

Understanding the role of a Guardian for Restrictive Practice (general) or (respite)

A guardian appointed for a restrictive practice (**general**) may consent to the use of the restrictive practice (other than containment and seclusion) by a relevant service provider in compliance with a positive behaviour support plan (PBSP) with or without conditions.

A guardian for restrictive practice (**respite**) may approve the use of containment or seclusion (with or without another restrictive practice) as required when the adult only receives respite and/or community access in compliance with a respite/community access plan with or without conditions.

What is a restrictive practice (RP)?

A restrictive practice means any of the following practices used to respond to the behaviour of an adult with an intellectual or cognitive disability that causes harm to the adult or others:

- a) Containing or secluding;
- b) Using chemical, mechanical or physical restraint on the adult; or
- c) Restricting access of the adult.

What does 'harm' mean?

'Harm' to a person includes physical harm to the person; or a serious risk of physical harm to the person; or damage to property involving a serious risk of physical harm to the person.

A guardian for restrictive practice (general) cannot give consent for the use of containment or seclusion. Only QCAT can approve containment and seclusion with or without the use of another restrictive practice.

If no guardian is appointed, an informal decision maker may give consent for restricting access to objects.

What are the requirements for giving consent to the use of RPs?

A Guardian for restrictive practice (**general**) may give consent to the use of the RP for the adult by a relevant service provider in compliance with a PBSP (with or without conditions) and only if satisfied:

- the adult's behaviour has previously resulted in harm to the adult or others;
- there is a reasonable likelihood that, if consent is not given, the adult's behaviour will cause harm to the adult or others;
- using the RP in compliance with the PBSP is the least restrictive way of ensuring the safety of the adult or others;
- the adult has been adequately assessed for developing or changing the PBSP;
- the use of the RP is supported by the recommendations of the person who assessed the adult;
- in developing the PBSP for chemical restraint, there has been consultation with the adult's doctor;
- if the PBSP is implemented, the risk of the adult's behaviour causing harm will be reduced or eliminated and the adult's quality of life will be improved in the long term;
- observations and monitoring provided for under the PBSP are appropriate;

- in deciding to give consent, the guardian must consider any forensic order, treatment support order or treatment authority and the views of the authorised treating psychiatrist;
- information about strategies, including RP previously used to manage behaviour and the effectiveness of those strategies;
- the type of disability services provided to the adult is considered;
- the suitability of the environment in which the RP is being used is considered;
- the views of the treating doctor (for chemical restraint) about the use of the chemical restraint is considered;
- the findings of the person who performed the assessment, differences of opinion, views of each entity or department consulted and the way in which the relevant service provider will provide support and supervise staff in implementing the PBSP, is considered.

A Guardian for restrictive practice (**respite**) may give consent to use of the restrictive practice (respite) matter in compliance with a respite/community access plan for the adult (with or without conditions) and only if satisfied:

- there is a reasonable likelihood that, if the consent is not given, the adult's behaviour will cause harm to the adult or others; and
- the relevant service provider has complied with the *Disability Services Act 2006* (Qld), part 6, division 5; and
- if the respite/community access plan is implemented, the risk of the adult's behaviour causing harm will be reduced or eliminated; and the adult's quality of life will be improved in the long term; and
- the observations and monitoring provided for under the respite/community access plan are appropriate;

- for chemical restraint, consent may be given only if satisfied there is a reasonable likelihood that, if consent is not given, the adult's behaviour will cause harm to the adult or others.

What are the different types of RPs?

'Chemical restraint' means the *use of medication for the primary purpose of controlling the adult's behaviour in response to the adult's behaviour that causes harm to the adult or others.*

(**Note:** using medication for the proper treatment of a diagnosed mental illness or physical condition is not a chemical restraint).

'Physical restraint' means the *use, for the primary purpose of controlling the adult's behaviour, of any part of another person's body to restrict the free movement of the adult in response to the adult's behaviour that causes harm to the adult or others.*

'Mechanical restraint' means the *use, for the primary purpose of controlling the adult's behaviour, of a device in response to the adult's behaviour that causes harm to the adult or others to restrict the free movement of the adult; or prevent or reduce self-injurious behaviour.*

(**Note:** what is **not** 'mechanical restraint': using a device to enable safe transportation of the adult, for example and amongst other things, a cover over a seat belt buckle, a harness or strap, using a device to prevent injury from involuntary bodily movements (i.e. seizure)).

'Restricting access' means *restricting the adult's access, at a place where the adult receives disability services or NDIS supports or services, to an object in response to the adult's behaviour that causes harm to the adult or others to prevent the adult using the object to cause harm to the adult or others.* For example: locking a drawer in which knives are kept, restricting access to particular cupboard or parts of fridge to

prevent the adult from eating in a way that is likely to cause harm to the adult or others.

(Note: Health and safety issues may require chemicals and poisons to be locked away. This is not a restrictive practice when there is no evidence that an adult has previously tried to eat/drink these types of substances).

What is a Positive Behaviour Support Plan (PBSP)?

A PBSP describes the strategies to be used to meet the adult's needs, support the adult's development of skills, maximise opportunities through which the adult can improve their quality of life; and reduce the intensity, frequency and duration of the adult's behaviour that causes harm to the adult or others. The plan must be developed for the adult by the service provider.

What is a respite/community access plan?

A respite/community access plan describes the behaviour of the adult that causes harm

to the adult or others, including the consequences of the behaviour. It also states the reasons for using the restrictive practices, a demonstration of why the restrictive practices are the least restrictive ensuring the safety of the adult or others and amongst other things, a description of the positive strategies.

What is the law?

The following Queensland legislation applies:

Disability Services Act 2006 (Qld)

Disability Services Regulation 2017 (Qld)

Guardianship and Administration Act 2000 (Qld)

Human Rights Act 2019 (Qld)

Where can I go for help?

The Office of the Public Guardian website contains further information:

publicguardian.qld.gov.au

You can also contact the Office of the Public Guardian by telephone: 1300 653 187