

Restrictive practices and guardianship

The following information explains when NCAT's Guardianship Division may make guardianship orders with a restrictive practices function.

Role of NCAT in applications about restrictive practices

When NCAT appoints a guardian for a person, it chooses which decision making functions that guardian will have.

Some common functions of 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 should make 'restrictive practice' decisions. This means restricting the rights or freedom of movement of the person.

These decisions are made when the person's behaviour involves physical or other risks to themselves or others. They are also made where intervention may be 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, including the use of chemical restraint, aim to address behaviour issues and minimise harm; they do not aim to treat a medical condition. For that reason, they are not considered to be 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 their own valid consent to the use of restrictive practices, then there is no need for substitute consent.

If substitute consent is needed, only a guardian with a restrictive practices function can provide consent.

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 a 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 restrictive practice functions, 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 function of the behaviour
- what positive approaches are being taken to address it
- what restrictive practices are proposed
- Evidence from the person's family and friends
- Evidence from the person's treating medical professionals, carers and disability support service providers
- 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 always subject to periodic review. A person can also 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 to 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 Family and Community Services NSW (FACS) policy and procedural guides.

Helpful resources

Tribunal decision

[HZC \[2019\] NSWCATGD 8](#) NCAT Guardianship Division decision published on the NSW Caselaw website www.caselaw.nsw.gov.au

Family and Community Services NSW

[Restricted Practices Authorisation Portal](#) is available on Family and Community Services NSW website www.facs.nsw.gov.au

NDIS Legislation

[National Disability Insurance Scheme \(Restrictive Practices and Behaviour Support\) Rules 2016](#) is available at www.legislation.gov.au.

Department of Health - Ageing and Aged Care

[Decision-Making Tool: Supporting a Restraint Free Environment in Residential Aged Care](#) handbook is available for download from the Department's website www.agedcare.health.gov.au

NSW Public Guardian

[Now You're the Guardian](#) is a guide for people appointed as guardian available on the Public Guardian website www.publicguardian.justice.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