

# Disability Services

## PROCEDURE

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

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### Purpose

This procedure deals with the Short Term Approval provisions of the *Disability Services Act 2006* (the Act) and the *Guardianship and Administration Act 2000*. The provisions apply to the use of a restrictive practice under the full legislative scheme by relevant service providers.

A relevant service provider is a funded service provider who provides disability services to an adult with an intellectual or cognitive disability and:

- receives funds from the Department of Communities, Disability Services and Seniors (the Department) to provide disability services; or
- provides disability services prescribed by regulation to a participant under the participant's NDIS plan.

In particular, this procedure outlines operational processes relating to sections 153, 154, 170, 171, 178, and 179 of the Act and Chapter 5B, Part 4 of the *Guardianship and Administration Act 2000*.

The Short Term Approval provisions provide a process for approving the short term use of a restrictive practice only where the use of the restrictive practice is the least restrictive way to protect the adult and others from 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).

The provisions provide for a time limited approval (for a maximum of six months) in some circumstances.

While the Short Term Approval is in place, appropriate steps can be taken in line with the requirements of the Act, to undertake assessment, develop a positive behaviour support plan for the adult and, if required, seek full approval or consent for the use of a restrictive practice.

This procedure assists a relevant service provider 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.

### Process

#### When a Short Term Approval is appropriate

The short term approval provisions apply only to adults:

- with an intellectual or cognitive disability;
- who have impaired decision making capacity regarding the use of restrictive practices;
- who exhibit behaviour that causes harm;
- who 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); and
- one or more restrictive practices under the Act is proposed:

- restrictive practices include containment, seclusion, mechanical restraint, physical restraint, chemical restraint or restricting access , as defined in the Act.
- restrictive practices do not include the use of medication if the medical practitioner determines the use is NOT for the purpose of managing behaviour that may cause harm, **or** if the medication is to facilitate or enable a single instance of health care under the *Guardianship and Administration Act 2000*.
- restrictive practices do not include the locking of gates, doors and windows due to the adult being an adult with a skills deficit as defined in the Act.

Situations in which a Short Term Approval may be used include where:

- an adult enters a disability service and displays behaviour that causes harm for the first time;
- an adult with known behaviour of harm transfers from one accommodation support provider to another;
- previous behaviour that causes harm re-emerges; or
- behaviour that did not previously cause harm, escalates to harmful levels.

#### **When a short term approval is NOT appropriate**

A short term approval is not appropriate for relevant service providers currently providing a service to the adult if:

For containment and seclusion

- The adult is the subject of a QCAT containment or seclusion approval and a PBSP is in place; or

For physical, chemical, mechanical restraint and restricted access to objects

- The adult has a guardian for restrictive practice matter and this guardian has given or refused to give, consent to the relevant service provider to use the restrictive practice

In these circumstances the relevant service provider needs to obtain QCAT approval or guardian consent consistent with the requirements of the Act for developing or changing a positive behaviour support plan.

The exception is where a guardian for a restrictive practice matter is appointed and the Short Term Approval relates to containment/seclusion in which case the provisions by which the Public Guardian may provide short term approval prevail.

#### **Statement about use of restrictive practices – the Model Statement**

When considering using restrictive practices in relation to an adult with an intellectual or cognitive disability, then the relevant service provider 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.

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 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 the avenues for complaint, review and redress are.

### Short term approval decision makers

A Short Term Approval can only be made by either:

- the Public Guardian for containment and/or seclusion; or
- the Chief Executive of the Department of Communities, Disability Services and Seniors or delegate for physical restraint, chemical restraint, mechanical restraint or restricting access to objects. The Chief Executive delegate is the Director Clinical Practice or Manager Clinical Services or Principal Clinician (in areas that have transitioned to the NDIS).

The necessary decision maker for a Short Term Approval for a given restrictive practice depends on:

- the type of restrictive practice;
- what if any, guardian appointments, restrictive practice approval or consent is already in place; and
- whether the adult is receiving general disability services or respite or community access services.

### Critical incident reporting requirements

In some cases a Short Term Approval will be sought in response to unforeseen or reasonably unforeseeable events that have caused or have the potential to cause harm to the adult or others. In these circumstances, even if a Short Term Approval is sought, critical incident reporting requirements must also be followed.

### Steps for obtaining a Short Term Approval

The process for a short term approval is described in steps 1 – 2

1. Short Term Approval request
2. Short Term Approval decision

A request for a Short Term Approval is only appropriate if it can be established that the restrictive practice is the least restrictive alternative and likely to be required in a planned or ongoing way due to circumstances including:

- a series of critical incidents where there is unauthorised use of restrictive practice;
- a new adult enters or will be entering the disability service with a known history of behaviour that causes harm; or

- approval/consent is in place to use physical restraint, chemical restraint, mechanical restraint or restricting access to objects but, due to a change of circumstance, containment or seclusion is required to prevent harm.

Where there has been a series of critical or potentially harmful incidents the relevant service manager is responsible for conducting a timely incident review to determine the least restrictive, effective approach for preventing future harm. Relevant interested parties for the adult should be involved in the review process.

Wherever possible, alternative methods will be tried that do not require the use of a restrictive practice.

Note for transfers of service provider: If there is a QCAT approval already in place or a guardian appointed, the receiving service provider will work with the referring service provider to seek an appropriate approval in the course of developing a transition plan for the adult.

### Step 1: Short Term Approval request

The relevant service manager will ensure they have the necessary information available and, where appropriate, supporting information (e.g. behaviour records, critical incident reports) to respond to questions from the decision maker.

The Department has developed a "[Short Term Approval Application Form](#)" to assist with this process.

For Short Term Approvals involving the use of containment and/or seclusion, the Office of the Public Guardian has a "[Restrictive Practices Short Term Approval Form](#)".

The relevant service manager will make contact with the appropriate Short Term Approval decision maker.

The decision maker will need to establish the following, at a minimum, in order to make a short term approval decision:

- the adult is not subject to a containment or seclusion approval from QCAT, 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;
- there is no guardian for a restrictive practice matter appointed, or if there is a guardian, 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;
- the adult's behaviour has previously resulted in harm to the adult or others;
- there is immediate and serious risk that if the approval is not given, 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 and others;
- if the restrictive practice is chemical restraint, the adult's treating doctor has been consulted;
- if the adult is subject to a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*, the authorised psychiatrist has been consulted; and
- if the adult is a forensic disability client, the senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011* has been consulted.

The Short Term Approval decision maker will, where practicable, consult with and consider the views of relevant stakeholders, including:

- the adult or a guardian or an informal decision maker for the adult;

- if the restrictive practice is chemical restraint, the decision maker must be satisfied that the relevant service provider has consulted with and considered the views of the adult's treating doctor;
- if the decision maker is aware of a forensic order, treatment support order or treatment authority under the *Mental Health Act 2016*, the authorised psychiatrist responsible for the treatment of the adult under this Act; or
- if the adult is a forensic disability client, the senior practitioner responsible for the care and support of the adult under the *Forensic Disability Act 2011*.

There is no legal obligation for the decision maker to consult with any party where it is not practical in the circumstances; however, every reasonable effort will be taken to make contact with. Wherever possible, consultation will include the adult and significant others for the adult, (including family members). The decision maker will also seek input from workplace health and safety personnel as appropriate.

### Step 2: Short Term Approval decision

As soon as practicable, but within seven days of making their decision, the decision maker will notify all relevant parties of their decision to approve or not approve the use of the restrictive practice under a Short Term Approval.

Where a Short Term Approval has been granted for containment or seclusion, the relevant service manager will alert the local regional Disability Service centre that a referral may be made.

The relevant service manager is responsible for ensuring all reasonable efforts are made to explain the decision to the adult.

### **Skills and monitoring**

The relevant service manager is responsible for ensuring that:

- any person acting for the service provider who uses a restrictive practice under a Short Term Approval has sufficient knowledge of the requirements for the lawful use of the practice and has the skills and knowledge to use the restrictive practice appropriately; and
- the use of the restrictive practice is monitored to safeguard against abuse, neglect and exploitation.

### **Short Term Approval cessation**

If a short term approval granted by the delegate of the Chief Executive is in place and one of the following situations occurs, the Short Term Approval ceases:

- where a QCAT containment or seclusion approval is made;
- where a guardian for a restrictive practice (general) matter for the adult makes a decision in relation to the relevant service providing using the restrictive practice in relation to the adult; or
- where the term of the Short Term Approval expires.

In the above circumstances:

- the relevant service manager will inform and/or discuss with the short term approval decision maker and Disability Services (if required) as soon as possible; and
- the relevant service provider will cease using the practices outlined in the Short Term Approval.

A Short Term Approval will also cease if the conditions of the approval are not being complied with.

If the Short Term Approval decision maker becomes aware of claims that the conditions of an approval are not being followed, the decision maker will discuss the matter with the relevant service manager as soon as possible with a view to determining whether a Short Term Approval will cease or continue, either unchanged or changed. The Short Term Approval decision maker will provide written confirmation of the outcome of the discussion.

### Changes to a Short Term Approval

A relevant service manager can request a change to a Short Term Approval by discussing the matter with the decision maker. The decision maker can only extend a Short Term Approval in exceptional circumstances.

Where a change to a Short Term Approval is granted, the decision maker will provide an amended Short Term Approval.

### Sharing information and confidentiality

The Act facilitates the disclosure of information to the Public Guardian by any person who has control of the information. The Public Guardian has the right to all information that:

- the adult would have been entitled to if the adult had capacity; and
- is necessary for the Public Guardian to make an informed decision.

The person, or service, controlling the information must give the information to the Public Guardian. If this is refused the Public Guardian can apply to QCAT to order the person to provide the information. Where QCAT orders a person to provide the information, the person must comply with the order unless they have a reasonable excuse.

The Act facilitates the disclosure of information by health care professionals for the purpose of assessments and the development of plans.

Note: The Act requires that confidentiality of information must be maintained. It is an offence under the Act to disclose the information to anyone other than as allowed under the Act.

### Records

Under the Act, the relevant service provider must:

- keep at the premises where disability services are provided to the adult a copy of any short term approval for the adult; and
- keep at the premises where the restrictive practice is being used an up-to-date policy and procedure on short term approval and ensure the policy and procedure is available for inspection by:
  - staff of the relevant service provider;
  - a guardian, informal decision maker or advocate for the adult; or
  - a community visitor under the *Guardianship and Administration Act 2000*.

Note: If there is any inconsistency between this procedure (and related policy) 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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