

Disability Services POLICY

Title: Short term approval for the use of restrictive practices in disability services

Policy Statement:

The Department of Communities, Disability Services and Seniors is committed to ensuring adults with an intellectual or cognitive disability who exhibit behaviour that causes harm and who are receiving disability services from a relevant service provider are supported in appropriate ways, in a safe environment and in a way that recognises the adult's rights and needs.

Where an adult's behaviour presents an immediate and serious risk of harm (i.e. physical harm to a person, a serious risk of physical harm to a person or damage to property involving a serious risk of physical harm to a person) to the adult or another person, short term approval for the use of a restrictive practice needs to be sought. The *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* make provisions to allow for a short-term approval for the use of a restrictive practice, where there is an immediate and serious risk of harm to the adult or another person, while further assessment and positive behaviour support planning is undertaken.

Principles:

Adults with an intellectual or cognitive disability:

- have the same human rights as other members of society and should be empowered to exercise their rights;
- have the right to live lives free from abuse, neglect or exploitation;
- have the right to services that are provided in accordance with section 18 (Human rights principle) and sections 19 – 32 (Service delivery principles) of the Act; and
- have the right to receive disability services from a relevant service provider in accordance with principles set out in section 142.

Use of a restrictive practice:

A restrictive practice should only be used:

- where necessary to prevent harm to the adult or others; and
- where it is the least restrictive way of ensuring the safety of the adult or others.

A relevant service provider should provide disability services in a way that:

- promotes the adult's development and physical, mental, social and vocational ability and increase opportunities for participation and inclusion in the community;
- responds to the adult's needs and goals;
- ensures the adult and their family and friends are given an opportunity to participate in the development of strategies for the care and support of the adult;

- involves positive behaviour support planning informed by evidence-based best practice which includes the implementation of strategies, to produce behavioural change, focussed on skills development and environmental design;
- ensures transparency and accountability in the use of restrictive practices;
- recognises that restrictive practices should not be used to punish an adult or in response to behaviour that does not cause harm to the adult or others;
- aims to reduce the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others;
- aims to reduce or eliminate the need for the restrictive practice; and
- ensures restrictive practices are only used as prescribed in the approved positive behaviour support plan or respite community access plan for the adult.

A short term approval to use a restrictive practice is limited to situations where:

- the adult has impaired capacity for making decisions about the use of restrictive practices in relation to themselves;
- there is an immediate and serious risk that, without the approval, the adult's behaviour will cause harm to the adult or others;
- the use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and
- for containment and seclusion – a containment or seclusion approval in relation to the adult has not been given **or** there is no guardian for a restrictive practice (respite) matter for the adult to consent to the use of containment or seclusion; or
- for restrictive practices other than containment or seclusion – there is no guardian for a restrictive practice (general) matter for the adult appointed to consent to the use of a restrictive practice, or if there is, the guardian has been asked for consent, but has not yet given, or refused to give, consent for the relevant service provider to use the restrictive practice.

Safeguards surrounding a short term approval include:

The process of obtaining a short term approval includes the direct involvement of service providers in identifying need, managing risk and making an application to the appropriately delegated decision maker. The decision making process will involve gathering further information through consultation with all relevant parties, such as the service provider, interested parties and private practice clinicians in locations transitioned to NDIS. The longer term appropriateness of a restrictive practice will be examined during the term of the short term approval period.

As a further safeguard, when a relevant service provider is considering the use of a restrictive practice in relation to an adult with an intellectual or cognitive disability, then they must give a Statement in the approved form to the following persons about the use of restrictive practices generally:

- the adult; and
- a person with sufficient and continuing interest in the adult (an interested person).

The statement must state:

- why the relevant service provider is considering using restrictive practices in relation to the adult;
- how the adult and the interested person can be involved and express their views in relation to the use of restrictive practices;

- who decides whether restrictive practices will be used in relation to the adult;
- how the adult and the interested person can make a complaint about, or seek review of, the use of restrictive practices; and
- that the Department, in accordance with the *Disability Services Regulation 2017*, will be collecting information regarding the adults' subjection to restrictive practices .

Also, the relevant service provider must explain the Statement to the adult:

- in the language or way the adult is most likely to understand; and
- in a way that has appropriate regard to the adult's age, culture, disability and communication ability.

The purpose of this provision is to ensure that the adult, family members and others in the adult's support network who have an ongoing involvement in the adult's life are aware why the relevant service provider is considering that any restrictive practice might be necessary; how they can be involved in planning and decision making and express their views; who will make the decision whether or not to authorise the restrictive practice; and what are the review and redress avenues, should there be a complaint.

Objectives:

The policy aims to:

- promote compliance with the legislative requirements for seeking a short term approval to use a restrictive practice, in particular sections 153, 154, 178 and 179 of the Act and Chapter 5B, Part 4 of the *Guardianship and Administration Act 2000*; and
- assist a relevant service provider to meet the requirement under the Human Services Quality Framework to develop and implement policies/procedures for delivering services in the least restrictive way and which comply with legislative requirements for use of restrictive practices and positive behaviour support planning.

Scope:

This policy applies to the relevant activities of departmental staff providing support to adults with an intellectual or cognitive disability who:

- have impaired decision making capacity relating to the use of restrictive practices in response to behaviour/s that causes harm; and
- are receiving disability services provided or funded by Disability Services, or services prescribed by regulation and funded under a NDIS participant plan (a relevant service provider).

This policy does not apply if any of the following is in place for the adult:

- there is a Queensland Civil and Administrative Tribunal approval and a Positive Behaviour Support Plan in place for the use of a restrictive practice, unless the service provider is not currently, but is proposing to provide disability services to an adult, and a short term approval for containment or seclusion is being sought from the Office of the Public Guardian;
- for physical restraint, chemical restraint, mechanical restraint and restricting access in general disability services: there is a guardian for a restrictive practice (general) matter appointed, unless the guardian has neither given, nor refused to give, consent to the relevant service provider to use the restrictive practice in relation to the adult; or
- for containment or seclusion in respite/community access services: there is a guardian for a restrictive practice (respite) matter currently appointed for the adult unless the service

provider is not currently, but is proposing to provide disability services to an adult, and a short term approval for containment or seclusion is being sought from the Office of the Public Guardian.

Roles and Responsibilities:

Staff of the Department of Communities, Disability Services and Seniors:

- All staff must comply with the *Disability Services Act 2006* and policies and procedures on the use of restrictive practices.
- Staff employed in Disability Services have particular responsibilities in relation to the statutory requirements of the *Disability Services Act 2006* restrictive practices framework.
- The Chief Executive, Department of Communities, Disability Services and Seniors, and delegates have a responsibility to ensure that appropriate processes are in place for Departmental staff to comply with the legislation, regulation, policies and procedures.

Disability Services provided or funded service providers:

All staff of a relevant service provider, including individuals acting for the service provider, must comply with the Act.

The service provider has responsibility for ensuring an individual acting for the service provider has sufficient knowledge of the requirements for the lawful use of a restrictive practice, the skills and knowledge required to use the restrictive practice appropriately and for monitoring the use of a restrictive practice to safeguard against abuse, neglect or exploitation.

The relevant service manager (a manager of appropriate seniority) has responsibilities in managing risk, assisting staff in identifying the need for planned use of a restrictive practice, requesting a short term approval and ensuring compliance with the conditions of a short term approval.

The Public Guardian

The Public Guardian has responsibility for deciding requests for a short term approval for the restrictive practices of containment or seclusion or other restrictive practices in combination with containment or seclusion.

Authority:

Disability Services Act 2006

Disability Services Regulation 2017

Guardianship and Administration Act 2000

Delegations:

Under the Act, the Chief Executive must make an administrative decision in relation to a short term approval – whether to give or not give a short term approval for the restrictive practices of physical restraint, chemical restraint, mechanical restraint or restricting access.

These powers are delegated by the Chief Executive to the Director Clinical Practice or Principal Clinician (in locations that have transitioned to the NDIS).

Note: If there is any inconsistency between the policy and related procedure and the *Disability Services Act 2006* or *Guardianship and Administration Act 2000*, the provision in the *Disability Services Act 2006* or *Guardianship and Administration Act 2000* applies to the extent of the inconsistency.

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Office: Centre of Excellence for Clinical Innovation and Behaviour Support

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