

QCAT Practice Direction No. 2 of 2026

APPLICATIONS FOR THE APPOINTMENT OF A GUARDIAN TO GIVE INFORMED CONSENT OR WITHHOLD CONSENT FOR THE USE OF A RESTRICTIVE PRACTICE IN AGED CARE

INTRODUCTION

1. This Practice Direction is effective from 20/07/26.
2. This Practice Direction applies to all applications for the appointment of a guardian under section 12 of the *Guardianship and Administration Act 2000* (Qld) to give informed consent or withhold consent for the use of a restrictive practice as defined under the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth).
3. This Practice Direction **does not apply** to an application for the appointment of a guardian for a restrictive practice matter or to approve the use of a relevant restrictive practice under chapter 5B of the *Guardianship and Administration Act 2000* (Qld) for which the *Disability Services Act 2006* (Qld) and *Disability Services Regulation 2017* (Qld) apply.

PURPOSE

4. The area of appointments of guardians in aged care in the context of restrictive practices is a somewhat complex area. The purpose of this Practice Direction is primarily to provide some information as to when an application for the appointment of a guardian may be necessary and to set out:
 - a. what an applicant must file in the tribunal in support of such an application; and
 - b. aspects of how such applications in the process will proceed in the tribunal (subject to any departure considered necessary or desirable by the tribunal in any given case).

DEFINITIONS FOR THIS PRACTICE DIRECTION

5. 'Application' means an application for the appointment of a guardian under section 12 for a 'personal matter' as defined under the *Guardianship and Administration Act 2000* (Qld) that is filed in the tribunal in compliance with the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) and *Queensland Civil and Administrative Tribunal Rules 2009* (Qld).
6. 'Guardian' means a guardian appointed under section 12 of the *Guardianship and Administration Act 2000* (Qld) for a personal matter for an adult who is found to have impaired capacity for the matter.
7. 'Capacity' is defined under schedule 4 of the *Guardianship and Administration Act 2000* (Qld).

8. 'Personal matter' is defined under schedule 2 of the *Guardianship and Administration Act 2000* (Qld) and schedule 2 of the *Powers of Attorney Act 1998* (Qld).
9. 'Adult' is the person to whom a proceeding under the *Guardianship and Administration Act 2000* (Qld) relates to and is also the 'individual' for the purposes of the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth).
10. 'Attorney' under an enduring power of attorney is the person authorised to do anything in relation to one or more financial matters or personal matters for the principal (who may also be known as the 'adult' or 'individual' in a relevant proceeding) as provided under the *Powers of Attorney Act 1998* (Qld).
11. 'Enduring power of attorney' for a person must be in an approved form as provided under section 44 of the *Powers of Attorney Act 1998* (Qld).
12. 'Enduring document' is an enduring power of attorney or an advance health directive under section 28 of the *Powers of Attorney Act 1998* (Qld).
13. 'Restrictive practice' means a restrictive practice as defined under the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth).
14. The following terms: 'registered provider', 'residential care home', 'funded aged care service' and 'behaviour support plan' are defined terms under the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth).

WHEN MAY THE APPOINTMENT OF A GUARDIAN TO GIVE INFORMED CONSENT OR WITHOLD CONSENT FOR THE USE OF A RESTRICTIVE PRACTICE BE NECESSARY?

15. An appointment of a guardian may be necessary if there is a restrictive practice in use for a person who is residing in an aged care setting who is found to lack the capacity to give their informed consent for the use of a restrictive practice:
 - a. the person lives in an approved 'residential care home';
 - b. a 'registered provider' is delivering a 'funded aged care service' to the person in their accommodation setting;
 - c. there is a restrictive practice in use for which the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth) apply;
 - d. it is necessary for the registered provider to comply with the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth) including to obtain informed consent to the use of a restrictive practice; and
 - e. the registered provider must comply with the requirements for the use of a restrictive practice under the *Aged Care Rules 2025* (Cth) including to obtain informed consent to the use of the restrictive practice and how it is to be used (including its duration, frequency and intended outcome).

IS AN APPLICATION NECESSARY WHERE THERE IS AN ATTORNEY APPOINTED UNDER AN ENDURING POWER OF ATTORNEY?

16. An attorney appointed under an enduring power of attorney for personal matters as defined under the *Powers of Attorney Act 1998* (Qld) who is available to make decisions for the relevant person may give informed consent or withhold consent for the use of the restrictive practice and how it is to be used (including its duration, frequency and intended outcome): see *EJ* [2026] QCAT 175.

WHAT MUST THE APPLICANT FILE IN THE TRIBUNAL IN SUPPORT OF THE APPLICATION TO APPOINT A GUARDIAN TO GIVE INFORMED CONSENT OR WITHHOLD CONSENT FOR THE USE OF A RESTRICTIVE PRACTICE?

17. In addition to the requirements for filing an application as provided under the *Queensland Civil and Administrative Tribunal Act 2009* (Qld) (QCAT Act) and *Queensland Civil and Administrative Tribunal Rules 2009* (Qld) (QCAT Rules), a person applying for the appointment of a guardian under section 12 of the *Guardianship and Administration Act 2000* (Qld) to give informed consent or withhold consent for the use of a restrictive practice for which the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth) apply, must file in the tribunal:
- a. a current health professional report or other evidence from a health professional addressing the person's capacity to give informed consent or to withhold consent for the use of a restrictive practice as defined under the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth);
 - b. any current behaviour support plan for the person detailing the restrictive practice in use and why it is necessary and how it is to be used (including its duration, frequency and intended outcome) as required under the *Aged Care Rules 2025* (Cth);
 - c. any clinical records or other evidence in support of the application detailing the restrictive practice in use and why it is necessary (including its duration, frequency and intended outcome) under the *Aged Care Rules 2025* (Cth);
 - d. details of any person acting as an informal decision-maker for the relevant person who may be subject to restrictive practices;
 - e. for the use of 'environmental restraint' as defined under the *Aged Care Rules 2025* (Cth), the evidence filed in support of the application must include details of why the use of environmental restraint is necessary to restrict the person's free access to all parts of their environment, including items and activities, for the primary purpose of influencing their behaviour;
 - f. for the use of a 'chemical restraint' as defined under the *Aged Care Rules 2025* (Cth), the evidence filed in support of the application must include certification by the person's treating health professional that the

relevant medication or chemical substance is prescribed for the primary purpose of influencing the person's behaviour and not prescribed for the treatment of a diagnosed medical disorder, a physical illness or a physical condition, or end of life care;

- g. any enduring document including an enduring power of attorney for the person.

HOW WILL THE APPLICATION PROCEED BEFORE THE TRIBUNAL?

18. The application shall proceed as an application for the appointment of a guardian under section 12 of the *Guardianship and Administration Act 2000* (Qld) to make decisions about the following personal matter:

- a. to give informed consent or withhold consent for the use of the relevant restrictive practice as that term is defined in section 17 of the *Aged Care Act 2024* (Cth) and section 17-5 of the *Aged Care Rules 2025* (Cth).

19. The tribunal's order appointing a guardian under section 12 of the *Guardianship and Administration Act 2000* (Qld) to give informed consent or withhold consent for the use of the relevant restrictive practice may be subject to conditions. Whether such an appointment is subject to conditions, and what they are, are ultimately a matter for the tribunal hearing and determining the application. However, you can expect that the tribunal may consider and require information relevant to the following:

- a. Consent being given only for the sole purpose of the safety of the person;
- b. The power to consent being limited to the residential care home that the person currently resides at;
- c. Consent being given by the appointed guardian only if they are satisfied that there is compliance with section 162-15 of the *Aged Care Rules 2025* (Cth) with respect to the person.

20. The *Human Rights Act 2009* (Qld) applies to an application for the appointment of a guardian under section 12 of the *Guardianship and Administration Act 2000* (Qld): see *NJ [2022] QCAT 283*.

21. You should be aware of the case of *NJ [2022] QCAT 283* that will apply to an application for the appointment of a guardian under section 12 of the *Guardianship and Administration Act 2000* (Qld) to give informed consent or to withhold consent for the use of a restrictive practice for which the *Aged Care Act 2024* (Cth) and *Aged Care Rules 2025* (Cth) apply.

WHO CAN APPLY FOR THE APPOINTMENT OF A GUARDIAN TO GIVE INFORMED CONSENT OR WITHHOLD CONSENT FOR THE USE OF A RESTRICTIVE PRACTICE?

22. Section 115 of the *Guardianship and Administration Act 2000* (Qld) provides:

115 Scope of applications

- (1) An application may be made, as provided under the QCAT Act, to the tribunal for a declaration, order, direction, recommendation or advice in relation to an adult about something in, or related to, the *Guardianship and Administration Act 2000* (Qld) or the *Powers of Attorney Act 1998* (Qld).
- (2) The application may be made by -
 - (a) the adult concerned; or
 - (b) unless the *Guardianship and Administration Act 2000* (Qld) or the *Powers of Attorney Act 1998* (Qld) states otherwise - another interested person.

23. Section 126 of the *Guardianship and Administration Act 2000* (Qld) provides that, amongst other things, if necessary, the tribunal may decide whether a person is an interested person for another person under the *Guardianship and Administration Act 2000* (Qld) or the *Powers of Attorney Act 1998* (Qld).

24. An '**interested person**,' for another person, means a person who has a sufficient and genuine concern for the rights and interests of the other person (Schedule 4 Dictionary).

OTHER MATTERS

25. All applications filed in the tribunal under the *Guardianship and Administration Act 2000* (Qld) or the *Powers of Attorney Act 1998* (Qld), must be filed in the approved QCAT form and with relevant documents as provided under the QCAT Rules.

26. For access to documents and who may access a document filed in a guardianship proceeding, see QCAT Practice Direction No. 8 of 2021.

27. For participation in a guardianship proceeding (and for other matters), see QCAT Practice Direction No. 11 of 2022 and QCAT Practice Direction No. 8 of 2010.



Hon Justice Kerri Mellifont
President
20 July 2026