

A GUIDE FOR FAMILIES - POSITIVE BEHAVIOUR SUPPORT AND THE USE OF RESTRICTIVE PRACTICES

POSITIVE BEHAVIOUR SUPPORT & RESTRICTIVE PRACTICES

Introduction

In 2008 the Queensland Government made amendments to the *Disability Services Act 2006* (the Act) to introduce a framework regulating the use of restrictive practices. This may affect you if you have a family member who is an adult with an intellectual or cognitive disability who has challenging behaviour. The purpose of the legislation was to reduce or eliminate the need to use restrictive practices in disability services by using positive behaviour support.

In 2014 further amendments were made to the Act which strengthened the recognition of the human rights of your family member by further improving the regulations and safeguards around the use of restrictive practices. As a family of an adult with an intellectual or cognitive disability, you play a vital supporting role. We understand that any changes to your family member's care takes teamwork from families, friends, carers and disability services.

If you want to know more about the *Disability Services Act 2006* and/or how the regulations around the use of restrictive practices may affect the care of your family member, you may find this booklet useful.

Note: When this guide refers to 'family', it means family, friends and any other members of an adult's personal support network.

About The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

The Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (the department) is the part of the Queensland Government responsible for disability policy and services. The department draws on its SOLID values (Strengths based, Open, Loyal, Innovative and Dedicated) to commit itself to supporting people with a disability to thrive. As such, the department is committed to ensuring that adults with intellectual or cognitive disability are supported in appropriate ways which ensure personal safety while actively considering the adult's rights and needs.

Furthermore, the department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department, as a public entity, has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights.

The *Disability Services Act 2006*

The Honourable W. J. Carter QC wrote a report in 2006 called *Challenging Behaviour and Disability — A Targeted Response* recommending that the *Disability Services Act 2006* be changed to:

- protect the rights of people with an intellectual or cognitive disability who have challenging behaviour by only allowing the use of restrictive practices by disability service providers where the practices are shown to be necessary, the least restrictive alternative and are authorised by the right decision maker
- establish a stronger system of positive behaviour support that would lead to a better quality of life.

Changes to the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* commenced on 1 July 2008. These changes aimed to reduce or eliminate the need for use of restrictive practices in the disability services sector. Under the Act, before a restrictive practice can be used, a service provider must meet a number of requirements and go through an approval process.

For some types of restrictive practices, the Queensland Civil and Administrative Tribunal (QCAT) will approve and review the restrictive practices or appoint guardians for restrictive practice matters. Some types of restrictive practices require approval from other decision makers.

All types of restrictive practices require a Positive Behaviour Support Plan to be developed.

2014 Amendments to the *Disability Services Act 2006*

In March 2014, the Queensland Government approved further changes to these two acts. These changes were made after a review of the existing restrictive practices framework. The changes were made to make it simpler and provide protection of people's human rights. The government worked closely with people from the disability sector to ensure that the changes were necessary, appropriate and could be implemented.

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When did the amendments take effect?

The amendments to the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* commenced on 1 July 2014.

What does this mean for me?

The legislation will apply to your family member if they are 18 years or over and have an intellectual or cognitive disability (this can include adults with an acquired brain injury) and:

- behaves in a way that either causes harm, or there is a serious risk of harm, to themselves or others (sometimes referred to as 'behaviours of harm' or 'challenging behaviour')
- has impaired decision-making capacity about restrictive practices
- is receiving disability services provided by:
 - Disability Services
 - A service provider that provides disability services prescribed by regulation and funded under a NDIS participant plan.

If you are unsure about whether your family member is in scope of the legislation, please talk to your service provider or call the Positive Behaviour Support & Restrictive Practices team on 1800 902 006.

It is important to understand that the legislation applies only to the use of restrictive practices by staff of services provided by Disability Services, or services prescribed by regulation and funded under a NDIS participant plan.

What does 'restrictive practice' mean?

Restrictive practice means any of the following practices that are used in response to the behaviour of someone with an intellectual or cognitive disability that causes harm to the adult or others:

- Containing or secluding someone.
- Using chemical, mechanical or physical restraint on someone.
- Restricting someone's access to objects that they may use to harm themselves or others

Containment

If your family member, in response to a behaviour that causes harm, is being physically prevented from freely exiting the premises where he or she receives disability services, other than by being secluded (see Seclusion below), this may mean they are being contained. (See Glossary below for full definition)

An example of containment

Ken is a 35-year-old man with an intellectual disability who lives in his home with support staff. Ken has been known to leave his home without support staff and will try to take soft drinks from the local shop. When the shopkeeper tries to stop Ken, he gets upset and hits the shopkeeper, leaving him hurt. Support staff now keep the front door to his home locked to stop Ken from freely leaving his home without support staff and preventing Ken from harming the shopkeeper.

Seclusion

If your family member, in response to a behaviour that causes harm, is being physically confined alone, at any time of the day or night, in a room or area from which they cannot freely exit, this may mean they are being secluded. (See Glossary below for full definition).

An example of seclusion

Kathy receives 24-hour accommodation support. She lives alone. Sometimes Kathy's behaviour can escalate and she can become physically aggressive, as well as throw objects at staff. When this happens, Kathy's support worker goes to the staff office and locks the door until Kathy calms down. This action is a restrictive practice as Kathy is being secluded.

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Chemical restraint

If your family member is being given medication for the primary purpose of controlling their behaviour, this may mean they are being chemically restrained. (See Glossary below for full definition).

Using medication in the following situations are not considered chemical restraint:

- For the treatment of a diagnosed mental illness or physical condition.
- Using medication, e.g. a sedative, prescribed by a medical practitioner to enable the adult to receive a single instance of health care under the *Guardianship and Administration Act 2000*.

An example of chemical restraint

Stacey is a 55-year-old woman who lives in shared accommodation with two other women. Support workers visit Stacey and her housemates to take them out to do their shopping or visit doctors. Sometimes, when her housemates are running late, Stacey gets angry and hits them. If the women are running late, and the support workers see Stacey getting angry, they give Stacey her medicine. This medicine has been prescribed by Stacey's doctor to calm her down and stop her from hurting others.

Mechanical restraint

If for the primary purpose of controlling your family member's behaviour, a device is used to restrict their free movement or prevent or reduce self-injurious behaviour, this may mean your family member is being mechanically restrained. There are exceptions to this such as wearing a seatbelt to travel safely. For the full list of exceptions, please see the Glossary below.

An example of mechanical restraint

Rebecca is a 20-year-old woman with a profound intellectual disability. Rebecca has a history of sucking on her hands. This has led to significant injury to her hands. In order to prevent her from sucking on her hands, Rebecca wears gloves on her hands while she is awake. While Rebecca can remove the gloves, their primary purpose is to reduce harm, and if she takes them off, staff will put them back on again.

Physical restraint

If a person uses part of their body to restrict your family member's free movement, for the primary purpose of controlling their behaviour, this may mean your family member is being physically restrained. (See Glossary below for full definition).

An example of physical restraint

David is a young man with autism and an intellectual disability who lives in supported accommodation. David has a set plan of things to do each day. Sometimes when these plans change David can get upset and begins to hit his ear with his fist. When support staff see David hitting himself, they hold his arms down to stop him from hurting himself. When David relaxes and feels comfortable again the support staff let go of David's arms.

Restricting access

If your family member is being prevented from accessing an object that may cause harm to themselves or others, this may mean your family member is having their access to objects restricted. (See Glossary below for full definition).

An example of restricting access

Ivy is a young woman who has an intellectual disability. Ivy has been known to set fires around the house when she finds matches or lighters. To keep Ivy and other people safe in the house, the matches and lighters are kept locked away in the cupboard, which Ivy is unable to access.

How will my family member be assessed?

If a restrictive practice is being used or considered as the least restrictive way of ensuring the safety of your family member or others an assessment must be done to:

- work out the nature of the behaviour
- what contributes to the behaviour occurring

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- recommend strategies to reduce the behaviour and improve quality of life.

For containment and seclusion an assessment must be completed by the at least two people appropriately qualified or experienced in different fields. For physical, mechanical or chemical restraint, your family member must be assessed by at least one appropriately qualified or experienced person.

For more information please contact the Positive Behaviour Support & Restrictive Practices team on 1800 902 006 or enquiries_rp@dldsatsip.qld.gov.au

Once an assessment is completed your family member's service provider will talk to you about how they will develop a Positive Behaviour Support Plan. They will need to see approval or consent if they still propose to use a restrictive practice when supporting your family member.

Positive Behaviour Support Plan

A Positive Behaviour Support Plan is best practice and recommended when supporting an adult with an intellectual or cognitive disability. If a Service provider is intending to use a restrictive practice on an adult then a Positive Behaviour Support Plan is mandatory following the assessment of your family member.

A Positive Behaviour Support Plan must include:

- the strategies that will be used to
 - meet the adult's needs
 - support the development of skills
 - maximise opportunities through which the adult can improve their quality of life
- a detailed description of the behaviour including triggers
- the positive strategies that must be tried before using a restrictive practice
- a description of how the restrictive practice is the least restrictive option to keep your family member and others safe
- how to use the restrictive practice, including how it will be monitored to make sure it is safe
- when the restrictive practice will be reviewed (must be at least once a year).

Some restrictive practices will have extra requirements, for example, if a service provider is containing or secluding your family member, the plan has to include suitability of the environment and the maximum amount of time your family member can be contained or secluded. Also, for chemical restraint, details of the medication, how it is to be taken and the name of the prescribing doctor must be included. These factors are all safeguards to ensure that the use of any restrictive practice is the least restrictive way to ensure the safety of the adult or others, and has regard to the adult's human rights.

Who can approve restrictive practice?

The table below provides a guide of the level of approval required for each type of restrictive practice, although this may vary in certain circumstances, for example, if your family member is only using community access or respite services. For more information please contact the Positive Behaviour Support & Restrictive Practices team on 1800 902 006 or enquiries_rp@dldsatsip.qld.gov.au.

Restrictive Practice	Who can approve?
Containment or seclusion	QCAT
Chemical restraint Mechanical restraint Physical restraint	The guardian for restrictive practice matters who is appointed by the Queensland Civil and Administrative Tribunal (for example, a family member, friend, adult guardian or other public official) Note: Any decisions made by the guardian will be reviewed by QCAT

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Restricted access to objects	A relevant decision maker if there is no guardian for restrictive practice matters
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In each case, there will be a time limit during which the restrictive practice has to be reviewed.

Short term approvals

Sometimes, when there is an immediate and serious risk that a behaviour will cause harm to your family member or others, a service provider may need to act to ensure everyone is safe. This may happen when there is a change of service provider or if your family member has moved. In these cases, a service provider can seek a short-term approval.

Short term approvals can be granted for a maximum period of six months to allow time for your family member to have an assessment and, where necessary for a Positive Behaviour Support Plan to be developed.

The table below shows who has the authority to grant short term approvals for restrictive practices.

Restrictive Practice	Who can approve?
Containment or seclusion	Public Guardian
Chemical restraint Mechanical restraint Physical restraint Restricted access to objects	Chief Executive of the department or delegate

How can I be involved in the decision-making process?

The Queensland Government recognises the crucial role that families and guardians play in making decisions about restrictive practices. Service providers will work with families, guardians, advocates and health-care providers during the assessment and development of the positive behaviour support plan.

Under the Act, as soon as services are considering the use of a restrictive practice, they must provide a statement to the adult, their families and others in their support network that includes:

- why a service provider is considering the use of a restrictive practice
- how families and others in an adult's support network can be involved in and express their views in relation to the use of the restrictive practice
- who will make the decision whether or not to authorise the restrictive practice
- how to make a complaint about or seek review of the use of the restrictive practice.

Service providers must also explain the statement in a way that the adult is most likely to understand, and is appropriate to their age, culture, disability and communication skills.

You may already be a relevant decision maker for matters relating to your family member's care. You can also apply to make the arrangement formal by being appointed their formal guardian, as discussed below.

How can I be appointed a formal guardian?

You can apply to become a guardian to deal with the day-to-day affairs of an adult with impaired decision-making capacity. This will give you the responsibility of making decisions about personal matters such as medical treatment, accommodation, employment and support services.

A guardian for restrictive practice matters is generally someone who is appointed to make decisions about the use of chemical, physical or mechanical restraint for an adult who has an intellectual or cognitive disability and is in receipt of services provided by a Disability Service, or services prescribed by regulation and funded under a NDIS participant plan. Such an appointment may be made if the adult's behaviour is causing or may cause harm to the adult or others. In some cases, where the adult is receiving respite or community access services only, a guardian may be appointed to approve containment or seclusion.

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If you would like to apply to become a formal guardian or administrator for your family member, contact the QCAT registry and request that an application kit be mailed to you, or download and print the application kit from the tribunal's website at www.qcat.qld.gov.au.

What if I think a decision needs to be reviewed?

You can apply to QCAT at any time to formally review the approval of a restrictive practice, and they will decide if the practice is still needed. Otherwise, the tribunal will generally review the decision at least every 12 months.

The *Disability Services Act 2006* also outlines the criteria that the tribunal, guardians and relevant decision makers have to consider when making decisions about restrictive practices and the processes for approving applications. If you would like to read more about this, the *Guardianship and Administration Act 2000* can be viewed at www.legislation.qld.gov.au.

How will disability service providers make sure restrictive practices are being used safely?

It is important to regularly review and monitor the use of restrictive practices to make sure that they are being used safely and properly, and to check that they are still necessary and effective.

QCAT will regularly review all approvals for restrictive practices and decisions made by a guardian for restrictive practice matters (at least every two years). As an interested person, you also have the right to apply for a decision by the tribunal (or a guardian appointed by the tribunal) to be reviewed at any time.

Your family member's Positive Behaviour Support Plan must also include safeguards, such as how restrictive practices will be monitored and reviewed, including:

- procedures for using the restrictive practice, including observations and monitoring to ensure your family member's proper care while the restrictive practice is being used
- how often the use of the restrictive practice will be reviewed.

Under the legislation, the following systems will be in place to monitor the use of restrictive practices:

- The **Community Visitor Program** will report on the use of restrictive practices and continue its existing inquiry and complaint functions, which is set out in the *Guardianship and Administration Act 2000*.
- **Authorised officers** appointed by the Director-General of the department under the *Disability Services Act 2006* will have powers to investigate service providers that do not comply with the new legislation.
- The **Public Guardian** has a duty under the *Guardianship and Administration Act 2000* to protect adults who have impaired capacity. The Public Guardian can look into any complaints about neglect, exploitation or abuse, and seek help for and act on behalf of an adult with impaired capacity.

In 2019 The NDIS was fully implemented in Queensland. This means that Queensland is a co-regulatory system, with the state retaining responsibility for the authorisation of restrictive practices. Service providers must report use of restrictive practices to the NDIS Quality and Safeguards Commission. This reporting will help service providers better monitor the way restrictive practices are used with your family member and provides important safeguards to ensure that any approved restrictive practice are being used appropriately.

Am I required to follow the same rules at home as service providers?

This legislation only applies to:

- staff of Disability Services
- staff of a service provider that provides services prescribed by regulation and funded under a NDIS participant plan.

However, any person with a disability continues to receive the full protection of existing criminal and civil laws. This means that anyone who acts improperly towards someone in their care (for example by neglect, abuse, assault or exploitation) may be subject to criminal sanctions or civil lawsuits.

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Although there may be some differences in the support provided by your service provider and the care you provide at home, the common goal is to support your family member with no restrictive practices.

Who can provide information and support about care at home?

The Positive Behaviour Support & Restrictive Practices team can provide support and advice. For more information please contact 1800 902 006 or enquiries_rp@dldsatsip.qld.gov.au.

How can we make a complaint?

You can email, write to or speak with any of the following contacts, who will assist you in the process as much as possible.

- **The provider of the service**
You can talk about your concern or problem with the staff who provide the service.
- **The Principal Clinician of the Positive Behaviour Support and Restrictive Practices team in your region**
Many problems or concerns are easily resolved by the people who know your region and your service provider.
 - [Contact Information](#)
- **The NDIS Quality and Safeguards Commission**
 - Phone 1800 035 544
 - online: <https://ndiscommission.gov.au/contact-us/makeacomplaint>
- **The Central Complaints and Review Unit, Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships**

To contact the Central Complaints and Review Unit within the department you can:

Phone: 1800 491 467 (free call)

Email: feedback@dldsatsip.qld.gov.au,

Complete the [online complaints form](#), and post feedback to:

Complaints and Investigations Unit

Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships

GPO Box 806, Brisbane Qld 4001

Web: www.dldsatsip.qld.gov.au/contact-us/compliments-complaints

What support is available?

The following organisations can provide you with information and support.

Queensland Civil and Administrative Tribunal

The main function of the Queensland Civil and Administrative Tribunal is to determine whether an adult has the capacity to make decisions about their lives and whether there is a need to appoint appropriate decision makers to act on the adult's behalf.

GPO Box 1639

Brisbane 4001

Phone: **1300 753 228**

Email: enquiries@qcat.qld.gov.au

Web: www.qcat.qld.gov.au

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Office of the Public Guardian

The Public guardian's role is to protect the rights and interests of adults who are unable to make decisions for themselves. As an independent statutory officer, the Public Guardian operates free from interference from government and non-government organisations.

PO Box 13554

Brisbane Qld 4003

Phone: **1300 653 187**

Fax: (07) 3738 9496

Email: publicguardian@publicguardian.qld.gov.au

Web: www.publicguardian.qld.gov.au

Community Visitor Program

The Community Visitor Program is designed to protect the interests of adults with impaired decision-making capacity due to a disability or mental illness and who live in:

- mental health facilities
- private hostels
- residential facilities operated by the Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships.

GPO Box 149

Brisbane Qld 4001

Phone: **1300 653 187**

Fax: (07)3738 9496

Email: communityvisitor@publicguardian.qld.gov.au

Web: www.publicguardian.qld.gov.au/community-visitors-for-adults

Positive Behaviour Support & Restrictive Practices Team

The Positive Behaviour Support & Restrictive Practices team works with key stakeholders to deliver a comprehensive suite of resources and services for government and non-government service providers.

The Positive Behaviour Support & Restrictive Practices team provides a central point of contact for the provision of advice on the authorisation of restrictive practices in Queensland for service providers, family members and others.

For more information contact the Positive Behaviour Support & Restrictive Practices team on 1800 902 006 or enquiries_rp@dssdsatsip.qld.gov.au.

Glossary

Chemical restraint of an adult with an intellectual or cognitive disability means the use of medication for the primary purpose of controlling the adult's behaviour in response to behaviour that causes harm to the adult or others. It is important to note, however, that using medication for the proper treatment of a diagnosed mental illness or physical condition is not chemical restraint. For the purpose of this definition, an intellectual or cognitive disability is not a physical condition. *Diagnosed* means a doctor has confirmed the adult has the mental illness or physical condition. *Mental illness* is defined in Section 10 of the *Mental Health Act 2016*.

Containment of an adult with an intellectual or cognitive disability means the physical prevention of the adult freely exiting the premises where the adult receives disability services, other than by secluding the adult in response to the adult's behaviour that causes harm to the adult or others.

Harm to a person means:

- physical harm to the person

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- a serious risk of physical harm to the person
- damage to property involving serious risk of physical harm to the person.

Least restrictive, in relation to an adult with an intellectual or cognitive disability means use of the restrictive practice that:

- ensures the safety of the adult or others
- and
- having regard to the previous point, imposes the minimum limits on the freedom of the adult as is practicable in the circumstances.

Mechanical restraint of an adult with an intellectual or cognitive disability means the use, for the primary purpose of controlling the adult's behaviour, of a device in response to the adult's behaviour that causes harm to the adult or others:

- to restrict the free movement of the adult
- to prevent or reduce self-injurious behaviour.

However, the following are not mechanical restraint:

- Using a device to enable the safe transportation of the adult — for example, a harness.
- Using a device for postural support.
- Using a device to prevent injury from involuntary bodily movements, such as seizures.
- Using a surgical or medical device for the proper treatment of a physical condition.
- Using bed rails or guards to prevent injury while the adult is asleep.

Physical restraint of an adult with an intellectual or cognitive disability means 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 in response to the adult's behaviour that causes harm to the adult or others.

Restricting access of an adult with an intellectual or cognitive disability means restricting the adult's access, at a place where the adult receives disability services, to an object in response to the adult's behaviour that causes harm to the adult or others to prevent the adult using the object to cause harm to the adult or others.

Restrictive practice means any of the following practices used to respond to the behaviour of an adult with an intellectual or cognitive disability that causes harm to the adult or others:

- Containing or secluding the adult
- Using chemical, mechanical or physical restraint on the adult
- Restricting access of the adult.

Seclusion of an adult with an intellectual or cognitive disability means physically confining the adult alone, at any time of the day or night, in a room or area from which free exit is prevented in response to the adult's behaviour that causes harm to the adult or others.

November 2022

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