

Restrictive practices and guardianship

This fact sheet explains who can consent to the use of restrictive practices and when NCAT's Guardianship Division may make orders giving a guardian a restrictive practices function.

Role of NCAT in applications about restrictive practices

When NCAT appoints a guardian for a person, it must decide which types of decision (functions) the guardian can make about the person's personal affairs.

Common functions given to a guardian include:

- deciding where a person should live
- deciding what services they will be provided
- making health care decisions for the person, and
- consenting to medical and dental treatment for the person.

NCAT can also decide that the guardian can make 'restrictive practice' decisions for the person. Decisions about restrictive practices may be required when the person's behaviour poses a physical or other risk to the person or others and intervention is needed to reduce or remove those risks.

Restrictive practices

A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of the person.

Restrictive practices aim to address behaviour issues and minimise harm; they do not aim to treat a medical condition. For that reason, they are not considered a form of medical treatment under the *Guardianship Act 1987* (NSW).

Types of restrictive practices

Restrictive practices generally take one or more of the following forms.

- **Seclusion** – where a person is kept in a room or space at any time where their exit is prevented.
- **Physical restraint** – where physical force is used to prevent or restrict a person's movement.
- **Mechanical restraint** – where a device is used to prevent or restrict a person's movement.

- **Environmental restraint** – where a person's access to parts of their environment, including items or activities, is restricted.
- **Chemical restraint** – where medication is used for the primary purpose of influencing a person's behaviour, and not for treatment of a diagnosed mental disorder, physical illness or physical condition.

Who can consent to the use of restrictive practices?

If a person can provide informed consent to the use of restrictive practices, they are entitled to give, or to withhold, consent to the use of restrictive practices.

However, if the person is unable to give informed consent, only a guardian, or an enduring guardian (see below) with a restrictive practices function can give, or withhold, consent to the use of restrictive practices.

To prevent the person with a disability harming themselves or others, the guardian should consent to using restrictive practices:

- only as a last resort, and
- when there are no less restrictive options available.

A 'person responsible' cannot consent to using any restrictive practices on behalf of a person with a disability. Refer to the *Guardianship Act* for the definition of 'person responsible'.

When can a guardian be given a restrictive practices function?

The *Guardianship Act* governs when NCAT may make a guardianship order.

Before appointing a guardian with a restrictive practices function, the Tribunal considers:

- The views of the person about the proposed practices
- The current behaviour support plan which should include:
 - a summary of the history of the behaviour



- an assessment of the impact of the behaviour on the person and others
- any positive approaches taken to address the behaviour, or being considered
- the restrictive practices proposed.
- Evidence from the person's family and friends
- Evidence from the person's treating medical professionals, carers and disability support service providers
- Any consultation with relevant specialists
- If chemical restraint is proposed:
 - medical evidence about the person's diagnoses
 - the nature of the chemical restraint proposed
 - how and when the medication will be used
 - any possible side effects.
- Whether the person's behaviours can possibly be managed without using restrictive practices
- Whether the practice has been approved by an authorisation process, if required.

It is also important that treating medical and behaviour support practitioners can be available to provide evidence to the Tribunal.

Review of guardianship orders with a restrictive practices function

Guardianship orders, including those which provide a restrictive practices function, are subject to periodic review. In addition, a person with a genuine concern for the person can request a review of a guardianship order at any time.

When reviewing an order relating to restrictive practices, NCAT needs up to date evidence about:

- the matters referred to above
- how and when restrictive practices have been used
- why their ongoing use is in the best interests of the person
- the implementation of both positive and restrictive practices and the impact of this on the person.

Is only the guardian's consent needed to use restrictive practices?

In most cases, no. A guardian's role is to decide whether to provide consent for the use of a restrictive practice.

Service providers may need other approvals before using restrictive practices on someone in their care. This is separate from any need for consent which is the focus of this fact sheet.

For example, before using a restrictive practice, NDIS registered service providers in NSW may need approval from a Restrictive Practice Authorisation Panel. This is outlined in the Department of Communities and Justice policy and procedural guides.

Approved aged care providers also have other requirements, such as having a clinical governance framework in place to minimise the use of restrictive practices. Compliance with requirements is monitored by the Aged Care Quality and Safety Commission.

Enduring Guardian

A person may appoint another person (an enduring guardian) to make decisions on their behalf about their personal affairs. That appointment comes into effect when the person is unable to manage their personal affairs because of a disability.

A person can give an enduring guardian any of the functions that NCAT can give a guardian, including a restrictive practices function. Any person with a genuine concern for the person can request NCAT to review the appointment of an enduring guardian.

On review, NCAT has the power to vary the appointment, to add to the functions given by the person to the enduring guardian, including a restrictive practices function (for more information see NCAT Fact Sheet, [Review of an enduring guardianship appointment](#)).

Helpful resources

Tribunal decisions

Guardianship Division decisions about restrictive practices published on the NSW Caselaw website www.caselaw.nsw.gov.au

- [HZC \[2019\] NSWCATGD 8](#)
- [TZD \[2021\] NSWCATGD 14](#)
- [JUW \[2023\] NSWCATGD 3](#)
- [SKN \[2023\] NSWCATGD 16](#)

Department of Communities and Justice

[Restrictive Practices Authorisation Portal](#) is available on the Department's website www.dcj.nsw.gov.au



NDIS Quality and Safeguards Commission

[NDIS behaviour support and restrictive practices fact sheet](#) is available at www.ndiscommission.gov.au

Aged Care Quality and Safety Commission

See [Minimising restrictive practices](#) on the Aged Care Quality and Safety Commission website
www.agedcarequality.gov.au

NSW Public Guardian

[Now You're the Guardian](#) is a guide for people appointed as guardian available on the NSW Trustee and Guardian website www.tag.nsw.gov.au

Contact NCAT

1300 006 228 | www.ncat.nsw.gov.au

Interpreter Service (TIS) 13 14 50

National Relay Service for TTY users 13 36 77

For more information and assistance visit the NCAT website or contact NCAT's Guardianship Division on (02) 9556 7600 or 1300 006 228.