

Frequently Asked Questions – Appointment of a guardian for a person who is approved as a recipient of residential care under the *Aged Care Act 1997* (Cth) and is subject to restrictive practices under the *Quality of Care Principles 2014* (Cth) as at 7 May 2025

(for a guardianship proceeding*)

**Please also see:*

- *Frequently Asked Questions (about QCAT's guardianship jurisdiction)*

What is residential care?

See s 41-3 of the *Aged Care Act 1997* (Cth)

41-3 Meaning of *residential care*

- (1) ***Residential care*** is personal care or nursing care, or both personal care and nursing care, that:
 - (a) is provided to a person in a residential facility in which the person is also provided with accommodation that includes:
 - (i) appropriate staffing to meet the nursing and personal care needs of the person; and
 - (ii) meals and cleaning services; and
 - (iii) furnishings, furniture and equipment for the provision of that care and accommodation; and
 - (b) meets any other requirements specified in the Subsidy Principles.
- (2) However, residential care does not include any of the following:
 - (a) care provided to a person in the person's private home;
 - (b) care provided in a hospital or in a psychiatric facility;
 - (c) care provided in a facility that primarily provides care to people who are not frail and aged;
 - (d) care that is specified in the Subsidy Principles not to be residential care.

Who is a recipient of residential care?

See the *Aged Care Act 1997* (Cth), Division 22 – How does a person become approved as a care recipient.

Section 22-1 Approval as a care recipient

- (1) A person can be approved as a recipient of one or more of the following:
 - (a) residential care;
 - (b) home care;
 - (c) flexible care.

...

Responsibilities of approved providers of aged care

Approved providers of aged care have responsibilities under the *Aged Care Act 1997* (Cth) in relation to the quality of aged care they provide to care recipients. Chapter 4 of the *Aged Care Act 1997* (Cth), contains relevant provisions detailing the responsibilities that relate to:

- Quality of care (see Part 4.1);
- User rights (see Part 4.2);
- Accountability etc. (see Part 4.3).

Responsibilities of approved providers of aged care in relation to the quality of care provided to care recipients are set out under s 54-1 of the *Aged Care Act 1997* (Cth):

54-1 Responsibilities of approved providers

(1) The responsibilities of an approved provider in relation to the quality of aged care that the approved provider provides are as follows:

- (a) to provide such care and services as are specified in the Quality of Care Principles in respect of aged care of the type in question;
- (b) to maintain an adequate number of appropriately skilled staff to ensure that the care needs of care recipients are met;
- (ba) if section 54-1A applies to the provider – to comply with subsection 54-1A(2);
- (c) to provide care and services of a quality that is consistent with any rights and responsibilities of care recipients that are specified in the User Rights Principles for the purposes of paragraph 56-1(m), 56-2(k) or 56-3(1);
- (d) to comply with the Aged Care Quality of Standard made under section 54-2;
- (e) to manage incidents and take reasonable steps to prevent incidents, including through:
 - (i) implementing and maintaining an incident management system that complies with the Quality of Care Principles; and
 - (ii) complying with any other requirements for managing or preventing incidents specified in the Quality of Care Principles;
- (f) if the provider provides aged care of a kind specified in the Quality of Care Principles to care recipients – to ensure a *restrictive practice in relation to those recipients is only used in the circumstances set out in those Principles.
- (g) to comply with the provisions of the *Code of Conduct that apply to the approved provider;
- (ga) to take reasonable steps to ensure that the *aged care workers and the *governing persons, of the approved provider comply with the provisions of the Code of Conduct that apply to them;
- (h) such other responsibilities as are specified in the Quality of Care Principles.

...

Reportable incidents

Section 54-3 of the *Aged Care Act 1997* (Cth) refers to 'incidents', that have occurred, are alleged to have occurred, or are suspected of having occurred, in connection with the provision of aged care to a care recipient of an approved provider. As provided under s 54-3, a reportable incident, must be reported to the Quality and Safety Commissioner. Under s 54-3(2)(g), the use of a restrictive practice in relation to the

care recipient, other than in circumstances set out in the Quality of Care Principles, is a reportable incident. The Quality and Safety Commissioner means the Commissioner of Quality and Safety Commission that is the Aged Care Quality and Safety Commission established by the *Aged Care Quality and Safety Commission Act 2018* (Cth) (see Schedule 1 of the *Aged Care Act 1997* (Cth)).

What is aged care?

Schedule 1 Dictionary of the of the *Aged Care Act 1997* (Cth) provides:

aged care means care of one or more of the following types:

- (a) residential care;
- (b) home care;
- (c) flexible care.

The Quality of Care Principles 2014 (Cth)?

The Quality of Care Principles, developed by legislative instrument under Division 96 of the *Aged Care Act 1997* (Cth), contain relevant provisions for care services and, amongst other things, behaviour support and restrictive practices – residential care and certain flexible care.

What is a restrictive practice in relation to a care recipient?

Section 54-9 of the *Aged Care Act 1997* (Cth) provides:

54-9 Restrictive Practice in relation to a care recipient

- (1) A **restrictive practice** in relation to a care recipient is any practice or intervention that has the effect of restricting the rights or freedom of movement of the care recipient.
- (2) Without limiting subsection (1), the Quality of Care Principles may provide that a practice or intervention is a **restrictive practice** in relation to a care recipient.

Division 2 of the Quality of Care Principles further defines practices or interventions that are restrictive practices, relevantly, s 15E(1) of the Principles provides:

15E Practices or interventions that are restrictive practices

- (1) For the purposes of subsection 54-9(2) of the Act, each of the following is a restrictive practice in relation to a care recipient:
 - (a) chemical restraint;
 - (b) environmental restraint;
 - (c) mechanical restraint;
 - (d) physical restraint;
 - (e) seclusion.

...

Section 15E(2) to (6), inclusive, of the Quality of Care Principles defines the meaning of each of the restrictive practices identified in s 15E(1): chemical restraint, environmental restraint, mechanical restraint, physical restraint and seclusion.

Requirements for the use of any restrictive practice

Section 54-10 of the *Aged Care Act 1997* (Cth) refers to relevant matters that the Quality of Care Principles must require:

54-10 Matters that Quality of Care Principles must require etc.

- (1) The Quality of Care Principles made for the purposes of paragraph 54-1(1)(f) must:
 - (a) require that a *restrictive practice in relation to a care recipient is used only:
 - (i) as a last resort to prevent harm to the care recipient or other persons; and
 - (ii) after consideration of the likely impact of the use of the practice on the care recipient; and
 - (b) require that, to the extent possible, alternative strategies are used before a restrictive practice in relation to a care recipient is used; and
 - (c) require that alternative strategies that have been considered or used in relation to a care recipient are documented; and
 - (d) require that a restrictive practice in relation to a care recipient is used only to the extent that it is necessary and in proportion to the risk of harm to the care recipient or other persons; and
 - (e) require that, if a restrictive practice in relation to a care recipient is used, it is used in the least restrictive form, and for the shortest time, necessary to prevent harm to the care recipient or other persons; and
 - (f) require that informed consent is given to the use of a restrictive practice in relation to a care recipient; and
 - (g) require that the use of a restrictive practice in relation to a care recipient is not inconsistent with any rights and responsibilities of care recipients that are specified in the User Rights Principles made for the purposes of paragraph 56-1(m); and
 - (h) make provision for, or in relation to, the monitoring and review of the use of a restrictive practice in relation to a care recipient.

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Circumstances for the use of restrictive practices

Division 3 of the Quality of Care Principles contains circumstances for the use of restrictive practices and the requirements for the use of any restrictive practice.

15F Circumstances for the use of restrictive practices

For the purposes of paragraph 54-1(1)(f) of the Act, the circumstances in which an approved provider may use a restrictive practice in relation to a care recipient are that the requirements set out in this Division that apply to the restrictive practice in relation to the care recipient are satisfied.

Note: The use of a restrictive practice in relation to a care recipient of an approved provider other than in these circumstances is a reportable incident (see paragraph 54-3(2)(g) of the Act).

15FA Requirements for the use of any restrictive practices

- (1) The following requirements apply to the use of any restrictive practice in relation to a care recipient:

...

(f) informed consent to the use of the restrictive practice, and how it is to be used (including its duration, frequency and intended outcome), has been given by:

- (i) the care recipient; or
- (ii) if the care recipient lacks the capacity to give that consent- the restrictive practices substitute decision-maker for the restrictive practice;

...

(j) the use of the restrictive practice meets the requirements (if any) of the law of the State or Territory in which the restrictive practice is used.

(2) However, the requirements set out in paragraphs (1)(a), (b), (c), (f), (fa) and (g) do not apply to the use of a restrictive practice in relation to a care recipient if the use of the restrictive practice in relation to the care recipient is necessary in an emergency.

(3) Subsection (2) applies only while the emergency exists.

Note: See section 15GB for other responsibilities of approved providers that apply if the use of a restrictive practice in relation to a care recipient is necessary in an emergency.

See also sections 15FB and 15FC for additional requirements for the use of restrictive practices other than chemical restraint (s 15FB) and for the use of restrictive practices that are chemical restraint (s 15FC).

Who may give informed consent to the use of a restrictive practice if the care recipient lacks capacity to give that consent?

Meaning of *restrictive practices substitute decision-maker*

See s 5B of the Quality of Care Principles:

5B Meaning of *restrictive practices substitute decision-maker*

- (1) An individual or body is the ***restrictive practice substitute decision-maker*** for a restrictive practice in relation to a care recipient if the individual or body has been appointed, under the law of the State or Territory in which the care recipient is provided with aged care, as an individual or body that can give informed consent to the use of the restrictive practice in relation to the care recipient if the care recipient lacks capacity to give that consent.

...

See also the table in s 5B of the Quality of Care Principles that provides a hierarchy of persons for the 'meaning of restrictive practices substitute decision-maker'. As provided under s 5B(2) the table has effect if:

- (a) there is no such individual or body appointed for restrictive practice in relation to the care recipient under the law of the State or Territory in which the care recipient is provided with aged care; and
- (b) either:
 - (i) there is no clear mechanism for appointing such an individual or body under the law of the State or Territory; or

- (ii) an application has been made for an appointment under the law of the State or Territory in relation to the use of the restrictive practice in relation to the care recipient, but there is a significant delay in deciding the application.

Can QCAT appoint a person or body to make decisions about restrictive practices for a person found to have impaired capacity about their restrictive practice matters and are therefore unable to give their consent?

The *Guardianship and Administration Act 2000* (Qld) contains relevant provisions for the appointment of guardians and administrators. Further, the Tribunal has the power to, amongst other things, approve the use of certain restrictive practices and to appoint a guardian for a restrictive practice matter who can give consent, if satisfied as to certain conditions, as provided under Chapter 5B of the *Guardianship and Administration Act 2000* (Qld) and the *Disability Services Act 2006* (Qld).

Section 12 of the *Guardianship and Administration Act 2000* (Qld) applies to an application for the appointment of a guardian for a personal matter, or an administrator for a financial matter, for an adult who is found to have impaired capacity for the matter.

Schedule 2 of the *Guardianship and Administration Act 2000* (Qld) defines the types of matters that may be a “personal matter” or a “financial matter”.

Relevant to a restrictive practice matter in Queensland is section 12(4) of the *Guardianship and Administration Act 2000* (Qld) that provides:

- (4) This section [meaning s 12 of the *Guardianship and Administration Act 2000* (Qld)] does not apply for the appointment of a guardian for a restrictive practice matter under Chapter 5B.

Chapter 5B of the *Guardianship and Administration Act 2000* (Qld) contains relevant provisions about restrictive practices in Queensland and applies to an adult with an intellectual or cognitive disability who receives disability services from a relevant service provider (see s 80R). For the meaning of ‘disability services’ the *Guardianship and Administration Act 2000* (Qld) refers to disability services or NDIS supports or services under the *Disability Services Act 2006* (Qld). For the meaning of ‘relevant service provider’ the *Guardianship and Administration Act 2000* (Qld) refers to the *Disability Services Act 2006* (Qld). The *Disability Services Act 2006* (Qld) also contains relevant provisions for the use of restrictive practices in Queensland.

Chapter 5B of the *Guardianship and Administration Act 2000* (Qld) and the *Disability Services Act 2006* (Qld) do not apply for a service provider that is an approved provider under the *Aged Care Quality and Safety Commission Act 2018* (Cth) if-

- (a) the service provider is providing disability services or NDIS supports or services to an adult; and
- (b) the adult is approved as a recipient of residential care under the *Aged Care Act 1997* (Cth), part 2.3.

[See s 12 of the *Disability Services Regulation 2017* (Qld)].

Can QCAT appoint a person or body to give informed consent or to withhold consent for the use of a restrictive practice in Queensland in relation to a recipient of residential care under the *Aged Care Act 1997* (Cth), if the care recipient lacks capacity to give their consent?

Please see *Frequently Asked Questions (about QCAT's guardianship jurisdiction)* that includes information about a guardian and capacity for decision-making.

The Tribunal has previously appointed a guardian under s 12 of the *Guardianship and Administration Act 2000* (Qld) as a restrictive practice substitute decision-maker, to give informed consent or to withhold consent for the use of the relevant restrictive practice with conditions, in circumstances where the person (the adult) is a recipient of residential care under the *Aged Care Act 1997* (Cth) and is found to lack capacity to give consent (see *NJ* [2022] QCAT 283).

In *NJ* [2022] QCAT 283, the Tribunal found that the restrictive practice, as that term is defined in s 15E of the *Quality of Care Principles*, was necessary “for the safety of NJ” (at [49]). The Tribunal used the power to appoint a guardian for a personal matter under s 12 of the *Guardianship and Administration Act 2000* (Qld) and considered the meaning of “personal matter”, as defined under Schedule 2, to include “the adult’s health care, or welfare...”. The Tribunal found that there was “a direct relationship between the matter and the welfare of NJ, and is a matter ‘relating’ to her welfare, and therefore to her ‘care’ and thus within the power of s 12” (at [50]).

In *NJ* [2022] QCAT 283, the Tribunal appointed a guardian pursuant to s 12 of the *Guardianship and Administration Act 2000* (Qld) to make decisions about the adult’s personal matters including to give informed consent or to withhold consent for the use of the relevant restrictive practice that was found to be in use, as that term is defined in s 15E of the *Quality of Care Principles*. The appointment of the guardian was conditional upon:

- (a) consent being given only for the sole purpose of the safety of NJ;
- (b) the power to consent being limited to the aged care facility that NJ currently resides at;
- (c) consent being given by the guardian only if the guardian is satisfied that there is compliance with s 15FA of the *Quality of Care Principles* with respect to NJ.

How do I apply for the appointment of a guardian?

You must complete and file in QCAT a [Form 10 Application for administration/guardianship appointment](#). More information about how to apply to QCAT can be found [here](#).

Please ensure that you attach all relevant information to your application including information about any restrictive practice that may be in use in compliance with the *Quality of Care Principles*.

Please see the *Guardianship and Administration Act 2000* (Qld) and *Disability of Services Act 2006* (Qld), if your application relates to a restrictive practice matter for a

person who is not a recipient of residential care under the *Aged Care Act 1997* (Cth) and receives disability services from a relevant service provider.

If you make an application or are proposed for appointment you will be an active party to the proceeding.