



## RESTRICTIVE PRACTICES

### LEGISLATIVE FRAMEWORK

The *Disability Services and Other Legislation Amendment Act 2008* amends the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*, to create a legislative scheme to safeguard the rights of adults with a cognitive or intellectual disability who have 'challenging behaviour' and where restrictive practices may be required to manage their behaviour.

### WHO IS AFFECTED BY THIS?

The legislation only applies to adults who have an intellectual or cognitive disability and challenging behaviours and who are receiving disability services from a Disability Services Queensland (DSQ) provided or DSQ-funded service.

It does not apply to the informal support provided to people with an intellectual or cognitive disability by family and friends, or to care provided to people with age-related conditions only (for example, dementia and Alzheimer's disease) as these are subject to controls for the provision of aged-care services.

### UNDER WHAT CIRCUMSTANCES ARE RESTRICTIVE PRACTICES ABLE TO BE USED?

The use of any restrictive practices must be accompanied by a strategy of positive behaviour support planning that emphasises both the development of positive, socially valued skills as well as strategies for reducing challenging behaviour.

This means that restrictive practices should only be authorised if it is demonstrated they are the least restrictive option in the circumstances and are necessary to prevent the adult's behaviour from causing harm to the adult or others. The objective of the positive behaviour support plan is to eliminate, as much as possible, the need for the restrictive practice in the life of the person.

### WHAT IS A RESTRICTIVE PRACTICE?

There are three groups of restrictive practices, in order of their intrusiveness on the freedom of the individual as follows:

#### 1. Containment and seclusion

- (a) **Containment** - physically preventing the free exit of the adult from premises where the adult receives disability services, other than by secluding the adult. Note: it is not regarded as containment if the adult has a skills deficit (e.g., lack of road safety skills) and the adult's free exit from the premises is prevented by the locking of gates, doors or windows to prevent him or her from being subject to harm.
- (b) **Seclusion** - where an adult is physically confined alone, at any time of the day or night, in a room or area from which free exit is prevented.

#### 2. Chemical, physical and mechanical restraint

- (a) **Chemical restraint** - the use of medication for the primary purpose of controlling the adult's behaviour. However, the use of chemical restraint for the proper treatment of a diagnosed mental illness or physical condition is not chemical restraint. An intellectual or cognitive disability is not considered a physical condition.
- (b) **Physical restraint** - the use, for the primary purpose of controlling the adult's behaviour, of any part of another person's body to restrict the free movement of the adult.
- (c) **Mechanical restraint** - the use, for the primary purpose of behavioural control, of a device to either restrict the free movement of an adult or to prevent or reduce self-injurious behaviour.

### 3. Restricting access

**Restricting access** - restricting the adult's access, at a place where the adult receives disability services, to an object to prevent the adult using the object to cause harm to the adult or others.

For example:

- restricting access to a particular cupboard or part of a fridge to prevent the adult eating in a way that is likely to cause harm to the adult
- restricting access to a drawer in which knives are kept to prevent an adult using the knives to cause harm.

#### WHO HAS AUTHORITY TO APPROVE RESTRICTIVE PRACTICES?

The approval of the restrictive practice is determined by the type of restrictive practice and the circumstances in which the restrictive practice is used.

The following approvals are required for the adult's services other than when the adult is only receiving respite care and/or community access:

RESTRICTIVE PRACTICE	APPROVAL REQUIRED BY
Containment * Seclusion *	Guardianship and Administration Tribunal (GAAT)
Chemical restraint Mechanical restraint Physical restraint	Guardian for restrictive practice (general) appointed by GAAT unless being used in conjunction with containment or seclusion, in which case GAAT approval will be required
Restricting access to an object	Guardian for restrictive practice (general) appointed by GAAT or an informal decision maker
Any form of restrictive practice plus containment and seclusion	GAAT

\* *Applications for containment or seclusion can only be lodged by DSQ or jointly by DSQ and the relevant service provider.*

The following approvals are required for when the adult only receives **respite and/or community access** services:

RESTRICTIVE PRACTICE	APPROVAL REQUIRED BY
Containment Seclusion	Guardian for restrictive practice (respite) appointed by GAAT
Restricting access to an object	Guardian for restrictive practice (respite) appointed by GAAT or if no guardian appointed, an informal decision maker
Mechanical restraint Physical restraint	Guardian for restrictive practice (respite) appointed by GAAT or if no guardian appointed, an informal decision maker
Chemical restraint – PRN (as and when needed)	
<ul style="list-style-type: none"> <li>▪ For an adult in respite</li> </ul>	Guardian for restrictive practice (respite) appointed by GAAT
<ul style="list-style-type: none"> <li>▪ For an adult with community access</li> </ul>	Guardian for restrictive practice (respite) appointed by GAAT
Chemical restraint – fixed dose	
<ul style="list-style-type: none"> <li>▪ For an adult in respite</li> </ul>	Informal decision maker or guardian for restrictive practice (respite) appointed by GAAT
<ul style="list-style-type: none"> <li>▪ For an adult with community access</li> </ul>	Guardian for restrictive practice (respite) appointed by GAAT

**HOW LONG DOES A CONTAINMENT OR SECLUSION APPROVAL GIVEN BY THE TRIBUNAL HAVE EFFECT?**

As stated in the order, but not more than 12 months from the date the order is made.

**HOW LONG CAN A GUARDIAN FOR RESTRICTIVE PRACTICES BE APPOINTED?**

As stated in the order, but not more than 12 months from the date the order is made.

**WHAT IS THE TRANSITIONAL PERIOD?**

The transitional period of 18 months (between 1 July 2008 and 31 December 2009) enables relevant service providers and other relevant parties time to undertake preparations to comply with the full requirements of the legislation. The full requirements of the legislation will take effect from 1 January 2010. However applications should be submitted to the Tribunal well in advance of this date to ensure sufficient time for the matter to be heard prior to the end of the transitional period.

During the transitional period the relevant service provider is required to keep and implement a policy that commences after the "compliance period" and continues until the end of the transitional period. For containment and seclusion matters and restricting access, this compliance period is six months from the day the relevant service provider first uses the restrictive practice in relation to the adult; and for all other restrictive practices it is nine months.

The relevant service provider must notify DSQ within 60 days of first secluding or containing the adult. This allows DSQ time to commence the multi-disciplinary assessment of the adult and develop a Positive Behaviour Support Plan.

**IF I HAVE BEEN PREVIOUSLY APPOINTED AS A GUARDIAN, CAN I MAKE DECISIONS IN RELATION TO RESTRICTIVE PRACTICES?**

No, only guardians who have been appointed specifically for restrictive practices can make decisions in relation to restrictive practices.

**IF I HAVE BEEN APPOINTED AS A GUARDIAN BEFORE 1 JULY 2008 TO MAKE DECISIONS ABOUT THE USE OF RESTRICTIVE PRACTICES, CAN I CONTINUE TO MAKE THOSE DECISIONS?**

Yes. However your authority to make decisions about the use of restrictive practices will end once your appointment is reviewed by the Tribunal, or on 31 December 2009, whichever occurs first. If you wish to continue to make decisions about the use of restrictive practices after your authority ends, you will have to make application to the Tribunal to be appointed as guardian for restrictive practices under the new legislation.

**WHAT HAPPENS IF THE APPOINTMENT IS URGENT?**

If an appointment needs to be made urgently, the Tribunal can make an interim order without a hearing and then conduct a formal hearing at a later date. Interim orders can be made for up to three months. Interim orders are only made in exceptional circumstances and are only issued in accordance with stringent guidelines and a strict set of criteria. Refer to Presidential Direction 3 of 2007 and Fact Sheet 7 for further information on Interim Orders.

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