

# 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

These procedures will direct action regarding the application of the short term approval provisions of the *Disability Services Act 2006* (the Act) and the *Guardianship and Administration Act 2000* (the GAA). The provisions apply to the use of a restrictive practice under the full legislative scheme by staff of Department of Communities, Child Safety and Disability Services provided or funded service providers to an adult with an intellectual or cognitive disability accessing accommodation support, community support, respite and/or community access services.

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 GAA.

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 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 (RSP) to meet the requirement under the Human Services Quality Framework to keep and implement policies and procedures on restrictive practices.

### Process

#### General requirements

##### *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 about the use of restrictive practices who exhibit behaviour that causes harm
- Who are receiving disability services from an RSP.

Situations in which a short term approval may be used include where:

- An adult enters a disability service and displays the behaviour that causes harm for the first time, including following a transfer from another service provider
- Previous behaviour that causes harm re-emerges or previously unharmed behaviour escalates to harmful levels
- An existing adult client begins behaving in an uncharacteristic manner
- an adult's behaviour is no longer manageable through the use of currently approved/consented restrictive practices.

A short term approval may be appropriately sought while awaiting an approval for containment/seclusion from the Queensland Civil and Administrative Tribunal (QCAT) or while awaiting a QCAT appointment of a guardian for a restrictive practice matter.

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

A short term approval is not appropriate if:

- There is a QCAT 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
- For physical restraint, chemical restraint, mechanical restraint and restricting access to objects in general disability services: there is a guardian for a restrictive practice (general) matter already appointed, unless the guardian has neither given, nor refused to give, consent to the relevant service provider to use of the restrictive practice for in relation to the adult
- For containment or seclusion in respite/community access services: there is a guardian for a restrictive practice (respite) matter already appointed and the adult is receiving respite or community access services only, 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.

In these circumstances the RSP 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 (general) 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.

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
- 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.

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

- In the language or way the adult is most likely to understand
- 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
- The Chief Executive delegate for physical restraint, chemical restraint, mechanical restraint or restricting access to objects. The Chief Executive delegate is a clinician in the department's Clinical Services.

The 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
- 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.

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

1. Short term approval request and decision
2. Short term approval decision notice

A request for a short term approval is only appropriate if it can be established that it is probable that a restrictive practice will be required in a planned or ongoing way due to circumstances including:

- A series of critical incidents where an unapproved restrictive practice is used
- A new adult enters or will be entering the disability service with a known history of behaviour that causes harm

- 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. A short term approval should not be sought unless probable ongoing need can be established.

Where ongoing probable need is difficult to determine a short term approval should be sought and the situation monitored to avoid unnecessary 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 and decision***

The relevant service manager will make direct telephone contact with the appropriate short term approval decision maker during normal business hours (9am to 5pm, Monday to Friday).

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 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 or 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 or involuntary treatment order under the *Mental Health Act 2000*, the authorised psychiatrist has been consulted
- 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 consult with and consider the views of relevant stakeholders, where practicable:

- 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 RSP has consulted with and considered the views of the adult's treating doctor
- If the decision maker is aware of a forensic order or involuntary treatment order under the *Mental Health Act 2000*, the authorised psychiatrist responsible for the treatment of the adult under this Act
- 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.

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.

Assuming the necessary information is available, the decision maker will wherever possible provide a decision (to approve or not approve the use of the restrictive practice under a short term approval) the same day.

The decision may be subject to conditions including the condition that subsequent consultation confirms the appropriateness of the approval.

As an interim measure prior to issuing a decision notice, the decision maker may advise the service manager of the decision by fax or email including any conditions relating to the decision. The service manager may provide written confirmation by fax or email.

### **Step 2: Short term approval decision notice**

As soon as practicable, but within seven days, the decision maker will provide a short term approval decision notice notifying all relevant parties of the decision to approve or not approve the use of the restrictive practice.

Where a short term approval has been granted for containment or seclusion, the relevant service manager will alert the local Specialist Disability Service that a referral may be made, pending the approval of the short term plan.

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
- 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 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
- 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 Clinical Services (if required) as soon as possible
- Where no formal decision notice is provided the short term approval decision maker will provide to the relevant service manager written confirmation of the outcome of the discussion including the date on which the approval ceases
- The RSP 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 decision notice.

**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
- 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 RSP must:

- Keep at the premises where disability services are provided to the adult a copy of any short term approval for the adult
- 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 RSP
  - a guardian, informal decision maker or advocate for the adult
  - a community visitor under the GAA.

### **Further information**

For further information about the restrictive practice provisions of the Act, including the short term approval provisions, legislation (including access to forms, templates and information sheets), see [www.disability.qld.gov.au/positive-futures](http://www.disability.qld.gov.au/positive-futures)

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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#### **Records File No.:**

**Date of approval:** 1 July 2014  
**Date of operation:** 1 July 2014  
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**Office:** Disability Strategic Policy, Disability Services  
**Help Contact:** Disability Strategic Policy, Disability Services

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#### **Links**

##### **Policy**

Operational Policy Statement - Short term approval for the use of restrictive practices in disability services (full legislative scheme)

Operational policy - Restrictive Practices (full legislative scheme)

Operational policy statement: - Locking of gates, doors and windows as the least restrictive way of supporting an adult with an intellectual or cognitive disability safely

##### **Related policies and procedures**

Operational procedure - Restrictive practices for general disability services (full legislative scheme)

Operational procedure - Restrictive practices for Respite and/or community access services only (full legislative scheme)

Operational procedure - Locking of gates, doors and windows as the least restrictive way of supporting an adult with an intellectual or cognitive disability safely

**Related legislation or standard**

*Disability Services Act 2006*

*Guardianship and Administration Act 2000*

Michael Hogan

Director-General