Policy	**Monitoring and advocating for the rights and interests of adults, children and young people staying in authorised mental health services**	
Approved by:	Public Guardian	**Name**: Natalie Siegel-Brown
Date Effective	March 2018	Version 1
Application	Community Visitors and Regional Visiting Managers—Community Visitor Program	
Related	*Practice Direction: Monitoring and advocating for the rights and interests of persons staying in authorised mental health services.* *Practice Direction: CVP interaction and sharing of information with private and informal decision makers (child and adult). This practice direction is in development.*	

POLICY

A. Relevant Legislation

A1. *Public Guardian Act 2014*
A2. *Mental Health Act 2016*
A3. *Guardianship and Administration Act 2000*
A4. *Powers of Attorney Act 1998*
A5. Universal Declaration of Human Rights
A6. Convention on the Rights of Persons with Disabilities

B. Purpose

B1. The Office of the Public Guardian (OPG) has an important statutory role in monitoring and advocating for the rights and interests of all people residing in authorised mental health services (AMHS). This includes monitoring and making enquiries into the service delivery provided by AMHS to ensure the rights and needs of people receiving services and treatment from those AMHS are being adhered to, and that people residing in an AMHS know their rights.

B2. This policy provides the OPG position on the Community Visitor Program's (CVP) delivery of visiting and advocacy functions for all adults, children and young people residing in an AMHS.

B3. The OPG policy position for people residing in an AMHS includes:

- all people residing in an AMHS have unique strengths, needs and vulnerabilities
- all people residing in an AMHS must have their rights maintained and any restrictions on a person's rights must be minimised and done in accordance with legislation
- treatment and care must be provided to a person in a manner that safeguards their rights, is the least restrictive of their rights and liberties and promotes their recovery and ability to live in the community

- where possible a person should be involved in and / or supported to make decisions about their assessment, treatment and recovery
- a person's views and wishes should be sought and respected
- an AMHS provides temporary accommodation (treatment) services and is—at least for a period of time—a person's home and should generally be short term
- the environment of an AMHS must be adaptive and responsive to the needs of the person.

C. Authorised Mental Health Services

C1. An AMHS may be a public or private service established to provide voluntary or involuntary examination, assessment and treatment for people with a mental illness[1].

C2. An AMHS may be an inpatient or community-based mental health facility. An inpatient facility is typically a dedicated mental health unit within a general hospital. In rural and remote areas a public hospital is an AMHS for the purpose of an individual's involuntary examination or assessment, but not treatment.

C3. An AMHS provides short and long-term and/or emergency mental health treatment. Long-term treatment should only occur in situations where a person is requiring treatment and not due to lack of appropriate accommodation and support in the community.

C4. While an AMHS can provide services to voluntary patients, an AMHS is the only place where a person can be detained for examination, involuntary assessment, or involuntary treatment for a mental illness; and where involuntary treatment can be enforced under the *Mental Health Act 2016* (MHA)[2].

C5. A list of AMHS's can be accessed on the Queensland Health Website.

C6. A Child and Youth Mental Health Services (CYMHS) are part of the broader Authorised Mental Health Service (AMHS). Some CYMHS's are component facilities within an AMHS and other CYMHS's are standalone.

D. Context

D1. The CVP monitors and advocates for the rights and interests of adults and children residing in an AMHS in the context of the treatment and care of people with mental illness, current health and government policies, human rights and legal instruments. Of specific interest are the following:

Human Rights Conventions

D2. Human rights protect the dignity and worth of human beings and confirm that people with mental illness have the right to enjoy autonomy, equality and dignity.

D3. It is critical for a Community Visitor (CV) to undertake this work with a strong understanding of, and with appropriate consideration for the 'dignity of risk'. The 'dignity of risk' places an emphasis on choice and self-determination, which are both critical to

1 Under section 10(1) *Mental Health Act 2016*, mental illness is defined as a condition characterised by a clinically significant disturbance of thought, mood, perception or memory.
2 Note: a person with both a mental illness and a disability can be detained in a Forensic Disability Service.

the concept of recovery[3]. The dignity of risk recognises that accompanying every endeavour is the element of risk, and that every opportunity for growth carries with it the potential for failure, noting that people learn from taking risks and trying new things and often learn as much from mistakes as successes[4]. This principle is a core component of the UN's Guiding Principles of the United Nations Convention on the Rights of Persons with Disabilities.

D4. Australia has ratified many important human rights treaties including:

- The Convention on the Rights of Persons with Disabilities[5]
- The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
- The Convention on the Rights of the Child.

D5. A fundamental human right is the protection against medical treatment without consent. This recognises the physical and mental integrity of a person as a serious and fundamental right that is violated when medical interventions are imposed without consent.

D6. Some human rights are subject to 'reasonable limits'. Applying a reasonable limit seeks to protect people from self-harm and suicide. The involuntary detention of a suicidal person to a safe environment is a demonstrably justified limitation of that person's rights.

D7. Any attempt to limit an individual's rights must be **demonstrably reasonable, necessary, justified and proportionate.**

D8. The Principles for the Protection of Persons with Mental Illness and the Improvement of Mental Health Care (MI Principles) provide guidance on how people with mental illness can expect to be treated in the health-care system and beyond[6].

The Mental Health Act 2016 (Qld)

D9. The *Mental Health Act 2016* (MHA) provides a regulatory framework for the management of people who do not have the capacity to make decisions about their own treatment and care, balancing treatment needs with the protection of the community.

D10. The MHA provides for involuntary treatment for mental illness. A person may be temporarily detained for examination by an authorised doctor in an AMHS with their treatment and care governed by the MHA.

D11. The MHA regulates the use of restricted practices: seclusion, mechanical restraint, physical restraint and the appropriate use of medications in AMHS. Seclusion and mechanical restraint may only be used when strict criteria in the MHA are met, including that there is no other reasonably practicable way to protect the relevant patient or others from physical harm. Obligation extends to the recording and planning and actual treatment.

D12. The use of restrictive practices is a significant infringement on a person's human rights, in particular the right to liberty and security of the person and the right not to be subject to

3 Parsons, C. The dignity of risk: challenges in moving on [online]. Australian Nursing Journal: ANJ, The, Vol. 15, No. 9, 2008 Apr: 28

4 Advocates Inc & Deegan, P (2001). The intentional care approach to supporting client choice, Intentional Care. http://www.intentionalcare.org/

5 Currently, the most authoritative legal document relating to the rights of people with disability, including people with mental illness.

6 The Principles are not formally binding, but they do influence the interpretation of Australia's human rights obligations.

cruel, inhuman or degrading treatment or punishment. It is also potentially unlawful and may give rise to criminal or civil liability.

D13. It is therefore imperative that restrictive practices are only ever used as a last resort, that appropriate safeguards are applied and that there is appropriate monitoring and oversight of its use.

D14. The CVP is responsible for monitoring and advocating for a person's human rights in an AMHS. A CV can use a variety of tools including document examination, discussions with consumers and staff, raising issue and issue escalation where appropriate and complaints referral.

D15. Details related to how the CVP and CVs monitor and advocate for an individual's rights and interests in an AMHS, is outlined in the Practice Direction: *Monitoring and advocating for the rights and interests of persons residing in authorised mental health service*.

E. Principles

E1. The Public Guardian recognises the vulnerability of all people residing in AMHS, but sees that particular attention must be paid to any person in an AMHS:

i. **against whom restrictive practices are applied.** This includes: seclusion, , chemical restraint, physical restraint and mechanical restraint.

ii. **whose detention appears to be without a defined end date**. This is particularly relevant for people with a dual diagnosis e.g. a mental illness and either a disability or addiction, or a mental illness and both a disability and addition has been made

iii. **who is a child or young person**. Children and young people residing in an AMHS may have been subject to trauma and abuse. All children and young people are particularly vulnerable if they are subjected to restricted practice or appear to be accommodated in the AMHS without a defined end date.

iv. **who has a dual-diagnosis (disability/addiction).** People with a dual diagnosis (a mental illness and either a disability or addiction, or a mental illness and both a disability and addition) face complex challenges and require a high level of support and as such can be more vulnerable to rights abuse.

v. **who may be under the guardianship, in particular that of the Public Guardian**. A CV and a guardian may find it beneficial to assist a person by taking a joint approach on a matter or providing each other with relevant information with regards to the person or the accommodation site.

vi. for whom a prescribed **course of ECT** involves three or more sessions a week and totals more than 12 sessions[7].

E2. The CVP has both external oversight and individual advocacy responsibilities to ensure a person's rights and interests are promoted and protected while they are being treated in an AMHS, this includes:

- ensuring that treatment and care provided to a person is suitably oriented towards improving the person's mental health condition and wellbeing and that this is

[7] The Department of Health. Guideline: the Administration of Electroconvulsive Therapy, July 2017 Located at: https://www.health.qld.gov.au/qhpolicy/html/index-m.asp

regularly reviewed to establish if present courses of treatment are on track to achieve this;
- ensuring that treatment and care provided to a person is appropriate for, and exclusively directed towards promoting and maintaining their health and wellbeing.
- promoting the presumption of a person's capacity to make decisions about their life, treatment and care, and to the greatest extent practicable, appropriately seeks their views and wishes and provides the person encouragement to take part in decisions about their treatment and care.
- ensuring the rights and interests of people receiving treatment and services from an AMHS are promoted and upheld by the AMHS and when the rights and interests are restricted that decisions and methods are documented throughout all phases of treatment.
- ensuring an AMHS provides treatment in a manner that is the least restrictive of a person's rights and liberties and has regard to that person's safety and welfare.
- ensuring an AMHS uses the less restrictive way (which is a key principle of the MHA), reduces and where possible eliminates: seclusion; chemical, mechanical, and physical restraint; and other restrictive practices.
- ensuring that the AMHS has provided people receiving treatment and/or their carers, or support persons with information (in appropriate formats) so they are aware of relevant rights and responsibilities and can be unhindered in exercising them.

F. Safety

When conducting visits to AMHS, the safety of CVP staff must take priority over other benefits of face-to-face visits with patients. Where safety concerns are present, other forms of communication with patients should be considered.

G. Visiting frequency

The Public Guardian has determined that AMHS' will be visited on a quarterly basis unless it is determined that any particular AMHS is to be visited more frequently.

In determining whether a AMHS should be visited more frequently than quarterly, RVMs must consider the vulnerability and needs of the individuals residing at an AMHS or other pressing concerns and, seek a change to the visiting schedule from the Director Visiting.

A requested visit may also be made to an AMHS and should be considered as an additional visit.

Qld Health provides the OPG with monthly reports identifying instances of seclusion and restraint at AMHSs. This data might trigger additional AMHS visits where patterns of frequent seclusion and restraint are noted.

H. Implementation

- This policy is to be communicated to all CVs prior to them commencing any visits to an AMHS and will be made available to all OPG staff via the OPG Intranet.
- This policy is to be revisited annually through the OPG policy and practice working group, and in accordance with the Office of the Public Guardian's risk management framework.

- Any feedback about how we operate, monitor and advocate for the rights and interests of people receiving treatment and services from an AMHS should be welcomed and provided to the CVP to be considered when reviewing or amending this Policy.
- All CVP staff are required to read and understand this policy document. Support and clarification is available through the CVP Practice team or the CVP Management team.
- A practice direction will provide specific guidance for the implementation of this policy.
- Training on this Policy will only be provided to those CVs nominated to visit AMHS'.
- The following OPG Officers and teams will have additional responsibilities:

The Public Guardian	. Advocate on individual or systemic matters as required, largely being those progressed under the process described by the *Significant Client Matter Escalation Practice Direction.*
Reporting team	. Report annually on visits completed in authorised mental health services
CVP Practice team	. Ensure all notifications of consumers (including minors) are forwarded to the relevant Regional Visiting Manager and recorded in an approved register
Director Visiting	. Retain oversight of program performance, and advocate on individual or systemic matters as required
Regional Visiting Managers	Ensure an appropriate match of Visitor to site, considering aspects such as the professional and personal background of the Visitor. Identify, advocate on and escalate outstanding or critical issues
Community Visitors	Work within their practice framework and in accordance with policy and legislation
Communications team	Development of a booklet for consumers within an AMHS that explains the role of the CVP and how we can help them.

I. Performance monitoring

The following measures will be reviewed annually by the policy and practice working group:

Outputs

- The number of notifications received regarding minors, residing in an authorised mental health service
- The number of in-scope issues raised within an AMHS
- The number of requested visits relating to consumers residing in an AMHS
- The percentage of issues resolved locally versus those escalated
- Fluctuations to the rate of restrictive practices (ideally a decrease) reported to OPG.

Outcomes

- CVs report a greater understanding of their role when visiting AMHS
- Increased oversight of restrictive practices within AMHS, resulting in greater consideration by clinicians given to the application of restrictive practices.

Version #	Approved By and Role	Date	Summary of Changes from Last Version	E-docs Document Number
3				
2				#
1	Natalie Siegel-Brown Public Guardian		Nil	# 4069826