

# The importance of safeguarding rights, reducing restrictive practices: the role of legislation – the Queensland experience

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# Carter Report

- The genesis for the introduction of legislation regulating the use of restrictive practices in Queensland was the 2006 report “*Challenging Behaviour and Disability: A Targeted response.*”
- The need for regulation of restrictive practices as well as the provision of evidence-based behaviour support practices

# Carter Report

- Restrictive practices only to be used within a state-wide framework of practice leadership (led by a Centre of Excellence)
- The need to amend the *Disability Services Act, 2006* to include the regulation of the use of restrictive practices to;
  - Uphold the human rights principles contained in that Act
  - To provide a defence to the offences of assault and deprivation of liberty (criminal code)

# Legislative and Practice Reform

- An individualised approach based on PBS
- Comprehensive multidisciplinary assessment and PBSP development
- Establishment of suitable accommodation
- A Centre of Excellence for Behaviour Support to oversee and support best practice
- A legislative framework that will ensure that the use of RPs is independently approved and properly regulated

# Restrictive Practices Legislation

- Introduced 1 July 2008
- Regulates practices:
  - containment, seclusion, chemical/mechanical/physical restraint and restricting access to objects
- A positive behaviour support plan must be developed as a condition of approval
- Generally, approval by the Queensland Civil or Administrative Tribunal or a Restrictive Practice Guardian appointed by QCAT

# Review of RP Legislation

- March 2014 Amendment introduced and passed by Parliament
- The *Disability Services (Restrictive Practices) and Other Legislation Amendment Act 2014 (the Act)* commenced on 1 July 2014

“We’ve made some important changes to enhance safeguards; empower adults and their families; ensure we have an effective reporting and monitoring system; and remove red tape to enable service providers to focus their time on the direct client supports”

# Review of Framework



- Changes are in two areas:
  1. **Enhanced safeguards** for clients subject to the restrictive practices framework
  2. **Greater focus on client service delivery** by simplifying and improving the framework



# Amendments emphasise that

- Restrictive practices should not be used punitively or in response to behaviour that does not cause harm to the adult or others
- Make it clear that approval is required when restrictive practices are used ***in response to behaviour that causes harm to self or others.***

\*Note: harm is physical harm or a serious risk of physical harm; or damage to property involving a serious risk of physical harm to person.



# Requirements for development of a positive behaviour support plan – assessment and consultation

The relevant service provider **must**

- e) Have **regard** to a model positive behaviour support plan

# Statement about use of restrictive practices

The statement **must** state

- a) **Why** relevant service provider is considering using restrictive practices; and
- b) **How** the adult and the interested person can be involved and express their view in relation to the use of restrictive practices; and

# Statement about use of restrictive practices

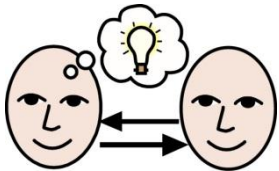
The statement **must** state

- c) **Who** decides whether restrictive practices will be used; and
- d) **How** the adult and the interested person can make a complaint about, or seek review of, this use of restrictive practices

# Statement about use of restrictive practices

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



# Guide to the model statement on the use of restrictive practices



for people with an intellectual or cognitive disability, their families and support networks

# The guide strengthens awareness of:

- the UN Convention on Human Rights
- the UN Convention on the Rights of Persons with Disabilities
- the Queensland *Disability Services Act 2006*
- the rights of people who are subject to restrictive practices under the Queensland *Disability Services Act 2006*
- the *Guardianship and Administration Act 2000*.

# Monitoring the use of restrictive practices

- The use of data, audit and review of the use of restrictive practices is effective in achieving reductions in their use (Sturmey & McGlynn, 2002; Scanlan, 2006)
- In organisations where there is no active auditing, non-approved restraints are more likely to be used (Leadbetter & Paterson, 2009)
- Data gathered through reporting and monitoring enables reviews of progress, identifies issues and patterns, and development needs.

# Reporting on the use of restrictive practices

It will be required to report on the use of restrictive practices once a **regulation** is made to set out the reporting requirements and intervals for reporting



# Role of the Centre of Excellence

Monitoring the use of restrictive practices

Develop guidelines and model plan for Positive Behaviour Support:

- Guidelines developed for families and service providers in positive behaviour support
- Model Plan to guide future plans

# Role of the Centre of Excellence

Develop specific educative resources:

- On-line resources and fact sheets contextual to the legislation, positive behaviour support and use of restrictive practices;
  - Model Plan
  - Guidelines on Positive Behaviour Support
  - Guidelines on Restrictive Practices
  - Introduction to Positive Behaviour Support

# Role of the Centre of Excellence

Provide training to the disability sector:

- Functional Assessment and Positive Behaviour Intervention [4 day course]
- Advanced Functional Assessment and Positive Behaviour Intervention [5 day course]
- Behaviour Intervention Plan Quality Evaluation Scoring Guide II [1 day course]
- Coaching and Mentoring [fortnightly over 6 months]

# Role of the Centre of Excellence

Be a central point of contact for restrictive practices for :

- Adults with a disability
- Families
- Guardians
- Carers
- Professionals

# What effect has legislation had on the use of RPs?

- Pre legislation it was estimated that app. 1500 people were subject to restrictive practices
- 2011: 614 approvals granted – not including physical or mechanical restraint
- 2012: 590 people subjected to all types of restrictive practices
- 2014: App. 600 people subjected to RPs

# What about the rest of Australia?



- *Disability Act, 2006* regulates use of RPs.
- RPs approved by Secretary of the Department and the appointment of an Authorised Program Offices
- Behaviour management plan required
- Senior Practitioner responsible for monitoring



- *Behaviour Support Policy* requiring consent for RPs and behaviour support plan
- Draft legislation for the regulation of RPs





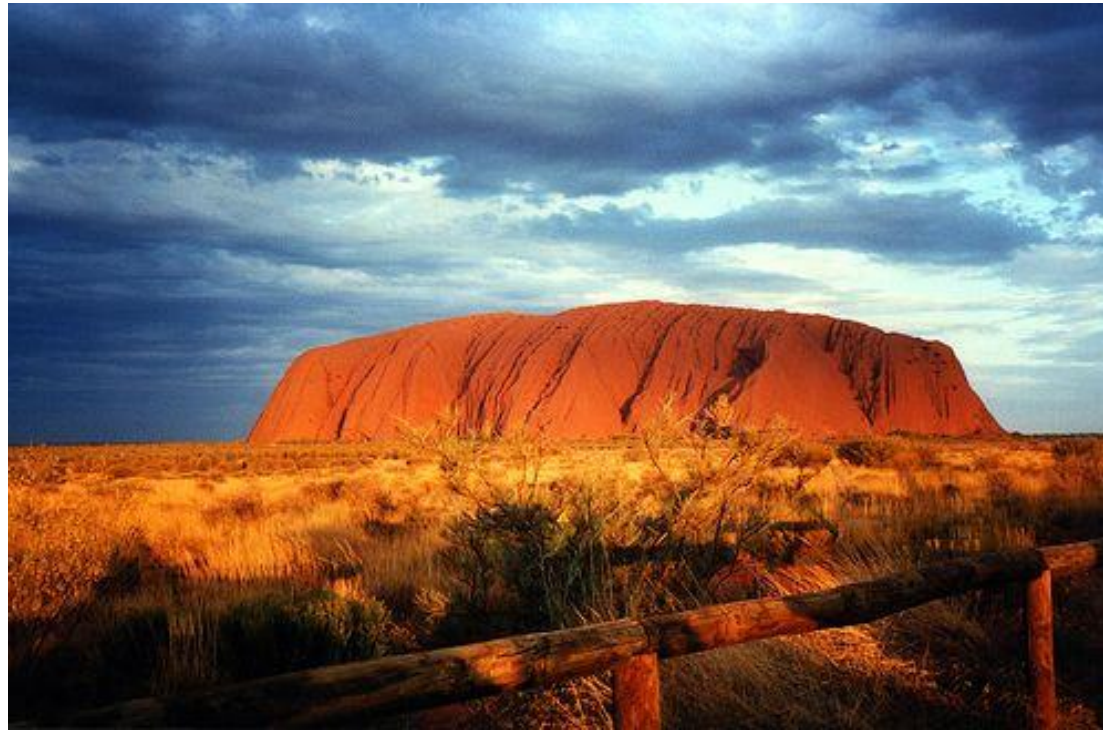
- *Disability Services Act, 1993* does not regulate RPs
- Voluntary code for the use of RPs with “tip” sheets



- *Disability Services Act, 2011* provides for authorisation by Secretary of Dept Human Services and Guardianship Board
- No requirement for behaviour management plan or reporting



- Policy for Guardian consent for RPs
- Current review of the *Disability Service Act, 1993* will consider RPs



- *Disability Services Amendment Act, 2012* provides for authorisation of RPs
- Residents of residential facilities must have a behaviour support plan developed



- *Disability Services Act, 1991* does not regulate the use of RPs.
- No requirement for approvals

# Thank You

# Questions?