The Public Advocate
*Influencing change to transform lives*

28 April 2023

Australian Commission on Safety and Quality in Health Care
Level 5, 255 Elizabeth Street
Sydney NSW 2000

Via email: ccs@safetyandquality.gov.au

**Re: Psychotropic Medicines in Cognitive Disability or Impairment Clinical Care Standard Public Consultation**

Thank you for the opportunity to comment on the draft Psychotropic Medicines in Cognitive Disability or Impairment Clinical Care Standard (the Standard).

As the Public Advocate for Queensland, I undertake systemic advocacy to promote and protect the rights and interests of Queensland adults with impaired decision-making ability.[1] There are several conditions that may affect a person's decision-making ability, including intellectual disability, acquired brain injury, mental illness, neurological disorders (such as dementia) or alcohol and drug misuse.

I support the Australian Commission on Safety and Quality in Health Care's commitment to reduce the inappropriate use of psychotropic medicines and applaud the standard's aim to support this direction, guiding the appropriate management of psychotropic medicines to improve outcomes for people with impaired decision-making ability.

I also commend the various rights-based principles found in the standard. The acknowledgment of person-centred care and supported decision-making are principles that are consistent with the human rights of people receiving health care.

I have made some suggestions below for consideration prior to the finalisation of the standard.

**Legal requirement for restrictive practices**

Although the standards do acknowledge the legal requirements surrounding the authorisation and use of chemical restraint, it may be helpful to emphasise the importance of these laws and their implications for clinicians and health care services if breached. The standards could potentially be improved with an acknowledgement that the use of restrictive practices without legal authorisation can be considered a criminal act, with consequent implications for individuals.

The standards do note that laws developed for aged care services and the NDIS regarding restrictive practices should be applied, but does not mention the consequences for not applying them. Consideration should also be given to the standards including reference to other laws around restrictive practices under various jurisdictions. For example, in Queensland, there are specific laws regarding restrictive practices under the *Mental Health Act 2016* (Qld) and the *Forensic Disability Act 2011* (Qld) that are different to those that apply in the context of the NDIS and aged care.

[1] *Guardianship and Administration Act 2000* (Qld) s209.

**'Best-interests' model**

The standards note that a substitute decision-maker will make a decision for a person based on their 'best interests' (pages 20 and 23). Many State and Territory jurisdictions across Australia (including Queensland) are now moving towards, in legislation and practice, a model for decision-making that is based on the person's 'will and preferences', which provides for a stronger alignment with the rights of the individual.

The *Guardianship and Administration Act 2000* (Qld) and the *Powers of Attorney Act 1998* (Qld) provide relevant examples of the application of a changed approach to decision-making for further reference.

**Substitute decision-makers**

The standards indicate that consent may need to be sought from a substitute decision-maker if a person lacks the capacity to consent to chemical restraint, and to 'seek consent in accordance with relevant legislation' (page 24).

It may be helpful for this information to also note that there may be different substitute decision-makers for different purposes, as well as jurisdictions in which consent cannot be sought.

Further, chemical restraint can also be applied in situations outside of a consent-based model, such as under the *Mental Health Act* and the *Forensic Disability Act* in Queensland, where a different regime applies.

**Non-drug strategies**

The standards stress the importance of using 'non-drug strategies' (page 31) prior to considering the use of chemical restraint on a person. This is generally correct, however the standards could also potentially note that 'non-drug' strategies do not include other forms of restrictive practices.

Although the standards do mention that these other strategies should not be 'restrictive', it may benefit from stating that all forms of restrictive practice should only be considered as a last resort, and that specific laws also guide the application of non-chemical forms of restraint.

**Guide for consumers**

Among the documents provided to support the introduction of the clinical standard is a 'Guide for consumers'. It is presumed that this guide has the objective of informing patients with impaired decision-making ability of the processes involved when they receive psychotropic medicine for the purpose of chemical restraint.

If this is the guide's overall objective, it is suggested that it be reviewed, potentially in consultation with peak disability advocacy and service organisations, to enhance its accessibility for this cohort and their support network, including carers, family, and friends.

These comments are made with the understanding that the authorisation and use of chemical restraint and other restrictive practices are complex, making it very difficult to simplify, particularly for people without a medical or legal background.

It is also noted that the guide is accompanied by an 'easy read' fact sheet which does assist in interpreting the process, but does not contain all of the relevant information from the guide.

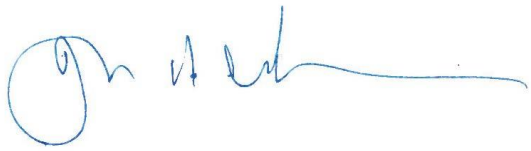
**Conclusion**

Thank you again for the opportunity to provide feedback regarding the new Psychotropic Medicines in Cognitive Disability or Impairment Clinical Care Standard.

It is anticipated that this standard, once finalised, will contribute to the reduction and potential elimination of the use of restrictive practices across clinical settings in the future.

Should you wish to discuss any of the matters I have raised in this submission further, please do not hesitate to contact my office via email public.advocate@justice.qld.gov.au or phone 07 3738 9513.

Yours sincerely



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**Public Advocate**