

3 August 2017

Our ref: VK – HDL/Elder

Emma Hlubucek
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By email: emma.hlubucek@lawcouncil.asn.au

Dear Ms Hlubucek

Aged Care Quality Assessment Senate Review

Thank you for the opportunity to provide comments on the Effectiveness of the Aged Care Quality Assessment and accreditation framework for protecting residents from abuse and poor practices, and ensuring proper clinical and medical care standards are maintained and practiced. Queensland Law Society appreciates being consulted on this important review.

This response has been compiled with the assistance of the Elder Law and Health and Disability Law Committees (the **Committees**) who have substantial expertise and practice in this area.

The Queensland Law Society (**QLS**) is the peak professional body for the State's legal practitioners. We represent and promote nearly 12,000 legal professionals, increase community understanding of the law, help protect the rights of individuals and advise the community about the many benefits solicitors can provide. The QLS also assists the public by advising government on improvements to laws affecting Queenslanders and working to improve their access to the law.

The Society supports the recommendations from the Office of the Public Guardian (the **Public Guardian**) and the Australian Law Reform Commission to regulate the use of restrictive practices in Aged Care. The Society also agrees with the Public Guardian's comments that the *Disability Services Act 2006* (Qld) is a comprehensive regulatory framework that should be considered as a potential model for Commonwealth reform. The inclusion of restrictive practice provisions in this Act has resulted in greater transparency, consistency, professionalism and oversight of these practices.

As it stands the *Aged Care Act 1997* (Cth) does not regulate the use of restrictive practices such as chemical, physical and mechanical restraint. These practices are a breach of human rights and can lead to negative physical and psychological effects on residents in aged care.

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The Committees have provided further comments with regards to the Senate Inquiry for your consideration.

Firstly, we submit that it is important that any revision of legislation covers medical prescribing. Giving the research suggesting the overuse of anti-psychotics in nursing homes, there is question with regard to who is consenting to this practice, for example, is it the patient, the substitute decision maker, nursing home staff or doctors? What standards for oversight and protocols are to be followed by the nursing home to ensure that these prescriptions are occurring in compliance with good medical practice, and in consultation with the patient's substitute decision maker (where applicable)? This can be an issue between State and Commonwealth-based schemes, and will need to be resolved to ensure that any Commonwealth-based regulations understand and integrate with State based schemes, such as enduring powers of attorney and other guardianship frameworks.

The Committees have also raised concerns about the lack of agency for the resident. A resident who moves into an aged care facility often has a new and unknown doctor. This can be unnerving and distressing for an elderly patient who may struggle with the imposition of a new doctor (having perhaps spent many years building a relationship of trust with one general practitioner). We submit that the revision should include greater consideration of the mechanisms whereby general practitioners can continue to visit their patients at the nursing home, once they have become a resident.

If you have any queries regarding the contents of this letter, please do not hesitate to contact our Policy Solicitor, Vanessa Krulin by phone on 3842 5872 or by email to Vanessa.Krulin@qls.com.au.

Yours faithfully



Christine Smyth
President