



Queensland

# **Disability Services and Other Legislation Amendment Act 2008**

**Act No. 23 of 2008**





Queensland

# Disability Services and Other Legislation Amendment Act 2008

## Contents

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		Page
<b>Part 1</b>	<b>Preliminary</b>	
1	Short title . . . . .	10
2	Commencement . . . . .	10
<b>Part 2</b>	<b>Amendment of Disability Services Act 2006</b>	
3	Act amended in pt 2 . . . . .	10
4	Amendment of s 5 (Act does not affect other rights or remedies)	10
5	Amendment of s 6 (Objects of Act) . . . . .	11
6	Amendment of s 7 (How objects are mainly achieved). . . . .	11
7	Insertion of new pt 10A. . . . .	11
	Part 10A Use of restrictive practices	
	Division 1 Preliminary	
	123A Purpose of pt 10A. . . . .	11
	123B Service providers to which pt 10A applies . . . . .	12
	123C Principles for performing functions etc. . . . .	12
	123D Explanation of operation of pt 10A . . . . .	12
	123E Definitions for pt 10A . . . . .	14
	123F Meaning of chemical restraint . . . . .	18
	123G Meaning of contain . . . . .	18
	123H Meaning of mechanical restraint . . . . .	18
	123I Requirement to keep and implement a policy . . . . .	19
	Division 2 Important concepts for using restrictive practices	
	123J Assessment of an adult . . . . .	20
	123K Who is appropriately qualified to assess an adult . . .	21
	123L What is a positive behaviour support plan . . . . .	22
	Division 3 Containment and seclusion	

Contents

---

Subdivision 1	Requirements for containing or secluding an adult	
123M	Containing or secluding an adult under containment or seclusion approval . . . . .	25
123N	Containing or secluding an adult for respite services or community access services . . . . .	26
123O	Containing or secluding an adult under short term approval . . . . .	27
Subdivision 2	Multidisciplinary assessment and development of positive behaviour support plan	
123P	Application of sdiv 2 . . . . .	28
123Q	Chief executive to decide whether multidisciplinary assessment of adult will be conducted. . . . .	28
123R	Notice of decision not to conduct assessment . . . . .	29
123S	Development of positive behaviour support plan following assessment . . . . .	30
123T	Participation of psychiatrist in development of plan—adult subject to forensic order or involuntary treatment order. . . . .	31
Subdivision 3	Changing a positive behaviour support plan	
123U	Application of sdiv 3 . . . . .	32
123V	Who may change positive behaviour support plan. . . . .	32
123W	When chief executive must decide whether positive behaviour support plan should be changed . . . . .	32
123X	Requirements for chief executive's decision about whether change should be made . . . . .	33
123Y	Action of chief executive after deciding whether change should be made. . . . .	33
Subdivision 4	General requirements for containment or seclusion	
123Z	Relevant service provider to ensure adult's needs are met . . . . .	36
Division 4	Use of restrictive practices other than containment or seclusion	
Subdivision 1	Requirements for using chemical, mechanical or physical restraint, or restricting access	
123ZA	Using chemical, mechanical or physical restraint, or restricting access, with consent of guardian etc. . . . .	36
123ZB	Using chemical, mechanical or physical restraint, or restricting access, for respite services or community access services . . . . .	38

123ZC	Using chemical restraint (fixed dose) for respite services . . . . .	39
123ZD	Using chemical, mechanical or physical restraint, or restricting access, under short term approval . . . . .	39
Subdivision 2	Assessment of adult and positive behaviour support plan	
123ZE	Application of sdiv 2 . . . . .	40
123ZF	Requirements for development of positive behaviour support plan—assessment and consultation . . . . .	40
123ZG	Changing a positive behaviour support plan . . . . .	42
123ZH	Requirement for relevant service provider to consider whether plan should be changed . . . . .	43
Subdivision 3	Requirements if adult subject to forensic order or involuntary treatment order	
123ZI	Requirement for relevant service provider to notify guardian . . . . .	43
123ZJ	Requirement for relevant service provider to notify director of mental health . . . . .	44
Subdivision 4	Short term approvals given by chief executive	
123ZK	Short term approval for use of restrictive practices other than containment or seclusion . . . . .	45
123ZL	Period for which short term approval has effect . . . . .	47
123ZM	Conditions of short term approval . . . . .	47
123ZN	Chief executive's decision about approving short term plan . . . . .	48
Division 5	Use of restrictive practices for respite services or community access services	
123ZO	Purpose of div 5 . . . . .	49
123ZP	Requirement to develop respite/community access plan . . . . .	49
123ZQ	Obtaining information about the adult . . . . .	51
123ZR	Consultation . . . . .	51
123ZS	Risk assessment . . . . .	52
Division 6	Policy about use of restrictive practices	
123ZT	Application of div 6 . . . . .	52
123ZU	Policy must be consistent with department's policy . . . . .	53
123ZV	Requirements for content of department's policy . . . . .	53
123ZW	Requirements for publication of department's policy etc. . . . .	56
Division 7	Review of particular chief executive decisions	

Contents

	123ZX	Application of div 7 . . . . .	56
	123ZY	Definitions for div 7 . . . . .	56
	123ZZ	Application for review . . . . .	57
	123ZZA	Review of relevant decision . . . . .	57
	Division 8	Miscellaneous provisions	
	Subdivision 1	Immunity for use of restrictive practices	
	123ZZB	Immunity from liability—relevant service provider . . .	58
	123ZZC	Immunity from liability—individual acting for relevant service provider . . . . .	58
	Subdivision 2	Requirements for relevant service providers	
	123ZZD	Requirement to give information to guardian or informal decision maker . . . . .	60
	123ZZE	Requirement to keep records and other documents .	62
	123ZZF	Notification requirements about approvals given for use of restrictive practices . . . . .	63
	Subdivision 3	Confidentiality provisions	
	123ZZG	Definitions for sdiv 3 . . . . .	65
	123ZZH	Relevant service provider may request confidential information from health professional or chief executive (health) . . . . .	65
	123ZZI	Relevant service providers must maintain confidentiality . . . . .	66
8		Insertion of new pt 15, div 1A . . . . .	67
	Division 1A	Locking of gates, doors and windows	
	214A	Application of div 1A . . . . .	67
	214B	Definitions for div 1A . . . . .	68
	214C	Immunity from liability—relevant service provider . . .	68
	214D	Immunity from liability—individual acting for relevant service provider . . . . .	69
	214E	Department's policy about locking of gates, doors and windows. . . . .	69
9		Amendment of s 222 (Confidentiality of other information) . . . . .	70
10		Insertion of new s 233A . . . . .	71
	233A	Review of Guardianship and Administration Act 2000, ch 5B . . . . .	71
11		Amendment of pt 16, div 2 hdg (Transitional provisions) . . . . .	71
12		Insertion of new pt 16, div 3 . . . . .	71
	Division 3	Transitional provisions for Disability Services and Other Legislation Amendment Act 2008	

	Subdivision 1 Preliminary	
	241 Interpretation . . . . .	71
	Subdivision 2 Immunity from liability for use of restrictive practices before commencement	
	242 Immunity of previous service provider . . . . .	73
	243 Immunity of individual acting for previous service provider . . . . .	74
	Subdivision 3 Immunity from liability for use of restrictive practices during transitional period	
	244 Immunity of relevant service provider. . . . .	74
	245 Requirement to assess adult if no authorised guardian . . . . .	75
	246 Immunity for individual acting for relevant service provider . . . . .	76
	247 Relationship of subdivision with pt 10A . . . . .	76
	248 Circumstances in which subdivision stops applying. .	76
	Subdivision 4 Other provisions	
	249 Requirements for department's policy about use of restrictive practices during transitional period . . . . .	77
	250 Short term approvals not to be given during transitional period. . . . .	79
13	Amendment of sch 7 (Dictionary). . . . .	79
<b>Part 3</b>	<b>Amendment of Guardianship and Administration Act 2000</b>	
14	Act amended in pt 3 . . . . .	81
15	Amendment of s 12 (Appointment). . . . .	81
16	Amendment of s 13 (Advance appointment) . . . . .	82
17	Insertion of new s 13A . . . . .	82
	13A Advance appointment—guardian for restrictive practice matter . . . . .	82
18	Amendment of s 26 (Automatic revocation) . . . . .	83
19	Amendment of s 28 (Periodic review of appointment) . . . . .	84
20	Amendment of s 29 (Other review of appointment) . . . . .	84
21	Amendment of s 33 (Power of guardian or administrator) . . . . .	85
22	Insertion of new ch 5B . . . . .	85
	Chapter 5B Restrictive practices	
	Part 1 Preliminary	
	80R Application of ch 5B . . . . .	85
	80S Purpose of ch 5B . . . . .	85

Contents

80T	Effect of ch 5B on substitute decision maker's ability to make health care decision . . . . .	86
80U	Definitions for ch 5B . . . . .	86
Part 2	Containment or seclusion approvals	
Division 1	Giving containment or seclusion approvals	
80V	When tribunal may approve use of containment or seclusion . . . . .	88
80W	Matters tribunal must consider . . . . .	89
80X	When tribunal may approve use of other restrictive practices . . . . .	90
Division 2	Period of containment or seclusion approval	
80Y	Period for which containment or seclusion approval has effect . . . . .	91
80Z	Automatic revocation of containment or seclusion approval . . . . .	91
Division 3	Reviewing a containment or seclusion approval	
80ZA	When containment or seclusion approval may be reviewed . . . . .	91
80ZB	Review process . . . . .	92
Part 3	Guardians for a restrictive practice matter	
80ZC	Application of pt 3. . . . .	93
80ZD	Appointment . . . . .	93
80ZE	Requirements for giving consent—guardian for restrictive practice (general) matter . . . . .	94
80ZF	Requirements for giving consent—guardian for restrictive practice (respite) matter . . . . .	95
Part 4	Short term approval of adult guardian for use of particular restrictive practices	
80ZG	Application of pt 4. . . . .	96
80ZH	When adult guardian may give short term approval for use of containment or seclusion . . . . .	97
80ZI	Conditions to which s 80ZH approval is subject. . . . .	98
80ZJ	Adult guardian's decision about whether to approve short term plan . . . . .	98
80ZK	When adult guardian may give short term approval for use of other restrictive practices . . . . .	99
80ZL	Right of adult guardian to information for making decision . . . . .	100
80ZM	Requirement for adult guardian to give notice of decision . . . . .	101



	Part 5	Tribunal proceedings	
	Division 1	General	
	80ZN	Relationship with ch 7 . . . . .	102
	Division 2	Applications	
	80ZO	Who may apply for a containment or seclusion approval . . . . .	103
	80ZP	Who may apply for appointment of guardian for restrictive practice matter . . . . .	103
	Division 3	Other matters	
	80ZQ	Who is an active party . . . . .	103
	80ZR	Interim orders . . . . .	104
	Part 6	Miscellaneous provisions	
	80ZS	Requirements for informal decision makers—consenting to use of restrictive practices . .	105
	80ZT	Informal decision makers must maintain confidentiality . . . . .	107
	80ZU	Review of ch 5B . . . . .	108
23		Amendment of s 82 (Functions) . . . . .	108
24		Amendment of s 98 (Annual report) . . . . .	108
25		Amendment of s 118 (Tribunal advises persons concerned of hearing) . . . . .	109
26		Amendment of s 174 (Functions) . . . . .	109
27		Amendment of s 222 (Definitions for ch 10) . . . . .	109
28		Amendment of s 230 (Reports by community visitors) . . . . .	110
29		Insertion of new ch 12, pt 8 . . . . .	110
	Part 8	Transitional provisions for Disability Services and Other Legislation Amendment Act 2008	
	265	Powers of guardians—use of restrictive practices . . .	110
	266	Short term approvals not to be given during transitional period . . . . .	111
30		Amendment of sch 2 (Types of matters) . . . . .	111
31		Amendment of sch 4 (Dictionary) . . . . .	111





Queensland

## **Disability Services and Other Legislation Amendment Act 2008**

### **Act No. 23 of 2008**

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**An Act to amend the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* to safeguard the rights of adults with an intellectual or cognitive disability by regulating the use of restrictive practices by particular disability service providers in relation to those adults**

**[Assented to 9 May 2008]**

[s 1]

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**The Parliament of Queensland enacts—**

## **Part 1 Preliminary**

### **1 Short title**

This Act may be cited as the *Disability Services and Other Legislation Amendment Act 2008*.

### **2 Commencement**

This Act commences on a day to be fixed by proclamation.

## **Part 2 Amendment of Disability Services Act 2006**

### **3 Act amended in pt 2**

This part amends the *Disability Services Act 2006*.

### **4 Amendment of s 5 (Act does not affect other rights or remedies)**

Section 5(1), after ‘This Act’—

*insert—*

‘, other than sections 123ZZB, 123ZZC, 214C, 214D, 242 to 244 and 246,’.

## **5 Amendment of s 6 (Objects of Act)**

Section 6—

*insert—*

- ‘(c) to safeguard the rights of adults with an intellectual or cognitive disability including by regulating the use of restrictive practices by funded service providers in relation to those adults—
- (i) only where it is necessary to protect a person from harm; and
  - (ii) with the aim of reducing or eliminating the need for use of the restrictive practices.’.

## **6 Amendment of s 7 (How objects are mainly achieved)**

Section 7—

*insert—*

- ‘(e) stating requirements for when funded service providers may use restrictive practices in relation to adults with an intellectual or cognitive disability.’.

## **7 Insertion of new pt 10A**

After section 123—

*insert—*

### **‘Part 10A Use of restrictive practices**

#### **‘Division 1 Preliminary**

##### **‘123A Purpose of pt 10A**

‘The purpose of this part is to protect the rights of adults with an intellectual or cognitive disability by regulating the use of restrictive practices by funded service providers in relation to those adults in a way that—

[s 7]

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- (a) has regard to the human rights of those adults; and
- (b) safeguards them and others from harm; and
- (c) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of the restrictive practices; and
- (d) ensures transparency and accountability in the use of the restrictive practices.

### **‘123B Service providers to which pt 10A applies**

‘This part applies to a funded service provider who provides disability services to an adult with an intellectual or cognitive disability (a *relevant service provider*).

### **‘123C Principles for performing functions etc.**

- ‘(1) This section applies to a person, including a relevant service provider, who performs a function, or exercises a power, under this part.
- ‘(2) Despite section 18, the person must have regard to the human rights principle in performing the function or exercising the power.

### **‘123D Explanation of operation of pt 10A**

- ‘(1) The purpose of this section is to explain generally the circumstances in which a relevant service provider may be authorised under this part to use a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- ‘(2) Use of the restrictive practice may be authorised if the following are satisfied—
  - (a) for containment or seclusion, or an associated restrictive practice—
    - (i) a positive behaviour support plan is prepared for the adult by the chief executive; and

- (ii) use of the restrictive practice is approved by the guardianship tribunal;
- (b) for any other restrictive practice—
  - (i) a positive behaviour support plan is prepared for the adult by the relevant service provider; and
  - (ii) use of the restrictive practice is consented to by a guardian for a restrictive practice (general) matter for the adult or, in some cases, an informal decision maker for the adult;
- (c) for all restrictive practices, use of the restrictive practice—
  - (i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and
  - (ii) is the least restrictive way of ensuring the safety of the adult or others; and
  - (iii) complies with the positive behaviour support plan for the adult.

*Note—*

Some other requirements must also be complied with for the relevant service provider to be authorised to use the restrictive practice. See section 123M (for containment or seclusion) or 123ZA (for use of other restrictive practices).

- ‘(3) Also, use of a restrictive practice may be authorised if—
  - (a) the restrictive practice is used in the course of providing respite services or community access services to the adult; or
  - (b) there is an immediate and serious risk of harm to the adult or others.

*Note—*

See—

- sections 123N, 123ZB and 123ZC for use of restrictive practices in the course of providing respite services or community access services

[s 7]

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- sections 123O and 123ZD for use of restrictive practices if there is an immediate and serious risk of harm to the adult or others.

‘(4) In this section—

*associated restrictive practice* means a restrictive practice other than containment or seclusion, relating to the adult who is the subject of a containment or seclusion approval.

### ‘123E Definitions for pt 10A

‘In this part—

*adult with an intellectual or cognitive disability* means an adult with a disability who has a condition attributable to an intellectual or cognitive impairment, or a combination of the impairments.

*appropriately qualified* see section 123K.

*assessment* see section 123J(3).

*authorised psychiatrist* see the *Mental Health Act 2000*, schedule 2.

*chemical restraint* see section 123F.

*chemical restraint (fixed dose)* means chemical restraint using medication that is administered at fixed intervals and times.

*community access services* means disability services that are—

- (a) community access services provided to an adult with an intellectual or cognitive disability who does not receive disability services other than respite services or community access services from a relevant service provider; and
- (b) funded as community access services by the department or the Commonwealth.

*contain* see section 123G.

*containment or seclusion approval* means approval given by the guardianship tribunal under the GAA, chapter 5B, part 2



for a relevant service provider to contain or seclude, or use another restrictive practice in relation to, an adult with an intellectual or cognitive disability.

**decision notice**, for a decision of the chief executive, means a notice stating the following—

- (a) the decision and the reasons for it;
- (b) that the person to whom the notice is given may apply for review of the decision under section 123ZZ within 28 days after the person receives the notice;
- (c) how to apply for review of the decision.

**director of mental health** means the director under the *Mental Health Act 2000*.

**GAA** means the *Guardianship and Administration Act 2000*.

**guardian for a restrictive practice (general) matter**, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (general) matter appointed for the adult under the GAA, chapter 5B.

**guardian for a restrictive practice matter**, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (general) matter, or a guardian for a restrictive practice (respite) matter, for the adult.

**guardian for a restrictive practice (respite) matter**, for an adult with an intellectual or cognitive disability, means a guardian for a restrictive practice (respite) matter appointed for the adult under the GAA, chapter 5B.

**guardianship tribunal** means the Guardianship and Administration Tribunal.

**harm** to a person means—

- (a) physical harm to the person; or
- (b) a serious risk of physical harm to the person; or
- (c) damage to property involving a serious risk of physical harm to the person.

[s 7]

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***informal decision maker***, for an adult with an intellectual or cognitive disability, means a member of the adult's support network, other than a paid carer for the adult within the meaning of the GAA.

***keep and implement***, a policy about use of a restrictive practice, see section 123I.

***least restrictive***, for use of a restrictive practice in relation to an adult with an intellectual or cognitive disability, 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.

***mechanical restraint*** see section 123H.

***multidisciplinary assessment*** see section 123J(4).

***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.

***positive behaviour support plan*** see section 123L.

***relevant decision maker (respite)***, for an adult with an intellectual or cognitive disability, means—

- (a) a guardian for a restrictive practice (respite) matter for the adult; or
- (b) for a restrictive practice other than chemical restraint used under section 123ZB, if there is no guardian for a restrictive practice (respite) matter for the adult—an informal decision maker for the adult.

***respite/community access plan*** see section 123ZP(2).

***respite services*** means disability services that are—

- (a) respite services provided to an adult with an intellectual or cognitive disability who does not receive disability

services other than respite services or community access services from a relevant service provider; and

- (b) funded as respite services by the department or the Commonwealth.

***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 to prevent the adult using the object to cause harm to the adult or others.

*Examples—*

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

***restrictive practice*** means—

- (a) containing or secluding an adult with an intellectual or cognitive disability; or
- (b) using chemical, mechanical or physical restraint on an adult with an intellectual or cognitive disability; or
- (c) restricting access of an adult with an intellectual or cognitive disability.

***seclude*** an adult with an intellectual or cognitive disability means physically confine the adult alone, at any time of the day or night, in a room or area from which free exit is prevented.

***short term approval*** means an approval given by—

- (a) the adult guardian under the GAA, chapter 5B, part 4; or
- (b) the chief executive under section 123ZK.

***short term plan*** see section 123ZM(2).

***support network***, for an adult, see the GAA, schedule 4.

[s 7]

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**‘123F Meaning of *chemical restraint***

- ‘(1) *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.
- ‘(2) However, using medication for the proper treatment of a diagnosed mental illness or physical condition is not chemical restraint.
- ‘(3) To remove any doubt, it is declared that an intellectual or cognitive disability is not a physical condition.
- ‘(4) In this section—  
*diagnosed*, for a mental illness or physical condition, means a doctor confirms the adult has the illness or condition.  
*mental illness* see the *Mental Health Act 2000*, section 12.

**‘123G Meaning of *contain***

- ‘(1) *Contain* an adult with an intellectual or cognitive disability means physically prevent the free exit of the adult from premises where the adult receives disability services, other than by secluding the adult.
- ‘(2) However, the adult is not contained if—
  - (a) the adult is an adult with a skills deficit under part 15, division 1A; and
  - (b) the adult’s free exit from the premises is prevented by the locking of gates, doors or windows under that part.
- ‘(3) In this section—  
*premises* includes the land around a building or other structure, but does not include a vehicle.

**‘123H Meaning of *mechanical restraint***

- ‘(1) *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 to—

- 
- (a) restrict the free movement of the adult; or
  - (b) prevent or reduce self injurious behaviour.
- ‘(2) However, the following are not mechanical restraint—
- (a) using a device to enable the safe transportation of the adult;  
*Examples of devices used to enable safe transportation—*
    - a cover over a seat belt buckle
    - a harness or strap
  - (b) using a device for postural support;
  - (c) using a device to prevent injury from involuntary bodily movements, such as seizures;
  - (d) using a surgical or medical device for the proper treatment of a physical condition;
  - (e) using bed rails or guards to prevent injury while the adult is asleep.

### ‘123I Requirement to ***keep and implement*** a policy

‘A requirement under this part for a relevant service provider to ***keep and implement*** a policy about use of a restrictive practice means—

- (a) prepare the policy and keep it up-to-date; and
- (b) when providing disability services, implement and comply with the procedures and other matters stated in the policy; and
- (c) keep a copy of the up-to-date policy at premises where the restrictive practice is used; and
- (d) ensure a copy of the up-to-date policy is available for inspection by the following—
  - (i) staff of the relevant service provider;
  - (ii) guardians, informal decision makers or advocates for adults in relation to whom the restrictive practices are used;

[s 7]

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- (iii) a community visitor under the GAA.

*Note—*

See also division 6 for requirements about the content of the policy.

## **‘Division 2                    Important concepts for using restrictive practices**

### **‘123J    Assessment of an adult**

- ‘(1) Before a restrictive practice can be used in relation to an adult with an intellectual or cognitive disability, the adult must be assessed.
- ‘(2) However, an assessment is not required if the restrictive practice is used—
- (a) under a short term approval; or
  - (b) in the course of providing respite services or community access services to the adult.

*Note—*

Although an assessment is not required for using restrictive practices in the course of providing respite services or community access services, relevant service providers must comply with division 5.

- ‘(3) For this part, an ***assessment*** of an adult with an intellectual or cognitive disability is an assessment by 1 or more persons, as provided for under subsections (4) to (6), for the following purposes—
- (a) making findings about the nature, intensity, frequency and duration of the behaviour of the adult that causes harm to the adult or others;
  - (b) developing theories about the factors that contribute to the adult’s behaviour mentioned in paragraph (a);

*Examples of factors that might contribute to the behaviour—*

- biological factors, such as genetic predispositions

- 
- psychological or cognitive factors, such as low communication skills
  - social factors, such as the adult's surroundings
  - medical conditions
- (c) making recommendations about appropriate strategies for—
- (i) meeting the adult's needs and improving the adult's capabilities and quality of life; and
  - (ii) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others; and
  - (iii) managing the adult's behaviour that causes harm to the adult or others to minimise the risk of harm.
- ‘(4) For containing or secluding an adult under section 123M, the adult must be assessed by 2 or more appropriately qualified persons who have qualifications or experience in different disciplines (a *multidisciplinary assessment*).
- ‘(5) For using chemical, mechanical or physical restraint under section 123ZA on an adult, the adult must be assessed by at least 1 appropriately qualified person.
- ‘(6) For restricting access of an adult under section 123ZA, the adult must be assessed by the relevant service provider proposing to restrict the adult's access.

### ‘123K Who is *appropriately qualified* to assess an adult

‘For assessing an adult with an intellectual or cognitive disability, a person is *appropriately qualified* if the person has the qualifications or experience appropriate to conduct the assessment.

*Examples of who might be appropriately qualified persons—*

behaviour analysts, medical practitioners, psychologists, psychiatrists, speech and language pathologists, occupational therapists, registered nurses, social workers

[s 7]

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**‘123L What is a *positive behaviour support plan***

- ‘(1) For this part, a *positive behaviour support plan*, for an adult with an intellectual or cognitive disability, means a plan stating at least each of the following—
- (a) the adult’s name, age and gender;
  - (b) the name of any guardian or informal decision maker for the adult;
  - (c) a description of the adult’s intellectual or cognitive disability;
  - (d) the name of each relevant service provider providing disability services to the adult and a description of the disability services provided;
  - (e) in relation to previous behaviour of the adult that has caused harm to the adult or others, a description of—
    - (i) the intensity, frequency and duration of the behaviour; and
    - (ii) the consequences of the behaviour;

*Examples—*

- harm is caused to the adult or someone else
  - the adult is charged with, or was convicted of, an offence involving the behaviour
- (f) any available information about strategies previously used to manage the behaviour mentioned in paragraph (e) and the effectiveness of those strategies;
  - (g) for the assessment of the adult, each of the following—
    - (i) the name of each person who assessed the adult;
    - (ii) a description of the assessment conducted;
    - (iii) the findings, theories and recommendations of each person about the matters mentioned in section 123J(3);
    - (iv) if the assessment was a multidisciplinary assessment and there was a difference of opinion between any of the appropriately qualified persons



who assessed the adult—how the difference was taken into account in developing the plan;

- (h) for each restrictive practice proposed to be used in relation to the adult, the details stated in subsection (2);
- (i) a description of the positive strategies, including the community access arrangements in place for the adult, that will be used to—
  - (i) meet the adult's needs and improve the adult's capabilities and quality of life; and
  - (ii) reduce the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others;

*Examples—*

- skills development, such as communication skills, motor skills or life skills
  - strategies that encourage the use of appropriate behaviour
- (j) for each relevant service provider who will use a restrictive practice in relation to the adult—a description of how the provider will support and supervise staff involved in implementing the plan;
  - (k) if the person developing the plan is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the requirements of the order;
  - (l) the name, and relationship to the adult, of each person consulted during the development of the plan, and the person's views about the use of each restrictive practice proposed to be used in relation to the adult.
- ‘(2) For subsection (1)(h), the details about the restrictive practice are the following—
- (a) the name of the relevant service provider who will use the restrictive practice;
  - (b) any strategies that must be attempted before using the restrictive practice;

[s 7]

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- (c) the procedure for using the restrictive practice, including observations and monitoring, and any other measures necessary to ensure the adult's proper care and treatment, that must happen while the restrictive practice is being used;
- (d) a description of the anticipated positive and negative effects on the adult of using the restrictive practice;
- (e) a demonstration of why use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others;
- (f) the strategy for reducing or eliminating the use of the restrictive practice;
- (g) the intervals at which use of the restrictive practice will be reviewed by the relevant service provider using the restrictive practice in compliance with the provider's policy about use of the restrictive practice;

*Note—*

See also section 123ZV.

- (h) for containment—a description of the adult's accommodation and its suitability for implementing the plan;
- (i) for seclusion—
  - (i) a description of the place where the adult will be secluded and its suitability for secluding the adult; and
  - (ii) the maximum period for which seclusion may be used at any 1 time and the maximum frequency of the seclusion;
- (j) for chemical restraint—
  - (i) the name of the medication to be used and any available information about the medication, including, for example, information about possible side effects; and

- (ii) the dose, route and frequency of administration, including, for medication to be administered as and when needed, the circumstances in which the medication may be administered, as prescribed by the adult's treating doctor; and
- (iii) if the adult's medication has previously been reviewed by the adult's treating doctor—the date of the most recent medication review; and
- (iv) the name of the adult's treating doctor;
- (k) for mechanical or physical restraint—the maximum period for which the restraint may be used at any 1 time.

## **'Division 3                    Containment and seclusion**

### **'Subdivision 1            Requirements for containing or secluding an adult**

#### **'123M Containing or secluding an adult under containment or seclusion approval**

- '(1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability if—
  - (a) the containment or seclusion is necessary to prevent the adult's behaviour causing harm to the adult or others; and
  - (b) the containment or seclusion is the least restrictive way of ensuring the safety of the adult or others; and
  - (c) the containment or seclusion complies with—
    - (i) a containment or seclusion approval; and
    - (ii) if the containment or seclusion approval is not given as an interim order under the GAA, section 80ZR—a positive behaviour support plan for the adult developed by the chief executive under this division; and

[s 7]

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- (d) the relevant service provider keeps and implements a policy about use of containment or seclusion under this section as required under division 6; and
  - (e) the relevant service provider complies with section 123Z.
- ‘(2) For subsection (1)(c)(ii), the adult is not contained or secluded in compliance with the positive behaviour support plan if the relevant service provider does not implement the positive strategies stated in the plan.
- ‘(3) Subsection (1)(d) applies subject to the terms of the containment or seclusion approval of which the adult is the subject.
- ‘(4) It is not necessary to obtain the adult’s consent to the containment or seclusion of the adult under this section.

**‘123N Containing or secluding an adult for respite services or community access services**

- ‘(1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability in the course of providing respite services or community access services to the adult if—
- (a) the containment or seclusion is necessary to prevent the adult’s behaviour causing harm to the adult or others; and
  - (b) the containment or seclusion is the least restrictive way of ensuring the safety of the adult or others; and
  - (c) before containing or secluding the adult, the relevant service provider complies with the requirements under division 5; and
  - (d) the containment or seclusion complies with—
    - (i) the consent of a guardian for a restrictive practice (respite) matter for the adult; and
    - (ii) a respite/community access plan for the adult; and

- (e) the relevant service provider keeps and implements a policy about use of containment or seclusion under this section as required under division 6; and
  - (f) the relevant service provider complies with section 123Z.
- ‘(2) For subsection (1)(d)(ii), the adult is taken not to be contained or secluded in compliance with the respite/community access plan if the relevant service provider does not implement the positive strategies stated in the plan.
- ‘(3) This section does not apply if the adult is the subject of a containment or seclusion approval.

**‘123O Containing or secluding an adult under short term approval**

- ‘(1) A relevant service provider may contain or seclude an adult with an intellectual or cognitive disability if—
- (a) there is an immediate and serious risk of harm to the adult or others; and
  - (b) the containment or seclusion is necessary to prevent the adult’s behaviour causing harm to the adult or others; and
  - (c) the containment or seclusion is the least restrictive way of ensuring the safety of the adult or others; and
  - (d) the containment or seclusion complies with—
    - (i) a short term approval given by the adult guardian under the GAA, chapter 5B, part 4; and
    - (ii) if a short term plan for the adult has been approved under the GAA, chapter 5B, part 4—the short term plan; and
  - (e) the relevant service provider keeps and implements a policy about use of containment or seclusion under this section as required under division 6; and
  - (f) the relevant service provider complies with section 123Z.

[s 7]

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- ‘(2) It is not necessary to obtain the adult’s consent to the containment or seclusion of the adult under this section.

## **‘Subdivision 2      Multidisciplinary assessment and development of positive behaviour support plan**

### **‘123P Application of sdiv 2**

‘This subdivision applies if—

- (a) a relevant service provider notifies the chief executive that the relevant service provider wishes to contain or seclude an adult with an intellectual or cognitive disability, other than in the course of providing respite services or community access services to the adult; and
- (b) the adult is not the subject of a containment or seclusion approval.

*Notes—*

- 1 Under the GAA, chapter 5B, a relevant service provider other than the department must apply for a containment or seclusion approval jointly with the chief executive.
- 2 If the adult is the subject of an existing containment or seclusion approval, see subdivision 3 for changing the adult’s positive behaviour support plan.

### **‘123Q Chief executive to decide whether multidisciplinary assessment of adult will be conducted**

- ‘(1) The chief executive must decide whether a multidisciplinary assessment of the adult will be conducted.
- ‘(2) The chief executive may decide a multidisciplinary assessment of the adult will be conducted if the chief executive considers it may be necessary for the relevant service provider to contain or seclude the adult to safeguard the adult or others from harm.

- ‘(3) In deciding whether a multidisciplinary assessment of the adult will be conducted, the chief executive must consult with, and consider the views of, the following persons—
- (a) the adult;
  - (b) if the adult has a guardian or informal decision maker—the guardian or informal decision maker;
  - (c) each relevant service provider providing disability services to the adult;
  - (d) if the chief executive is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the authorised psychiatrist responsible for treatment of the adult under that Act;
  - (e) any other person considered by the chief executive to be integral to the chief executive’s decision.

*Example—*

a family member who is part of the adult’s support network, a key health care provider or an advocate for the adult

- ‘(4) Despite subsection (3)(b), the chief executive is not required to consult with a person who is an informal decision maker for the adult if—
- (a) the chief executive is not, and could not reasonably be expected to be, aware the person is an informal decision maker for the adult; or
  - (b) after taking all reasonable steps, the chief executive can not locate the person.

### **‘123R Notice of decision not to conduct assessment**

‘If the chief executive decides a multidisciplinary assessment of the adult will not be conducted, the chief executive must give the following persons a decision notice about the decision—

- (a) the relevant service provider;
- (b) the adult;

[s 7]

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- (c) a guardian or informal decision maker for the adult who was consulted by the chief executive under section 123Q(3).

**‘123S Development of positive behaviour support plan following assessment**

- ‘(1) This section applies if a multidisciplinary assessment of the adult is conducted.
- ‘(2) The chief executive must develop a positive behaviour support plan for the adult if, having regard to the findings, theories and recommendations of the persons who assessed the adult, the chief executive is satisfied—
  - (a) the adult’s behaviour has previously resulted in harm to the adult or others; and
  - (b) it is necessary for the relevant service provider to contain or seclude the adult to safeguard the adult or others from harm; and
  - (c) containing or secluding the adult is the least restrictive way of ensuring the safety of the adult or others.
- ‘(3) The positive behaviour support plan must provide for the use of any restrictive practice, including chemical, mechanical or physical restraint or restricting access, that is—
  - (a) when the plan is developed, proposed to be used in relation to the adult by any relevant service provider; and
  - (b) based on the recommendations of the persons who assessed the adult.
- ‘(4) In developing the positive behaviour support plan, the chief executive must consult with, and consider the views of, each person who was consulted under section 123Q(3).
- ‘(5) If the positive behaviour support plan provides for the use of chemical restraint, the chief executive must—
  - (a) consult the adult’s treating doctor; and
  - (b) inform the adult’s treating doctor about—



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- (i) the findings and theories of the persons who conducted the multidisciplinary assessment about the adult's behaviour that causes harm to the adult or others, including the factors contributing to the behaviour; and
  - (ii) the strategies, including other restrictive practices, proposed to be used for—
    - (A) meeting the adult's needs and improving the adult's capabilities and quality of life; and
    - (B) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others.
- ‘(6) If the chief executive is not required to develop a positive behaviour support plan for the adult under subsection (2), the chief executive must give the following persons a decision notice about the decision not to develop the plan—
- (a) the relevant service provider;
  - (b) the adult;
  - (c) a guardian or informal decision maker for the adult who was consulted under section 123Q(3).

**‘123T Participation of psychiatrist in development of plan—adult subject to forensic order or involuntary treatment order**

- ‘(1) This section applies if—
- (a) the chief executive is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*; and
  - (b) the chief executive develops a positive behaviour support plan for the adult under this division.
- ‘(2) The chief executive must ensure the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000* is given the opportunity to participate in the development of the positive behaviour support plan.

[s 7]

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## **‘Subdivision 3      Changing a positive behaviour support plan**

### **‘123U Application of sdiv 3**

‘This subdivision applies if an adult with an intellectual or cognitive disability is the subject of a containment or seclusion approval.

### **‘123V Who may change positive behaviour support plan**

‘The positive behaviour support plan for the adult may be changed only by the chief executive.

### **‘123W When chief executive must decide whether positive behaviour support plan should be changed**

‘The chief executive must decide whether a change to the adult’s positive behaviour support plan should be made if—

- (a) a relevant service provider asks the chief executive, in writing, to make a change to the plan; or
- (b) the chief executive becomes aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*.

*Examples of when a relevant service provider might ask for a change—*

- A new relevant service provider wants to use a restrictive practice in relation to the adult, including chemical, mechanical or physical restraint or restricting access.
- The relevant service provider to which the containment or seclusion approval applies wants to change a detail stated in the positive behaviour support plan for the adult.
- The containment or seclusion approval is about to expire and the relevant service provider to which the approval applies wishes to apply for a new approval.

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**‘123X Requirements for chief executive’s decision about whether change should be made**

- ‘(1) The chief executive may decide a change should be made to the adult’s positive behaviour support plan only if satisfied the change would not—
  - (a) increase the risk of the adult’s behaviour causing harm to the adult or others; or
  - (b) decrease the extent to which the adult’s needs are met or the adult’s capabilities and quality of life are improved.
- ‘(2) For deciding whether a change should be made, the chief executive may arrange for all or part of a multidisciplinary assessment to be conducted, or consult any of the persons listed in section 123Q(3), as the chief executive considers appropriate in the circumstances.
- ‘(3) However, if the chief executive is deciding whether a change should be made because the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*, the chief executive must consult the authorised psychiatrist responsible for treatment of the adult under that Act.
- ‘(4) Subsection (2) applies subject to any order or direction of the guardianship tribunal.

**‘123Y Action of chief executive after deciding whether change should be made**

- ‘(1) If the chief executive decides a change to the adult’s positive behaviour support plan should be made, the chief executive must decide whether the change requires a GAA application to be made.
- ‘(2) The change requires the making of a GAA application if it—
  - (a) is inconsistent with the terms of an existing containment or seclusion approval; or

[s 7]

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*Examples—*

- The existing containment or seclusion approval approves seclusion for periods of not more than 15 minutes. The change is to increase the maximum period to 30 minutes.
  - The existing containment or seclusion approval applies to relevant service provider A. The change is for relevant service provider B to use a restrictive practice in relation to the adult.
  - The existing containment or seclusion approval is for seclusion. The change is for the additional use of mechanical restraint.
- (b) is requested because an existing containment or seclusion approval is about to expire and the relevant service provider proposes to apply for a further approval.
- ‘(3) If the change does not require the making of a GAA application, the chief executive must make the change and give a copy of the amended plan to the following—
- (a) the guardianship tribunal;
  - (b) the adult;
  - (c) if the adult has a guardian or informal decision maker—the guardian or informal decision maker;
  - (d) the relevant service provider to which an existing containment or seclusion approval applies.
- ‘(4) However, the chief executive is not required to give a copy of the amended plan to a person who is an informal decision maker for the adult if—
- (a) the chief executive is not, and could not reasonably be expected to be, aware the person is an informal decision maker for the adult; or
  - (b) after taking all reasonable steps, the chief executive can not locate the person.
- ‘(5) As soon as practicable after making the decision mentioned in subsection (1), the chief executive must give a prescribed notice to—

- (a) if the chief executive was required to decide whether a change should be made because of a request made by a relevant service provider—the relevant service provider;  
or

*Note—*

If the chief executive decides the change should not be made and the relevant service provider is dissatisfied with the decision, the relevant service provider could apply to the guardianship tribunal under the GAA, section 80ZA for review of the existing containment or seclusion approval.

- (b) if the chief executive was required to decide whether a change should be made because the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—
  - (i) the director of mental health; and
  - (ii) the relevant service provider to which an existing containment or seclusion approval applies.

‘(6) In this section—

***GAA application*** means an application to the guardianship tribunal for—

- (a) the giving of a new containment or seclusion approval;  
or
- (b) review of an existing containment or seclusion approval.

***prescribed notice*** means a notice stating the chief executive’s decisions about—

- (a) whether a change should be made to the positive behaviour support plan for the adult; and
- (b) if the chief executive decides a change should be made—whether the change requires the making of a GAA application.

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## **‘Subdivision 4      General requirements for containment or seclusion**

### **‘123Z Relevant service provider to ensure adult’s needs are met**

‘A relevant service provider containing or secluding an adult with an intellectual or cognitive disability must ensure the adult is given each of the following—

- (a) sufficient bedding and clothing;
- (b) sufficient food and drink;
- (c) access to adequate heating and cooling;
- (d) access to toilet facilities;
- (e) the adult’s medication as prescribed by a doctor.

## **‘Division 4              Use of restrictive practices other than containment or seclusion**

### **‘Subdivision 1      Requirements for using chemical, mechanical or physical restraint, or restricting access**

#### **‘123ZA Using chemical, mechanical or physical restraint, or restricting access, with consent of guardian etc.**

- ‘(1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability if—
- (a) use of the restrictive practice is necessary to prevent the adult’s behaviour causing harm to the adult or others; and
  - (b) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and

- (c) either—
    - (i) if the adult is the subject of a containment or seclusion approval—use of the restrictive practice complies with—
      - (A) the approval; and
      - (B) if the containment or seclusion approval is not given as an interim order under the GAA, section 80ZR—a positive behaviour support plan for the adult developed by the chief executive under division 3; or
    - (ii) otherwise—use of the restrictive practice complies with—
      - (A) a positive behaviour support plan for the adult developed by the relevant service provider under this division; and
      - (B) the consent of a relevant decision maker for the adult; and
  - (d) the relevant service provider keeps and implements a policy about use of the restrictive practice under this section as required under division 6.
- ‘(2) For subsection (1)(c), the restrictive practice is not used in compliance with a positive behaviour support plan if the relevant service provider does not implement the positive strategies stated in the plan.
- ‘(3) Subsection (1)(d) applies subject to the terms of any containment or seclusion approval of which the adult is the subject.
- ‘(4) In this section—
- relevant decision maker***, for an adult with an intellectual or cognitive disability, means—
- (a) a guardian for a restrictive practice (general) matter for the adult; or

[s 7]

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- (b) for restricting access of the adult, if there is no guardian for a restrictive practice (general) matter for the adult—an informal decision maker for the adult.

**‘123ZB Using chemical, mechanical or physical restraint, or restricting access, for respite services or community access services**

- ‘(1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability in the course of providing respite services or community access services to the adult if—
  - (a) use of the restrictive practice is necessary to prevent the adult’s behaviour causing harm to the adult or others; and
  - (b) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and
  - (c) before using the restrictive practice, the relevant service provider complies with the requirements under division 5; and
  - (d) use of the restrictive practice complies with—
    - (i) the consent of a relevant decision maker (respite) for the adult; and
    - (ii) a respite/community access plan for the adult; and
  - (e) the relevant service provider keeps and implements a policy about use of the restrictive practice under this section as required under division 6.
- ‘(2) For subsection (1)(d)(ii), the restrictive practice is not used in compliance with the respite/community access plan if the relevant service provider does not implement the positive strategies stated in the plan.
- ‘(3) This section does not apply if the adult is the subject of a containment or seclusion approval.
- ‘(4) This section does not apply to chemical restraint (fixed dose) used in the course of providing respite services to the adult.



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**‘123ZC Using chemical restraint (fixed dose) for respite services**

- ‘(1) A relevant service provider may use chemical restraint (fixed dose) on an adult with an intellectual or cognitive disability in the course of providing respite services to the adult if—
- (a) use of the chemical restraint complies with the consent of a relevant decision maker (respite) for the adult; and
  - (b) the relevant service provider keeps and implements a policy about use of the chemical restraint under this section as required under division 6.
- ‘(2) This section does not apply if the adult is the subject of a containment or seclusion approval.

**‘123ZD Using chemical, mechanical or physical restraint, or restricting access, under short term approval**

- ‘(1) A relevant service provider may use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability if—
- (a) there is an immediate and serious risk of harm to the adult or others; and
  - (b) use of the restrictive practice—
    - (i) is necessary to prevent the adult’s behaviour causing harm to the adult or others; and
    - (ii) is the least restrictive way of ensuring the safety of the adult or others; and
    - (iii) complies with a short term approval and, if a short term plan for the adult has been approved under subdivision 4 or the GAA, chapter 5B, part 4, the short term plan; and
  - (c) the relevant service provider keeps and implements a policy about use of the restrictive practice under this section as required under division 6.
- ‘(2) It is not necessary to obtain the adult’s consent to the use of a restrictive practice under this section.

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## **‘Subdivision 2      Assessment of adult and positive behaviour support plan**

### **‘123ZE Application of sdiv 2**

‘This subdivision applies if—

- (a) a relevant service provider proposes to use chemical, mechanical or physical restraint on, or restrict access of, an adult with an intellectual or cognitive disability, other than—
  - (i) under a short term approval; or
  - (ii) in the course of providing respite services or community access services to the adult; and
- (b) the adult is not the subject of a containment or seclusion approval; and

*Note—*

If the adult is the subject of a containment or seclusion approval, and the adult’s positive behaviour support plan does not provide for the relevant service provider’s use of the restrictive practice mentioned in paragraph (a), the relevant service provider must—

- (a) ask the chief executive to change the positive behaviour support plan to provide for the relevant service provider’s use of the restrictive practice (see division 3, subdivision 3); and
- (b) apply to the guardianship tribunal for the making or review of a containment or seclusion approval in relation to the relevant service provider’s use of the restrictive practice.
- (c) the relevant service provider does not propose to contain or seclude the adult in addition to using the restrictive practice mentioned in paragraph (a).

### **‘123ZF Requirements for development of positive behaviour support plan—assessment and consultation**

- ‘(1) This section states the requirements with which the relevant service provider must comply in developing a positive behaviour support plan for the adult.

‘(2) The relevant service provider must—

(a) ensure the adult is assessed; and

*Note—*

See section 123J for requirements about the assessment of the adult.

(b) if the provider is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—ensure the authorised psychiatrist responsible for treatment of the adult under that Act is given the opportunity to participate in the development of the positive behaviour support plan; and

(c) consult with, and consider the views of, the following—

(i) the adult;

(ii) any guardian or informal decision maker for the adult;

(iii) any other relevant service provider providing disability services to the adult;

(iv) another person considered by the provider to be integral to the development of the plan.

*Examples—*

a family member who is part of the adult’s support network, a key health care provider or an advocate for the adult

‘(3) Also, if the relevant service provider proposes to use chemical restraint, the relevant service provider must—

(a) consult the adult’s treating doctor; and

(b) inform the adult’s treating doctor about—

(i) the findings and theories of the person who assessed the adult about the adult’s behaviour that causes harm to the adult or others, including the factors contributing to the behaviour; and

(ii) the strategies, including other restrictive practices, proposed to be used in conjunction with the use of the chemical restraint for—

[s 7]

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- (A) meeting the adult's needs and improving the adult's capabilities and quality of life; and
  - (B) reducing the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others.
- '(4) The positive behaviour support plan may provide for the use of mechanical or physical restraint only if the use is supported by the recommendations of the person who assessed the adult.

### **'123ZG Changing a positive behaviour support plan**

- '(1) A positive behaviour support plan that provides for use of chemical, mechanical or physical restraint may be changed by the relevant service provider only if—
  - (a) either—
    - (i) for a change relating to use of chemical restraint—the relevant service provider has consulted the adult's treating doctor; or
    - (ii) otherwise—the change is supported by the recommendations of an appropriately qualified person; and
  - (b) a guardian for a restrictive practice (general) matter for the adult consents to the change.
- '(2) A positive behaviour support plan that provides only for restricting access of the adult may be changed by the relevant service provider only if a following person consents to the change—
  - (a) a guardian for a restrictive practice (general) matter for the adult;
  - (b) if there is no guardian for a restrictive practice (general) matter for the adult—an informal decision maker for the adult.

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**‘123ZH Requirement for relevant service provider to consider whether plan should be changed**

- ‘(1) This section applies if—
- (a) a positive behaviour support plan is developed for an adult under this division; and
  - (b) the relevant service provider becomes aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*.
- ‘(2) The relevant service provider must consider whether the positive behaviour support plan should be changed.
- ‘(3) In deciding whether the positive behaviour support plan should be changed, the relevant service provider must—
- (a) consult the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000*; and
  - (b) consider the psychiatrist’s views about the use of any restrictive practice provided for in the plan.

**‘Subdivision 3 Requirements if adult subject to forensic order or involuntary treatment order**

*Note—*

Under section 161, a funded non-government service provider may be given a compliance notice requiring the provider to remedy a contravention of a requirement under this subdivision.

**‘123ZI Requirement for relevant service provider to notify guardian**

- ‘(1) This section applies if—
- (a) a relevant service provider is required under section 123ZF(2) or 123ZH(3) to consult the authorised

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psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000*; and

- (b) the psychiatrist does not agree with the use of a restrictive practice provided for in the positive behaviour support plan for the adult.

‘(2) As soon as practicable after consulting the authorised psychiatrist, the relevant service provider must notify a relevant decision maker for the adult about the psychiatrist’s views regarding use of the restrictive practice.

‘(3) In this section—

***consult***, the authorised psychiatrist responsible for treatment of the adult under the *Mental Health Act 2000*, includes give the psychiatrist an opportunity to participate in the development of a positive behaviour support plan.

***relevant decision maker***, for the adult, means—

- (a) a guardian for a restrictive practice (general) matter for the adult; or
- (b) if the only restrictive practice provided for in the positive behaviour support plan for the adult is restricting access and there is no guardian for a restrictive practice (general) matter for the adult—an informal decision maker for the adult.

### **‘123ZJ Requirement for relevant service provider to notify director of mental health**

‘(1) This section applies if—

- (a) a relevant service provider develops or changes a positive behaviour support plan for an adult under this division; and
- (b) a guardian for a restrictive practice (general) matter, or an informal decision maker, for the adult consents to the use of a restrictive practice by the relevant service provider in relation to the adult; and

- (c) the relevant service provider is or becomes aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*.
- ‘(2) The relevant service provider must—
  - (a) give notice to the director of mental health of the terms of the consent given by the guardian or informal decision maker as soon as practicable after the later of—
    - (i) the consent being given; or
    - (ii) the relevant service provider becoming aware of the forensic order or involuntary treatment order; and
  - (b) if asked by the director of mental health, give the director a copy of the positive behaviour support plan for the adult.

## **‘Subdivision 4      Short term approvals given by chief executive**

### **‘123ZK Short term approval for use of restrictive practices other than containment or seclusion**

- ‘(1) This section applies if a relevant service provider asks the chief executive for approval to use a restrictive practice, other than containment or seclusion, in relation to an adult with an intellectual or cognitive disability.
- ‘(2) The chief executive may give the approval only if the chief executive is satisfied—
  - (a) the adult is not the subject of a containment or seclusion approval; and
  - (b) there is no guardian for a restrictive practice (general) matter for the adult; and
  - (c) there is an immediate and serious risk that, if the approval is not given, the adult’s behaviour will cause harm to the adult or others; and

[s 7]

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- (d) use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and
  - (e) if the restrictive practice is chemical restraint—the relevant service provider has consulted with, and considered the views of, the adult’s treating doctor.
- ‘(3) If the chief executive has previously given an approval under this section in relation to the adult, the chief executive may give the approval only if satisfied exceptional circumstances justify giving a subsequent approval under this section.
- ‘(4) In deciding whether to give the approval, the chief executive must, unless it is not practicable in the circumstances, consult with and consider the views of the following persons about the proposed use of the restrictive practice—
  - (a) the adult, or a guardian or informal decision maker for the adult;
  - (b) if the chief executive is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the authorised psychiatrist responsible for treatment of the adult under that Act.
- ‘(5) The chief executive must, as soon as practicable after deciding whether to give the approval, give the relevant service provider notice of the decision, including, if the approval is given—
  - (a) the conditions to which it is subject; and
  - (b) the period for which it has effect.
- ‘(6) Also, the chief executive must, within 7 days after deciding whether to give the approval, give notice of the decision to the following persons—
  - (a) the adult guardian;
  - (b) any person consulted by the chief executive under subsection (4).
- ‘(7) A notice for subsection (6) must state each of the following—
  - (a) the name of the adult;



- (b) the name of the relevant service provider;
  - (c) the chief executive's decision, including, if the approval is given—
    - (i) the terms of the approval; and
    - (ii) the chief executive's reasons for giving the approval.
- ‘(8) A person given notice under subsection (5) or (6) of a decision of the chief executive to give, or refuse to give, the approval may apply to the guardianship tribunal, and the guardianship tribunal may make the order it considers appropriate.

#### **‘123ZL Period for which short term approval has effect**

- ‘(1) An approval given by the chief executive under section 123ZK has effect for the period stated in the notice given to the relevant service provider under section 123ZK(5).
- ‘(2) However, the period must not be more than 3 months.
- ‘(3) The approval ends if—
- (a) the guardianship tribunal appoints a guardian for a restrictive practice (general) matter for the adult; or
  - (b) the guardianship tribunal gives a containment or seclusion approval for the adult; or
  - (c) the relevant service provider does not comply with the condition of the approval mentioned in section 123ZM(1)(a); or
  - (d) the chief executive notifies the relevant service provider under section 123ZN that the chief executive does not approve a short term plan for the adult given to the chief executive by the provider.

#### **‘123ZM Conditions of short term approval**

- ‘(1) An approval given by the chief executive under section 123ZK—

[s 7]

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- (a) is subject to the condition that, within 14 days after receiving notice that the approval has been given, the relevant service provider must give the chief executive a short term plan for the adult; and
  - (b) may be subject to other conditions considered appropriate by the chief executive.
- ‘(2) For this part, a *short term plan*, for an adult with an intellectual or cognitive disability, is a plan stating at least the following—
- (a) a description of the behaviour of the adult that causes harm to the adult or others, including the consequences of the behaviour;
  - (b) a description of the restrictive practices used in relation to the adult;
  - (c) the reasons for using the restrictive practices;
  - (d) a demonstration of why using the restrictive practices is the least restrictive way of ensuring the safety of the adult or others.

### **‘123ZN Chief executive’s decision about approving short term plan**

- ‘(1) This section applies if the chief executive is given a short term plan for an adult with an intellectual or cognitive disability by a relevant service provider under section 123ZM(1)(a).
- ‘(2) As soon as practicable after receiving the short term plan, the chief executive must decide whether to approve it.
- ‘(3) The chief executive must approve the short term plan if the chief executive is satisfied—
  - (a) the information in the plan is consistent with the information considered by the chief executive in deciding whether to give the relevant short term approval; and

- (b) there is an immediate and serious risk that, if the short term approval does not continue in effect, the adult's behaviour will cause harm to the adult or others; and
  - (c) use of the restrictive practices in compliance with the short term approval and the plan is the least restrictive way of ensuring the safety of the adult or others.
- ‘(4) The chief executive must, as soon as practicable after deciding whether to approve the short term plan, notify the relevant service provider about the chief executive's decision.
- ‘(5) If the chief executive does not approve the short term plan—
- (a) the relevant service provider may apply to the guardianship tribunal; and
  - (b) the guardianship tribunal may make the order it considers appropriate.

## **‘Division 5                    Use of restrictive practices for     respite services or community     access services**

### **‘123ZO Purpose of div 5**

- ‘(1) This division prescribes the requirements that a relevant service provider must comply with before using a restrictive practice in the course of providing respite services or community access services to an adult with an intellectual or cognitive disability.
- ‘(2) This division does not apply for the use of chemical restraint (fixed dose) under section 123ZC.

### **‘123ZP Requirement to develop respite/community access     plan**

- ‘(1) The relevant service provider must develop a respite/community access plan for the adult.

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- ‘(2) A *respite/community access plan*, for an adult with an intellectual or cognitive disability, is a plan stating at least each of the following—
- (a) the adult’s name;
  - (b) a description of the behaviour of the adult that causes harm to the adult or others, including the consequences of the behaviour;
  - (c) a description of the restrictive practices used in relation to the adult;
  - (d) the reasons for using the restrictive practices;
  - (e) any strategies that must be attempted before using the restrictive practices;
  - (f) the procedure for using the restrictive practices, including observations and monitoring, and any other measures necessary to ensure the adult’s proper care and treatment, that must take place while the restrictive practices are being used;
  - (g) a demonstration of why the restrictive practices are the least restrictive way of ensuring the safety of the adult or others;
  - (h) a description of the positive strategies that will be used to—
    - (i) meet the adult’s needs and improve the adult’s capabilities and quality of life; and
    - (ii) reduce the intensity, frequency and duration of the adult’s behaviour that causes harm to the adult or others;
  - (i) for containment—a description of the place where the adult will be contained;
  - (j) for seclusion—
    - (i) a description of the place where the adult will be secluded; and

- (ii) the maximum period for which seclusion may be used at any 1 time and the maximum frequency of the seclusion;
- (k) for chemical restraint—
  - (i) the name of the medication to be used and any available information about the medication, including, for example, information about possible side effects; and
  - (ii) the dose, route and frequency of administration, including, for medication to be administered as and when needed, the circumstances in which the medication may be administered, as prescribed by the adult's treating doctor; and
  - (iii) the name of the adult's treating doctor;
- (l) for mechanical or physical restraint—the maximum period for which the restraint may be used at any 1 time.

### **'123ZQ Obtaining information about the adult**

'In developing a respite/community access plan, the relevant service provider must obtain, from the persons consulted under section 123ZR, any information available and relevant for identifying the following—

- (a) the adult's needs;
- (b) the behaviour of the adult that causes harm to the adult or others, including the consequences of the behaviour;
- (c) the factors contributing to the behaviour mentioned in paragraph (b).

### **'123ZR Consultation**

'In developing a respite/community access plan for an adult, the relevant service provider must consult with, and consider the views of, the following persons—

- (a) the adult;

[s 7]

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- (b) if the adult has a guardian or informal decision maker—the guardian or informal decision maker;
- (c) any other relevant service provider providing disability services to the adult;
- (d) any other person considered by the relevant service provider to be integral to the development of the plan.

*Example—*

a family member who is part of the adult's support network, a key health care provider or an advocate for the adult

### **'123ZS Risk assessment**

'The relevant service provider must identify, and keep a record of—

- (a) the risks associated with the provision of respite services or community access services to the adult by the relevant service provider; and

*Examples of possible risks—*

- the adult's behaviour causing harm to another client of the relevant service provider
  - the staff of the relevant service provider not being adequately trained to manage the behaviour of the adult
  - the physical environment in which the services are provided not being adequate to accommodate the needs of the adult
- (b) the procedures the relevant service provider will implement to mitigate those risks.

## **'Division 6                      Policy about use of restrictive practices**

### **'123ZT Application of div 6**

'This division applies if another section in this part authorises a relevant service provider to use a restrictive practice if the

relevant service provider keeps and implements a policy about use of the restrictive practice.

*Note—*

See sections 123M(1)(d), 123N(1)(e), 123O(1)(e), 123ZA(1)(d), 123ZB(1)(e), 123ZC(1)(b) and 123ZD(1)(c).

### **‘123ZU Policy must be consistent with department’s policy**

‘The relevant service provider must keep and implement a policy about use of the restrictive practice that is consistent with the department’s policy about use of the restrictive practice.

### **‘123ZV Requirements for content of department’s policy**

- ‘(1) The department must have a policy about use of each type of restrictive practice.
- ‘(2) To the extent the policy is about use of a type of restrictive practice other than under a short term approval or in the course of providing respite services or community access services to an adult, the policy must outline the procedures a relevant service provider must use to—
  - (a) for a restrictive practice not used under a containment or seclusion approval—
    - (i) develop a positive behaviour support plan for an adult with an intellectual or cognitive disability, including, for example, consulting with members of the adult’s support network; and
    - (ii) review use of the restrictive practice at least once—
      - (A) if the restrictive practice is used with the consent of a guardian for a restrictive practice (general) matter—during the period of the guardian’s appointment; or

[s 7]

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- (B) if the restrictive practice is used with the consent of an informal decision maker—during each 12 month period; and
  - (b) for a restrictive practice used under a containment or seclusion approval—review use of the restrictive practice when required by the chief executive, but at least once during the period of the approval; and
  - (c) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—
    - (i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and
    - (ii) has the skills and knowledge required to use the restrictive practice appropriately; and
  - (d) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation; and
  - (e) for restricting access—minimise the impact on other persons living at the premises.
- ‘(3) To the extent the policy is about use of a type of restrictive practice under a short term approval, the policy must outline the procedures a relevant service provider must use to—
- (a) develop a short term plan for an adult with an intellectual or cognitive disability; and
  - (b) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—
    - (i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and
    - (ii) has the skills and knowledge required to use the restrictive practice appropriately; and
  - (c) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation.
- ‘(4) To the extent the policy is about use of a type of restrictive practice in the course of providing respite services or



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community access services to an adult with an intellectual or cognitive disability, the policy must outline the procedures a relevant service provider must use to—

- (a) for a restrictive practice other than chemical restraint (fixed dose)—
    - (i) develop a respite/community access plan for the adult; and
    - (ii) carry out a risk assessment for the adult under section 123ZS; and
  - (b) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—
    - (i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and
    - (ii) has the skills and knowledge required to use the restrictive practice appropriately; and
  - (c) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation; and
  - (d) for restricting access—minimise the impact on other persons living at the premises.
- ‘(5) Subsections (2) to (4) do not limit the matters that may be stated in the policy.
- ‘(6) The policy must ensure appropriate regard is had to linguistic and cultural diversity and Aboriginal tradition and Island custom.

*Editor’s note—*

*Acts Interpretation Act 1954, section 36—*

**Aboriginal tradition** means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

**Island custom**, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres

[s 7]

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Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

**‘123ZW Requirements for publication of department’s policy etc.**

- ‘(1) The chief executive must keep a copy of the department’s policy about use of each type of restrictive practice available for inspection free of charge by relevant service providers at—
  - (a) the department’s head office and regional offices; and
  - (b) other places the chief executive considers appropriate.
- ‘(2) Also, the chief executive must publish the policy on the department’s website on the internet.

**‘Division 7                      Review of particular chief executive decisions**

**‘123ZX Application of div 7**

‘This division applies if the chief executive makes a decision (a *relevant decision*) about which the chief executive is required under this part to give a decision notice.

*Note—*

See sections 123R (a decision that a multidisciplinary assessment will not be conducted) and 123S(6) (a decision not to develop a positive behaviour support plan under division 3).

**‘123ZY Definitions for div 7**

‘In this division—

*interested person*, for a relevant decision, means a person to whom the chief executive is required under this part to give a decision notice about the decision.

*relevant decision* see section 123ZX.

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**‘123ZZ Application for review**

- ‘(1) An interested person for a relevant decision may apply to the chief executive, within 28 days after receiving a decision notice about the decision, to review the decision.
- ‘(2) The chief executive may extend the time for applying for the review.
- ‘(3) Also, an interested person for a relevant decision may apply to the chief executive to review the decision if the chief executive has not given the interested person a decision notice about the decision.
- ‘(4) The application must be in the approved form and accompanied by enough information to enable the chief executive to decide the application.

**‘123ZZA Review of relevant decision**

- ‘(1) This section applies to an application under section 123ZZ for review of a relevant decision.
- ‘(2) Unless the chief executive made the relevant decision personally, the chief executive must ensure the application is not dealt with by—
  - (a) the person who made the relevant decision; or
  - (b) a person in a less senior office than the person who made the relevant decision.
- ‘(3) Within 28 days after receiving the application, the chief executive must review the relevant decision and make a decision (the *review decision*)—
  - (a) confirming the relevant decision; or
  - (b) amending the relevant decision; or
  - (c) substituting another decision for the relevant decision.
- ‘(4) Immediately after deciding the application, the chief executive must give the interested person a notice stating—

[s 7]

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- (a) the review decision; and
- (b) the reasons for the review decision.

## **‘Division 8                      Miscellaneous provisions**

### **‘Subdivision 1              Immunity for use of restrictive practices**

#### **‘123ZZB Immunity from liability—relevant service provider**

‘A relevant service provider is not criminally or civilly liable if the relevant service provider, acting honestly and without negligence, uses a restrictive practice under this part.

#### **‘123ZZC Immunity from liability—individual acting for relevant service provider**

- ‘(1) This section applies to an individual who, acting for a relevant service provider, uses a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- ‘(2) The individual is not criminally or civilly liable for using the restrictive practice if the individual acts honestly and without negligence in compliance with—
  - (a) if the restrictive practice is used under section 123M—
    - (i) the containment or seclusion approval for the adult; and
    - (ii) either—
      - (A) if the containment or seclusion for the adult is given as an interim order under the GAA, section 80ZR—the terms of the order; or
      - (B) otherwise—the positive behaviour support plan for the adult; or
  - (b) if the restrictive practice is used under section 123N—

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- (i) the consent of a guardian for a restrictive practice (respite) matter for the adult; and
    - (ii) the respite/community access plan for the adult; or
  - (c) if the restrictive practice is used under section 123ZA—
    - (i) the positive behaviour support plan for the adult; and
    - (ii) either—
      - (A) a containment or seclusion approval for the adult; or
      - (B) the consent of a relevant decision maker for the adult within the meaning of section 123ZA; or
  - (d) if the restrictive practice is used under section 123ZB—
    - (i) the respite/community access plan for the adult; and
    - (ii) the consent of a relevant decision maker (respite) for the adult; or
  - (e) if the restrictive practice is used under section 123ZC—the consent of a relevant decision maker (respite) for the adult; or
  - (f) if the restrictive practice is used under section 123O or 123ZD—
    - (i) the relevant short term approval; and
    - (ii) if a short term plan for the adult has been approved under division 4, subdivision 4 or the GAA, chapter 5B, part 4—the short term plan.
- ‘(3) For subsection (2), the individual is taken to be acting in compliance with an approval, consent or plan mentioned in the subsection if the individual reasonably believes he or she is acting in compliance with the approval, consent or plan.

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## **‘Subdivision 2      Requirements for relevant service providers**

*Note—*

Under section 161, a funded non-government service provider may be given a compliance notice requiring the provider to remedy a contravention of a requirement under this subdivision.

### **‘123ZZD Requirement to give information to guardian or informal decision maker**

- ‘(1) This section applies if—
- (a) a relevant service provider seeks consent from a substitute decision maker for an adult to use a restrictive practice in relation to the adult; and
  - (b) the restrictive practice is not chemical restraint (fixed dose) used under section 123ZC in the course of providing respite services to the adult.
- ‘(2) To enable the substitute decision maker to make an informed decision about the use of a restrictive practice other than in the course of providing respite services or community access services to the adult, the relevant service provider must give the substitute decision maker each of the following—
- (a) the positive behaviour support plan for the adult;
  - (b) any assessment or other information used to develop or change the plan;
  - (c) if the relevant service provider is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the terms of the order.
- ‘(3) To enable the substitute decision maker to make an informed decision about the use of a restrictive practice in the course of providing respite services or community access services to the adult, the relevant service provider must give the substitute decision maker—

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- (a) the respite/community access plan for the adult; and
  - (b) any information used to develop the plan.
- ‘(4) If the relevant service provider, acting honestly and without negligence, gives the information to the substitute decision maker, the relevant service provider is not liable, civilly, criminally or under an administrative process, for giving the information.
- ‘(5) Also, merely because the relevant service provider gives the information, the relevant service provider can not be held to have—
- (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.
- ‘(6) Without limiting subsections (4) and (5)—
- (a) in a proceeding for defamation, the relevant service provider has a defence of absolute privilege for publishing the information; and
  - (b) if the relevant service provider would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice, the relevant service provider—
    - (i) does not contravene the Act, oath or rule of law or practice by giving the information; and
    - (ii) is not liable to disciplinary action for giving the information.
- ‘(7) This section does not limit the GAA, section 44.

*Note—*

The GAA, section 44 enables a guardian to obtain all information the adult would have been entitled to if the adult had capacity and that is necessary for the guardian to make informed decisions.

- ‘(8) In this section—  
***information*** includes a document.

[s 7]

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***substitute decision maker***, for an adult, means a guardian for a restrictive practice matter, or an informal decision maker, for the adult.

*Note—*

A guardian or informal decision maker who gains confidential information is subject to confidentiality requirements under the GAA. See the GAA, section 249 for guardians and section 80ZT for informal decision makers.

### **‘123ZZE Requirement to keep records and other documents**

- ‘(1) This section applies to a relevant service provider using a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- ‘(2) The relevant service provider must make, and keep for the time prescribed under a regulation, the records prescribed under a regulation.
- ‘(3) Also, the relevant service provider must keep, at premises where disability services are provided to the adult, a copy of—
  - (a) if the restrictive practice is used under section 123M or 123ZA—the positive behaviour support plan for the adult; or
  - (b) if the restrictive practice is used under section 123N or 123ZB—the respite/community access plan for the adult; or
  - (c) if the restrictive practice is used under section 123O or 123ZD—the short term approval and any short term plan for the adult.
- ‘(4) If the restrictive practice is used under a containment or seclusion approval given as an interim order under the GAA, section 80ZR—
  - (a) subsection (3)(a) does not apply; and
  - (b) the relevant service provider must keep, at premises where disability services are provided to the adult, a copy of the interim order.



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**‘123ZZF Notification requirements about approvals given for use of restrictive practices**

‘(1) If—

- (a) a relevant service provider is given a limited restrictive practice approval authorising the provider to use a restrictive practice at a service outlet; and
- (b) there is no other limited restrictive practice approval in effect relating to the service outlet;

the relevant service provider must, within the required period, give notice in the approved form to the chief executive.

‘(2) A relevant service provider who has given a notice under subsection (1) must, within the period mentioned in subsection (6), give notice in the approved form to the chief executive if all limited restrictive practice approvals relating to the service outlet stop having effect.

‘(3) If—

- (a) a relevant service provider is given a restrictive practice approval authorising the provider to use a restrictive practice at a visitable site under the GAA; and
- (b) there is no other restrictive practice approval in effect relating to the visitable site;

the relevant service provider must, within the required period, give notice to the chief executive of the department in which the GAA is administered.

*Editor’s note—*

GAA, section 222—

**visitable site** means a place, other than a private dwelling house, where a consumer lives or receives services and that is prescribed under a regulation.

‘(4) For subsection (3), the notice must state—

- (a) the name and address of the visitable site; and
- (b) that a restrictive practice approval has been given in relation to the visitable site.

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- ‘(5) A relevant service provider who has given a notice under subsection (3) must, within the period mentioned in subsection (6), give notice to the chief executive of the department in which the GAA is administered if all restrictive practice approvals relating to the visitable site stop having effect.
- ‘(6) For subsections (2) and (5), the notice must be given within 21 days after the event mentioned in the subsection happens.
- ‘(7) In this section—

***limited restrictive practice approval*** means a restrictive practice approval other than—

- (a) a containment or seclusion approval; or
- (b) a short term approval given by the adult guardian under the GAA, chapter 5B, part 4.

***required period*** means—

- (a) if the restrictive practice approval is a short term approval—14 days after the approval is given; or
- (b) otherwise—21 days after the restrictive practice approval is given.

***restrictive practice approval*** means—

- (a) a containment or seclusion approval; or
- (b) consent to use of a restrictive practice given by—
  - (i) a guardian for a restrictive practice matter; or
  - (ii) an informal decision maker; or
- (c) a short term approval.

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## **‘Subdivision 3      Confidentiality provisions**

### **‘123ZZG Definitions for sdiv 3**

‘In this subdivision—

*chief executive (health)* means the chief executive of the department in which the *Health Services Act 1991* is administered.

*health professional* means a person engaged in delivering a private sector health service, including the following—

- (a) a person registered under a health practitioner registration Act within the meaning of the *Health Practitioner Registration Boards (Administration) Act 1999*;
- (b) a person enrolled, registered or authorised to practise under the *Nursing Act 1992*;
- (c) any other person, including, for example, an audiologist, dietitian or social worker.

*private sector health service* means a service for maintaining, improving or restoring people’s health and wellbeing, other than a service provided by the State.

### **‘123ZZH Relevant service provider may request confidential information from health professional or chief executive (health)**

- ‘(1) This section applies if a relevant service provider considers a health professional, or the chief executive (health), may hold confidential information about an adult with an intellectual or cognitive disability that is relevant to any of the following being done by the provider—
- (a) the assessment of the adult, including the making of a decision about whether to assess the adult;
  - (b) the development or changing of a positive behaviour support plan for the adult;

[s 7]

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- (c) the development of a short term plan for the adult;
  - (d) the development of a respite/community access plan for the adult.
- ‘(2) The relevant service provider may ask the health professional or chief executive (health) for the confidential information.
- ‘(3) A health professional or the chief executive (health) who gives confidential information requested under this section and who would otherwise be required to maintain confidentiality about the information under an Act, oath or rule of law or practice—
  - (a) does not contravene the Act, oath or rule of law or practice by giving the information; and
  - (b) is not liable to disciplinary action for giving the information.
- ‘(4) Also, merely because the health professional or the chief executive (health) gives the confidential information, the person can not be held to have—
  - (a) breached any code of professional etiquette or ethics; or
  - (b) departed from accepted standards of professional conduct.

**‘123ZZI Relevant service providers must maintain confidentiality**

- ‘(1) This section applies if a relevant service provider—
  - (a) gains confidential information under section 123ZZH; or
  - (b) otherwise gains confidential information in the course of—
    - (i) assessing an adult with an intellectual or cognitive disability or developing a positive behaviour support plan for the adult; or
    - (ii) developing a respite/community access plan or short term plan for an adult with an intellectual or cognitive disability.

- ‘(2) The relevant service provider, or an individual acting for the relevant service provider, must not disclose the information to anyone other than under subsection (3).

Maximum penalty—100 penalty units.

- ‘(3) The relevant service provider, or an individual acting for the relevant service provider, may disclose the information to someone else—
- (a) for this Act; or
  - (b) to discharge a function under another law; or
  - (c) for a proceeding in a court or tribunal; or
  - (d) if authorised under another law or a regulation made under this Act; or
  - (e) if authorised in writing by the adult with an intellectual or cognitive disability to whom the information relates; or
  - (f) to protect a person with a disability from abuse, neglect or exploitation.’.

## **8 Insertion of new pt 15, div 1A**

Part 15—

*insert—*

### **‘Division 1A Locking of gates, doors and windows**

#### **‘214A Application of div 1A**

‘This division applies if—

- (a) a relevant service provider locks gates, doors or windows at premises where disability services are provided to adults with an intellectual or cognitive disability; and

[s 8]

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- (b) the only reason the gates, doors or windows are locked is to prevent physical harm being caused to an adult with a skills deficit.

## **‘214B Definitions for div 1A**

‘In this division—

***adult with an intellectual or cognitive disability*** see section 123E.

***adult with a skills deficit*** means an adult with an intellectual or cognitive disability who can not safely exit premises where disability services are provided to the adult without supervision, if the only reason the adult can not safely exit the premises without supervision is—

- (a) the adult lacks road safety skills; or
- (b) the adult is vulnerable to abuse or exploitation by others; or
- (c) the adult is unable to find his or her way back to the premises; or
- (d) another reason prescribed under a regulation.

***relevant service provider*** see section 123B.

## **‘214C Immunity from liability—relevant service provider**

- ‘(1) The relevant service provider is not civilly or criminally liable for locking gates, doors or windows if—
  - (a) the relevant service provider acts honestly and without negligence; and
  - (b) the relevant service provider keeps and implements a policy about the locking of gates, doors and windows that is consistent with the department’s policy about the locking of gates, doors and windows; and
  - (c) the gates, doors or windows are locked in compliance with the policy; and

- (d) the relevant service provider takes reasonable steps to minimise the impact of locking the gates, doors or windows on a person living at the premises who is not an adult with a skills deficit.
- ‘(2) Subsection (1) applies to the extent the locking of the gates, doors or windows prevents the free exit from the premises of—
  - (a) an adult with a skills deficit; or
  - (b) any other person living at the premises, other than an adult with an intellectual or cognitive disability who is contained within the meaning of part 10A.
- ‘(3) In this section—  
*keep and implement*, for a policy, means—
  - (a) prepare the policy and keep it up-to-date; and
  - (b) when providing disability services, implement and comply with the procedures and other matters stated in the policy; and
  - (c) keep a copy of the up-to-date policy at the premises.

**‘214D Immunity from liability—individual acting for relevant service provider**

‘An individual, acting for a relevant service provider, is not civilly or criminally liable for locking gates, doors or windows if the individual acts in compliance with, or reasonably believes he or she is acting in compliance with, the provider’s policy about the locking of gates, doors and windows.

**‘214E Department’s policy about locking of gates, doors and windows**

- ‘(1) The department must have a policy about the locking of gates, doors and windows under this division.

[s 9]

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- ‘(2) The policy must outline the procedures a relevant service provider will use to ensure gates, doors and windows are locked only if it is—
  - (a) necessary to prevent physical harm to an adult with a skills deficit; and
  - (b) the least restrictive way of ensuring the adult’s safety as is practicable in the circumstances.
- ‘(3) Also, the policy must ensure appropriate regard is had to linguistic and cultural diversity and Aboriginal tradition and Island custom.

*Editor’s note—*

*Acts Interpretation Act 1954, section 36—*

**Aboriginal tradition** means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

**Island custom**, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

- ‘(4) The chief executive must keep a copy of the policy available for inspection free of charge by relevant service providers at—
  - (a) the department’s head office and regional offices; and
  - (b) other places the chief executive considers appropriate.
- ‘(5) Also, the chief executive must publish the policy on the department’s website on the internet.’.

## **9 Amendment of s 222 (Confidentiality of other information)**

Section 222(3)—

*insert—*

- ‘(da) a person contracted by the department for the purpose of conducting a multidisciplinary assessment, or



developing a positive behaviour support plan, under part 10A, division 3; or’.

**10 Insertion of new s 233A**

Part 15—

*insert—*

**‘233A Review of Guardianship and Administration Act 2000, ch 5B**

‘When the Minister conducts the review required under section 233, the Minister and the Minister responsible for administering the *Guardianship and Administration Act 2000*, acting jointly, must review the efficacy and efficiency of chapter 5B of that Act.’.

**11 Amendment of pt 16, div 2 hdg (Transitional provisions)**

Part 16, division 2, heading, after ‘provisions’—

*insert—*

**‘for Act No. 12 of 2006’.**

**12 Insertion of new pt 16, div 3**

After section 240—

*insert—*

**‘Division 3                      Transitional provisions for Disability  
Services and Other Legislation  
Amendment Act 2008**

**‘Subdivision 1              Preliminary**

**‘241 Interpretation**

‘(1) In this division—

[s 12]

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***authorised guardian***, for an adult with an intellectual or cognitive disability in relation to a restrictive practice, means a guardian for the adult—

- (a) appointed before the commencement under the *Guardianship and Administration Act 2000*; and
- (b) who is authorised under that Act, in accordance with the terms of the guardian's appointment, to make decisions about the use of the restrictive practice in relation to the adult.

*Note—*

See also the GAA, section 265.

***commencement*** means the commencement of this division.

***compliance period*** means—

- (a) if the restrictive practice used is containment or seclusion or restricting access—6 months from the day the relevant service provider first uses the restrictive practice in relation to the adult on or after the commencement; or
- (b) if the restrictive practice used is chemical, mechanical or physical restraint—9 months from the day the relevant service provider first uses the restrictive practice in relation to the adult on or after the commencement.

***previous service provider*** means—

- (a) the State, to the extent the State provided disability services for adults with an intellectual or cognitive disability before the commencement; or
- (b) a person other than the State who provided disability services funded by the State for adults with an intellectual or cognitive disability before the commencement.

***transitional period*** means the period starting on the commencement and ending 18 months after the commencement.

- ‘(2) If the context permits, terms used in this division that are defined for part 10A have the meanings given for part 10A.

## **‘Subdivision 2 Immunity from liability for use of restrictive practices before commencement**

### **‘242 Immunity of previous service provider**

‘A previous service provider is not criminally or civilly liable for using a restrictive practice before the commencement in relation to an adult with an intellectual or cognitive disability if—

- (a) the previous service provider acted honestly and without negligence; and
- (b) using the restrictive practice was—
  - (i) necessary to prevent the adult’s behaviour causing harm to the adult or others; and
  - (ii) the least restrictive way of ensuring the safety of the adult or others; and
- (c) within a reasonable time before using the restrictive practice, the previous service provider assessed the adult to identify—
  - (i) the nature and causes of the adult’s behaviour that caused harm to the adult or others; and
  - (ii) strategies for managing the adult’s behaviour that caused harm to the adult or others, and for meeting the adult’s needs; and
- (d) the previous service provider carried out monitoring in relation to use of the restrictive practice to ensure the safety of the adult.

[s 12]

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**‘243 Immunity of individual acting for previous service provider**

- ‘(1) This section applies to an individual who, acting for a previous service provider before the commencement, used a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- ‘(2) The individual is not criminally or civilly liable for using the restrictive practice if—
  - (a) the individual acted honestly and without negligence; and
  - (b) use of the restrictive practice was necessary, or the individual reasonably believed use of the restrictive practice was necessary, to prevent the adult’s behaviour causing harm to the adult or others.

**‘Subdivision 3 Immunity from liability for use of restrictive practices during transitional period**

**‘244 Immunity of relevant service provider**

- ‘(1) A relevant service provider is not criminally or civilly liable for using a restrictive practice during the transitional period in relation to an adult with an intellectual or cognitive disability if—
  - (a) the relevant service provider acts honestly and without negligence; and
  - (b) use of the restrictive practice is—
    - (i) necessary to prevent the adult’s behaviour causing harm to the adult or others; and
    - (ii) the least restrictive way of ensuring the safety of the adult or others; and
  - (c) either—

- (i) if there is an authorised guardian for the adult in relation to the restrictive practice—the restrictive practice is used in compliance with the consent of the authorised guardian; or
    - (ii) otherwise—the relevant service provider complies with section 245; and
  - (d) the relevant service provider carries out monitoring in relation to use of the restrictive practice to ensure the safety of the adult; and
  - (e) for containment or seclusion—within 60 days after first containing or secluding the adult on or after the commencement, the relevant service provider gives notice to the chief executive in the approved form of the containment or seclusion of the adult; and
  - (f) from the first day after the end of the compliance period until the last day of the transitional period—the relevant service provider keeps and implements a policy about use of the restrictive practice during the transitional period that is consistent with the department’s policy about use of the restrictive practice mentioned in section 249.
- ‘(2) Subsection (1)(b) to (d) does not apply if the restrictive practice is chemical restraint (fixed dose) used in the course of providing respite services to the adult.
- ‘(3) This section is subject to section 248.

**‘245 Requirement to assess adult if no authorised guardian**

‘For section 244(1)(c)(ii), the requirements are that the relevant service provider must, during the compliance period, assess the adult to identify—

- (a) the nature and causes of the adult’s behaviour that causes harm to the adult or others; and

[s 12]

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- (b) strategies for managing the adult's behaviour that causes harm to the adult or others, and for meeting the adult's needs.

**'246 Immunity for individual acting for relevant service provider**

- '(1) This section applies to an individual who, acting for a relevant service provider during the transitional period, uses a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- '(2) The individual is not criminally or civilly liable for using the restrictive practice if—
  - (a) the individual acts honestly and without negligence; and
  - (b) use of the restrictive practice is necessary, or the individual reasonably believes use of the restrictive practice is necessary, to prevent the adult's behaviour causing harm to the adult or others.
- '(3) Subsection (2)(b) does not apply if the restrictive practice is chemical restraint (fixed dose) used in the course of providing respite services to the adult.
- '(4) This section is subject to section 248.

**'247 Relationship of subdivision with pt 10A**

'This subdivision does not limit part 10A.

**'248 Circumstances in which subdivision stops applying**

- '(1) This section provides for the circumstances in which this subdivision stops applying to the use of a restrictive practice by a relevant service provider in relation to an adult with an intellectual or cognitive disability.
- '(2) If the restrictive practice is not used in the course of providing respite services or community access services to the adult, the circumstances are—

- (a) for containment or seclusion—the guardianship tribunal gives, or refuses to give, a containment or seclusion approval authorising the relevant service provider to contain or seclude the adult; or
  - (b) for chemical, mechanical or physical restraint—a guardian for a restrictive practice (general) matter for the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider; or
  - (c) for restricting access—a guardian for a restrictive practice (general) matter, or an informal decision maker, for the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider.
- ‘(3) If the restrictive practice is used in the course of providing respite services or community access services to the adult, the circumstances are a guardian for a restrictive practice (respite) matter, or an informal decision maker, for the adult gives, or refuses to give, consent to use of the restrictive practice by the relevant service provider.

## ‘Subdivision 4      Other provisions

### ‘249      **Requirements for department’s policy about use of restrictive practices during transitional period**

- ‘(1) The department must have a policy about use of each type of restrictive practice during the transitional period.
- ‘(2) The policy must outline the procedures a relevant service provider must use to—
  - (a) if the relevant service provider is required to comply with section 245—assess an adult with an intellectual or cognitive disability; and
  - (b) ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—

[s 12]

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- (i) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and
    - (ii) has the skills and knowledge required to use the restrictive practice appropriately; and
  - (c) monitor use of the restrictive practice to safeguard against abuse, neglect or exploitation; and
  - (d) review use of the restrictive practice at least once every 9 months; and
  - (e) if the policy is about restricting access—minimise the impact on other persons living at the premises.
- ‘(3) Subsection (2) does not limit the matters that may be stated in the policy.
- ‘(4) The policy must ensure appropriate regard is had to linguistic and cultural diversity and Aboriginal tradition and Island custom.

*Editor’s note—*

*Acts Interpretation Act 1954, section 36—*

**Aboriginal tradition** means the body of traditions, observances, customs and beliefs of Aboriginal people generally or of a particular community or group of Aboriginal people, and includes any such traditions, observances, customs and beliefs relating to particular persons, areas, objects or relationships.

**Island custom**, known in the Torres Strait as Ailan Kastom, means the body of customs, traditions, observances and beliefs of Torres Strait Islanders generally or of a particular community or group of Torres Strait Islanders, and includes any such customs, traditions, observances and beliefs relating to particular persons, areas, objects or relationships.

- ‘(5) The chief executive must keep a copy of the policy available for inspection free of charge by relevant service providers at—
- (a) the department’s head office and regional offices; and
  - (b) other places the chief executive considers appropriate.
- ‘(6) Also, the chief executive must publish the policy on the department’s website on the internet.
- ‘(7) This section stops applying on the day after the transitional period ends.



**‘250 Short term approvals not to be given during transitional period**

‘Sections 123O and 123ZD and part 10A, division 4, subdivision 4 do not apply during the transitional period.’.

**13 Amendment of sch 7 (Dictionary)**

(1) Schedule 7, definition *interested person*—  
*omit.*

(2) Schedule 7—  
*insert—*

***‘adult with an intellectual or cognitive disability***, for part 10A and part 15, division 1A, see section 123E.

***adult with a skills deficit***, for part 15, division 1A, see section 214B.

***appropriately qualified***, for part 10A, see section 123E.

***assessment***, for part 10A, see section 123E.

***authorised guardian***, for part 16, division 3, see section 241(1).

***authorised psychiatrist***, for part 10A, see section 123E.

***chemical restraint***, for part 10A, see section 123E.

***chemical restraint (fixed dose)***, for part 10A, see section 123E.

***chief executive (health)***, for part 10A, division 8, subdivision 3, see section 123ZZG.

***commencement***, for part 16, division 3, see section 241(1).

***community access services***, for part 10A, see section 123E.

***compliance period***, for part 16, division 3, see section 241(1).

***contain***, for part 10A, see section 123E.

***containment or seclusion approval***, for part 10A, see section 123E.

***decision notice***, for part 10A, see section 123E.

***director of mental health***, for part 10A, see section 123E.

***GAA***, for part 10A, see section 123E.

***guardian for a restrictive practice (general) matter***, for part 10A, see section 123E.

***guardian for a restrictive practice matter***, for part 10A, see section 123E.

***guardian for a restrictive practice (respite) matter***, for part 10A, see section 123E.

***guardianship tribunal***, for part 10A, see section 123E.

***harm***, for part 10A, see section 123E.

***health professional***, for part 10A, division 8, subdivision 3, see section 123ZZG.

***informal decision maker***, for part 10A, see section 123E.

***interested person***—

(a) for a relevant decision for part 10A, division 7, see section 123ZY; or

(b) for a reviewable decision, see section 207.

***keep and implement***, for part 10A, see section 123E.

***least restrictive***, for part 10A, see section 123E.

***mechanical restraint***, for part 10A, see section 123E.

***multidisciplinary assessment***, for part 10A, see section 123E.

***physical restraint***, for part 10A, see section 123E.

***positive behaviour support plan***, for part 10A, see section 123E.

***previous service provider***, for part 16, division 3, see section 241(1).

***private sector health service***, for part 10A, division 8, subdivision 3, see section 123ZZG.

***relevant decision***, for part 10A, division 7, see section 123ZY.

*transitional period*, for part 16, division 3, see section 241(1).’.

[s 16]

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*Note—*

Section 80ZD provides for the appointment of guardians for restrictive practice matters.’.

## **16 Amendment of s 13 (Advance appointment)**

Section 13—

*insert—*

- ‘(9) This section does not apply for the appointment of a guardian for a restrictive practice matter under chapter 5B.’.

## **17 Insertion of new s 13A**

After section 13—

*insert—*

### **‘13A Advance appointment—guardian for restrictive practice matter**

- ‘(1) The tribunal may, by order, make an appointment of a guardian for a restrictive practice matter under chapter 5B for an individual who is at least 17½ years but not 18 years if the tribunal is satisfied—
- (a) there is a reasonable likelihood, when the individual turns 18, the individual will have impaired capacity for the matter; and
  - (b) the individual’s behaviour has previously resulted in harm to the individual or others; and
  - (c) there is a reasonable likelihood, when the individual turns 18—
    - (i) there will be a need for a decision about the restrictive practice matter; and
    - (ii) without the appointment—
      - (A) the individual’s behaviour is likely to cause harm to the individual or others; and

- 
- (B) the individual's interests would not be adequately protected.
- ‘(2) This Act applies, with necessary changes, to an appointment under this section.
- ‘(3) The appointment begins when the individual turns 18.
- ‘(4) The appointment ends—
- (a) on the day ordered by the tribunal, which must not be later than the day the individual turns 19; or
  - (b) if no day is ordered by the tribunal—when the individual turns 19.
- ‘(5) The appointment may be on terms considered appropriate by the tribunal.
- ‘(6) The tribunal may make the order on its own initiative or on the application of any of the following—
- (a) the individual;
  - (b) an interested person for the individual;
  - (c) a relevant service provider under chapter 5B;
  - (d) the chief executive (disability services);
  - (e) the adult guardian;
  - (f) if the individual is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health.’.

## **18 Amendment of s 26 (Automatic revocation)**

Section 26(1)—

*insert—*

- ‘(e) for a guardian for a restrictive practice matter under chapter 5B—the tribunal gives a containment or seclusion approval under chapter 5B in relation to the adult.’.

[s 19]

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**19 Amendment of s 28 (Periodic review of appointment)**

Section 28—

*insert—*

- ‘(2) This section does not apply for a guardian for a restrictive practice matter under chapter 5B.’.

**20 Amendment of s 29 (Other review of appointment)**

- (1) Section 29(b), ‘on’—

*omit, insert—*

‘for a guardian other than a guardian for a restrictive practice matter under chapter 5B—on’.

- (2) Section 29—

*insert—*

‘(c) for a guardian for a restrictive practice matter under chapter 5B—on the application of any of the following—

- (i) the adult;
- (ii) an interested person for the adult;
- (iii) a relevant service provider under chapter 5B providing disability services to the adult;
- (iv) the chief executive (disability services);
- (v) the adult guardian;
- (vi) if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health.’.

- (3) Section 29—

*insert—*

- ‘(2) However, the tribunal must review the appointment of a guardian for a restrictive practice matter under chapter 5B at least once before the term of the appointment ends.’.

## **21 Amendment of s 33 (Power of guardian or administrator)**

Section 33—

*insert—*

- ‘(3) For a guardian for a restrictive practice matter under chapter 5B, this section applies subject to sections 80ZE and 80ZF.’.

## **22 Insertion of new ch 5B**

After section 80Q—

*insert—*

# **‘Chapter 5B Restrictive practices**

## **‘Part 1 Preliminary**

### **‘80R Application of ch 5B**

‘This chapter applies to an adult with an intellectual or cognitive disability who receives disability services from a funded service provider within the meaning of the DSA (a *relevant service provider*).

### **‘80S Purpose of ch 5B**

- ‘(1) The purpose of this chapter is to enable the tribunal to—
- (a) give approval for a relevant service provider to contain or seclude an adult, and to review the approval; and
  - (b) if the tribunal has given, or proposes to give, an approval mentioned in paragraph (a) in relation to an adult—give approval for a relevant service provider to use restrictive practices other than containment or seclusion in relation to the adult, and to review the approval; and
  - (c) appoint a guardian for a restrictive practice matter for an adult, and to review the appointment.

[s 22]

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‘(2) Also, this chapter—

- (a) enables the adult guardian to approve the use of particular restrictive practices on a short term basis; and
- (b) provides criteria for guardians for a restrictive practice matter and informal decision makers for deciding whether to consent to the use of particular restrictive practices.

**‘80T Effect of ch 5B on substitute decision maker’s ability to make health care decision**

‘This chapter does not limit the extent to which a substitute decision maker is authorised under a provision of this Act or the *Powers of Attorney Act 1998* to make a health care decision in relation to an adult to whom this chapter does not apply.

**‘80U Definitions for ch 5B**

‘In this chapter—

*active party* see section 80ZQ.

*adult with an intellectual or cognitive disability* see the DSA, section 123E.

*assessment*, of an adult, see the DSA, section 123E.

*authorised psychiatrist* see the *Mental Health Act 2000*, schedule 2.

*chemical restraint* see the DSA, section 123E.

*chemical restraint (fixed dose)* see the DSA, section 123E.

*community access services* see the DSA, section 123E.

*contain* see the DSA, section 123E.

*containment or seclusion approval*—

- (a) means approval given by the tribunal under part 2, division 1 for a relevant service provider to contain or seclude an adult; and



- (b) includes an approval given under that part for a relevant service provider to use a restrictive practice other than containment or seclusion in relation to the adult.

***disability services*** see the DSA, section 12.

***DSA*** means the *Disability Services Act 2006*.

***harm*** see the DSA, section 123E.

***informal decision maker***, for an adult, see the DSA, section 123E.

***least restrictive*** see the DSA, section 123E.

***mechanical restraint*** see the DSA, section 123E.

***physical restraint*** see the DSA, section 123E.

***positive behaviour support plan*** see the DSA, section 123E.

***relevant service provider*** see section 80R.

***respite/community access plan*** see the DSA, section 123E.

***respite services*** see the DSA, section 123E.

***restrictive practice*** see the DSA, section 123E.

***restrictive practice (general) matter***, for an adult, means a matter relating to the use of a restrictive practice in relation to the adult by a relevant service provider, other than—

- (a) containment or seclusion; or
- (b) any restrictive practice used in the course of providing respite services or community access services to the adult.

***restrictive practice matter*** means—

- (a) a restrictive practice (general) matter; or
- (b) a restrictive practice (respite) matter.

***restrictive practice (respite) matter***, for an adult, means a matter relating to the use of a restrictive practice in relation to the adult by a relevant service provider in the course of providing respite services or community access services to the adult.

[s 22]

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*seclude* see the DSA, section 123E.

*short term plan* see the DSA, section 123E.

## **‘Part 2                      Containment or seclusion    approvals**

### **‘Division 1                Giving containment or seclusion    approvals**

#### **‘80V    When tribunal may approve use of containment or    seclusion**

- ‘(1) The tribunal may, by order, give approval for a relevant service provider to contain or seclude an adult, subject to the conditions stated in the order.
- ‘(2) The tribunal may give the approval only if the tribunal is satisfied—
  - (a) the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult; and
  - (b) there is a need for the relevant service provider to contain or seclude the adult because—
    - (i) the adult’s behaviour has previously resulted in harm to the adult or others; and
    - (ii) there is a reasonable likelihood that, if the approval is not given, the adult’s behaviour will cause harm to the adult or others; and
  - (c) a positive behaviour support plan has been developed for the adult that provides for the containment or seclusion; and

- (d) containing or secluding the adult in compliance with the approval is the least restrictive way of ensuring the safety of the adult or others; and
  - (e) the adult has been adequately assessed by appropriately qualified persons, within the meaning of the DSA, section 123E, in the development of the positive behaviour support plan for the adult; and
  - (f) if the positive behaviour support plan for the adult is implemented—
    - (i) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
    - (ii) the adult's quality of life will be improved in the long-term; and
  - (g) the observations and monitoring provided for under the positive behaviour support plan for the adult are appropriate.
- ‘(3) The tribunal may make the order on its own initiative or on an application under section 80ZO.

**‘80W Matters tribunal must consider**

‘In deciding whether to give a containment or seclusion approval, the tribunal must consider each of the following—

- (a) the suitability of the environment in which the adult will be contained or secluded;
- (b) if the tribunal is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—
  - (i) the terms of the order; and
  - (ii) the views of the authorised psychiatrist responsible for treatment of the adult under that Act about the containment or seclusion of the adult;
- (c) any strategies, including restrictive practices, previously used to manage or reduce the behaviour of the adult that

[s 22]

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causes harm to the adult or others, and the effectiveness of those strategies;

- (d) the type of disability services provided to the adult.

**‘80X When tribunal may approve use of other restrictive practices**

- ‘(1) This section applies if—
- (a) an approval given under section 80V is in effect in relation to an adult; or
  - (b) the tribunal proposes to give an approval under section 80V in relation to an adult.
- ‘(2) The tribunal may, by order, give approval for a relevant service provider to use a restrictive practice other than containment or seclusion (the *other restrictive practice*) in relation to the adult, subject to the conditions stated in the order.
- ‘(3) The tribunal may make the order only if the tribunal is satisfied of the matters stated in section 80V(2)(a) to (g) in relation to the other restrictive practice.
- ‘(4) In deciding whether to make the order, the tribunal must consider—
- (a) the matters stated in section 80W; and
  - (b) if the other restrictive practice is chemical restraint—the views of the adult’s treating doctor about the use of the chemical restraint.
- ‘(5) For subsections (3) and (4)(a), sections 80V(2)(a) to (g) and 80W apply as if a reference in the sections to containing or secluding the adult were a reference to using the other restrictive practice in relation to the adult.
- ‘(6) An order made under this section is taken to be part of the approval given under section 80V in relation to the adult.
- ‘(7) The tribunal may make the order on its own initiative or on an application under section 80ZO.

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## **‘Division 2                      Period of containment or seclusion approval**

### **‘80Y      Period for which containment or seclusion approval has effect**

- ‘(1) A containment or seclusion approval has effect for the period stated in the order.
- ‘(2) The total period for which the approval has effect must be not more than 12 months from the day the order is made.
- ‘(3) This section applies subject to sections 80Z and 80ZB.

### **‘80Z      Automatic revocation of containment or seclusion approval**

- ‘(1) A containment or seclusion approval ends if—
  - (a) the adult dies; or
  - (b) for a relevant service provider—the adult stops receiving disability services from the provider.
- ‘(2) The relevant service provider must notify the tribunal in writing if an event mentioned in subsection (1)(a) or (b) happens.

## **‘Division 3                      Reviewing a containment or seclusion approval**

### **‘80ZA      When containment or seclusion approval may be reviewed**

- ‘The tribunal may review a containment or seclusion approval at any time—
  - (a) on its own initiative; or
  - (b) on the application of any of the following—
    - (i) the adult;

[s 22]

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- (ii) an interested person for the adult;
- (iii) a relevant service provider to which the approval applies;
- (iv) the chief executive (disability services);
- (v) the adult guardian;
- (vi) if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health.

### **‘80ZB Review process**

- ‘(1) The tribunal may conduct a review of a containment or seclusion approval in the way it considers appropriate.
- ‘(2) At the end of the review, the tribunal must revoke the containment or seclusion approval unless it is satisfied it would give the containment or seclusion approval if a new application for the approval were made.
- ‘(3) If the tribunal is satisfied it would give the containment or seclusion approval if a new application for the approval were made, it may—
  - (a) continue its order giving the containment or seclusion approval; or
  - (b) change its order giving the containment or seclusion approval; or
  - (c) make an order giving a new containment or seclusion approval.

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## **‘Part 3                      Guardians for a restrictive practice matter**

### **‘80ZC Application of pt 3**

‘This part does not apply if a containment or seclusion approval is in effect in relation to an adult.

### **‘80ZD Appointment**

- ‘(1) The tribunal may, by order, appoint a guardian for a restrictive practice matter for an adult if the tribunal is satisfied—
- (a) the adult has impaired capacity for the matter; and
  - (b) the adult’s behaviour has previously resulted in harm to the adult or others; and
  - (c) there is a need for a decision about the matter; and
  - (d) without the appointment—
    - (i) the adult’s behaviour is likely to cause harm to the adult or others; and
    - (ii) the adult’s interests will not be adequately protected.
- ‘(2) The appointment may be on terms considered appropriate by the tribunal.
- ‘(3) The appointment has effect for the period stated in the order.
- ‘(4) The period for which the appointment has effect must not be more than 12 months from the day the order is made.
- ‘(5) Subsections (3) and (4) apply subject to sections 26 and 31.
- ‘(6) The tribunal may make the appointment on its own initiative, or on an application under section 80ZP.
- ‘(7) This section does not limit the application of chapter 3 to the appointment.

[s 22]

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**‘80ZE Requirements for giving consent—guardian for restrictive practice (general) matter**

- ‘(1) The purpose of this section is to state requirements for a guardian for a restrictive practice (general) matter about consenting to the use of a restrictive practice in relation to the adult by a relevant service provider.
- ‘(2) The guardian may consent to use of the restrictive practice by the relevant service provider in compliance with a positive behaviour support plan for the adult.
- ‘(3) The consent may be given subject to conditions.
- ‘(4) The guardian may give the consent only if satisfied—
  - (a) the adult’s behaviour has previously resulted in harm to the adult or others; and
  - (b) there is a reasonable likelihood that, if the consent is not given, the adult’s behaviour will cause harm to the adult or others; and
  - (c) using the restrictive practice in compliance with the positive behaviour support plan mentioned in subsection (2) is the least restrictive way of ensuring the safety of the adult or others; and
  - (d) the adult has been adequately assessed for developing or changing the positive behaviour support plan; and
  - (e) use of the restrictive practice is supported by the recommendations of the person who assessed the adult; and
  - (f) if the restrictive practice is chemical restraint—in developing the positive behaviour support plan, the relevant service provider consulted the adult’s treating doctor; and
  - (g) if the positive behaviour support plan is implemented—
    - (i) the risk of the adult’s behaviour causing harm will be reduced or eliminated; and
    - (ii) the adult’s quality of life will be improved in the long-term; and



- 
- (h) the observations and monitoring provided for under the positive behaviour support plan are appropriate.
  - ‘(5) In deciding whether to give the consent, the guardian must consider the following—
    - (a) if the guardian is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—
      - (i) the terms of the order; and
      - (ii) the views of the authorised psychiatrist responsible for treatment of the adult under that Act about the use of the restrictive practice;
    - (b) any information available to the guardian about strategies, including restrictive practices, previously used to manage the behaviour of the adult that causes harm to the adult or others, and the effectiveness of those strategies;
    - (c) the type of disability services provided to the adult;
    - (d) the suitability of the environment in which the restrictive practice is to be used;
    - (e) if the restrictive practice is chemical restraint—the views of the adult’s treating doctor about the use of the chemical restraint.

**‘80ZF Requirements for giving consent—guardian for restrictive practice (respite) matter**

- ‘(1) The purpose of this section is to state requirements for a guardian for a restrictive practice (respite) matter about consenting to the use of a restrictive practice in relation to the adult by a relevant service provider.
- ‘(2) The guardian may consent to use of the restrictive practice by the relevant service provider in compliance with a respite/community access plan for the adult.
- ‘(3) The consent may be given subject to conditions.
- ‘(4) The guardian may give the consent only if satisfied—

[s 22]

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- (a) there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others; and
  - (b) the relevant service provider has complied with the DSA, part 10A, division 5; and
  - (c) if the respite/community access plan is implemented—
    - (i) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
    - (ii) the adult's quality of life will be improved in the long-term; and
  - (d) the observations and monitoring provided for under the respite/community access plan are appropriate.
- ‘(5) For giving consent to the use of chemical restraint (fixed dose)—
- (a) subsections (2) and (4) do not apply; and
  - (b) the guardian may give the consent only if satisfied there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others.

## **‘Part 4                      Short term approval of adult guardian for use of particular restrictive practices**

### **‘80ZG Application of pt 4**

‘This part does not apply for an adult if—

- (a) there is a containment or seclusion approval in relation to the adult; or
- (b) both of the following apply—

- (i) there is a guardian for a restrictive practice (respite) matter for the adult;
- (ii) a relevant service provider proposes to contain or seclude the adult in the course of providing respite services or community access services to the adult.

**‘80ZH When adult guardian may give short term approval for use of containment or seclusion**

- ‘(1) The adult guardian may give approval for a relevant service provider to contain or seclude an adult if satisfied—
  - (a) the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult; and
  - (b) the adult’s behaviour has previously resulted in harm to the adult or others; and
  - (c) there is an immediate and serious risk that, if the approval is not given, the adult’s behaviour will cause harm to the adult or others; and
  - (d) using the restrictive practice is the least restrictive way of ensuring the safety of the adult or others.
- ‘(2) In deciding whether to give the approval, the adult guardian must, unless it is not practicable in the circumstances, consult with and consider the views of the following persons about the use of the restrictive practice—
  - (a) the adult;
  - (b) a guardian or informal decision maker for the adult;
  - (c) if the adult guardian is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the authorised psychiatrist responsible for treatment of the adult under that Act.
- ‘(3) If the adult guardian has previously given an approval under this section in relation to the adult, the adult guardian may give the approval only if satisfied exceptional circumstances justify giving a subsequent approval under this section.

[s 22]

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- ‘(4) An approval given under this section may not have effect for more than 3 months.
- ‘(5) The approval ends if—
  - (a) the relevant service provider does not comply with the condition of the approval mentioned in section 80ZI(a); or
  - (b) the adult guardian gives the relevant service provider written notice under section 80ZJ that the adult guardian does not approve a short term plan for the adult given to the adult guardian by the provider.
- ‘(6) The relevant service provider or a person consulted under subsection (2) may apply to the tribunal in relation to a decision of the adult guardian to give, or refuse to give, the approval, and the tribunal may make the order it considers appropriate.

**‘80ZI Conditions to which s 80ZH approval is subject**

‘An approval given by the adult guardian under section 80ZH—

- (a) is subject to the condition that, within 14 days after receiving notice that the approval has been given, the relevant service provider must give the adult guardian a short term plan for the adult; and
- (b) may be subject to other conditions considered appropriate by the adult guardian.

**‘80ZJ Adult guardian’s decision about whether to approve short term plan**

- ‘(1) This section applies if the adult guardian is given a short term plan for an adult by a relevant service provider under section 80ZI(a).
- ‘(2) As soon as practicable after receiving the short term plan, the adult guardian must decide whether to approve it.

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- ‘(3) The adult guardian must approve the short term plan if satisfied—
- (a) the information in the plan is consistent with the information considered by the adult guardian in deciding whether to give the relevant short term approval; and
  - (b) there is an immediate and serious risk that, if the short term approval does not continue in effect, the adult’s behaviour will cause harm to the adult or others; and
  - (c) use of the restrictive practices in compliance with the short term approval and the plan is the least restrictive way of ensuring the safety of the adult or others.
- ‘(4) The adult guardian must, as soon as practicable after deciding whether to approve the short term plan, notify the relevant service provider about the adult guardian’s decision.
- ‘(5) If the adult guardian does not approve the short term plan—
- (a) the relevant service provider may apply to the tribunal; and
  - (b) the tribunal may make the order it considers appropriate.

**‘80ZK When adult guardian may give short term approval for use of other restrictive practices**

- ‘(1) While an approval given under section 80ZH is in effect, the adult guardian may give approval for a relevant service provider to use another restrictive practice in relation to the adult if satisfied of the matters stated in section 80ZH(1)(a) to (d) for the restrictive practice.
- ‘(2) Also, if the restrictive practice is chemical restraint, the adult guardian must be satisfied the relevant service provider has consulted with, and considered the views of, the adult’s treating doctor.
- ‘(3) The adult guardian may not give approval under this section for use of a restrictive practice if there is a guardian for a restrictive practice (general) matter for the adult.

[s 22]

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- ‘(4) Subsection (5) applies if, when an approval is given under this section, a short term plan for the adult has already been developed by the relevant service provider.
- ‘(5) The approval given under this section is subject to the condition that, within 14 days after the approval is given, the relevant service provider must—
  - (a) amend the short term plan for the adult to include use of the restrictive practice; and
  - (b) give the amended plan to the adult guardian for approval.
- ‘(6) Section 80ZJ applies, with any necessary changes, to the adult guardian for deciding whether to approve an amended short term plan mentioned in subsection (5).
- ‘(7) An approval given under this section ends—
  - (a) if the relevant service provider is notified by the adult guardian that an amended short term plan mentioned in subsection (5) is not approved—on receipt of the notice; or
  - (b) otherwise—on the day the approval given under section 80ZH ends.

**‘80ZL Right of adult guardian to information for making decision**

- ‘(1) This section applies to the adult guardian for deciding whether to give approval under this part for a relevant service provider to use a restrictive practice in relation to an adult.
- ‘(2) The adult guardian has a right to all the information that—
  - (a) the adult would have been entitled to if the adult had capacity; and
  - (b) is necessary for the adult guardian to make an informed decision.
- ‘(3) At the adult guardian’s request, a person who has custody or control of the information must give the information to the adult guardian, unless the person has a reasonable excuse.

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- ‘(4) If a person who has custody or control of the information does not comply with a request by the adult guardian to give information, the tribunal may, on application by the adult guardian, order the person to give the information to the adult guardian.
  - ‘(5) If the tribunal orders a person to give information to the adult guardian, the person must comply with the order, unless the person has a reasonable excuse.
  - ‘(6) It is a reasonable excuse for a person to fail to give information because giving the information might tend to incriminate the person.
  - ‘(7) Subject to subsection (6), this section overrides—
    - (a) any restriction, in an Act or the common law, about the disclosure or confidentiality of information; and
    - (b) any claim of confidentiality or privilege, including a claim based on legal professional privilege.

**‘80ZM Requirement for adult guardian to give notice of decision**

- ‘(1) As soon as practicable after the adult guardian decides to give, or refuse to give, an approval under this part, the adult guardian must give written notice of the decision to the following—
  - (a) the relevant service provider;
  - (b) the adult;
  - (c) the tribunal;
  - (d) the chief executive (disability services);
  - (e) a guardian for a restrictive practice (general) matter for the adult;
  - (f) any other person consulted by the adult guardian under section 80ZH(2).
- ‘(2) The notice must state the following—
  - (a) the name of the adult;

[s 22]

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- (b) the name of the relevant service provider;
- (c) the adult guardian's decision, including, if the decision is to give the approval, the terms of the approval;
- (d) the reasons for the adult guardian's decision.

## **'Part 5                      Tribunal proceedings**

### **'Division 1                General**

#### **'80ZN Relationship with ch 7**

- (1) The following provisions of chapter 7 apply for a proceeding under this chapter—
  - part 1
  - part 2 (other than section 119)
  - part 3
  - part 4 (other than section 129)
  - part 4A
  - sections 154 and 155
  - parts 6 to 8
  - part 10.
- '(2) The remaining provisions of chapter 7 do not apply for a proceeding under this chapter.
- '(3) This part contains additional provisions that apply for a proceeding under this chapter.



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## **‘Division 2                    Applications**

### **‘80ZO Who may apply for a containment or seclusion approval**

‘An application for a containment or seclusion approval may be made—

- (a) if the department responsible for administering the DSA is not the relevant service provider to which the application relates—jointly by the chief executive (disability services) and the relevant service provider; or
- (b) otherwise—by the chief executive (disability services).

### **‘80ZP Who may apply for appointment of guardian for restrictive practice matter**

‘An application for appointment of a guardian for a restrictive practice matter may be made by any of the following—

- (a) an adult;
- (b) an interested person for an adult;
- (c) a relevant service provider providing disability services to an adult;
- (d) the chief executive (disability services);
- (e) the adult guardian;
- (f) if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health.

## **‘Division 3                    Other matters**

### **‘80ZQ Who is an *active party***

‘Each of the following persons is an *active party* for a proceeding under this chapter—

[s 22]

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- (a) the chief executive (disability services);
- (b) the applicant;
- (c) the adult concerned in the proceeding;
- (d) any current guardian or administrator for the adult;
- (e) if the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health;
- (f) a relevant service provider providing disability services to the adult;
- (g) the adult guardian;
- (h) a person joined as a party to the proceeding by the tribunal.

*Example of a person who might be joined as a party—*

a member of the adult's family

### **'80ZR Interim orders**

- '(1) This section applies for a proceeding under this chapter if the tribunal is satisfied, on reasonable grounds—
  - (a) there is an immediate risk of harm to the adult concerned in the proceeding or others; and
  - (b) using a restrictive practice is the least restrictive way of ensuring the safety of the adult or others.
- '(2) The tribunal may make an interim order in the proceeding without hearing and deciding the proceeding or otherwise complying with the requirements of this Act, including section 118.
- '(3) The interim order has effect for the period stated in the order.
- '(4) The period stated in the order must not be more than 3 months.

‘(5) In this section—

*tribunal* means the tribunal constituted by the president, a deputy president or a legal member.

## ‘Part 6                      Miscellaneous provisions

### ‘80ZS Requirements for informal decision makers—consenting to use of restrictive practices

‘(1) This section applies to an informal decision maker for deciding whether to consent to—

- (a) a relevant service provider restricting access of an adult other than in the course of providing respite services or community access services to the adult; or
- (b) the use of a restrictive practice in relation to an adult by a relevant service provider in the course of providing respite services or community access services to the adult.

‘(2) For giving consent to use of a restrictive practice mentioned in subsection (1)(a), the informal decision maker must—

- (a) apply the general principles; and
- (b) be satisfied—
  - (i) the adult’s behaviour has previously resulted in harm to the adult or others; and
  - (ii) there is a reasonable likelihood that, if the consent is not given, the adult’s behaviour will cause harm to the adult or others; and
  - (iii) using the restrictive practice in compliance with the positive behaviour support plan for the adult is the least restrictive way of ensuring the safety of the adult or others; and

[s 22]

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- (iv) if the positive behaviour support plan for the adult is implemented—
    - (A) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
    - (B) the adult's quality of life will be improved in the long-term; and
  - (v) if the informal decision maker is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the authorised psychiatrist responsible for treatment of the adult under that Act has been given an opportunity to participate in the development of the positive behaviour support plan.
- ‘(3) For giving consent to use of a restrictive practice mentioned in subsection (1)(b), the informal decision maker must—
  - (a) apply the general principles; and
  - (b) be satisfied—
    - (i) the adult's behaviour has previously resulted in harm to the adult or others; and
    - (ii) there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others; and
    - (iii) using the restrictive practice in compliance with the respite/community access plan for the adult is the least restrictive way of ensuring the safety of the adult or others; and
    - (iv) if the respite/community access plan for the adult is implemented—
      - (A) the risk of the adult's behaviour causing harm will be reduced or eliminated; and
      - (B) the adult's quality of life will be improved in the long-term.

- ‘(4) However, subsection (3)(b)(iii) and (iv) do not apply for giving consent to the use of chemical restraint (fixed dose) in the course of providing respite services to the adult.
- ‘(5) In this section—  
*restricting access*, of an adult, see the DSA, section 123E.

**‘80ZT Informal decision makers must maintain confidentiality**

- ‘(1) This section applies if an informal decision maker gains confidential information under the DSA, part 10A about an adult with an intellectual or cognitive disability.

*Note—*

A guardian who gains confidential information is subject to confidentiality requirements under section 249.

- ‘(2) The informal decision maker must not disclose the information to anyone other than under subsection (3).
- ‘(3) The informal decision maker may disclose the information to someone else—
  - (a) for this Act or the DSA; or
  - (b) to discharge a function under another law; or
  - (c) for a proceeding in a court or tribunal; or
  - (d) if authorised under another law or a regulation made under this Act; or
  - (e) if authorised in writing by the adult to whom the information relates; or
  - (f) to protect a person with a disability, within the meaning of the DSA, section 11, from abuse, neglect or exploitation.
- ‘(4) In this section—  
*confidential information* includes information about a person’s affairs but does not include—

[s 23]

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- (a) information already publicly disclosed unless further disclosure of the information is prohibited by law; or
- (b) statistical or other information that could not reasonably be expected to result in the identification of the person to whom the information relates.

### **‘80ZU Review of ch 5B**

‘The DSA, section 233A provides for the efficacy and efficiency of this chapter to be reviewed by the Minister and the Minister responsible for administering that Act, acting jointly.

*Note—*

The review must be conducted when the DSA is reviewed under section 233 of that Act.’.

## **23 Amendment of s 82 (Functions)**

- (1) Section 82(1)—

*insert—*

‘(ha) giving approvals under chapter 5B for the use by a relevant service provider of a restrictive practice in relation to an adult to whom the chapter applies, and reviewing the approvals;’.

- (2) Section 82(2)—

*insert—*

*Note—*

See for example the *Disability Services Act 2006*, sections 123ZK(8) and 123ZN(5).’.

## **24 Amendment of s 98 (Annual report)**

Section 98(1)(a), after ‘year’—

*insert—*

‘, including the number of applications, approvals and orders made under chapter 5B’.

**25 Amendment of s 118 (Tribunal advises persons concerned of hearing)**

Section 118(1)—

*insert—*

‘(fa) for a proceeding under chapter 5B—

- (i) the chief executive (disability services); and
- (ii) a relevant service provider providing disability services to the adult; and
- (iii) if the tribunal is aware the adult is subject to a forensic order or involuntary treatment order under the *Mental Health Act 2000*—the director of mental health;’.

**26 Amendment of s 174 (Functions)**

Section 174(2)—

*insert—*

‘(ea) approving, under chapter 5B, part 4, the use of a restrictive practice in relation to an adult to whom that chapter applies;’.

**27 Amendment of s 222 (Definitions for ch 10)**

Section 222, definition *private dwelling house*—

*omit, insert—*

‘***private dwelling house*** means premises that are used, or are used principally, as a separate residence for—

- (a) if a restrictive practice under chapter 5B is being used at the premises—1 family; or
- (b) otherwise—1 family or person.’.

[s 28]

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**28 Amendment of s 230 (Reports by community visitors)**

Section 230(4)—

*insert—*

- ‘(e) if a restrictive practice under chapter 5B is being used at the visitable site—
- (i) the tribunal; or
  - (ii) a guardian or administrator for an adult in relation to whom the restrictive practice is used; or
  - (iii) the chief executive (disability services).’.

**29 Insertion of new ch 12, pt 8**

Chapter 12—

*insert—*

**‘Part 8 Transitional provisions for  
Disability Services and Other  
Legislation Amendment Act  
2008**

**‘265 Powers of guardians—use of restrictive practices**

- ‘(1) This section applies to a guardian for an adult to whom chapter 5B applies if the guardian was—
- (a) appointed before the commencement; and
  - (b) immediately before the commencement, authorised in accordance with the terms of the guardian’s appointment to make decisions for the adult about the use of a restrictive practice in relation to the adult.
- ‘(2) Despite chapter 5B, the guardian may continue to make decisions for the adult about use of the restrictive practice in relation to the adult.
- ‘(3) This section stops applying on the earlier of—



- (a) the guardian's appointment being reviewed by the tribunal; or
- (b) the first day after the transitional period ends.

'(4) In this section—

*commencement* means the commencement of this section.

*restrictive practice* see section 80U.

*transitional period* means the period starting on the commencement and ending 18 months after the commencement.

**'266 Short term approvals not to be given during transitional period**

'Chapter 5B, part 4 does not apply during the transitional period within the meaning of section 265.'

**30 Amendment of sch 2 (Types of matters)**

Schedule 2, section 2—

*insert—*

- '(j) a restrictive practice matter under chapter 5B;
- (k) seeking help and making representations about the use of restrictive practices for an adult who is the subject of a containment or seclusion approval under chapter 5B.'

**31 Amendment of sch 4 (Dictionary)**

(1) Schedule 4—

*insert—*

'*adult with an intellectual or cognitive disability*, for chapter 5B, see section 80U.

*assessment*, for chapter 5B, see section 80U.

*authorised psychiatrist*, for chapter 5B, see section 80U.

[s 31]

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***chemical restraint***, for chapter 5B, see section 80U.

***chemical restraint (fixed dose)***, for chapter 5B, see section 80U.

***chief executive (disability services)*** means the chief executive of the department in which the *Disability Services Act 2006* is administered.

***community access services***, for chapter 5B, see section 80U.

***contain***, for chapter 5B, see section 80U.

***containment or seclusion approval***, for chapter 5B, see section 80U.

***director of mental health*** means the director under the *Mental Health Act 2000*.

***disability services***, for chapter 5B, see section 80U.

***DSA***, for chapter 5B, see section 80U.

***harm***, for chapter 5B, see section 80U.

***informal decision maker***, for chapter 5B, see section 80U.

***least restrictive***, for chapter 5B, see section 80U.

***mechanical restraint***, for chapter 5B, see section 80U.

***physical restraint***, for chapter 5B, see section 80U.

***positive behaviour support plan***, for chapter 5B, see section 80U.

***relevant service provider***, for chapter 5B, see section 80U.

***respite/community access plan***, for chapter 5B, see section 80U.

***respite services***, for chapter 5B, see section 80U.

***restrictive practice***, for chapter 5B, see section 80U.

***restrictive practice (general) matter***, for chapter 5B, see section 80U.

***restrictive practice matter***, for chapter 5B, see section 80U.

*restrictive practice (respite) matter*, for chapter 5B, see section 80U.

*seclude*, for chapter 5B, see section 80U.

*short term plan*, for chapter 5B, see section 80U.’.

- (2) Schedule 4, definition *active party*—

*insert*—

‘(aa) for chapter 5B, see section 80U; or’.

- (3) Schedule 4, definition *active party*, paragraphs (aa) and (b)—  
*renumber* as paragraphs (b) and (c).