

Bethany Care Ltd

Restrictive Practices

Policy & Procedure 41

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Policy statement

Supporting adults who exhibit behaviour that causes harm.

Bethany Care Ltd is committed to ensuring adults with an intellectual or cognitive disability who exhibit behaviour that causes harm, are supported in appropriate ways, in a safe environment and in a way that recognises the adult's rights and needs.

The focus should be on preventing or reducing the behaviour that causes harm through supporting the adult to live a full and active life with opportunities to engage in community activities and other activities of interest, develop relationships and learn new skills.

Use of restrictive practices to manage behaviour that causes harm

If restrictive practices are considered necessary to manage the behaviour of the adult with an intellectual or cognitive disability who is receiving disability services from Bethany Care, they should only be used in a way that:

- has regard to the human rights of the adult
- safeguards the adult or others from harm
- is the least restrictive way of ensuring the adult's and others' safety
- maximises the opportunity for positive outcomes for the adult and aims to reduce or eliminate the need to use restrictive practices
- ensures transparency and accountability in the use of restrictive practices.

Key principles

Principles to consider in supporting adults who have an intellectual or cognitive disability who exhibit behaviour that causes harm and who are receiving disability services from Bethany Care

- **Human rights principle:** Bethany Care has regard for the human rights principle — that people with a disability have the same human rights as other people (Section 123C of the *Disability Services Act 2006*).
- **Service delivery principles:** Bethany Care should consider all service delivery principles in the *Disability Services Act 2006* (sections 20–33).
- **Assessment of individual:** Behaviour that causes harm occurs for a reason. Gaining an understanding of the adult and the purpose or function of their behaviour is an essential component in the development of appropriate support strategies.
- **Positive and proactive approach:** A positive and proactive approach to behaviour support should be implemented. A positive approach involves the development of multi-element support plans that support the adult to live a full and active life and with a focus on the links between antecedents to the behaviour and occurrences of the behaviour.

Principles to consider if Bethany Care considers it necessary to use a restrictive practice in response to the adult's behaviour that causes harm.

Bethany Care must consider:

- **Least restrictive way:** Use of the restrictive practice ensures the safety of the adult or others and, having regard to this, imposes the minimum limits on the freedom of the adult as is practicable in the circumstances.
- **Implementing positive strategies:** A restrictive practice must only be used as a time-limited measure for the purpose of preventing harm to the adult or others, while positive strategies are developed and implemented to address the behaviour that causes harm.
- **Reduction or elimination of restrictive practices:** A positive behaviour support plan must support the reduction or elimination of restrictive practices in the long term.
- **Consultation of significant others:** In the development of a positive behaviour support plan, the adult, the adult's guardian or informal decision-maker and significant others in the adult's support network (for example, family members) must be consulted.
- **Review and monitoring of the restrictive practice:** A restrictive practice should be regularly reviewed and monitored to safeguard against abuse, neglect or exploitation.

- **Skills and knowledge of the individual implementing the plan:** Individuals who use the restrictive practice must have sufficient knowledge and skills to use the restrictive practice appropriately.
- **Evidence-based research:** Any action taken should be based on evidence-based research and practice.
- **Preventative strategies:** Any action taken should reinforce best practice in behaviour support through preventative strategies and early intervention to respond to emerging behaviour that causes harm.
- **Transparency:** Transparent and accountable processes should be in place in relation to decision making and the use of restrictive practices.

Objectives

This policy deals with the use of restrictive practices under the full legislative scheme. If Bethany Care obtains approval or consent under the full legislative scheme, we will follow this policy and related procedures on the use of the restrictive practice. This policy and procedures is designed to be consistent with the policy of the Department of Communities (Disability Services) and the related procedures.

If Bethany Care considers it necessary to use a restrictive practice before they have obtained approval or consent under the full legislative scheme, we will comply with the transitional requirements in the Act, and keep and implement a transitional operational policy and procedures, which is consistent with the transitional operational policy and procedures of the Department of Communities (Disability Services).

Scope

This policy applies to Bethany Care Ltd, a funded nongovernment service when it provides disability services to an adult with an intellectual or cognitive disability whose behaviour either causes harm to the adult or others, or represents a serious risk of harm to the adult or others ('behaviour that causes harm').

The adult with an intellectual or cognitive disability must have impaired decision-making capacity for making decisions about the use of restrictive practices.

This policy does not apply to:

- situations where gates, doors and windows are locked by Bethany Care to prevent an adult with an intellectual or cognitive disability exiting premises without supervision for the sole reason of preventing physical harm to an adult with a skills deficit — these requirements are detailed in a separate Bethany Care operational policy and procedures statement entitled **Locking of gates, doors and windows**.
- prohibited practices — that is, practices that interfere with an adult's basic human rights and are demeaning or constitute a form of abuse or neglect. Because of their illegal or unethical nature, the following practices are unacceptable and therefore prohibited from use as behaviour support strategies:
 - verbal abuse, such as screaming, swearing, name-calling, threatening, demeaning or making derogatory statements
 - emotional abuse, which is deliberate provocation of fear, anxiety or low self-esteem, such as derogatory remarks about the adult, their family or cultural heritage, or activities which place the adult in an unsafe environment or produce fear
 - deprivation, which is withholding of essential living requirements, such as meals or clothing
 - appropriate to weather conditions
 - other dangerous or cruel practices, which are painful, noxious or unsafe activities such as use of cold showers.

General disability services or respite and/or community access services

This policy must be read in conjunction with:

- Operational procedure: *Restrictive practices — general disability services (full legislative scheme)*
- Operational procedure: *Restrictive practices — respite and/or community access services only (full legislative scheme)*.

The requirements for using a restrictive practice may vary depending on:

- the type of disability service that is provided to an adult with an intellectual or cognitive disability
- the type of restrictive practice proposed.

To determine which procedures apply, Bethany Care should identify whether they are providing **general disability services**, or **respite services** and/or **community access services** only to an adult with an intellectual or cognitive disability.

General disability services are disability service types of:

- accommodation support
- community support
- respite services or community access services where these are in combination with accommodation or community support service types.

Respite or community access services refer to situations where the only disability service the adult with an intellectual or cognitive disability receives is a respite or community access service. The adult cannot receive any other disability service from either the Department of Communities (Disability Services) or a Department of Communities (Disability Services) funded non-government service.

Short-term approvals (where there is an immediate and serious risk of harm)

IMPORTANT NOTE: THIS APPLIES FROM 1 JANUARY 2010

At times it may be necessary for a service provider to respond to an adverse event where an unplanned response is required and a restrictive practice is necessary in order to prevent an immediate and serious risk of harm to the adult or another person. For example, the incident could involve an adult with an intellectual or cognitive disability whose behaviour causes harm and who, until recently, lived with their family at home, and had not received any Department of Communities (Disability Services) support or funding prior to coming into a service provided or funded by the Department of Communities (Disability Services). Alternatively, the incident could involve an adult in receipt of Department of Communities (Disability Services) support or funding whose behaviour has suddenly escalated where their behaviour puts the adult or someone else at immediate and serious risk of harm.

The *Disability Services Act 2006* makes provisions to allow for a short-term approval for the use of a restrictive practice, where there is an immediate and serious risk of harm to the adult or another person. Short-term approvals can be provided for up to three months and can only be extended in exceptional circumstances..

Roles and responsibilities

Service providers funded by the Department of Communities (Disability Services):

All Bethany Care staff, must comply with the *Disability Services Act 2006*, including keeping and implementing a policy (and related procedures) on the use of restrictive practices.

Authority

Disability Services Act 2006

Guardianship and Administration Act 2000

Delegations

Under the *Disability Services Act 2006*, the Chief Executive, Department of Communities (Disability Services), must develop a positive behaviour support plan, where containment or seclusion is proposed (other than when the only disability service the adult is receiving is a respite and/or community access services).

The Chief Executive, Department of Communities (Disability Services), must also make certain administrative decisions under the Act:

- whether to conduct a multidisciplinary assessment (where containment or seclusion is proposed)
- whether to develop a positive behaviour support plan (where containment or seclusion is proposed)
- short-term approvals (where restrictive practices other than containment or seclusion are proposed)
- whether a positive behaviour support plan should be changed.

These powers are delegated to the Individual Response Leaders or Principal Clinicians in the Specialist Response Service.

Note: If there is any inconsistency between this policy (and related procedures) and the Disability Services Act 2006, the provision in the Disability Services Act 2006 applies to the extent of the inconsistency.

ATTACHMENT 1

Definitions

Definitions of key terms as they appear in:

- Operational policy: *Restrictive practices (full legislative scheme)*
- Operational procedure: *Restrictive practices — general disability services (full legislative scheme)*
- Operational procedure: *Restrictive practices — respite and/or community access services only (full legislative scheme)*

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 (Section 36 of the *Acts Interpretation Act 1954*).

Adult means a person who is 18 years of age or older.

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

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

Appropriately qualified or experienced person is a person having the qualifications or experience appropriate to conduct an assessment. Examples include behaviour analysts, medical practitioners, psychologists, psychiatrists, speech and language pathologists, occupational therapists, social workers, and persons with demonstrated experience in behaviour support practices. The role of the appropriately qualified or experienced person may be undertaken by Department of Communities (Disability Services) staff, staff of funded non-government service providers or persons from the private sector.

Assessment of an adult with an intellectual or cognitive disability means an assessment by one or more persons for the purposes of gaining an understanding of the adult and the possible reasons for the behaviour. See also definition of multidisciplinary assessment.

Basic needs (in relation to containing or secluding a person) means the adult with an intellectual or cognitive disability is provided with:

- sufficient bedding and clothing
- sufficient food and drink
- access to adequate heating and cooling
- access to toilet facilities, and
- the adult's medication as prescribed by a doctor.

Behaviour means behaviour of the adult that either causes **harm** to the adult or others, or represents a serious risk of harm to the adult or others (also referred to as behaviour that causes harm).

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. However, using medication for the proper treatment of a diagnosed mental illness or physical condition is not chemical restraint. For the purposes of this definition, an intellectual or cognitive disability is not a physical condition. 'Diagnosed' means that a doctor has confirmed that the adult has the mental illness or physical condition. 'Mental illness' is defined in Section 12 of the *Mental Health Act 2000*.

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

Chemical restraint pro re nata (PRN) means chemical restraint using medication that is administered as needed; that is, not at fixed intervals or times.

Chief Executive (unless otherwise qualified) means the Chief Executive of the Department of Communities (Disability Services), or delegate. A number of the statutory functions of the Chief Executive are delegated (for example, decisions to undertake a multidisciplinary assessment, develop and change a positive behaviour support plan for containment or seclusion). Policies and procedures will indicate to whom the power has been delegated.

Community access services means disability services that are 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 Bethany Care. The service must be provided or funded by the Department of Communities (Disability Services) as a community access service as defined by the Commonwealth State/Territory Disability Agreement — National Minimum Data Set (CSTDA—NMDS).

Containment of an adult with an intellectual or cognitive disability means to physically prevent the free exit of the adult from premises where the adult receives disability services, other than by secluding the adult. However, the adult is not contained if the adult is an adult with a skills deficit under the Act, and the adult's free exit from the premises is prevented by the locking of gates, doors or windows under the Act (see definition above of 'adult with a skills deficit').

Department of Communities (Disability Services) delegate (unless otherwise qualified) means the person or position the Chief Executive of the Department of Communities (Disability Services) has delegated his or her statutory functions to (for example, decisions to undertake a multidisciplinary assessment, develop and change a positive behaviour support plan for containment or seclusion). Policies and procedures will indicate to whom the power has been delegated.

General disability services are not defined in the Act, but for the purposes of this document it refers to:

- accommodation support
- community support, or
- respite services or community services where these are in combination with accommodation or community support services.

Guardian for a restrictive practice (general) matter means a guardian appointed for the adult under the *Guardianship and Administration Act 2000*, Chapter 5B, to specifically consent on behalf of the adult in relation to the use of restrictive practice where an adult is receiving Department of Communities (Disability Services) provided or funded services, except where the adult is receiving respite and/or community access services only.

Guardian for a restrictive practice (respite) matter means a guardian appointed for the adult under the *Guardianship and Administration Act 2000*, Chapter 5B, to specifically consent on behalf of the adult in relation to the use of restrictive practice where an adult is receiving a respite and/or community access service only.

Guardianship and Administration Tribunal is the statutory body established under the *Guardianship and Administration Act 2000* whose functions include determining whether an adult has capacity to make decisions about their lives and whether there is a need to appoint appropriate decision-makers to act on the adult's behalf.

Harm to a person means:

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

Health professional means a person engaged in delivering a private sector health service, including:

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

Impaired decision-making capacity, although not defined in the *Disability Services Act 2006*, the Guardianship and Administration Tribunal refer to impaired decision-making capacity as:

the inability to go through the process of reaching a decision and putting it into effect. There are three elements to this process:

- *understanding the nature and effect of the decision*
- *freely and voluntarily making a decision, and*
- *communicating the decision in some way.*

If an adult is unable to carry out any part of this process for decision-making, the adult is said to have impaired decision-making capacity. Impaired decision making capacity is not ignorance, eccentricity, different ethical views, cultural diversity, poor communication, poor judgement or poor decision making.

In terms of these policies and procedures the primary purpose of determining decision-making capacity is solely in to the use of restrictive practices.

It is recommended as good practice that an assessment regarding an adult's decision-making capacity should only be undertaken by a health professional experienced in conducting capacity assessments.

Following the adult's assessment, an application to GAAT is required for the final decision on whether the adult has impaired decision making capacity and if the adult requires a guardian for the use of restrictive practices. GAAT must be satisfied that the adult has impaired capacity for making decisions about the use of restrictive practices (section 80V(2)(a) of the *Guardianship and Administration Act 2000*); and when making a decision whether or not to appoint a guardian for a restrictive practice matter, one factor GAAT must be satisfied of is whether the adult has impaired capacity for the matter (section 80ZD(1)(a) of the *Guardianship and Administration Act 2000*).

Individual Response Leader is not referred to or defined in the *Disability Services Act 2006*. It refers to the team leader role within each regional Specialist Response Service specialist team. The role of the Individual Response Leader includes prioritising referrals to their teams and sourcing assessment and planning services to ensure the service response is coordinated across the disability and mainstream services. The Individual Response Leader provides expert guidance to practitioners and relevant service providers on strategies to reduce the use of restrictive practices. They ensure that there are effective consultation mechanisms with the adult, their family and Bethany Care in place and work collaboratively with all parties involved.

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 *Guardianship and Administration Act 2000*.

Interested person for a relevant decision means a person to whom the Chief Executive, Department of Communities (Disability Services) is required to give a decision notice about a decision. If the term is used under the *Guardianship and Administration Act 2000*, 'interested person' means a person who has sufficient and continuing interest in the other person.

Intellectual or cognitive disability means a condition attributable to an intellectual or cognitive impairment, or a combination of the impairments.

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 (Section 36 of the *Acts Interpretation Act 1954*).

Keep and implement a policy means:

- prepare the policy and keep it up-to-date
- when providing disability services, implement and comply with the procedures and other matters stated in the policy
- keep a copy of the up-to-date policy at the premises.

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 that:

(a) ensures the safety of the adult or others

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

Limited restrictive practice approval means a restrictive practice approval other than:

- a containment or seclusion approval, or
- a **short-term approval** given by the adult guardian under the *Guardianship and Administration Act 2000*, Chapter 5B, Part 4.

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

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

However, the following are not mechanical restraint:

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

Multidisciplinary assessment of an adult with an intellectual or cognitive disability is an assessment of the adult conducted by two or more appropriately qualified or experienced persons who have qualifications or experience in different disciplines.

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 is a plan to support an adult, and includes assessment and the planning and implementation of strategies to meet the adult's needs, improve their capabilities and quality of life and reduce the occurrence of the behaviour that causes harm.

Premises includes:

- (a) a building or other structure
- (b) a part of a building or other structure
- (c) a vehicle
- (d) a caravan.

However, in relation to containment, premises is a), b) and d) above, and also includes the land around a building or other structure, but does not include a vehicle.

Principal Clinician is not referred to or defined in the *Disability Services Act 2006*. It refers to a role that is located within each of the Specialist Response Services specialist teams. The Principal Clinician is part of a multidisciplinary team that conducts assessments, develops plans (such as positive behaviour support plans) and works closely with Bethany Cares to implement the recommendations made from the assessments.

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.

Relevant decision-maker means the person or persons responsible for making decisions on behalf of the adult who has an impaired decision-making capacity. The most appropriate person will vary, depending on the type of restrictive practice being proposed, and the disability service being provided. The policies and procedures will outline who the relevant decision-maker will be in each circumstance.

Respite/community access plan is a plan to support an adult and includes planning and implementation of strategies to meet the adult's needs, improve their capabilities and quality of life and reduce the occurrence of the behaviour that causes harm. The requirements for the respite/community access plan are not exactly the same as those specified for the positive behaviour support plan in recognition of the difference in circumstances.

Respite services mean disability services that are respite services provided to an adult with an intellectual or cognitive disability, who does not receive disability services other than respite services and/or community access services from Bethany Care. The service must be provided or funded by the Department of Communities (Disability Services) as a respite service.

Restricting access (to objects) of an adult 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 themselves or others.

Restrictive practice means:

- containing or secluding an adult with an intellectual or cognitive disability
- using chemical, mechanical or physical restraint on an adult with an intellectual or cognitive disability, or
- restricting access (of objects) to an adult with an intellectual or cognitive disability.

Restrictive practice approval means:

- a containment or seclusion approval
- consent to use a restrictive practice of chemical, physical or mechanical restraint, or restricting access (of objects), given by a relevant decision-maker, or
- a short-term approval.

Risk assessment, in relation to the development of a respite/community access plan, means an assessment of the risks associated with the provision of respite services or community access services to the adult by the Bethany Care, and the procedures the Bethany Care will implement to mitigate those risks.

Seclusion of an adult with an intellectual or cognitive disability means to 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 a time limited approval given by the Adult Guardian under the *Guardianship and Administration Act 2000* (for containment and seclusion) or by the Chief Executive, Department of Communities

(Disability Services) — for restrictive practices other than containment and seclusion — under the *Disability Services Act 2006*.

Short-term plan for an adult with an intellectual or cognitive disability means a plan stating at least a description of the behaviour that causes harm to the adult or others (including the consequences of the behaviour), and a description of the restrictive practice to be used and how it is the least restrictive way of ensuring the safety of the adult and others and the reasons for using the restrictive practice.

Specialist Response Service is a Department of Communities (Disability Services) direct service delivery team providing specialised multidisciplinary behaviour assessment and behaviour support services to adults with an intellectual or cognitive disability whose behaviour causes harm to that adult or others.

Transitional period means the period starting on 1 July 2008 and ending on 31 December 2009. The transitional period ends or stops applying when either of the following circumstances occurs, whichever comes first:

- on 31 December 2009, or
- when the relevant decision-maker under the main scheme (in Part 10A of the *Disability Services Act 2006*) makes a decision about whether or not to approve the restrictive practice.

Visible site is a place, other than a private dwelling house, that is:

- a place that is wholly or partly funded by the Department of Communities (Disability Services) where a consumer lives
- a place where a consumer lives and receives services from the Department of Communities (Disability Services), or
- a place where a consumer lives and receives services from an entity that receives financial assistance from the Department of Communities (Disability Services) to supply the service.

For this definition, 'private dwelling house' (in relation to cases where a restrictive practice is being used) means premises that are used (or are used principally) as a separate residence for one family

OPERATIONAL PROCEDURE

As a funded non government disability service provider, Bethany Care will follow the procedures outlined in the the **Operational Procedure, Restrictive practices for general disability services (full legislative scheme)** document produced by Department of Communities (Disability Services) as amended from time to time.