

Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013

Explanatory Notes

Short title

The short title of the Bill is the Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013.

Policy objectives and the reasons for them

The Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013 (the Bill) amends the regulatory framework in the *Disability Services Act 2006* (DSA) and the *Guardianship and Administration Act 2000* (GAA) that applies to the use of restrictive practices (for example, seclusion and restraint) by funded disability service providers on adults with intellectual or cognitive disability in response to behaviour that results in physical harm or a serious risk of physical harm to the adult or others (known as challenging behaviour).

Challenging behaviour is described as ‘culturally abnormal behaviour(s) of such intensity, frequency and duration that the physical safety of the person or others is likely to be placed in serious jeopardy, or behaviour which is likely to seriously limit the use of or result in the person being denied access to ordinary community facilities’ (source: Emerson, E. *Challenging Behaviour, Analysis and intervention in people with severe intellectual disabilities*. 2nd edition, Cambridge University Press, 2001).

These amendments respond to a review of the regulatory framework and the government’s broader service response which aim to address the needs of adults with intellectual or cognitive disability and challenging behaviour, improve their quality of life, and reduce and eliminate the use of restrictive practices.

Disability service providers, families and carers, clinicians, advocate organisations and statutory bodies were consulted as part of the review, and sought changes to:

- reduce the resource intensiveness of administrative processes to allow service providers to focus on client care;
- provide further resources to adults and families to understand the framework and how they can exercise their rights;
- ensure effective monitoring of the use of restrictive practices and client outcomes; and
- provide further training and support to service providers in the development and implementation of positive behaviour support plans.

The review identified a number of changes to the legislation (in addition to other policy responses) to improve the care and quality of life for adults with challenging behaviour; enhance protections for these adults; and streamline processes and reduce red tape for disability service providers.

Achievement of policy objectives

The Bill achieves the policy objectives by making the following changes to the DSA and/or GAA to improve protections for clients:

- emphasising the need for a positive behaviour support approach for all adults with intellectual or cognitive disability and challenging behaviour in funded disability services not just where restrictive practices are required;
- outlining that service providers should not use restrictive practices as a form of punishment;
- providing for reporting on the use of restrictive practices by funded disability service providers to enable systematic monitoring of the use of restrictive practices, and measure the effectiveness of the scheme in reducing the use of restrictive practices and improving outcomes for adults; and
- introducing a requirement for service providers to provide a statement to the adult and those close to the adult about the use of restrictive practices to enable them to understand the framework, avenues for complaints and redress, and how they can participate in planning and decision making.

The Bill also makes the following changes to the DSA and/or GAA to reduce red tape and streamline processes for service providers:

- amending the definitions of restrictive practices to clarify that the purpose for which restrictive practices are used is to respond to the behaviour of an adult with an intellectual or cognitive disability that causes, or has the potential to cause, physical harm to the adult or others. This will make it easier to determine the practices that require authorisation;
- reducing the prescriptive requirements in positive behaviour support plans to ensure that plans only contain detail that is useful for service providers in providing care and support to the adult;
- providing flexibility in appointment periods for guardians for a restrictive practice matter from a maximum appointment of up to 12 months to up to 2 years to allow service providers to focus more of their resources on the care of clients;
- removing the requirement for a short term plan for a short term approval to reduce the regulatory burden associated with seeking a short term approval;
- clarifying when a short term approval can be sought to support the transition of adults subject to the regulatory framework to new service providers;
- providing time-limited immunity from civil or criminal liability where a service provider has sought a short term approval, or the consent of the Adult Guardian as a guardian for a restrictive practice matter, and the approval or consent has not been decided before the existing approval or consent expires to ensure that service providers are not at risk of using restrictive practices without immunity from civil and criminal liability;
- clarifying that the use of medication such as a sedative to facilitate the provision of a single instance of health care, such as dental work, to an adult with an intellectual or cognitive disability is not a chemical restraint; and
- removing the legislative requirement for the Department of Communities, Child Safety and Disability Services and service providers to keep and implement policies on the use of restrictive practices, as the requirement for these policies will be dealt with administratively and will continue to be monitored through the department's Human Services Quality Framework (HSQF). The removal of this requirement eliminates some unnecessary complexity from the legislation, without compromising client safeguards.

The Bill is part of a broader package of reforms to improve the operation of the framework and outcomes for adults. The reforms focus on reducing red tape for service providers; building the capacity of service providers to implement positive behaviour support in their organisations; and maintaining protections for adults. For example, the Department of Communities, Child Safety and Disability Services is developing guidelines and a model plan for positive behaviour support plans; expanding training to disability service providers and professionals undertaking assessments and making the newly established Centre of Excellence for Clinical Innovation and Behaviour Support a central point of contact for service providers, family members and others to provide advice and monitor the use of restrictive practices.

Alternative ways of achieving policy objectives

Amending legislation is the only way of achieving the policy objectives.

Estimated cost for government implementation

The proposals in the Bill will be implemented within existing resources.

Consistency with fundamental legislative principles

Section 4(2)(a) of *Legislative Standards Act 1992* – whether legislation has sufficient regard to the rights and liberties of individuals

Authorising the use of restrictive practices

Authorising restrictive practices under this framework can impact on the rights and freedom of movement of adults subject to restrictive practices. However, the use of restrictive practices is only authorised in clear and limited circumstances. Importantly, decisions to approve or consent to the use of restrictive practices must be made by a person independent of the service provider and are subject to strict legislative criteria. Further, in general, the decision-maker must be informed by recommendations following a comprehensive assessment of the adult by an appropriately qualified or experienced person.

The introduction of reporting on the use of restrictive practices by service providers will also increase transparency and accountability in the use of restrictive practices and quality of life outcomes for adults subject to restrictive practices.

Further, the proposed reforms will strengthen the involvement of the adult, their family members, and others in their support network. For example, the amendments introduce a requirement for a service provider to provide a statement to the adult and those close to the adult which explains why the service provider is considering restrictive practices, how the adult and their family can be involved in the process and express their views, who will make the decision and the avenues for complaint, review and redress.

These additional measures ensure there is adequate oversight of the use of restrictive practices in funded disability services.

Reporting and right to privacy

The amendments will enable the Chief Executive to obtain information from service providers about the use of restrictive practices on adults, and allow the Chief Executive to give that information to the Queensland Civil and Administrative Tribunal (QCAT), the Adult Guardian, Public Advocate, and the service provider that originally provided the information.

This provision is considered justified as it is necessary to monitor the use of restrictive practices and impacts and outcomes for clients, on an individual and systemic level. Monitoring is a crucial safeguard for clients and allows measurement of the effectiveness of the framework as a whole in reducing the use of restrictive practices and improving the lives of adults subject to restrictive practices. The provision of information to bodies outside the Department of Communities, Child Safety and Disability Services is limited to statutory bodies and service providers with a role in ensuring the rights of adult's subject to restrictive practices are upheld, and who are bound by legislative requirements that limit the disclosure of confidential information.

Section 4(3)(h) of *Legislative Standards Act 1992* — whether legislation confers immunity from proceeding or prosecution only with adequate justification

The amendments introduce the following two circumstances where a funded disability service provider or an individual acting for the service provider may have a time-limited immunity from civil and criminal liability in the use of restrictive practices:

1. where a service provider has sought a short term approval to use a restrictive practice other than the restrictive practice (or restrictive practices) that they currently have authorisation to use and the decision for the short term approval has not been decided; and
2. where the Adult Guardian is the guardian for a restrictive practice matter and the consent has not been decided before the existing consent expires.

Several service providers have raised concerns that delays in obtaining approvals and consents to use restrictive practices place them at risk of using restrictive practices without immunity from civil or criminal liability. Due to the nature of individual person-centred assessments, delays may result from a range of factors including: the absence of relevant information to justify the restrictive practice; the need for further professional advice on client needs; and operational delays due to fluctuating numbers of applications.

The amendments provide for sufficient safeguards for clients in the provision of this immunity to a service provider, including:

- time-limited period of immunity (no longer than 30 days);
- demonstrating that the use of the restrictive practice is necessary to prevent harm and is the least restrictive way of keeping the adult and others safe; and
- there is a positive behaviour support plan or respite/community access plan being implemented for the adult.

Given the clear limits on the use of restrictive practices, including the fact it must be used in the least restrictive way, and the emphasis on ensuring an adult is being cared for in a way that addresses their challenging behaviour and improves their quality of life, these amendments are considered justified. Without this immunity, a service provider may not be able to ensure the safe operation of their services, or the protection from harm of the adult or other people in the service.

Consultation

Under the former government, the review of the restrictive practices framework commenced in 2010 with 10 consultation sessions held round the State.

A public discussion paper was also released in July to August 2013. Service providers, advocacy organisations, families of people subject to restrictive practices, and other interested parties were notified of the release of the discussion paper. The purpose of the discussion paper was to identify changes through legislation, practice, education and policy to:

- Improve the care and quality of life for adults with challenging behaviour causing, or at risk of causing, physical harm;
- Streamline processes and reduce red tape for service providers;
- Build capacity of service providers to implement positive behaviour support;
- Equip workers to support clients effectively and in a way that is safe for all; and
- Safeguard adults with challenging behaviours causing, or at risk of causing, physical harm.

Consistency with legislation of other jurisdictions

The regulation of restrictive practices differs across Australia and overseas. Queensland, Victoria and most recently Tasmania and Northern Territory are the only Australian jurisdictions with regulatory regimes.

In Victoria, a tribunal approves the equivalent of containment (as happens in Queensland), while the Secretary of the relevant department (equivalent to the Director-General) approves other restrictive practices. The Senior Practitioner monitors the use of restrictive practices. In Tasmania, the Guardianship Board approves personal restrictions, like containment, seclusion, physical, mechanical and chemical restraint, while the Secretary of the department, with the advice of the Senior Practitioner, approves environmental restrictions such as restricting an adult's access to objects. In the Northern Territory, which only regulates the use of restrictive practices in Government operated services, the Chief Executive of the department approves the use of restrictive practices. Like Queensland, these schemes focus on implementing positive behaviour support for individuals with challenging behaviour and ensuring that restrictive practices are only used where necessary and in a way least restrictive of the client's rights.

Nationally, through the Standing Council on Community and Disability Services, a National Framework for Reducing the Use of Restrictive Practices in the Disability Service Sector (National Framework) is being developed. The draft National Framework sets out broad and high-level principles to guide each jurisdiction in administering their own schemes. It includes nationally-accepted definitions of restrictive practices, and focusses on data collection; person-centred and evidence based planning and practices; and workforce development. It does not set out a detailed regulatory scheme for jurisdictions to adopt.

The National Disability Insurance Scheme (NDIS) is developing a quality assurance and safeguards framework. It is intended that the National Framework will inform the development of the NDIS quality assurance and safeguards framework that will be implemented when the NDIS is rolled out across Australia.

Notes on provisions

Part 1 Preliminary

Clause 1 provides that the short title for the Act is the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2013*.

Clause 2 provides that the Act commences on a date to be fixed by proclamation.

Part 2 Amendment of *Disability Services Act 2006*

Clause 3 provides that Part 2 of the Bill amends the *Disability Services Act 2006*.

Clause 4 inserts a new heading for Part 10A called ‘Positive behaviour support and restrictive practices’ to highlight the importance of positive behaviour support when providing disability services to adults with an intellectual or cognitive disability with behaviour that causes harm or a serious risk of harm to the adult or others.

Clause 5 replaces section 123A (Purpose of pt 10A) with a new section 123A to broaden the purpose of Part 10A to not only regulate the use of restrictive practices by funded disability services providers but to also outline the principles to be taken into account by funded service providers in providing disability services to adults with intellectual or cognitive disability and behaviour that causes harm or a serious risk of harm to the adult or others.

Clause 6 amends section 123B (Service providers to which pt 10A applies) to clarify that Part 10A of the DSA applies to a funded service provider in relation to the provision of disability services to all adults with an intellectual or cognitive disability receiving disability services from the funded service provider even if disability services are not provided with the funding received directly from the department. This is to ensure that it is clear that Part 10A applies to the provision of disability services to an adult with an intellectual or cognitive disability who receives funding under self-directed funding arrangements under the Your Life Your Choice Self-Directed Framework either directly from the department or through an approved host provider where this self-directed funding is used to obtain services from a service provider that also receives funds from the department as part of a written agreement with the department under the DSA.

Clause 7 inserts a new section 123CA (Principles for providing disability services to particular adults) to set out a number of principles addressing the way disability services are to be provided by a relevant service provider to adults with an intellectual or cognitive disability with behaviour that causes physical harm or a serious risk of physical harm to the adult or others. These principles focus on the importance of evidence based positive behaviour support planning in providing care and support to adults with challenging behaviour, and that restrictive practices should only be used where absolutely necessary and where they are the least restrictive way of ensuring the safety of the adult or others.

Clause 8 amends particular definitions in section 123E (Definitions for pt 10A), and removes the definitions of ‘keep and implement’ and ‘short term plan’. This is a consequence of the removal of the legislative requirement in Part 10A Division 6 of the DSA for service providers to keep and implement policies on restrictive practices as well as the removal of the requirement for a short term plan to be developed as part of the process for obtaining a short term approval to use restrictive practices.

Clause 8 makes changes to the definitions of ‘restrictive practice’, ‘physical restraint’, ‘seclusion’ and ‘restricting access’ to provide clarity (including through the insertion of notes accompanying these definitions) that these interventions require authorisation as restrictive practices when they are used to respond to the behaviour of an adult with an intellectual or cognitive disability that causes physical harm or a serious risk of physical harm to the adult or others. The clause also revises the examples of ‘restricting access’ to make it clearer that it means restricting access to an object in response to behaviour of an adult that causes physical harm, or a serious risk of physical harm, to the adult or others.

These amendments are to make it clear that practices used to assist the adult with daily living or therapeutic activities, or to keep the adult safe where the adult has a skills deficit and as a consequence is unable to perform a task safely are not intended to be restrictive practices.

An example of a practice to assist the adult with daily living or therapeutic activities is where a staff member may use hand over hand modelling in order to support a client to complete a task such as dressing or eating. This might be as part of a planned approach to teach a new skill and the staff member might be holding the person’s hand or arm. It is not intended that this would be a restrictive practice.

An example of a practice used to keep the adult safe where the adult has a skills deficit is the use of a belt which is used as part of a limited and specific approach where someone has difficulties with mobility, and may be injured if they fall on the floor or trip. It is not intended that this be a restrictive practice.

An intervention that is not intended to be a restrictive practice is restricting an adult’s access to a cupboard where laundry chemicals are kept, if the adult cannot recognise the difference between these chemicals and consumable beverages, and there is a risk the adult would consume the chemicals accidentally.

It is not intended that it be a restrictive practice for a staff member to use un-resisted redirection to direct an adult away from an unsafe situation, for example, a busy road, where the adult cannot recognise the danger.

Clause 8 also adds a definition into section 123E for ‘model positive behaviour support plan’ to mean a plan of that name prepared by the Chief Executive and published on the department’s website. The Bill makes it a requirement for the Chief Executive and relevant service providers to have regard to a model positive behaviour support plan in developing a positive behaviour support plan for an adult under sections 123S (Development of positive behaviour support plan following assessment) and 123ZF (Requirements for development of positive behaviour support plan – assessment and consultation).

Clause 9 amends the definition of ‘chemical restraint’ in section 123F (including through the insertion of a note accompanying the definition) to clarify that chemical restraint is medication used for the primary purpose of controlling an adult’s behaviour in response to behaviour of the adult that causes physical harm or a serious risk of physical harm to the adult or others.

This clause also clarifies that using prescribed medication such as a sedative to allow an adult to receive a single instance of health care under the GAA, for example to undergo dental work, is not chemical restraint.

Clause 10 amends the definition of ‘contain’ in section 123G to clarify (including through the insertion of a note accompanying the definition) that containment is physically preventing the free exit of an adult from premises where the adult receives disability services, other than by secluding the adult, in response to the adult’s behaviour that causes physical harm or a serious risk of physical harm to the adult or others.

Clause 11 amends the definition of ‘mechanical restraint’ in section 123H to clarify (including through the insertion of a note accompanying the definition) that mechanical restraint means the use, for the primary purpose of controlling the adult’s behaviour, of a device in response to the adult’s behaviour that causes physical harm or a serious risk of physical harm to the adult or others to restrict the free movement of the adult; or prevent or reduce self-injurious behaviour.

Clause 12 omits section 123I (Requirement to keep and implement a policy) which sets out what is required of service providers in keeping and implementing a policy about the use of a restrictive practice as a consequence of the Bill removing Part 10A Division 6 (Policy about the use of restrictive practices).

Clause 13 replaces section 123L (What is a positive behaviour support plan) with a new section 123L to provide that a positive behaviour support plan is a plan that describes the strategies to be used to meet an adult’s needs; support the adult’s development of skills; maximise the opportunities to improve the adult’s quality of life; and reduce the intensity, frequency and duration of the adult’s behaviour that causes harm to the adult and others.

The new section 123L also sets out the minimum requirements of a positive behaviour support plan, including the particular details about the adult’s behaviour; strategies to be attempted before using a restrictive practice; and details about the use of a restrictive practice. A number of requirements of the plan have been removed to ensure that plans contain necessary details only and are useable for support workers in practice. Section 123L provides that plans must set out the early warning signs or triggers for behaviour of the adult that has caused harm to the adult or others, and any other measures that must happen while the restrictive practice is being used that are necessary to ensure the adult is safeguarded from abuse, neglect and exploitation. These new requirements came out of feedback as part of the review. A further requirement of a positive behaviour support plan has also been added to set out the intervals at which the service provider will review restrictive practices and that these intervals must be at least once during a 12 month period, for practices other than containment and seclusion and at least once during the period of an approval for containment and seclusion. This requirement has been added in to ensure that there continues to be an obligation on service providers to review restrictive practices at particular intervals, as this requirement is in Part 10A Division 6 which is being removed.

Clause 14 makes consequential amendments to section 123M (Containing or secluding an adult under containment or seclusion approval) as a result of removing Part 10A Division 6. In effect, a service provider is no longer required by the legislation to keep and implement a policy about the use of containment or seclusion as required under Part 10A Division 6 as a requirement for the use of containment or seclusion on an adult.

Clause 15 makes consequential amendments to section 123N (Containing or secluding an adult for respite services or community access services) as a result of removing Part 10 Division 6. In effect, a service provider providing respite or community access services is no longer required by the legislation to keep and implement a policy about the use of containment or seclusion as required under Part 10A Division 6 as a requirement for the use of containment or seclusion on an adult.

Clause 16 makes consequential amendments to section 123O (Containing and secluding an adult under short term approval) as a result of removing Part10A Division 6 which in effect means that a service provider is no longer required by the legislation to keep and implement a policy about the use of containment or seclusion as required under Part10A Division 6 as a requirement for the use of containment or seclusion under a short term approval. Clause 16 also removes the requirement for the service provider to comply with the short term plan that has been approved by the Adult Guardian as the Bill removes the requirement for a short term plan to be developed.

Clause 17 inserts a new section 123OA titled ‘Containing or secluding an adult before decision on short term approval’ to allow a service provider to contain or seclude an adult in circumstances where the relevant service provider has asked in writing for a short term approval of the restrictive practice from the Adult Guardian under Chapter 5B, Part 4 of the GAA and the approval has not been decided. The service provider can use the restrictive practice until the Adult Guardian provides notice to the service provider about the decision whether to give the short term approval or 30 days after the service provider asked for the short term approval, whichever happens earliest. However, during this period, the service provider may only use the restrictive practice where use of the practice is necessary to prevent the adult’s behaviour causing physical harm or a serious risk of physical harm to the adult or others; is the least restrictive way of ensuring the safety of the adult or others; and a positive behaviour support plan or respite/community access plan for the adult is being implemented. Clause 17 also provides that the relevant service provider in using the practice under the section must comply with the requirements of section 123Z (Relevant service to ensure adults needs are met) which addresses what must be provided to an adult where a service provider is containing or secluding a client, including sufficient bedding, clothing, food and drink, and access to toilet facilities.

This amendment addresses feedback from service providers about delays in obtaining short term approvals to use restrictive practices as this can create periods of time where a service provider and their staff do not have immunity from civil and criminal liability in the use of restrictive practices. Due to individual circumstances, delays might arise due to a range of factors (such as the absence of relevant information on the justification of a restrictive practice; need for further professional advice on the adult’s needs; or the number of approval/consent applications received at the same time).

Clause 18 amends section 123S (Development of positive behaviour support plan following assessment) to provide that when developing a positive behaviour support plan, the Chief Executive must have regard to a model positive behaviour support plan (as defined in section 123E). This requirement is to ensure that the development of positive behaviour support plans is guided by an evidenced based best practice model positive behaviour support plan to ensure that the plans are workable in practice and achieve the best outcomes for the adult. The Centre of Excellence for Clinical Innovation and Behaviour Support in the Department of Communities, Child Safety and Disability Services is developing a model positive behaviour support plan for this amendment.

Clause 19 makes consequential amendments to section 123ZA (Using chemical, mechanical or physical restraint, or restricting access, with consent of a guardian etc) as a result of removing Part 10A Division 6. In effect, a service provider is no longer required by the legislation to keep and implement a policy about the use of the restrictive practice as required under Part10A Division 6 as a requirement for the use of the restrictive practice on an adult.

Clause 20 makes consequential amendments to section 123ZB (Using chemical, mechanical or physical restraint, or restricting access, for respite services or community access services) as a result of removing Part 10A Division 6. In effect, a service provider in a respite or community access service is no longer required by the legislation to keep and implement a policy about the use of the

restrictive practice as required under Part 10A Division 6 as a requirement for the use of the restrictive practice on an adult.

Clause 21 makes consequential amendments to section 123ZC (Using chemical restraint (fixed dose) for respite services) as a result of removing Part 10A Division 6. In effect, a service provider in a respite access service is no longer required by the legislation to keep and implement a policy about the use of chemical restraint as required under Part 10A Division 6 as a requirement for the use of fixed dose chemical restraint on an adult.

Clause 22 inserts a new section 123ZCA (Using chemical, mechanical or physical restraint, or restricting access, if consent ended) to allow the use of a restrictive practice (other than containment and seclusion) by a service provider in circumstances where a consent to use a practice has been given by the Adult Guardian as the guardian for a restrictive practice matter and that consent has expired, and the service provider has asked the Adult Guardian in writing at least 30 days before that consent expired for a new consent to use the practice, and at the time that consent expired, the Adult Guardian has not decided whether to give the new consent. The service provider can use the restrictive practice following the expiry of the consent until the Adult Guardian provides notice to the service provider about the Adult Guardian's decision whether to give the new consent or 30 days after the existing consent ends, whichever happens earliest. However, during this period, the service provider may only use the restrictive practice where use of the practice is necessary to prevent the adult's behaviour causing physical harm or a serious risk of physical harm to the adult or others; and is the least restrictive way of ensuring the safety of the adult or others; and complies with the existing consent and the positive behaviour support plan or respite/community access plan for the adult.

This amendment addresses feedback from service providers about delays in obtaining the consent of the Adult Guardian to use restrictive practices as this can create periods of time where a service provider and their staff do not have immunity from civil and criminal liability in the use of restrictive practices. Due to individual circumstances, delays might arise due to a range of factors (such as the absence of relevant information on the justification of a restrictive practice; need for further professional advice on the adult's needs; or the number of approval/consent applications received at the same time).

Clause 23 amends section 123ZD (Using chemical, mechanical or physical restraint, or restricting access, under short term approval) as a result of removing Part 10A Division 6 which in effect means that a service provider is no longer required by the legislation to keep and implement a policy about the use of the restrictive practice as required under Part 10A Division 6 as a requirement for the use of a restrictive practice under a short term approval. Clause 23 also removes the requirement for the service provider to comply with the short term plan that has been approved by the Adult Guardian or Chief Executive as the Bill removes the requirement for a short term plan to be developed.

Clause 24 inserts a new section 123ZDA titled 'Using chemical, mechanical or physical restraint, or restricting access, before decision on short term approval' to allow the use of a restrictive practice by a service provider in circumstances where the relevant service provider has asked in writing for a short term approval from the Chief Executive under section 123ZK of the DSA of a restrictive practice other than containment or seclusion and the approval has not been decided. The service provider can use the restrictive practice until the Chief Executive provides notice to the service provider about the decision whether to give the short term approval or 30 days after the service provider asked for the short term approval, whichever happens earliest. However, during this period, the service provider may only use the restrictive practice where use of the practice is

necessary to prevent the adult's behaviour causing physical harm or a serious risk of physical harm to the adult or others; is the least restrictive way of ensuring the safety of the adult or others; and a positive behaviour support plan or respite/community access plan is being implemented for the adult.

This amendment addresses feedback from service providers about delays in obtaining short term approvals to use restrictive practices as this can create periods of time where a service provider and their staff do not have immunity from civil and criminal liability in the use of restrictive practices. Due to individual circumstances, delays might arise due to a range of factors (such as the absence of relevant information on the justification of a restrictive practice; need for further professional advice on the adult's needs; or the number of approval applications received at the same time).

Clause 25 amends section 123ZF (Requirements for development of positive behaviour support plan – assessment and consultation) to provide that when developing a positive behaviour support plan, the relevant service provider must have regard to a model positive behaviour support plan (as defined in section 123E).

Clause 26 amends section 123ZK (Short term approval for use of restrictive practices other than containment and seclusion) to clarify that a service provider can apply for a short term approval (for chemical, mechanical or physical restraint, or restricting access) where an existing client (subject to an approved restrictive practice) changes service provider. Section 123ZK is amended to provide that the Chief Executive may give a short term approval to use a restrictive practice if satisfied there is a guardian for a restrictive practice (general) matter for an adult but the guardian has not made a decision whether to consent to that restrictive practice for that particular service provider. For example, where an adult, who is subject to a consent to use mechanical restraint by a guardian for a restrictive practice (general) matter, stops receiving services from one relevant service provider and starts receiving services from another relevant service provider, the new relevant service provider may ask the Chief Executive for a short term approval to use mechanical restraint if the new relevant service provider considers there is an immediate and serious risk that if mechanical restraint is not used in relation to the adult, the adult's behaviour will cause harm to the adult or others, and there has not been time to change the positive behaviour support plan and prepare any other documents to assist the guardian in making a decision in relation to the use of mechanical restraint by the new relevant service provider.

Clause 26 also inserts a requirement that the Chief Executive may only give a short term approval if satisfied the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult. This is to correct an omission when the legislation first commenced, and to ensure that all persons responsible for making decisions in relation to authorising restrictive practices are satisfied the adult has impaired capacity for making decisions about the use of restrictive practices in relation to himself or herself.

Clause 26 provides that the Chief Executive may give a short term approval subject to conditions the Chief Executive considers appropriate. This ensures this power is retained despite the removal of sections 123ZM (Conditions of short term approval) and 123ZN (Chief executive's decision about approving short term plan) by the Bill, which have been removed as a consequence of the removal of the requirement for a short term plan to be developed as part of a short term approval.

Clause 27 makes consequential amendment to section 123ZL (Period for which short term approval has effect) as a result of removing the requirement for the development of a short term plan for a short term approval. Clause 27 has also been amended as a consequence of the amendment to section 123ZK and provides that a short term approval from the Chief Executive ends if a guardian for a

restrictive practice (general) matter for the adult makes a decision about whether to consent to the relevant service provider using the restrictive practice in relation to the adult. Under the section as it currently stands, a short term approval from the Chief Executive ends if a guardian for a restrictive practice (general) matter for the adult makes a decision about whether to consent to the use of the restrictive practice in relation to the adult, but the consent does not have to relate to a particular service provider. This amendment aligns with the changes to section 123ZK.

Clause 28 omits sections 123ZM (Conditions of short term approval) and 123ZN (Chief executive's decision about approving short term plan) which remove the requirement for a short term plan to be developed as part of a short term approval. There is currently a two staged process for obtaining a short term approval in the legislation, involving an initial approval, on the condition that a service provider submits a short term plan to the decision maker within 14 days.

Service providers have noted that the multi-layered approval process to obtain a short term approval (requiring an approval and then the development of a short term plan) involves duplication of information provided to the decision maker and can result in delays in receiving approvals.

The requirement for a short term plan as part of the short term approval process has been removed to reduce the regulatory burden associated with seeking a short term approval. However, the legislation retains the same minimum requirements that the Chief Executive must be satisfied of in providing a short term approval.

Clause 29 removes part 10A Division 6 (Policy about use of restrictive practices). This Division requires service providers to keep and implement policies about the use of restrictive practices that are consistent with the Department of Communities, Child Safety and Disability Services policies, and sets out requirements for these policies. The removal of this Division is proposed on the basis that the requirement for these policies will be dealt with administratively and will continue to be monitored through the department's Human Services Quality Framework (HSQF). The removal of the Division eliminates some unnecessary complexity from the legislation, without compromising client safeguards.

Compliance with requirements to keep and implement acceptable restrictive practices policies is subject to rigorous and periodic third-party audits under the HSQF. These third-party audits are conducted by certification bodies which must be accredited by the Joint Accreditation Scheme of Australia and New Zealand. Audits are undertaken over a three-year cycle, with a mid-term maintenance audit at 18 months and include technical experts who must engage the participation of service users.

Auditors require evidence that service providers have policies relating to restrictive practices that are consistent with the department's policies. Auditors will continue to monitor whether service providers adhere to the HSQF after Division 6 is removed from the legislation. As a result, there will still be a requirement for service providers to have policies consistent with the department's policies.

Division 6 does set out some important requirements for what a policy is to contain, including when the use of a restrictive practice is to be reviewed; procedures for ensuring an individual acting for a relevant service provider has the skills and knowledge to use restrictive practices appropriately; and procedures for monitoring of the use of restrictive practices. The Bill is maintaining these requirements as follows:

- the timeframe for the review of the use of a restrictive practice is being inserted into the DSA as a requirement of the positive behaviour support plan (see clause 13);

- a new requirement is to be inserted into the DSA for service providers to have procedures in place to ensure an individual acting for the relevant service provider has sufficient knowledge of the requirements for lawful use of restrictive practices; and has the skills and knowledge required to use the restrictive practices appropriately (see clause 32);
- the requirement to monitor the use of restrictive practices will be dealt with through the introduction of a statutory reporting scheme and new proposed sections in the DSA requiring service providers to report to the Chief Executive on their use of restrictive practices (see clause 36).

Clause 30 amends section 123ZZC (Immunity from liability – individual acting for service provider) to provide immunity to an individual acting for a relevant service provider who uses a restrictive practice under new sections 123OA, 123ZCA and 123ZDA, and removes references to compliance with a short term plan from the section. For an individual to receive immunity from criminal or civil liability under sections 123OA (Containing or secluding an adult before decision on short term approval) and 123ZDA (Using chemical, mechanical or physical restraint, or restricting access, before decision on short term approval), the individual must act honestly and without negligence in compliance with the positive behaviour support plan or respite/community access plan for the adult. For an individual to receive immunity from criminal or civil liability under section 123ZCA (Using chemical, mechanical or physical restraint, or restricting access, if consent ended) the individual must act honestly and without negligence in compliance with the existing consent for the adult and the positive behaviour support plan or respite/community access plan for the adult.

Clause 31 inserts a new section 123ZZCA titled ‘Requirement to give statement about the use of restrictive practices’ which creates a new requirement for the service provider to give a statement, in the approved form, about the use of restrictive practices to the adult and any person with a sufficient and continuing interest in the adult. The service provider must explain the statement to the adult in the language or way the adult is most likely to understand; and in a way that has appropriate regard to the adult’s age, culture, disability and communication ability. The purpose of this provision is to ensure that the adult, family members and others in the adult’s support network are aware why a service provider is considering that any restrictive practice might be necessary; how they can be involved in planning and decision making and express their views; who will make the decision whether or not to authorise the restrictive practice; and what the avenues for complaint, review and redress are.

Clause 32 inserts a new section 123ZZDA (Requirement to keep and implement procedure) which requires a relevant service provider to keep and implement procedures to ensure that an individual acting for the relevant service provider who uses a restrictive practice in relation to the adult has sufficient knowledge of the requirement for lawful use of the restrictive practice; and has the skills and knowledge required to use the restrictive practice appropriately.

Clause 33 amends section 123ZZE (Requirement to keep records and other documents) to remove the requirement for a short term plan for an adult to be kept at premises where restrictive practices are used on the adult as a result of removing the requirement for a short term plan to be developed as part of a short term approval.

Clause 34 amends section 123ZZH (Relevant service provider may request confidential information from health professional, chief executive (health) or health service chief executive) to remove reference to a short term plan as a result of removing the requirement for the development of a short term plan as part of a short term approval.

Clause 35 amends section 123ZZI (Relevant service providers must maintain confidentiality) to remove reference to a short term plan as a result of removing the requirement for the development of a short term plan as part of a short term approval.

Clause 36 inserts a new Division 8, subdivision 4 in Part 10A titled 'Reporting and provision of particular information' that inserts a requirement for service providers to provide information regarding the use of restrictive practices in a way and at times prescribed under a regulation. This new subdivision also allows the Chief Executive to give this information to QCAT, the Adult Guardian, the Public Advocate and the service provider who provided the information to the Chief Executive. Regular reporting and data collection is an important safeguard to track and monitor the use of restrictive practices and the quality of life outcomes for adults subject to them, with a view to reduce and eliminate the use of restrictive practices.

Clause 37 inserts a new Division 9 in Part 16 titled 'Transitional provision for Disability Services (Restrictive Practices) and Other Legislation Amendment Bill 2013' that sets out transitional arrangements to apply the new section 123ZZCA (Requirement to give statement about the use of restrictive practices). The new section 325 provides that on commencement of the section where a relevant service provider is using restrictive practices in relation to an adult, section 123ZZCA applies as if the service provider was considering using the restrictive practice in relation to the adult on the commencement of the section.

Clause 38 removes the definitions of 'keep and implement' and 'short term plan' in schedule 7 (Dictionary) as a result of removing the requirement for the development of a short term plan for a short term approval and the removal of the Part 10A Division 6. A definition of model positive behaviour support plan is inserted into the dictionary.

Part 3 Amendment of *Guardianship and Administration Act 2000*

Clause 39 provides that Part 3 amends the *Guardianship and Administration Act 2000*.

Clause 40 makes a consequential amendment to remove the definition of 'short term plan' from section 80U (Definitions for ch 5B) as a result of removing the requirement for the development of a short term plan for a short term approval.

Clause 41 amends section 80W (Matters tribunal must consider) to amend the heading to be 'Matters tribunal to consider' and insert additional matters QCAT may consider when giving approval to use containment or seclusion. These additional considerations reflect matters that the Bill removes as legislative requirements for a positive behaviour support plan but which are matters that QCAT may consider when deciding an approval.

Clause 42 amends section 80X (When tribunal may approve use of other restrictive practices) to provide that when QCAT is deciding to approve the use of other restrictive practices (other than containment or seclusion), it may consider the additional matters in new subsection 80W(2).

Clause 43 amends section 80ZD (Appointment) to increase the period that QCAT may appoint a guardian for a restrictive practice matter from 12 months to 2 years. During the review, service providers raised concerns that the resource intensive nature of the process for appointing and reviewing the appointment of guardians for a restrictive practice matter diverts resources from the care of clients. This amendment provides QCAT with more flexibility to determine the length of an appointment of restrictive practice guardian on a case by case basis for a period of up to two years depending on QCAT's assessment of the suitable timeframe for appointing the guardian.

Clause 44 inserts additional requirements to section 80ZE (Requirements for giving consent – guardian for restrictive practice (general) matter) to insert additional matters the guardian may consider when deciding to consent to a restrictive practice. These additional considerations reflect matters that the Bill removes as legislative requirements for a positive behaviour support plan but are still matters that a guardian for a restrictive practice (general) matter may consider when deciding whether to consent to the use of the restrictive practice.

Clause 45 omits section 80ZG (Application of Pt 4) as the Bill incorporates the matters in section 80ZG (i.e. the circumstances where a short term approval cannot be applied for) into section 80ZH (When adult guardian may give short term approval for use of containment or seclusion).

Clause 46 amends section 80ZH (When adult guardian may give short term approval for use of containment or seclusion) to insert the matters in current section 80ZG into section 80ZH. In effect, section 80ZH sets out the circumstances where a short term approval from the Adult Guardian cannot be sought under that section. These circumstances are where there is a containment or seclusion approval in relation to the adult; or there is a guardian for a restrictive practice (respite) matter for the adult and 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. Clause 46(2) makes a technical amendment.

Clause 46(3) amends section 80ZH to provide that the Adult Guardian may give a short term approval subject to conditions the Adult Guardian considers appropriate. This ensures this power is retained despite the removal of sections 80ZI (Conditions to which s 80ZH approval is subject) and 80ZJ (Adult guardian's decision about whether to approve short term plan) by the Bill, which have been removed as a consequence of the removal of the requirement for a short term plan to be developed as part of a short term approval.

Clause 47 omits sections 80ZI (Conditions to which s 80ZH approval is subject) and 80ZJ (Adult guardian's decision about whether to approve short term plan) as a result of removing the requirement for the development of a short term plan for a short term approval. There is currently a two-staged process for obtaining a short term approval in the legislation, involving an initial approval being granted, on the condition that a service provider submits a short term plan to the decision maker within 14 days.

Service providers have noted that the multi-layered approval process to obtain a short term approval (requiring an approval and then the development of a short term plan) involves duplication of information provided to the decision maker and can result in delays in receiving approvals.

The requirement for a short term plan as part of the short term approval process has been removed to reduce the regulatory burden associated with seeking a short term approval. However, the legislation retains the same minimum requirements that the Adult Guardian must be satisfied of in providing a short term approval.

Clause 47 also inserts a new section 80ZI (When adult guardian may give short-term approval for use of containment or seclusion—new relevant service provider) which provides that the Adult Guardian may give an approval for a relevant service provider to contain or seclude an adult if satisfied of particular matters in section 80ZH(2) (as renumbered) if the relevant service provider is not currently providing but proposes to provide disability services to the adult. This new section will allow a service provider who will be providing services to an adult, where the use of containment or seclusion

is needed to keep the adult or others safe from harm, to apply for that approval so it is in place when the adult starts receiving disability services from the new provider.

Clause 48 (1) inserts a reference to the new section 80ZI (When adult guardian may give short-term approval for use of containment or seclusion—new relevant service provider) to allow the Adult Guardian to give approval to a relevant service provider to use another restrictive practice in relation to an adult if an approval for containment or seclusion is in effect for an adult under new section 80ZI. Clause 48(2) makes consequential amendments to section 80ZK (When adult guardian may give short term approval for use of other restrictive practices) as a result of removing the requirement for the development of a short term plan for a short term approval. Clause 48(3) provides that an approval ends under this section if a guardian for a restrictive practice (general) matter for the adult makes a decision to consent to the relevant service provider using the restrictive practice in relation to the adult; or on the day an approval of the Adult Guardian given under sections 80ZH or 80ZI ends. Amendments contained in clause 48(3) are also a consequence of the amendments that remove the requirement for a short term plan to be developed for a short term approval.

Clause 49 amends section 80ZM (Requirement for adult guardian to give notice of decision) to replace the reference to 80ZH(2) with 80ZH(3), as a result of renumbering as a consequence of amendments to section 80ZH (When adult guardian may give short term approval for use of containment or seclusion).

Clause 50 amends schedule 4 (Dictionary) to omit the definition of ‘short term plan’.