



**Carers Queensland Inc.**

**Submission to the  
Australian Law Reform Commission –  
Equality, Capacity and Disability in Commonwealth Laws**

**January 2014**

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Equality, Capacity and Disability in Commonwealth Laws

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## **CARERS QUEENSLAND INC.**

Family carers provide unpaid care and support to family members and friends who have a disability, mental illness, chronic medical condition, terminal illness or are frail aged.

The activity and impact of providing care is best understood in terms of its context; as a relationship between two or more individuals, rooted in family, friendship or community. Caring is a role rarely chosen by most, nor does it discriminate. Children and young people, people of working age and older people, people with a disability, people who identify as culturally and linguistically diverse, indigenous Australians and those living in rural and remote Queensland provide care to a family member or friends on a daily basis. For some caring is a short term commitment whilst for others it is a role that literally lasts a lifetime.

Carers Queensland Inc. is the peak body representing the diverse concerns, needs and interests of carers in Queensland. Carers Queensland believes that all carers regardless of their age, disability, gender identification, sexuality, religion, socioeconomic status, geographical location or their cultural and linguistic differences should have the same rights, choices and opportunities and be able to enjoy optimum health, social and economic wellbeing and participate in family and community life, employment and education like other citizens of the State. Carers Queensland's mission is to improve the quality of life of all carers throughout Queensland.

We believe we are in a unique position to advocate on behalf of the 484,400<sup>1</sup> carers living in Queensland. We aspire to provide an independent platform from which to advance the issues and concerns of carers and believe our knowledge and expertise in carer issues means that we are able to provide the Government with relevant and trusted information that will ensure that the needs of carers will be recognised, respected and acted upon. Our ambition is to ensure that carers are recognised and included as active partners in the development of government health and social policy, legislation and service delivery practices.

This submission reflects the concerns of Queensland's carers, those citizens who provide unpaid care and support to vulnerable family members and friends. This submission has been informed by consultation with Queensland's carers and Australian and international research.

## **OVERVIEW**

Carers Queensland recognises and upholds the tenets of the United Nations Convention on the Rights of Persons with Disabilities and the seven core United Nations human rights treaties to which Australia is signatory and the right of citizenship of the population.<sup>2 3</sup>

Carers Queensland believes that the human rights of all people should be both indivisible and interdependent and that to deny an individual or a group of people their human rights is to deny them their dignity, respect and citizenship. Carers Queensland also believes that full citizenship is underpinned by two moral beliefs: the equal dignity of all human beings and the positive value of human diversity and difference and that the actualization of citizenship is essential for both personal and political security, enabling a stronger and more productive society.<sup>4</sup>

Carers Queensland commends the Commonwealth Government for initiating this review of Commonwealth laws by the Australian Law Reform Commission and believes that the reforms will support Australia's goal of economic stability and prosperity and being a fair and just society. In particular, the 'right' reforms of particular Commonwealth laws, we believe, could support genuine inclusive growth and create the capacity to redress the disequilibrium between economic and social systems in Australia.<sup>5</sup>

Our responses will be confined to those questions relating to, or of relevance to, carers of people with disability.

## **SUMMARY OF RECOMMENDATIONS**

Carers Queensland recommends:

1. the inclusion of diversity into the existing list of framing principles
2. establishment of a national or nationally consistent framework for the determination of a person's capacity
3. the formal recognition of carers and family
4. establishment of a national or nationally consistent code of conduct for the elimination of restrictive practices

## DETAILED RESPONSES

**Q. 3** *The ARLC has identified as framing principles: dignity; equality; autonomy; inclusion and participation; and accountability. Are there other key principles that should inform the ARLC's work in this area?*

Carers Queensland believes that **diversity** should be incorporated into the existing list of framing principles; ensuring the human rights of all people with disability is indivisible and interdependent.<sup>6 7</sup>

**Q. 4** *Should there be a Commonwealth or nationally consistent approach to defining capacity and assessing a person's ability to exercise their legal power capacity? If so, what is the most appropriate mechanism and what are the key elements?*

The Carers Queensland Family and Advocacy Support Service<sup>1</sup> has witnessed the distress experienced by carers and families as they seek to understand and negotiate cross jurisdictional differences when arranging guardianship and long term care and support services. This distress is compounded by the time and cost impost of negotiating with different agencies including various government departments and tribunals.

Reflecting on our experience Carers Queensland supports the establishment of a national or nationally consistent framework and approach to determining a person's capacity and ability to exercise legal power and the appointment of appropriate guardians etc.

A national or nationally consistent framework:

- i. should consist of contemporaneous and best practice policies, procedures and protocols for determining legal capacity.
- ii. will provide an effective structure that requires the input of all involved parties, including families and carers, in determining an individual's capacity, ensuring their voice is heard without the necessity to use (often prohibitively costly) advocacy and other legal services.
- iii. will underpin and enable the 'portability' provisions integral to the aged care sector and the NDIS policy. Without a national framework the efficacy and reputation of both policies and structures will be compromised.

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<sup>1</sup> Established in 2006 the Carers Queensland Family Support and Advocacy Service is the only specialist community legal service providing support and assistance to carers with matters being handled by the Queensland Adult Guardian, Public Trustee of Queensland and Queensland Civil Administration Tribunal. Approximately 1.4% of cases involve cross-jurisdictional issues.

- iv. Will be supported by comprehensive database capable of being accessed by the relevant statutory authorities in all States and Territories ensuring that people with impaired capacity, their carers and family are not required to participate in multiple and unnecessary 'determination' hearings should they decide to relocate.

**Q. 5** *How should the role of family members, carers and others in supporting people with disability to exercise legal capacity be recognised by Commonwealth laws and frameworks?*

The experience of the Advocacy and Family Support Service suggests that the opportunity for carers to have a voice is often dependent on the prior (personal and professional) experiences of the parties involved in the guardianship and administration processes and is at the goodwill of those in the coordinating/decision-making role. Whilst 'the system' in Queensland appears to be working at the moment, our experience suggests that undoubtedly it could be more efficient and cost effective to all parties with the institution of a national or nationally consistent framework (as per Question 4).

**Q. 37** *What is the most appropriate approach to the regulation, reduction and elimination of restrictive practices used on people with disability at a national or nationally consistent level? What are the key elements any such approach should include?*

Carers Queensland supports the establishment of a national or nationally consistent code of conduct for the elimination of restrictive practices. Commonwealth funding of service providers would be dependent on service providers signing up to the code and complying with the conditions specified in the code, including the provision of data.

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## REFERENCES

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- <sup>2</sup> Disability Rights Now. (2012). Civil society report to the United Nations Committee on the rights of person with disabilities. Compiled by Disability Representative, Advocacy, Legal and Human Rights Organisations.
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- <sup>6</sup> Gay and Lesbian Rights Lobby. (2012). *Prioritising Human Rights: submission on the development of a national human rights action plan*. Sydney: Author
- <sup>7</sup> Brothers, Michael. (2003). It's not just about ramps and Braille: disability and sexual orientation in *Re-Thinking Identity: the challenge of diversity* edited by Katherine Zappone.  
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