

Overview of amendments to the *Disability Services Act 2006*

Safeguarding rights and improving services

The *Disability Services and Other Legislation Amendment Act 2008* amends the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000*. These amendments commenced on 1 July 2008.

The new legislation strengthens safeguards to uphold the human rights of adults with an intellectual or cognitive disability who exhibit challenging behaviour.

It regulates the use of restrictive practices and provides a positive behaviour support system to improve the quality of life of these adults.

Safeguarding human rights

The human rights principle states that people with a disability have the same human rights as other members of society and should be empowered to exercise their rights.

The amendments to the *Disability Services Act 2006* strengthen the application of this principle in the delivery of services to adults with an intellectual or cognitive disability who exhibit challenging behaviour.

The new legislation ensures that any use of restrictive practices (for example, containment or seclusion) by a service provider has regard for the human rights of these adults, and is the least restrictive way of safeguarding them and others from harm.

Reducing and eliminating restrictive practices

The amendments maximise the opportunity for positive outcomes for adults with an intellectual or cognitive disability who exhibit challenging behaviour.

The legislation aims to reduce or eliminate the need for the use of restrictive practices across the disability services sector and helps ensure transparency and accountability.



Target group for the legislation

The legislation only applies to adults who:

- are 18 years or over, and
- have an intellectual or cognitive disability, and whose behaviour either causes harm to the adult or others, or represents a serious risk of harm to the adult or others (sometimes called ‘challenging behaviour’), and
- are receiving disability services from Disability Services Queensland or from a non-government service provider funded by Disability Services Queensland.

This group can include adults with an acquired brain injury.

Background to the legislation

In 2006, the Minister for Disability Services commissioned the Honourable W.J. Carter QC to investigate legislative and service options for improving responses and support services for adults with an intellectual or cognitive disability who exhibit severely challenging behaviour.

The Carter Report, *Challenging Behaviour and Disability – A Targeted Response*, included a recommendation to develop a new legislative framework for providing disability services to these adults.

The amendments to the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* were developed in response to the report. These amendments build on the strong foundation currently in place for promoting the rights of people with a disability, increasing their wellbeing and encouraging their participation in community life.

Consultation on the Disability Services and Other Legislation Amendment Bill 2007 occurred between October 2007 and January 2008. A copy of *Consultation Feedback on the Disability Services and Other Legislation Amendment Bill 2007: A Full Report* is available at www.disability.qld.gov.au/positive-futures

The Bill was passed by the Queensland Parliament in April 2008 and commenced on 1 July 2008.

The new legislation is a significant step in the whole-of-government response to Mr Carter’s recommendations and is just one part of the \$113 million Positive Futures package that the Queensland Government is delivering over four years in response to the Carter Report.

Authorisation for the use of restrictive practices

The table below outlines which level of approval is generally required under the new legislation for the use of restrictive practices.

Restrictive practice	Approval/consent
Containment or seclusion	Guardianship and Administration Tribunal
Chemical restraint Mechanical restraint Physical restraint	Guardian for restrictive practice matters who is appointed by the Guardianship and Administration Tribunal <i>Note:</i> Decisions of the guardian are subject to review by the Guardianship and Administration Tribunal.
Restricting access	An informal decision maker (for example, a member of the adult’s support network) if there is no guardian for restrictive practice matters



Before gaining approval to use a restrictive practice, disability service providers must conduct an assessment of the adult with whom the practice is proposed to be used. They must also develop a positive behaviour support plan for the adult.

The legislation recognises the important role of families and guardians in decision making about the use of restrictive practices. Families, guardians, advocates and health care providers may be consulted during both the assessment and the development of the plan.

In each case, a time limit will be applied to approval for the use of restrictive practices. The maximum period of time for any level of approval is 12 months.

Generally, approvals will be formally reviewed by the Guardianship and Administration Tribunal at least every 12 months to determine if restrictive practices are still necessary. However, the tribunal can also review the use of restrictive practices at any time on its own initiative or on an application by an ‘interested person’ for the adult and ‘certain others’ as listed in the amended *Guardianship and Administration Act 2000* (for example, the Adult Guardian).

This Act also outlines the criteria that the tribunal, guardians and informal decision makers must consider when making decisions about restrictive practices and the processes for approving applications.

The least restrictive way

The use of restrictive practices will only be considered appropriate if it is necessary to prevent adults in the target group from causing harm to themselves or others, and is the least restrictive way of ensuring the safety of the adult or others.

Under the amended *Disability Services Act 2006*, ‘least restrictive’ means:

use of the restrictive practice —

(a) ensures the safety of the adult or others; and

(b) having regard to paragraph (a), imposes the minimum limits on the freedom of the adult as is practicable in the circumstances.

Emphasis on assessment

The assessment required for approval of the use of restrictive practices must generally be conducted by appropriately qualified or experienced persons.

For containment or seclusion, a multidisciplinary assessment is required. This must be conducted by at least two or more people with qualifications or experience in different disciplines.

For physical, mechanical or chemical restraint, the adult must be assessed by at least one appropriately qualified or experienced person.

There are some exceptions to these requirements in the case of a short-term approval (see page 4) and in the provision of respite or community access services to adults.

Assessments should include:

- identification of relevant behaviour which may cause harm to the adult or another person
- theories for the causes of the behaviour
- positive strategies to meet the adult’s needs and reduce the challenging behaviour
- strategies to manage the adult’s behaviour, including the use of restrictive practices if necessary.



Positive behaviour support plan

The legislation requires service providers to develop a positive behaviour support plan based on an assessment of the adult. This plan is designed to reduce challenging behaviour and increase positive behaviour.

Positive behaviour support plans that include any restrictive practices will be subject to appropriate checks and balances, together with ongoing monitoring and review.

The legislation lists the minimum yet rigorous requirements for the plan. It must include details about:

- why the restrictive practice is necessary for the safety of a person and how it is the least restrictive way in the circumstances
- the procedures for using the restrictive practice, including observation and monitoring for the safe use of the practice
- how often the restrictive practice will be reviewed.

Depending on the type of restrictive practice, there are additional requirements. For example, for the use of containment or seclusion, plans must address the suitability of the adult's environment and maximum periods for use.

Short-term approvals

The legislation provides for short-term approvals for the use of restrictive practices where there is an immediate and serious risk of adults harming themselves or others. These short-term approvals can only be made for up to three months, unless there are exceptional circumstances, such as a change in the service provider or location of the adult.

In the case of an emergency where there is an imminent risk of harm and the service provider does not have time to obtain any approvals, it may be lawful for a service provider to take action that is reasonable in the circumstances to prevent harm to the adult or someone else. In this situation, the service provider must take all reasonable steps to obtain approval for the continued use of the restrictive practice during the period in which it is being used.

The table below outlines the level of approval needed for the short-term use of restrictive practices.

Restrictive practice	Approval/consent
Containment or seclusion	Adult Guardian
Chemical restraint Mechanical restraint Physical restraint Restricting access	The Director-General (or an authorised delegate) of Disability Services Queensland if there is no guardian for restrictive practice matters

If a short-term approval is granted, the service provider must provide a short-term plan to the decision maker within 14 days of the approval being given.

Note: Short-term approval requirements do not apply during the transitional period (1 July 2008 to 31 December 2009) for implementation of the new legislation.



Respite and community access services

The legislation includes special provisions for respite and/or community access services. These provisions apply to adults who receive only respite and/or community access services funded or provided by Disability Services Queensland.

Under these provisions, the service provider needs to develop a respite/community access plan, and gain relevant consent before using restrictive practices.

There is also a special provision for the use of fixed dose medication in respite services.

The following table outlines which level of approval is needed for the use of restrictive practices in respite or community access services.

Restrictive practice	Approval/consent
Containment or seclusion	Guardian for restrictive practice (respite) matters <i>Note:</i> Decisions of the guardian are subject to review by the Guardianship and Administration Tribunal.
Chemical restraint (generally)	Guardian for restrictive practice (respite) matters <i>Note:</i> Decisions of the guardian are subject to review by the Guardianship and Administration Tribunal.
Physical or mechanical restraint Chemical restraint (fixed dose) in respite services only	Informal decision maker if there is no guardian for restrictive practice matters
Restricting access	Informal decision maker if there is no guardian for restrictive practice matters

Monitoring the use of restrictive practices

Regular review and monitoring of restrictive practices are important to ensure they are safely and properly implemented, and to check their continued effectiveness.

As explained on page 3, the Guardianship and Administration Tribunal will regularly review most approvals for restrictive practices.

An 'interested person' and 'certain others', as listed in the legislation, can apply at any time to review a decision of the tribunal or a decision of a guardian appointed by the tribunal.

Positive behaviour support plans must also outline how restrictive practices will be monitored and reviewed, including:

- procedures for using the restrictive practice, including observations
- intervals at which the restrictive practice will be reviewed.

Service providers must also keep and implement policies and procedures on the use of restrictive practices. These must be consistent with Disability Services Queensland's policies and include details about the process for reviews. Service providers must also keep records on the use of any restrictive practice.



Under the legislation, the following compliance mechanisms will also monitor the use of restrictive practices.

Community Visitor Program

The Community Visitor Program will continue its existing inquiry and complaint functions under the *Guardianship and Administration Act 2000* and report on the use of restrictive practices at ‘visitable sites’.

Authorised officers

Officers appointed by the Director-General of Disability Services Queensland under the *Disability Services Act 2006* will have powers to investigate non-compliance.

Adult Guardian

Under the *Guardianship and Administration Act 2000*, the Adult Guardian has a statutory duty to protect adults who have impaired capacity. The Adult Guardian can investigate complaints about neglect, exploitation or abuse of these adults and seek help and make representations for an adult with impaired capacity.

The amendments, together with the existing powers of the Adult Guardian under the *Guardianship and Administration Act 2000*, help to protect adults who have impaired capacity for a matter from neglect, exploitation or abuse.

The changes provide unprecedented safeguards for adults with an intellectual or cognitive disability in Queensland.

New service response to support the new legislation

The legislation goes hand-in-hand with a new Specialist Response Service established by Disability Services Queensland to ensure high-quality service delivery.

In fact, most of the government’s \$113 million Positive Futures package will be invested in service delivery, including:

- **Specialist Response Service teams** (approximately 70 new positions over four years) that will work alongside service providers to undertake assessments and develop plans
- a specialist, statewide community-based **Mental Health Assessment and Outreach team** that will support adults with an intellectual or cognitive disability exhibiting challenging behaviours
- a **Centre of Excellence for Behaviour Support** that will provide evidence-based research and policies in positive behaviour support and training for service providers as part of the implementation of positive behaviour support plans
- **purpose-designed dwellings** and direct support staff who will offer emergency/crisis and secure care options for therapeutic interventions and transition to community living
- **policies and procedures, practice guides and resource tools** that will be provided to the sector with an education program for service providers.

Funding will also be provided to the Department of Justice and Attorney-General for the additional workloads of:

- the Guardianship and Administration Tribunal, which will process applications for the approval and review of certain restrictive practices and the appointment of guardians
- the Adult Guardian
- the Community Visitor Program.



Immunity provisions

The new legislation contains immunity provisions for relevant disability service providers (or individuals acting on their behalf). These allow them to lawfully use restrictive practices, provided they comply with all the requirements under the legislation.

The legislation also contains retrospective immunity provisions. These provide appropriate legal protection for relevant disability service providers (or individuals acting on their behalf) using a restrictive practice before the commencement of the Act, as long as they have met the requirements outlined in the amended *Disability Services Act 2006*.

Transitional period

To allow time for service providers to comply with all the new requirements, the legislation provides for a transitional period from 1 July 2008 to 31 December 2009.

During this time, service providers can use a restrictive practice as long as they follow some basic requirements listed in the Act. These are detailed in the transitional policies and procedures for the use of restrictive practices, available at www.disability.qld.gov.au/positive-futures

The transitional period ends on 31 December 2009 or when the relevant decision maker under the full requirements of the Act makes a decision about whether or not to approve the restrictive practice for an adult. After the transitional period ends or stops applying, service providers must comply with the full requirements of the Act.

Implementing the new legislation

The amendments to the *Disability Services Act 2006* commenced on 1 July 2008.

The Queensland Government values the expertise of the disability sector, families and carers and will continue to work in partnership with individuals and groups within the sector as the legislation is implemented.

Disability Services Queensland is conducting a range of education and communication activities to ensure all stakeholders are informed of the new legislation, policies and procedures, and receive information and resources to implement the positive behaviour support system.





Positive Futures

An integrated approach to excellence

Further information

For further information about the new legislation, please phone the Disability Information Service or visit the Disability Services Queensland website.

Freecall: 1800 177 120*

Fax: 3896 3467

Telephone typewriter (TTY): 1800 010 222*

Web: www.disability.qld.gov.au/positive-futures

Email: disabilityinfo@disability.qld.gov.au

Post: GPO Box 806
Brisbane Q 4001

* Calls from mobile phones are charged at applicable rates.

Need help making phone calls?

Contact the National Relay Service (NRS) on 1800 555 677. This service is free.

Note: The information contained in this document is provided as an initial guide only. For further information, contact the Disability Information Service on 1800 177 120.

Other languages and formats

If you need the assistance of an interpreter, please contact the Translating and Interpreting Service, TIS National, on 13 14 50 and ask to be connected to the Disability Information Service.

This document is available in alternative formats (including large print) on request. If you would like a copy in another format, please contact the Disability Information Service on 1800 177 120* or email disabilityinfo@disability.qld.gov.au