Frequently Asked Questions – Restrictive Practices – Aged Care

This "frequently asked questions" relate to guardianship proceedings and the appointment of a guardian for an individual who receives funded aged care services from an *Aged Care Act 2024* (Cth) registered provider. It relates to circumstances where the individual is subject to restrictive practices for which the Aged Care Rules 2025 (Cth) apply.

You might also find that the "Frequently Asked Questions (About QCAT's guardianship jurisdiction)" on QCAT's website is of assistance to you.

Can an attorney appointed under an enduring power of attorney for personal matters in Queensland (see the *Powers of Attorney Act 1998* (Qld)) be the restrictive practice substitute decision-maker if the individual lacks the capacity to give their consent for the use of the restrictive practice?

In *EJ* [2026] QCAT 175, the Tribunal found that an attorney appointed under an enduring power of attorney for personal matters who is available to make decisions for the relevant individual (referred to as the adult under the *Guardianship and Administration Act 2000* (Qld)) may be the restrictive practice substitute decision-maker for the purposes of the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth). This means that the appointed attorney for personal matters can give informed consent to the use of the restrictive practice, and how it is to be used (including its duration, frequency and intended outcome) as the restrictive practice substitute decision-maker if the individual lacks the capacity to give that consent.

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 appointment 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 s 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 a registered provider under the *Aged Care Act 2024* (Cth) if-

(a) the service provider is providing disability services or NDIS supports or services to an adult; and
(b) the adult has approval under the *Aged Care Act 2024* (Cth), s 65(2) to access funded aged care services for the service group residential care.

[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 an individual under the *Aged Care Act 2024* (Cth), if the individual 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 was 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 was 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.

As at 1 November 2025, the *Aged Care Act 1997* (Cth) and *Quality of Care Principles 2014* (Cth) is replaced by the *Aged Care Act 2024* (Cth) and the *Aged Care Rules 2025* (Cth).

Note: section 17-5 of the *Aged Care Rules 2025* (Cth) substantially replicate section 15E of the former Quality of Care Principles, similarly section 162-15 substantially replicate section 15FA.

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 Aged Care Rules.

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 2024* (Cth).

If I make an application or am proposed for appointment, will I be an active party to the proceeding?

Yes.

What is funded aged care and who are they delivered to?

As provided under s 9(1) of the *Aged Care Act 2024* (Cth) a 'funded aged care service' means a service included on the list referred to in s 8(1), as prescribed in the rules, delivered to an individual who can access the service through a service group referred to in s 9(2). Section 8(3) provides that a 'service group' means, amongst other things, 'residential care'.

Section 10 of the *Aged Care Act 2024* (Cth) provides that a funded aged care service can be delivered in:

(a) an approved residential care home; or
(b) a home or community setting.

What are the rules?

Section 602(1) of the *Aged Care Act 2024* (Cth), provides that the Minister may, by legislative instrument, make rules prescribing matters:

(a) required or permitted by this Act to be prescribed by the rules; or
(b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Relevant to restrictive practices, the *Aged Care Rules 2025* (Cth) contains provisions for, and amongst other things, reportable incidents, restrictive practices, and behaviour support.

What is a residential care home?

Under s 10(2) of the *Aged Care Act 2024* (Cth) a 'residential care home' means a place that:

(a) is the place of residence of individuals who, by reason of sickness, have a continuing need for aged care services, including nursing services; and
(b) is fitted, furnished and staffed for the purpose of providing those services.

As provided under s 10(3), a 'residential care home' includes any of the following places:

(a) a place within, or co-located with, a hospital or other health service that is covered by an agreement with the Commonwealth to deliver aged care services alongside health services as a part of an integrated service arrangement;
(b) a place within a retirement village that is a place described by subsection (2);
(c) a place which is a complex of buildings;
(d) any other place prescribed by the rules.

As provided under s 10(4), a 'residential care home' does not include any of the following places:

(a) a private home;
(b) a retirement village (other than a place referred to in paragraph (3)(b));
(c) a facility for which a declaration under subsection 121-5(6) of the *Private Health Insurance Act 2007* is in force (other than a place referred to in paragraph (3)(a));
(d) a hospice or facility that primarily provides palliative care;
(e) any other place prescribed by the rules.

Who delivers funded aged care services?

Funded aged care services are delivered by registered providers (and associated providers of registered providers) and the aged care workers of registered providers (s 11(1)). Relevant terms 'registered providers', 'aged care workers' and 'associated providers' is defined under s 11.

What are the Aged Care Quality Standards?

Section 15(1) of the *Aged Care Act 2024* (Cth) provides that the rules may prescribe standards relating to the quality of funded aged care services delivered by a registered provider.

Further, as provided under subsection (2), without limiting subsection (1), the rules may prescribe standards about 'the following matters' which include, for example and amongst other things, the physical environments in which funded aged care services are required to be delivered; how registered providers must support individuals accessing funded aged care services in approved residential care homes; and how registered providers must monitor and drive improvements to their delivery of funded aged care services.

Section 15(3) provides that the rules may provide that a provision of the Aged Care Quality Standards applies to the following:

(a) all registered providers;
(b) registered providers in specified provider registration categories;
(c) specific kinds of registered providers.

What are reportable incidents?

Section 16 of the *Aged Care Act 2024* (Cth) refers to 'incidents' that have occurred, are alleged to have occurred, or are suspected of having occurred, in connection with the delivery of funded aged care services to an individual by a registered provider. For example, and amongst other things, a 'reportable incident' includes an unreasonable use of force against an individual, the use of a restrictive practice in relation to the individual (other than in accordance with any requirement prescribed by the rules).

See the *Aged Care Rules 2025* (Cth) for relevant provisions relating to 'reportable incidents'.

What is a restrictive practice in relation to the individual?

Section 17 of the *Aged Care Act 1997* (Cth) provides:

17 Restrictive practice in relation to an individual

(1) A ***restrictive practice*** in relation to an individual is any practice or intervention that has the effect of restricting the rights or freedom of movement of that individual.
(2) Without limiting subsection (1), the rules may provide that a practice or intervention is a ***restrictive practice*** in relation to an individual.

Division 2 of Part 7 of Chapter 1 the *Aged Care Rules 2025* (Cth) further defines practices or interventions that are restrictive practices, relevantly, section 17-5 of the *Aged Care Rules 2025* (Cth) provides:

17-5 Practices or interventions that are restrictive practices in relation to individuals

(1) For the purposes of subsection 17(2) of the Act, each of the following is a restrictive practice in relation to an individual:
 (a) chemical restraint;
 (b) environmental restraint;

(c) mechanical restraint;
(d) physical restraint;
(e) seclusion.

…

Section 17-5 (2) to (6), inclusive, of the *Aged Care Rules 2025* (Cth) defines the meaning of each of the restrictive practices identified in s 17-5 (1): chemical restraint, environmental restraint, mechanical restraint, physical restraint and seclusion.

What are requirements in respect of a restrictive practice?

Section 18 of the *Aged Care Act 2024* (Cth) refers to relevant matters that the *Aged Care Rules 2025* (Cth) must require:

18 Restrictive practice requirements

(1) The rules made for the purposes of section 162 relating to the use of restrictive practices in relation to an individual to whom a registered provider is delivering funded aged care services must:
(a) require that a restrictive practice in relation to the individual is used only:
(i) as a last resort to prevent harm to the individual or other persons; and
(ii) after consideration of the likely impact of the use of the practice on the individual; and
(b) require that, to the extent possible, alternative strategies are used before a restrictive practice in relation to the individual is used; and
(c) require that alternative strategies that have been considered or used in relation to the individual are documented; and
(d) require that a restrictive practice in relation to the individual is used only to the extent that it is necessary and in proportion to the risk of harm to individual or other persons; and
(e) require that, if a restrictive practice in relation to the individual is used, it is used in the least restrictive form, and for the shortest time, necessary to prevent harm to the individual or other persons; and
(f) require that informed consent is given to the use of a restrictive practice in relation to the individual; and
(g) make provision for, or in relation to, the monitoring and review of the use of a restrictive practice in relation to the individual.

…

Are there legal provisions in respect of the use of restrictive practices?

Part 9 of Chapter 4 of the *Aged Care Rules 2025* (Cth) contains relevant provisions for conditions for the use of restrictive practices and the requirements for the use of any restrictive practice.

Section 162-5 of the *Aged Care Rules 2025* (Cth) states the kinds of providers that the conditions apply to and provides that for the purposes of s 162 of the Act, a registered provider registered in the provider registration category residential care is prescribed.

162-10 of the *Aged Care Rules 2025* (Cth) states that Part 9 prescribes requirements relating to the use of restrictive practices in relation to an individual to whom a

registered provider is delivering funded aged care services in an approved residential care home.

Note: See also sections 17 and 18 of the *Aged Care Act 2024* (Cth) and Division 2 of Part 7 of Chapter 1 of the *Aged Care Rules 2025* (Cth).

Requirements relating to the use of restrictive practices

See 162-15 of the *Aged Care Rules 2025* (Cth).

162-15 Requirements for the use of any restrictive practice

(1) The following requirements apply to the use of any restrictive practice in relation to an individual:

…

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

…

(k) 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), (g) and (h) do not apply to the use of a restrictive practice in relation to an individual if the use of the restrictive practice in relation to the individual is necessary in an emergency.

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

Note: See section 162-35 for other responsibilities of registered providers that apply if the use of a restrictive practice in relation to an individual is necessary in an emergency.

See also ss 162-20 and 162-25 for additional requirements for the use of restrictive practices other than chemical restraint (s 162-20) and for the use of restrictive practices that are chemical restraint (s 162-25). See also Division 3 (ss 162-45 to 162-75, inclusive) for additional requirements relating to behaviour support.

Conditions relating to restrictive practices under the *Aged Care Act 2024* (Cth)

Section 162 provides that it is a condition of registration that a registered provider of a kind prescribed by the rules must comply with any requirements prescribed by the rules relating to the use of restrictive practices in relation to an individual to whom the provider is delivering funded aged care services.

Is there a provision or provisions relating to immunity from civil or criminal liability in relation to the use of a restrictive practice in certain circumstances?

See s 163 (immunity from civil or criminal liability in relation to the use of a restrictive practice in certain circumstances) and 163-5 of the *Aged Care Rules 2025* (Cth).

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

Meaning of *restrictive practices substitute decision-maker*

See s 6-20 of the *Aged Care Rules 2025* (Cth):

6-20 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 an individual (the ***individual concerned***) if:
   (a) the individual or body is appointed by the law of the State or Territory in which the individual concerned accesses funded aged care services as an individual or body that can give informed consent to the use of the restrictive practice in relation to the individual concerned if the individual concerned lacks capacity to give that consent; or
   (b) under an appointment in writing that is in effect under the law of the State or Territory in which the individual concerned accesses funded aged care services, the individual or body can give informed consent to the use of the restrictive practice in relation to the individual concerned if the individual concerned lacks capacity to give that consent.

See also the table* in section 6-20 of the *Aged Care Rules 2025* (Cth) that provides a hierarchy of persons for the 'meaning of restrictive practices substitute decision-maker'. As provided under section 6-20(2) the table has effect if:

(a) there is no such individual or body appointed for restrictive practice in relation to the individual concerned under the law of the State or Territory in which the individual concerned accesses funded aged care services; 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 individual concerned, but there is a significant delay in deciding the application.

*Note: the table that provides a hierarchy of persons for the 'meaning of restrictive practices substitute decision-maker' may be subject to legislative.