

# Disability Services

## PROCEDURE

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**Title:** Locking of gates, doors and windows as the least restrictive way of supporting an adult with an intellectual or cognitive disability safely

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### Purpose

This procedure outlines the processes to be used by a Department of Communities, Disability Services and Seniors (the Department) provided or funded services or services prescribed by regulation and funded under a NDIS participant plan (a relevant service provider) who provide disability services to an adult with an intellectual or cognitive disability, where gates, doors or windows are locked to prevent physical harm being caused to an adult with an assessed skills deficit.

Some adults with an intellectual or cognitive disability may not possess the road safety skills, or other personal safety skills, needed to safely access the community without supervision.

The *Disability Services Act 2006* (the Act) provides that in certain circumstances, a relevant service provider can lock gates, doors or windows at premises where disability services are provided to adults with an intellectual or cognitive disability, providing that the only reason the gates, doors or windows are locked is to prevent physical harm being caused to an adult with an assessed skills deficit.

Relevant service providers need to ensure that the use of a locked gates, doors or windows strategy in relation to an adult with an assessed skills deficit:

- has regard to the human rights of the person;
- safeguards the person and others from harm; and
- maximises the opportunity for positive outcomes.

This procedure applies to the practice of locking of gates, doors or windows to prevent physical harm being caused to:

- an adult (18 years or older);
- who has an intellectual or cognitive disability;
- who is receiving disability services from a Department provided and/or funded service or services prescribed by regulation and funded under a NDIS participant plan; and
- who is an adult with a skills deficit as defined under the Act.

An adult with a skills deficit is defined under the Act to mean an adult with an intellectual or cognitive disability who cannot safely exit the premises where disability services are being provided to the adult without supervision, if the **only reason** the adult cannot safely exit the premises without supervision is:

- the adult lacks road safety skills;
- the adult is vulnerable to abuse or exploitation by others;
- the adult is unable to find their way back to the premises, or
- another reason prescribed under a regulation.

Locking gates, doors or windows includes:

- locking perimeter gates while the adult and staff are at the premises; and
- closing of internal or external doors and/or windows while the adult and staff are inside the building in such a way that the adult with an intellectual or cognitive disability cannot open the gate, door or window independently, sufficient to exit through the gate, door or window.

This procedure does not apply to private agencies or other services that are not provided or funded by the Department, services prescribed by regulation and funded under a NDIS participant plan; nor do they apply to adults when supported by their family or in other informal support arrangements not funded or provided by the Department or via an NDIS participant plan.

This procedure does not apply to:

- situations where the locking of gates, doors or windows constitutes containment or seclusion as defined in the Act; or
- situations where locking the gates, doors or windows constitutes restricting access as defined in the Act.

The procedure also does not apply to:

- taking security precautions such as locking doors and windows to deter intruders and to protect property, provided people are not prevented from leaving the building at any time;
- circumstances where a person's bedroom door is locked from the outside when they are absent from their room or the dwelling, for the purposes of protecting their personal property;
- circumstances where the gates, doors or windows are locked to address issues that are not related to the physical safety of the adult; or
- the locking of gates, doors or windows where the adult is inside the premises and staff are not, and the adult is unable to exit the premises – this practice may be a restrictive practice under the Act (with specific requirements that must be met) or may constitute unsafe practice (which would not be approved under any circumstances).

The locking of gates, doors or windows is not a restrictive practice under the Act. However, where the locking of gates, doors or windows occurs in combination with a restrictive practice as specified in the Act, relevant service providers must also ensure that they comply with the policy and procedures mentioned in the previous section.

## Process

The following outlines the key steps involved in establishing that the **only reason** the gates, doors or windows are locked is that it is:

- (a) necessary to prevent physical harm to an adult with a skills deficit; and
- (b) the least restrictive way of ensuring the adult's safety as is practicable in the circumstances.

Further, where considered the least restrictive way of preventing harm to the adult, this procedure outline the planning, implementation, monitoring and review requirements.

This procedure requires relevant service providers, who lock gates, doors or windows at premises used to provide disability services to an adult with an intellectual or cognitive disability, to:

- ensure that it is necessary to prevent physical harm to an adult with a skills deficit who does not have the skills required to safely exit the premises and conduct themselves safely outside the premises without supervision;

- establish that it is the least restrictive way of ensuring the adult's safety as is practicable in the circumstances;
- minimises the impact on other people receiving a service at the premises; and
- have appropriate regard to cultural and linguistic diversity, including Aboriginal tradition and Island custom.

The Act also requires that a relevant service provider keeps and implements a policy about the locking of gates, doors or windows that is consistent with the department's policy.

In order to comply with these requirements the following process is recommended when considering the need to lock gates, doors or windows of premises where services are provided to adults with an intellectual or cognitive disability.

### Identification

Relevant service providers must establish that the locking of gates, doors or windows policy and procedures apply by confirming the person for whom the strategy is being considered:

- is an adult aged 18 years or older;
- has an intellectual or cognitive disability as defined in the Act;
- is receiving a disability service from a Department provided or funded service or services prescribed by regulation and funded under a NDIS participant plan; and
- that the **only reason** the gates, doors or windows are locked is to prevent physical harm being caused to an adult with a skills deficit.

Furthermore, the relevant service provider must establish that the practice is not containment, seclusion or restricting access as defined under the Act.

### Establishing whether the adult is an adult with a skills deficit

The relevant service provider must establish that:

- the adult cannot safely exit premises where disability services are provided to the adult without supervision; and
- the **only reason** the adult cannot safely exit the premises without supervision is that the adult:
  - (i) lacks road safety skills;
  - (ii) is vulnerable to abuse or exploitation by others;
  - (iii) is unable to find their way back to the premises; or
  - (iv) another reason prescribed under a regulation.

The adult's safety skills should be assessed formally by an appropriately qualified practitioner, for example an occupational therapist or psychologist. However, access to a formal assessment by a qualified practitioner may not be readily available. In those circumstances, until a formal assessment can be completed, the relevant service provider should conduct their own assessment of the adult's skills and consult with significant stakeholders, including the person and their support network, to establish a current and evidence-based conclusion of the adult's skills and capabilities.

Where it is determined through formal assessment, or through assessment by the service provider and a consensus view, that the adult does not currently possess the skills to exit the premises safely without supervision, service providers must then determine whether or not

locking the gates, doors or windows is necessary and the least restrictive way of ensuring the adult's physical safety.

### **Establishing the necessity of the practice to ensure safety**

Even if it is determined that the adult requires supervision to exit the premises, the relevant service provider must still establish that it is necessary to prevent the exit from the premises without supervision in order to prevent physical harm to an adult with a skills deficit. That is, the service provider must be satisfied that the **only reason** the gates, doors or windows are locked is to prevent physical harm being caused to an adult with a skills deficit. This must be balanced with the obligation to ensure that the person's freedom of movement is not unnecessarily restricted and that dignity of risk is considered.

To establish this, the relevant service provider should consider the:

- likelihood that the adult would leave the premises (including, for example, taking into account any previous history of leaving the premises and any physical harm or serious risk of physical harm that occurred to the adult at those times);
- likelihood that the adult would come to harm if they left the premises; and
- seriousness of the physical harm which may occur.

If the adult would not leave the premises by themselves, or would not be able to do so without the notice of individuals able to provide supervision, it may not be necessary to take any further action to prevent the adult leaving without supervision.

If the adult is unlikely to come to any harm, even if they left the premises without supervision, it may not be necessary to take further action, or the action that is taken may not relate to preventing the person from leaving the premises.

If the adult may come to harm, the relevant service provider must ascertain the seriousness of the consequences of the potential harm. The assessment of the seriousness of the potential harm that may occur should inform the service provider's response.

### **Least Restrictive Alternative**

If the relevant service provider determines or assesses that the locking of gates, doors or windows is necessary to prevent physical harm being caused to the adult with a skills deficit, the service provider must be satisfied that the practice is the least restrictive way of ensuring their safety.

To determine whether or not the practice of locking gates, doors or windows is the least restrictive way of ensuring the adult's safety as is practicable in the circumstances, the relevant service provider should consider:

- why the person is leaving or trying to leave without supervision;
- any other approaches which have been tried;
- whether there are other resources that may be brought to bear on the issue;
- if locking of gates, doors or windows is to occur – what is the shortest possible time that the locking could occur for;
- if locking of gates, doors or windows is to occur – consider the least restrictive way of locking e.g. limiting access to part of the premises rather than lock all of the gates, doors or windows at the premises; and
- the use of alternative strategies including special equipment and/or modifications to the premises that may be used instead of or supplementary to the locking of the gates, doors or windows.

The relevant service provider should also take into account:

- dignity of risk of the adult; and
- the views and wishes of the adult and significant others in the adult's support network.

The assessment process will involve the adult and their support network, including the guardian or informal decision maker.

The process should be documented to ensure that meaningful review of the decision-making process can be undertaken.

### **Decision**

On the basis of the findings of the assessment, the relevant service provider, in consultation with the adult's support network (including the guardian or informal decision maker), will decide whether there is enough evidence that the only reason for locking gates, doors or windows is that it is necessary and the least restrictive way to prevent physical harm to the adult with a skills deficit.

The relevant service provider must record this decision making process in writing.

### **Planned response**

The relevant service provider must develop and document a planned response which is part of and consistent with the adult's Individual Plan. The planned response must be developed and documented in a manner which reflects the outcomes of the assessment process. The planned response should be developed by the service provider ensuring the involvement of direct support staff, the adult, and significant members of the adult's support network.

Particular consideration must be given to the needs of Aboriginal persons, Torres Strait Islanders or people from culturally or linguistically diverse backgrounds in the consultation and planning process. This may take the form of having appropriate regard to Aboriginal tradition, Island custom, other linguistic or cultural beliefs and supporting people to participate in the process and/or providing access to interpreters.

The plan must clearly outline:

- details demonstrating why the practice of locking gates, doors or windows is the least restrictive way of ensuring the physical safety of the adult with a skills deficit as is practicable in the circumstances;
- the circumstances and manner in which the locking of gates, doors and windows may be used;
- strategies for developing the adult's safety skills to the maximum extent possible in order to reduce reliance on and to ultimately cease the practice of locking gates, doors or windows;
- timeframes for review of the plan;
- other strategies for reducing the need to lock the gates, doors or windows of the premises; and
- strategies for minimising the impact on other people receiving a service at the premises.

The written plan must be approved by the relevant service provider and a copy should be provided to the adult's support network (including the adult's guardian or informal decision-maker).

### **Safety measures**

The decision to lock gates, doors or windows may require additional safeguards in the household. For example, fire safety evacuation plans will need to be specifically designed and/or amended to ensure people are not placed at risk. The relevant service provider is responsible for ensuring that

all staff and household members are provided with relevant training in respect of emergency evacuation plans.

The following legislation contains specific requirements that relevant service providers may be obliged to incorporate:

- *Fire and Emergency Services Act 1990*: All owners / occupiers of Budget Accommodation buildings must prepare a Fire Safety Management Plan and Fire and Evacuation Plan in accordance with the requirements of the *Fire and Emergency Services Act 1990*. The purpose of this is to ensure that all persons, including those with mobility or other evacuation impairments, can exit the building in a timely and safe manner should an emergency arise; and
- The *Work Health and Safety Act 2011* is based on the principle of duty of care and covers all workplaces. Employers are required to accept general duty of care for the health and safety of all peoples in the workplace and are responsible for ensuring that all reasonably practicable measures have been taken to control risks against all possible injuries arising in the workplace.

### **Implementation, Monitoring and Review**

The relevant service provider is responsible for ensuring the plan is implemented, monitored and reviewed.

#### **Implementation**

The service provider will ensure that the plan is implemented as required by ensuring that:

- all interventions, as outlined in the plan, are implemented according to the specific instructions detailed in the plan; and
- records are kept of the application of the plan including the progress of skill development strategies outlined in the plan.

#### **Monitoring**

The service provider is responsible for monitoring the plan, in particular:

- the implementation of the positive elements of the individual plan;
- improvements in the adult's quality of life;
- the effectiveness of the particular locked gates, doors or windows strategy implemented;
- the safety of the adult and other householders when the practice is in place; and
- negative impacts on other members of the household.

#### **Review**

The service provider will review the plan as required and ensure that:

- reviews occur according to timeframes established in the plan;
- the adult and member of the adult's network (including the guardian or informal decision maker) are consulted and involved;
- the initial assessment is regularly re-examined, particularly the assessment of the adult's skill level, to determine if the locked gates, doors or windows strategy is still necessary and is still the least restrictive way of ensuring the physical safety of the adult with a skills deficit.

In certain circumstances, a review may be initiated before the scheduled review date. These circumstances include:

- if the adult moves to a different premises or a service is provided in different premises;
- if a new person moves into the premises;
- if the adult begins to display behaviour that causes harm (and the locking of gates, doors or windows meets the definition of containment, seclusion or restricted access under the Act).

### **Other household members**

If there is a need to lock the gates, doors or windows at a premises where disability services are being provided to an adult with a skills deficit, then time frames must be established to ensure on-going assessment/reassessment of how this locking of gates, doors or windows impacts on others receiving disability services at the premises, and how it imposes the minimum restriction on them.

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