



Queensland

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



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2013

A Bill

for

An Act to amend the *Disability Services Act 2006* and the *Guardianship and Administration Act 2000* for particular purposes

[s 1]

The Parliament of Queensland enacts— 1

Part 1 Preliminary 2

Clause 1 Short title 3

This Act may be cited as the *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2013*. 4
5

Clause 2 Commencement 6

This Act commences on a day to be fixed by proclamation. 7

Part 2 Amendment of Disability Services Act 2006 8
9

Clause 3 Act amended 10

This part amends the *Disability Services Act 2006*. 11

Clause 4 Replacement of pt 10A, hdg (Use of restrictive practices) 12

Part 10A, heading— 13

omit, insert— 14

Part 10A Positive behaviour 15

support and restrictive 16

practices 17

Clause 5 Replacement of s 123A (Purpose of pt 10A) 18

Section 123A— 19

omit, insert—

123A Purpose of pt 10A

The purpose of this part is to protect the rights of adults with an intellectual or cognitive disability by—

- (a) stating principles to be taken into account by funded service providers in providing disability services to those adults with behaviour that causes harm to themselves or others; and
- (b) regulating the use of restrictive practices by funded service providers in relation to those adults in a way that—
 - (i) has regard to the human rights of those adults; and
 - (ii) safeguards them and others from harm; and
 - (iii) maximises the opportunity for positive outcomes and aims to reduce or eliminate the need for use of the restrictive practices; and
 - (iv) ensures transparency and accountability in the use of the restrictive practices.

Clause 6 Amendment of s 123B (Service providers to which pt 10A applies)

Section 123B—

insert—

- (3) To remove any doubt, this part 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

[s 7]

provider even if the disability services are not 1
provided with the funding received. 2

Clause 7 Insertion of new s 123CA 3

After section 123C— 4

insert— 5

**123CA Principles for providing disability services 6
to particular adults 7**

- (1) This section applies to an adult with an 8
intellectual or cognitive disability if the adult's 9
behaviour causes harm to the adult or others. 10
- (2) A relevant service provider must provide 11
disability services to the adult in a way that— 12
 - (a) promotes the adult's— 13
 - (i) development and physical, mental, 14
social and vocational ability; and 15
 - (ii) opportunities for participation and 16
inclusion in the community; and 17
 - (b) responds to the adult's needs and goals; and 18
 - (c) ensures the adult and their family and 19
friends are given an opportunity to 20
participate in the development of strategies 21
for the care and support of the adult; and 22
 - (d) involves— 23
 - (i) positive behaviour support planning 24
informed by evidence-based best 25
practice; and 26
 - (ii) the implementation of strategies, to 27
produce behavioural change, focussed 28
on skills development and 29
environmental design; and 30
 - (e) ensures transparency and accountability in 31
the use of restrictive practices; and 32

(f)	recognises that restrictive practices should only be used—	1 2
(i)	when necessary to prevent harm to the adult or others; and	3 4
(ii)	if the use is the least restrictive way of ensuring the safety of the adult or others; and	5 6 7
(g)	recognises that restrictive practices should not be used punitively or in response to behaviour that does not cause harm to the adult or others; and	8 9 10 11
(h)	aims to reduce the intensity, frequency and duration of the adult’s behaviour that causes harm to the adult or others; and	12 13 14
(i)	aims to reduce or eliminate the need to use restrictive practices; and	15 16
(j)	if there is a positive behaviour support plan for the adult—ensures restrictive practices are only used consistent with the plan.	17 18 19
	<i>Note—</i>	20
	Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 123E, definition <i>harm</i> .	21 22 23
Clause 8	Amendment of s 123E (Definitions for pt 10A)	24
(1)	Section 123E, definitions <i>keep and implement</i> , <i>restrictive practice</i> and <i>short term plan—</i> <i>omit.</i>	25 26 27
(2)	Section 123E— <i>insert—</i>	28 29
	<i>model positive behaviour support plan</i> means a plan of that name prepared by the chief executive and published on the department’s website.	30 31 32

[s 8]

- restrictive practice* means any of the following practices used to respond to the behaviour of an adult with an intellectual or cognitive disability that causes harm to the adult or others—
- (a) containing or secluding the adult;
 - (b) using chemical, mechanical or physical restraint on the adult;
 - (c) restricting access of the adult.
- Note—*
- Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 123E, definition *harm*.
- (3) Section 123E, definition *physical restraint*, ‘adult.’—
- omit, insert—*
- adult in response to the adult’s behaviour that causes harm to the adult or others.
- Note—*
- Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 123E, definition *harm*.
- (4) Section 123E, definition *restricting access*, after ‘to an object’—
- insert—*
- in response to the adult’s behaviour that causes harm to the adult or others
- (5) Section 123E, definition *restricting access*—
- insert—*
- Note—*
- Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 123E, definition *harm*.
- (6) Section 123E, definition *restricting access*, examples, first dot point, from ‘locking’ to ‘an adult’—

<i>omit, insert—</i>	1
if an adult has a history of using knives to cause harm to others, locking a drawer in which knives are kept to prevent the adult	2 3
(7) Section 123E, definition <i>restricting access</i> , examples, second dot point, ‘restricting an adult’s’—	4 5
<i>omit, insert—</i>	6
if an adult has Prader-Willi syndrome, restricting the adult’s	7
(8) Section 123E, definition <i>seclude</i> , ‘prevented.’—	8
<i>omit, insert—</i>	9
prevented in response to the adult’s behaviour that causes harm to the adult or others.	10 11
<i>Note—</i>	12
Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 123E, definition <i>harm</i> .	13 14 15

Clause 9	Amendment of s 123F (Meaning of <i>chemical restraint</i>)	16
(1)	Section 123F(1), ‘behaviour.’—	17
	<i>omit, insert—</i>	18
	behaviour in response to the adult’s behaviour that causes harm to the adult or others.	19 20
	<i>Note—</i>	21
	Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 123E, definition <i>harm</i> .	22 23 24
(2)	Section 123F(2)—	25
	<i>omit, insert—</i>	26
	(2) However, the following are not chemical restraint—	27 28
	(a) using medication for the proper treatment of a diagnosed mental illness or physical condition;	29 30 31

[s 10]

	(b) using medication, for example a sedative, prescribed by a medical practitioner to facilitate or enable the adult to receive a single instance of health care under the GAA.	1 2 3 4 5
	<i>Example of when subsection (2)(b) applies—</i>	6
	sedating an adult before attending a dentist appointment is not chemical restraint	7 8
Clause 10	Amendment of s 123G (Meaning of <i>contain</i>)	9
	Section 123G(1), ‘secluding the adult.’—	10
	<i>omit, insert—</i>	11
	secluding the adult, in response to the adult’s behaviour that causes harm to the adult or others.	12 13
	<i>Note—</i>	14
	Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 123E, definition <i>harm</i> .	15 16 17
Clause 11	Amendment of s 123H (Meaning of <i>mechanical restraint</i>)	18
	(1) Section 123H(1), after ‘device’—	19
	<i>insert—</i>	20
	in response to the adult’s behaviour that causes harm to the adult or others	21 22
	(2) Section 123H(1)—	23
	<i>insert—</i>	24
	<i>Note—</i>	25
	Harm to a person includes physical harm to the person and a serious risk of physical harm to the person. See section 123E, definition <i>harm</i> .	26 27 28

Clause 12	Omission of s 123I (Requirement to <i>keep and implement</i> a policy)	1
		2
	Section 123I—	3
	<i>omit.</i>	4
Clause 13	Replacement of s 123L (What is a <i>positive behaviour support plan</i>)	5
		6
	Section 123L—	7
	<i>omit, insert—</i>	8
	123L What is a <i>positive behaviour support plan</i>	9
	(1) A <i>positive behaviour support plan</i> , for an adult with an intellectual or cognitive disability, is a plan that describes the strategies to be used to—	10
		11
		12
	(a) meet the adult’s needs; and	13
	(b) support the adult’s development of skills; and	14
		15
	(c) maximise opportunities through which the adult can improve their quality of life; and	16
		17
	(d) reduce the intensity, frequency and duration of the adult’s behaviour that causes harm to the adult or others.	18
		19
		20
	(2) A positive behaviour support plan, for an adult with an intellectual or cognitive disability, must include at least each of the following—	21
		22
		23
	(a) in relation to previous behaviour of the adult that has caused harm to the adult or others, a description of—	24
		25
		26
	(i) the intensity, frequency and duration of the behaviour; and	27
		28
	(ii) the consequences of the behaviour; and	29
	(iii) the early warning signs and triggers for the behaviour, if known;	30
		31

[s 13]

- (b) the positive strategies that must be attempted before using a restrictive practice, including the community access arrangements in place for the adult;
- (c) for each restrictive practice proposed to be used in relation to the adult—
 - (i) the circumstances in which the restrictive practice is to be used; and
 - (ii) a demonstration of why use of the restrictive practice is the least restrictive way of ensuring the safety of the adult or others; and
 - (iii) the procedure for using the restrictive practice, including observations and monitoring, that must happen while the restrictive practice is being used; and
 - (iv) any other measures that must happen while the restrictive practice is being used that are necessary to ensure—
 - (A) the adult’s proper care and treatment; and
 - (B) the adult is safeguarded from abuse, neglect and exploitation; and
 - (v) a description of the anticipated positive and negative effects on the adult of using the restrictive practice; and
 - (vi) the intervals at which use of the restrictive practice will be reviewed by the relevant service provider using the restrictive practice;
- (d) for seclusion—the maximum period for which seclusion may be used at any 1 time and the maximum frequency of the seclusion;

(e)	for chemical restraint—	1
(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	2 3 4 5 6
(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	7 8 9 10 11 12 13
(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	14 15 16 17
(iv)	the name of the adult’s treating doctor;	18
(f)	for mechanical or physical restraint—the maximum period for which the restraint may be used at any 1 time.	19 20 21
(3)	For subsection (2)(c)(vi), use of a restrictive practice must be reviewed—	22 23
(a)	for a restrictive practice not used under a containment or seclusion approval—at least once during each 12-month period; or	24 25 26
(b)	for a restrictive practice used under a containment or seclusion approval—when required by the chief executive, and at least once during the period of the approval.	27 28 29 30
Clause 14	Amendment of s 123M (Containing or secluding an adult under containment or seclusion approval)	31 32
(1)	Section 123M(1)(d) and (3)— <i>omit.</i>	33 34

[s 15]

- (2) Section 123M(1)(e)— 1
renumber as section 123M(1)(d). 2
- (3) Section 123M(4)— 3
renumber as section 123M(3). 4

- Clause 15 Amendment of s 123N (Containing or secluding an adult for respite services or community access services)** 5
6
- (1) Section 123N(1)(e)— 7
omit. 8
- (2) Section 123N(1)(f)— 9
renumber as section 123N(1)(e). 10

- Clause 16 Amendment of s 123O (Containing or secluding an adult under short term approval)** 11
12
- Section 123O(1)(d) to (f)— 13
omit, insert— 14
- (d) the containment or seclusion complies with 15
a short term approval given by the adult 16
guardian under the GAA, chapter 5B, part 4; 17
and 18
- (e) the relevant service provider complies with 19
section 123Z. 20

- Clause 17 Insertion of new s 123OA** 21
- Part 10A, division 3, subdivision 1— 22
insert— 23
- 123OA Containing or secluding an adult before decision on short term approval** 24
25
- (1) A relevant service provider may contain or 26
seclude an adult with an intellectual or cognitive 27
disability if— 28

	(a) the relevant service provider has asked the adult guardian, in writing, for an approval under the GAA, chapter 5B, part 4 to contain or seclude the adult and the request has not been decided; and	1 2 3 4 5
	(b) the containment or seclusion—	6
	(i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and	7 8 9
	(ii) is the least restrictive way of ensuring the safety of the adult or others; and	10 11
	(c) a positive behaviour support plan or a respite/community access plan for the adult is being implemented; and	12 13 14
	(d) the relevant service provider complies with section 123Z.	15 16
	(2) However, the relevant service provider may only contain or seclude the adult until the earlier of the following—	17 18 19
	(a) the relevant service provider is given notice about the adult guardian's decision on the request;	20 21 22
	(b) 30 days after the relevant service provider asks for the short term approval.	23 24
	(3) It is not necessary to obtain the adult's consent to the containment or seclusion of the adult under this section.	25 26 27
Clause 18	Amendment of s 123S (Development of positive behaviour support plan following assessment)	28 29
	Section 123S(4)—	30
	<i>omit, insert—</i>	31
	(4) In developing the positive behaviour support plan, the chief executive must—	32 33

[s 19]

	(a) have regard to a model positive behaviour support plan; and	1 2
	(b) consult with, and consider the views of, each person who was consulted under section 123Q(3).	3 4 5
Clause 19	Amendment of s 123ZA (Using chemical, mechanical or physical restraint, or restricting access, with consent of guardian etc.)	6 7 8
	(1) Section 123ZA(1)(d) and (3)— <i>omit.</i>	9 10
	(2) Section 123ZA(4)— <i>renumber</i> as section 123ZA(3).	11 12
Clause 20	Amendment of s 123ZB (Using chemical, mechanical or physical restraint, or restricting access, for respite services or community access services)	13 14 15
	Section 123ZB(1)(e)— <i>omit.</i>	16 17
Clause 21	Amendment of s 123ZC (Using chemical restraint (fixed dose) for respite services)	18 19
	Section 123ZC(1), from ‘adult if—’— <i>omit, insert—</i>	20 21
	adult if use of the chemical restraint complies with the consent of a relevant decision-maker (respite) for the adult.	22 23 24
Clause 22	Insertion of new s 123ZCA	25
	After section 123ZC— <i>insert—</i>	26 27

123ZCA Using chemical, mechanical or physical restraint, or restricting access, if consent ended	1 2 3
(1) This section applies if—	4
(a) the guardian for a restrictive practice matter for an adult with an intellectual or cognitive disability is the adult guardian; and	5 6 7
(b) the adult guardian has given consent (the <i>existing consent</i>) to the use of a restrictive practice, other than containment or seclusion, in relation to the adult.	8 9 10 11
(2) A relevant service provider may use the restrictive practice after the existing consent ends if—	12 13 14
(a) at least 30 days before the existing consent ends, the relevant service provider asks the adult guardian, in writing, to consent to the use of the restrictive practice in relation to the adult; and	15 16 17 18 19
(b) at the time the existing consent ends, the adult guardian has not decided whether to give the consent; and	20 21 22
(c) use of the restrictive practice—	23
(i) is necessary to prevent the adult’s behaviour causing harm to the adult or others; and	24 25 26
(ii) is the least restrictive way of ensuring the safety of the adult or others; and	27 28
(iii) complies with the existing consent and the positive behaviour support plan or respite/community access plan for the adult.	29 30 31 32
(3) However, the relevant service provider may only use the restrictive practice under this section until the earlier of the following—	33 34 35

[s 23]

	(a) the adult guardian gives the relevant service provider notice about the adult guardian's decision whether to give the consent;	1 2 3
	(b) 30 days after the existing consent ends.	4
Clause 23	Amendment of s 123ZD (Using chemical, mechanical or physical restraint, or restricting access, under short term approval)	5 6 7
	(1) Section 123ZD(1)(b)(iii), from 'and,' to 'the short term plan'—	8 9
	<i>omit.</i>	10
	(2) Section 123ZD(1)(c)—	11
	<i>omit.</i>	12
Clause 24	Insertion of new s 123ZDA	13
	Part 10A, division 4, subdivision 1—	14
	<i>insert—</i>	15
	123ZDA Using chemical, mechanical or physical restraint, or restricting access, before decision on short term approval	16 17 18
	(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—	19 20 21 22
	(a) the relevant service provider has asked the chief executive, in writing, for an approval under section 123ZK to use the restrictive practice in relation to the adult and the request has not been decided; and	23 24 25 26 27
	(b) use of the restrictive practice—	28
	(i) is necessary to prevent the adult's behaviour causing harm to the adult or others; and	29 30 31

	(ii) is the least restrictive way of ensuring the safety of the adult or others; and	1 2
	(c) a positive behaviour support plan or a respite/community access plan for the adult is being implemented.	3 4 5
	(2) However, the relevant service provider may only use the restrictive practice until the earlier of the following—	6 7 8
	(a) the relevant service provider is given notice about the chief executive’s decision on the request;	9 10 11
	(b) 30 days after the relevant service provider asks for the short term approval.	12 13
	(3) It is not necessary to obtain the adult’s consent to the use of a restrictive practice under this section.	14 15
Clause 25	Amendment of s 123ZF (Requirements for development of positive behaviour support plan—assessment and consultation)	16 17 18
	Section 123ZF(2)—	19
	<i>insert—</i>	20
	(d) have regard to a model positive behaviour support plan.	21 22
Clause 26	Amendment of s 123ZK (Short term approval for use of restrictive practices other than containment or seclusion)	23 24
	(1) Section 123ZK(2), after paragraph (a)—	25
	<i>insert—</i>	26
	(aa) the adult has impaired capacity for making decisions about the use of restrictive practices in relation to the adult; and	27 28 29
	(2) Section 123ZK(2)(b)(ii), from ‘consent’—	30
	<i>omit, insert—</i>	31

[s 27]

	consent to the relevant service provider to use the restrictive practice in relation to the adult; and	1 2
	<i>Note—</i>	3
	It is not necessary to obtain the adult’s consent to the use of a restrictive practice under a short term approval. See section 123ZD.	4 5 6
(3)	Section 123ZK(2)(aa) to (e)— <i>renumber</i> as section 123ZK(2)(b) to (f).	7 8
(4)	Section 123ZK— <i>insert—</i>	9 10
	(5A) The chief executive may give the approval subject to the conditions the chief executive considers appropriate.	11 12 13
(5)	Section 123ZK(5A) to (8)— <i>renumber</i> as section 123ZK(6) to (9).	14 15
(6)	Section 123ZK— <i>insert—</i>	16 17
	(10) In this section— <i>impaired capacity</i> see the <i>Guardianship and Administration Act 2000</i> , schedule 4.	18 19 20
Clause 27	Amendment of s 123ZL (Period for which short term approval has effect)	21 22
(1)	Section 123ZL(3)(a), from ‘to use the’— <i>omit, insert—</i>	23 24
	to the relevant service provider to use the restrictive practice in relation to the adult; or	25 26
(2)	Section 123ZL(3)(c) and (d)— <i>omit.</i>	27 28

Clause 28	Omission of ss 123ZM and 123ZN	1
	Sections 123ZM and 123ZN—	2
	<i>omit.</i>	3
Clause 29	Omission of pt 10A, div 6 (Policy about use of restrictive practices)	4
	Part 10A, division 6—	5
	<i>omit.</i>	6
Clause 30	Amendment of s 123ZZC (Immunity from liability—individual acting for relevant service provider)	7
	(1) Section 123ZZC(2)(f)—	8
	<i>omit.</i>	9
	(2) Section 123ZZC(2)(c) to (e)—	10
	<i>renumber</i> as section 123ZZC(e) to (g).	11
	(3) Section 123ZZC(2)—	12
	<i>insert</i> —	13
	(c) if the restrictive practice is used under section 123O or 123ZD—the relevant short term approval; or	14
	(d) if the restrictive practice is used under section 123OA or 123ZDA—the positive behaviour support plan or respite/community access plan for the adult; or	15
	(4) Section 123ZZC(2)—	16
	<i>insert</i> —	17
	(h) if the restrictive practice is used under section 123ZCA—	18
	(i) the existing consent for the adult under that section; and	19
		20
		21
		22
		23
		24
		25
		26
		27
		28
		29

[s 31]

- (ii) the positive behaviour support plan or
respite/community access plan for the
adult. 1
2
3

Clause 31 Insertion of new s 123ZZCA 4

Part 10A, division 8, subdivision 2— 5

insert— 6

**123ZZCA Requirement to give statement about use
of restrictive practices** 7
8

- (1) This section applies if a relevant service provider
providing disability services to an adult with an
intellectual or cognitive disability is considering
using restrictive practices in relation to the adult. 9
10
11
12
- (2) The relevant service provider must give a
statement in the approved form to the following
persons about the use of restrictive practices
generally— 13
14
15
16
 - (a) the adult; 17
 - (b) a person with a sufficient and continuing
interest in the adult (an *interested person*). 18
19
- (3) The statement must state— 20
 - (a) why the relevant service provider is
considering using restrictive practices in
relation to the adult; and 21
22
23
 - (b) how the adult and the interested person can
be involved and express their views in
relation to the use of restrictive practices;
and 24
25
26
27
 - (c) who decides whether restrictive practices
will be used in relation to the adult; and 28
29
 - (d) how the adult and the interested person can
make a complaint about, or seek review of,
the use of restrictive practices. 30
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- (4) Also, the relevant service provider must explain the statement to the adult—
- (a) in the language or way the adult is most likely to understand; and
 - (b) in a way that has appropriate regard to the adult’s age, culture, disability and communication ability.
- Example of a way for paragraph (a) or (b)—*
- by using visual or other aids

Clause 32 Insertion of new s 123ZZDA

After section 123ZZD—
insert—

123ZZDA Requirement to keep and implement procedure

- (1) This section applies to a relevant service provider who uses a restrictive practice in relation to an adult with an intellectual or cognitive disability.
- (2) The relevant service provider must keep and implement procedures that ensure an individual acting for the relevant service provider who uses the restrictive practice in relation to the adult—
 - (a) has sufficient knowledge of the requirements for lawful use of the restrictive practice; and
 - (b) has the skills and knowledge required to use the restrictive practice appropriately.
- (3) In this section—
keep and implement, for a procedure, means—
 - (a) prepare the procedure and keep it up to date; and
 - (b) implement and comply with the procedures; and

[s 33]

	(c) keep a copy of the up-to-date procedure at premises where the restrictive practice is used.	1 2 3
Clause 33	Amendment of s 123ZZE (Requirement to keep records and other documents) Section 123ZZE(3)(c), ‘and any short term plan’— <i>omit.</i>	4 5 6 7
Clause 34	Amendment of s 123ZZH (Relevant service provider may request confidential information from health professional, chief executive (health) or health service chief executive) (1) Section 123ZZH(1)(c)— <i>omit.</i> (2) Section 123ZZH(1)(d)— <i>renumber</i> as section 123ZZH(1)(c).	8 9 10 11 12 13 14 15
Clause 35	Amendment of s 123ZZI (Relevant service providers must maintain confidentiality) Section 123ZZI(1)(b)(ii), ‘or short term plan’— <i>omit.</i>	16 17 18 19
Clause 36	Insertion of new pt 10A, div 8, sdiv 4 Part 10A, division 8— <i>insert</i> —	20 21 22

Subdivision 4	Reporting and provision of particular information	1
		2
123ZZJ	Requirement to give information about use of restrictive practice to chief executive	3
		4
(1)	This section applies to a relevant service provider using a restrictive practice in relation to an adult with an intellectual or cognitive disability.	5
		6
		7
(2)	The relevant service provider must give to the chief executive, in the way and at the times prescribed under a regulation, information about the use of the restrictive practice prescribed under a regulation.	8
		9
		10
		11
		12
123ZZK	Chief executive may give information about use of restrictive practice	13
		14
(1)	This section applies to information given to the chief executive by a relevant service provider under section 123ZZJ.	15
		16
		17
(2)	The chief executive may give the information to any or all of the following—	18
		19
(a)	QCAT;	20
(b)	the adult guardian;	21
(c)	the public advocate under the GAA;	22
(d)	the relevant service provider.	23

Clause 37	Insertion of new pt 16, div 9	24
	Part 16—	25
	<i>insert—</i>	26

[s 38]

Division 9	Transitional provision for Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2013	1 2 3 4 5
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325 Notice about use of restrictive practices		6
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|-----|--|----------------------|
| (1) | This section applies if on the commencement of this section a relevant service provider is using restrictive practices in relation to an adult with an intellectual or cognitive disability. | 7
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10 |
| (2) | Section 123ZZCA applies to the relevant service provider as if the relevant service provider was considering using restrictive practices in relation to the adult on the commencement of this section. | 11
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Clause 38	Amendment of sch 7 (Dictionary)	15
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|-----|--|----------------------|
| (1) | Schedule 7, definitions <i>keep and implement</i> and <i>short term plan</i> —
<i>omit.</i> | 16
17
18 |
| (2) | Schedule 7—
<i>insert</i> —

<i>model positive behaviour support plan</i> , for part 10A, see section 123E. | 19
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21
22 |

Part 3	Amendment of Guardianship and Administration Act 2000	23 24
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Clause 39	Act amended	25
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	This part amends the <i>Guardianship and Administration Act 2000</i> .	26 27
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Clause 40	Amendment of s 80U (Definitions for ch 5B)	1
	Section 80U, definition <i>short term plan</i> —	2
	<i>omit.</i>	3
Clause 41	Amendment of s 80W (Matters tribunal must consider)	4
	(1) Section 80W, heading, ‘must’—	5
	<i>omit, insert—</i>	6
	to	7
	(2) Section 80W—	8
	<i>insert—</i>	9
	(2) Also, in deciding whether to give the	10
	containment or seclusion approval, the tribunal	11
	may consider the following—	12
	(a) the findings, theories and recommendations	13
	of each person who assessed the adult;	14
	(b) if there was a difference of opinion between	15
	the persons who assessed the adult—how	16
	this difference was taken into account in	17
	developing the positive behaviour support	18
	plan for the adult;	19
	(c) the views of each person consulted during	20
	the assessment of the adult and the	21
	development of the positive behaviour	22
	support plan about the use of containment or	23
	seclusion;	24
	(d) the way in which the relevant service	25
	provider will support and supervise staff	26
	involved in implementing the positive	27
	behaviour support plan.	28
Clause 42	Amendment of s 80X (When tribunal may approve use of	29
	other restrictive practices)	30
	(1) Section 80X(4)—	31

[s 43]

<i>omit, insert—</i>	1
(4) In deciding whether to make the order, the tribunal—	2 3
(a) must consider—	4
(i) the matters stated in section 80W(1); and	5 6
(ii) if the other restrictive practice is chemical restraint—the views of the adult’s treating doctor about the use of the chemical restraint; and	7 8 9 10
(b) may consider the matters stated in section 80W(2).	11 12
(2) Section 80X(5), ‘(4)(a)’—	13
<i>omit, insert—</i>	14
(4)(a)(i) and (b)	15

Clause 43	Amendment of s 80ZD (Appointment)	16
	Section 80ZD(4), ‘12 months’—	17
	<i>omit, insert—</i>	18
	2 years	19

Clause 44	Amendment of s 80ZE (Requirements for giving consent—guardian for restrictive practice (general matter))	20 21 22
	Section 80ZE—	23
	<i>insert—</i>	24
	(6) Also, in deciding whether to give the consent, the guardian may consider the following—	25 26
	(a) the findings, theories and recommendations of each person who assessed the adult;	27 28

	(b) if there was a difference of opinion between the persons who assessed the adult—how this difference was taken into account in developing the positive behaviour support plan for the adult;	1 2 3 4 5
	(c) the views of each person consulted during the assessment of the adult and the development of the positive behaviour support plan about the use of the restrictive practice;	6 7 8 9 10
	(d) the way in which the relevant service provider will support and supervise staff involved in implementing the positive behaviour support plan.	11 12 13 14
Clause 45	Omission of section 80ZG (Application of pt 4)	15
	Section 80ZG—	16
	<i>omit.</i>	17
Clause 46	Amendment of s 80ZH (When adult guardian may give short-term approval for use of containment or seclusion)	18 19
	(1) Section 80ZH, before subsection (1)—	20
	<i>insert—</i>	21
	(1A) This section does not apply for an adult if—	22
	(a) there is a containment or seclusion approval in relation to the adult; or	23 24
	(b) both of the following apply—	25
	(i) there is a guardian for a restrictive practice (respite) matter for the adult;	26 27
	(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.	28 29 30 31

[s 47]

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|---|----|
| (2) Section 80ZH(1), ‘an adult’— | 1 |
| <i>omit, insert—</i> | 2 |
| the adult | 3 |
| (3) Section 80ZH— | 4 |
| <i>insert—</i> | 5 |
| (3A) The adult guardian may give the approval subject | 6 |
| to the conditions the adult guardian considers | 7 |
| appropriate. | 8 |
| (4) Section 80ZH(5)— | 9 |
| <i>omit.</i> | 10 |
| (5) Section 80ZH(1A) to (6)— | 11 |
| <i>renumber</i> as section 80ZH(1) to (7). | 12 |

Clause 47 Replacement of ss 80ZI and 80ZJ 13

Sections 80ZI and 80ZJ— 14

omit, insert— 15

80ZI When adult guardian may give short-term approval for use of containment or seclusion—new relevant service provider 16
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|--|----------------------|
| (1) This section applies for an adult in relation to a relevant service provider if the relevant service provider is not providing, and proposes to provide, disability services to the adult. | 19
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21
22 |
| (2) The adult guardian may give approval for the relevant service provider to contain or seclude the adult if the adult guardian is satisfied of the matters in section 80ZH(2)(a) to (d). | 23
24
25
26 |
| (3) Section 80ZH(3) to (7) applies in relation to the approval. | 27
28 |

Clause 48	Amendment of s 80ZK (When adult guardian may give short-term approval for use of other restrictive practices)	1 2
	(1) Section 80ZK(1), after ‘under section 80ZH’—	3
	<i>insert</i> —	4
	or 80ZI	5
	(2) Section 80ZK(1), ‘section 80ZH(1)(a)’—	6
	<i>omit, insert</i> —	7
	section 80ZH(2)(a)	8
	(3) Section 80ZK(4) to (7)—	9
	<i>omit, insert</i> —	10
	(4) An approval given under this section ends—	11
	(a) if a guardian for a restrictive practice (general) matter for the adult gives, or refuses to give, consent to the relevant service provider to use the restrictive practice in relation to the adult; or	12 13 14 15 16
	(b) otherwise—on the day the approval given under section 80ZH or 80ZI ends.	17 18
Clause 49	Amendment of s 80ZM (Requirement for adult guardian to give notice of decision)	19 20
	Section 80ZM(1)(f), ‘section 80ZH(2)’—	21
	<i>omit, insert</i> —	22
	section 80ZH(3)	23
Clause 50	Amendment of sch 4 (Dictionary)	24
	Schedule 4, definition <i>short term plan</i> —	25
	<i>omit.</i>	26