report, Challenging Behaviour and Disability – A Targeted Response. Additionally, the Society acknowledges the various requirements in the *Forensic Disability Bill 2010* which defend and protect the human rights of adults under forensic orders. It is the Society's position that the vision of the *Forensic Disability Bill 2010* is a progressive step in the advancement of protections for individuals under forensic orders.

2. Location

The Paper states that one specifically designed facility is to be situated at Wacol. From our discussions, we understand that the construction of the facility is close to completion. We have strong concern about this location, as for all intents and purposes, the Wacol facility is considered by the community to be a correctional facility.

We also seek clarification of whether persons under forensic orders will come in to contact with the general prison population. Due to the vulnerability of these individuals, we consider that it would be inappropriate to allow contact with the general prison population.

While we support the development of purpose built facilities we are aware that there is a need for further facilities in the State to be located outside of south eastern Queensland. Our members advise that there is a significant and worthy need for comparable facilities to be constructed in centres such as Townsville, Cairns and other regional locations. Should the single facility model be progressed we are apprehensive about the therapeutic effect of removing individuals thousands of kilometres from their home region to provide them with the benefit of involuntary detention, care and protection.

3. Capacity

The Paper states that the facility will accommodate up to 10 people. We do not consider that this will be sufficient to accommodate for persons who are currently serving forensic orders. We understand that there has been some discussion on expanding this facility and we support this proposal. We consider that this proposal should be implemented as a matter of priority.

Again we consider that it is of paramount importance to make similar facilities available in Queensland regional centres, for example; Cairns and Townsville.

4. Review

The Paper states that the service arrangement between Queensland Health and the Department of Communities is to be reviewed two years from the commencement of the service. We opine that the arrangement and the *Forensic Disability Bill 2010* be reviewed on a bi-annual basis to ensure that the aims of the legislation are being achieved.

5. Regulated and prohibited seclusion and mechanical restraint

We are supportive of the Queensland Health policy on the reduction of the use of restrictive practices. We agree that a guardian be appointed for restrictive practice matters. This guardian should be consulted on the approval, review and use of restrictive practices by disability service providers.

The Department's policy for use of restrictive practices should be easily accessible to the concerned adult, his or her guardian, and other appropriate persons. The Society believes that it is important that all appropriate persons readily have access to information, notice of decisions, and an opportunity to request review. In this regard, we consider that it is important to keep a restrictive practice register in order to accurately record and monitor the use of these practices.

We consider that the use of mechanical and/or chemical restraints should require:

- The consent of the adult or their legal guardian or the Queensland Civil and Administrative Tribunal;
- The approval of the Director;
- That a report be provided to the Director on the use of the restrictive practice; and
- The recording of the use of the restrictive practice on an accessible register.

We support the development of Positive Behaviour Support Plan (PBSP) by the Department to deal with the application of restrictive practices. As recommended in the Carter Report, the disabled adult, his or her parent or guardian, and appropriate specialists should also have the opportunity to participate in the

development of the PBSP. Furthermore, it is the Society's view that the chief executive should also be required to consult with the Queensland Civil and Administrative Tribunal when adopting PBSPs. We suggest that notifications be made to relevant persons, such as; concerned adult and his or her guardian. We consider that this is essential to adequately protect the rights of these persons.

In relation to the PBSP, we advocate that there must be provisions for appeal or review to change a PBSP. The Society submits that there should be a provision in the legislation outlining persons with standing to request a change to the PBSP, including the adult, his or her guardian, appropriate specialist, and other appropriate persons. It is important that the legislation details avenues for appeal or review of changes and we suggest that orders for use of mechanical or physical restraints be regularly reviewed.

6. Allied persons

The Queensland Law Society supports the concept of an allied person being appointed to assist the person who is held under a forensic order. However, we do not consider that the Administrator of the authorised forensic disability service should have the ability to nominate who should be an individual's allied person. We consider that the legislation should specify that the person's Guardian be automatically appointed as the allied person. If no Guardian has been appointed, then the appointment of an individual's allied person should be decided by the Queensland Civil and Administrative Tribunal.

We believe that this allied person should have full access to all relevant information, including but not limited to:

- A statement of the person's rights;
- Notification of Mental Health Review Tribunal hearings;
- The use of regulated and prohibited seclusion and mechanical restraints; and
- All treatment undergone by the person under the forensic order.

We also support the Adult Guardian's proposal to have standing in these matters.

7. Visitor

We consider that the legislation make provision for a Visitor. This Visitor should be an independent person, appointed by the Mental Health Review Tribunal to visit the facility and carry out random audits. The Visitor should be provided with a range of powers, including the power to:

- Examine documents;
- Question facility employees; and
- Inspect the facility.

In the Society's view this function is not served by the Authorised Officer, whose investigative and enforcement powers are only enlivened when a complaint is made. In contrast, the Visitor would have investigative and enforcement powers that are complaint driven and may therefore be exercised at any time.

We support your proposal to make this facility a visitable site. However, we still consider that the role of an Authorised Practitioner will not replace the valuable function that would be served by appointing a Visitor.

Thank you again for the opportunity to provide comment on this Paper. Due to the short consultation process, we reserve the right to make more substantial comments. Please do not hesitate to contact Ms

Binny De Saram, a Policy Solicitor with our office on (07) 3842 5885 or b.desaram@qls.com.au if you require further comment or clarification on the points raised in this letter.

We look forward to continuing to work with you on this important law reform issue.

Yours faithfully

Peter Eardley
President