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Office of the President

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The Research Director
Health and Community Services Committee
Parliament House
George Street
Brisbane Qld 4000

By Post and Email to: hcsc@parliament.qld.gov.au

Dear Director

DISABILITY SERVICES (RESTRICTIVE PRACTICES) AND OTHER LEGISLATION AMENDMENT BILL 2013

Thank you for inviting the Queensland Law Society (QLS) to make submissions on the *Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013.*

This letter is written with the assistance of the Elder Law Committee.

At the outset, QLS supports legislation that adheres to fundamental legislative principles and does not support legislation which impedes on the rights and liberties of individuals.

The Society is generally supportive of the proposed amendments and commends the Minister and the Department of Communities for conducting consultation prior to the introduction of the Bill. QLS is of the view that early consultation is the key to introducing good laws.

QLS is particularly supportive of the spirit of clause 5, which amends s123A of the *Disability Services Act 2006* (Qld) by widening the purpose of Part 10A: Use of Restrictive Practices by importantly:

> *"stating principles to be taken into account by funded service providers in providing disability services to those adults with behaviour that causes harm to themselves or others;…"*

The Society considers this to be an excellent initiative and an important step in improving transparency and uniformity for the use of restrictive practices.

There are three key features the Society will canvas in this submission:

1. the importance of external scrutiny and advocacy;

2. ensuring transparency; and
3. ensuring the adult (where appropriate) and interested persons are involved in decision making/ providing feedback for the adult's positive behaviour plan.

1. The importance of external scrutiny and advocacy

Upholding and ensuring the rights and liberties of individuals are the cornerstones of democracy.

In our view, the use of restrictive practices should have safeguards within so that decisions about the adult are transparent, reviewable and involve independent scrutiny and advocacy.

In the matter of *GAS* [2013] QCAT 194,[1] the Tribunal did not initially approve the Order for containment and seclusion, as it was based on a plan that referred to community access that the adult was not receiving. As such QCAT did not consider seclusion for 21 hours per day as the least restrictive. QCAT were also concerned that the treating doctors' views were not regarded.

Community Access was restored, and QCAT approved the plan, but authorised the appointment of a representative, to assist in representing the views and wishes of GAS. Importantly, QCAT required that the representative be someone independent of the service provider (who was receiving approximately $500,000 annually) or the funding body.

This raises the importance of external and independent advocacy in an area where conflicts of interest can arise. For example, the service provider has much invested in retaining the adult and the $500,000 package, making it difficult for GAS to change service providers, should he have wanted to. When people are spending a long time in seclusion, this means that they are usually living in an extremely austere environment. This usually involves all furniture and objects being permanently affixed to walls and floor. People do not generally have access to information, or communication (for example phones or computers). This means that these adults may not have an opportunity to seek external advocacy or to investigate and change service providers, which may assist in supporting and managing the adult's treatment and behaviour.

Recommendations

We therefore recommend amendments to clause 31 (s123ZZCA) of the Bill. Whilst we are very supportive of the principles behind clause 31 and commend the requirement to give a statement about the use of restrictive practices, we consider that the above issues may be better addressed by:

- Including a further requirement in subsection 3, that the statement expressly state the contact details for independent advocacy for the adult, including (but not limited to):
    - Disability Advocacy and Legal Services; and
    - Queensland Law Society; and

[1] http://archive.sclqld.org.au/qjudgment/2013/QCAT13-194.pdf

- Set out the timeframes and parameters in subsection 3(d) for how an individual's plan may be reviewed (eg setting out a periodic review and who may review the plan).

We note that the Bill also provides provisions to expanding the immunity provisions for service providers. We note the oral submissions made by Queensland Advocacy Incorporated and the Public Advocate and agree that there be more certainty and clarification regarding the operation of the expanded immunity provisions.

2. Ensuring transparency

The Society is very supportive of ensuring transparency, particularly for persons subject to restrictive practices.

To that end we note that clause 36 (s123ZZK) sets out who the Chief Executive may give information about use of restrictive practices. They are:

- QCAT;
- The Adult Guardian;
- The Public Advocate under the GAA: and
- The relevant service provider.

Recommendations

We therefore recommend that the classes of people who may receive information about the use of restrictive practices should be extended to:

- the adult (in circumstances where it is appropriate);
- the adult's support network; and
- the adult's treating doctors and health care professionals.

This will ensure the transparency objectives of the restrictive practice principles are adhered to, which promoted good practice.

To assist with portability issues and to ensure resource efficiency, we also consider that the support plan (similar to forensic orders) should attach to the person, not to the service provider. As discussed above, there is marked rigidity in having the plan attach to the service provider.[2] In our view, we recommend clarifying that QCAT orders (for example) are to be attached to the person would reduce red tape as it reduces the need to have orders for numerous guardians and service providers.

3. Ensuring the adult (where appropriate) and interested persons are involved in decision making/ providing feedback for the adult's positive behaviour plan

We consider that the adult (where appropriate) and interested persons (in the adult's support network, including health care professionals) should have an opportunity to be involved and

[2] *GAS* [2013] QCAT 194.

provide input in decision making for the adult's positive behaviour plan. We do not recommend changing the decision maker for the adult's positive behaviour plan but rather they the decision maker invite the adult (where appropriate) and interested persons to provide feedback in developing the plan. The decision maker then has the final determination for the plan, but can do so in an informed way noting the views, feedback and experiences from the adult and interested persons.

Recommendation

We therefore recommend an amendment to clause 13 (s123L) that the positive behaviour plan to set out who may provide feedback and suggestions for the plan. We propose, as a minimum, that the adult (where appropriate), the adult's support network and treating doctors be involved and provide feedback for consideration.

Thank you for the opportunity to prepare submissions on the Bill. If you have any queries regarding the contents of this letter, please do not hesitate to contact us.

Yours faithfully

Michael Fitzgerald
Deputy President