



Office of the Public Advocate  
Rights Safety Justice Support

# Guardian Consent for Restrictive Practices in Disability Settings

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## 1. Purpose

To prevent and minimise the use of restrictive practices. To ensure that people under guardianship receive best practice care, and that if restrictive practices are consented to that appropriate checks and reviews have occurred.

## 2. Application

This Policy applies in situations where:

- a Guardian is appointed pursuant to the *Guardianship and Administration Act 1993(GAA)*; and
- if required, relevant orders made by the South Australian Civil and Administrative Tribunal (SACAT) pursuant to section 32(1)(b) or (c) are in place.

## 3. Implementation

If a guardian is requested to consent to a restrictive practice the guardian will first:

- (1) Seek confirmation that all relevant behavioural prevention strategies to avoid the use of a restrictive practice have either been attempted or seriously considered. In most situations it is expected that a person has been assessed and a positive behaviour support plan developed that seeks to avoid the need for restrictive practices to be used.
- (2) If concerns remain that restrictive practices could be avoided or minimised, then a specialist review from a practitioner or service with skills in these areas will be requested (for example a developmental educator with expertise in positive behaviour support, a psychologist, or a Disability Behaviour Support Team if available).
- (3) Seek confirmation that the use of the restrictive practice is consistent with the disability organisation's policy for the use of such practices, and any requirements for approval of the practice that the organisation has in place.

## 4. Background

Preventing limiting, and eliminating the use of restrictive practices is consistent with the United Nations Convention on the Rights of Persons with Disabilities' aims of protecting the rights, freedoms and inherent dignity of people with disabilities.

In particular the Convention recognises the rights to equal recognition before the law (Article 12), liberty and security (Article 14), freedom from torture or cruel, inhuman or degrading

treatment or punishment (Article 15), and freedom from exploitation, violence and abuse (Article 16).

The *GAA* requires that decisions be least restrictive (as is consistent with a person's proper care and protection), and that the use of special powers to place, detain and use force in the care of a person under guardianship be only used when the safety of the person or others is seriously at risk.

The *Disability Services Act (DSA) 1993* following amendments that came into operation in late 2013, has an object to acknowledge and support the rights of people living with disabilities to exercise choice and control in relation to decision making.

*DSA* section 3A states that a prescribed disability service provider must have in place appropriate policies and procedures for ensuring the safety and welfare of persons using the service. The nature of these policies and procedures will depend on the nature of the service provided but may include, for example, policies and procedures addressing restrictive practices.

In this context prescribed providers (a Government department, agency or instrumentality or a provider that is funded under the *DSA*) that provides support services for people who are subject to restrictive practices, would be expected to have a restrictive practices policy in place. The aim of such policies should be to reduce or eliminate where possible the use of such practices.

**Where to send feedback:** [opa@agd.sa.gov.au](mailto:opa@agd.sa.gov.au).

**Enquiries about Consent and the Use of this Policy** can be directed to the OPA Information Service on 8342 8200.

## 5. Definitions

The following definitions apply in this, the 'Guardian Consent for Restrictive Practices in Disability Settings' policy document, and in the 'Request for Guardian Consent to be Completed by Treating Professional or the Service Manager' request form.

**ACD:** *Advance Care Directives Act 2013.*

**Consent Act:** *Consent to Medical Treatment and Palliative Care Act 1995*

**GAA:** *Guardianship and Administration Act 1993*

**Guardian** means an enduring guardian or a guardian appointed under a guardianship order pursuant to the GAA.

**Practitioner** means a health or disability professional as defined in the relevant organisational guidelines (ie, Disability Services Guidelines or equivalent).

**Restrictive practices** means detention, seclusion, chemical restraint, physical restraint and mechanical restraint as defined in this document.

**Detention** means a situation where a person is unable to physically leave the place where he or she receives disability services. The means of detention may include locked doors, windows or gates, and the constant supervision and escorting of a person to prevent the person from exercising freedom of movement. "Detain" and "detained" have corresponding meanings.

**Seclusion** means the sole confinement of a person with a disability at any hour of the day or night in any room or area in the premises in which that person is detained.

**Chemical restraint:** If the primary purpose of administering medication is to subdue or control the behaviour of a person with a disability, then the use of the medication is a chemical restraint. Likewise, the use of medication when needed (ie, 'PRN'), for the primary purpose of controlling behaviour, is a restraint. If information regarding the primary purpose of administering the medication is not available, the intervention should be considered a chemical restraint. If the medication is used to treat a person's illness (psychiatric or physical), then it is not viewed as a restraint but as a treatment.

**Physical restraint** means the use of any part of another person's body to restrict the free movement of a person with a disability with the aim of controlling that person's behaviour.

**Mechanical restraint** means the use of a device to restrict the free movement of a person with a disability or to prevent or reduce self-injurious behaviour. It does not include the use of devices for therapeutic purposes or to enable the safe transportation of that person.

**Substitute Decision Maker** under a particular advance care directive means a substitute decision-maker appointed under *ACD Act 2013* Part 3 Division 2 or Part 7. In this policy it includes substitute decision makers appointed under the former Enduring Power of Guardianship and Medical Power of Attorney.

## ***6. Restrictive Practices subject to review***

The use of a restrictive practice should be subject to regular and ongoing review.

If there are situations where a restrictive practice has been commenced without consent (for example the administration of chemical restraint) then the first question to consider is whether the practice can be stopped. If not, a guardian can be asked to consent on a temporary basis for an intervention to continue for a brief period of time, so that practitioners can undertake necessary assessments and give proper consideration the use of other options that do not involve restraint.

## ***7. Emergency Provisions***

The requirements of this policy will not apply when consent is given on an emergency basis - for example when a guardian has been given special powers by SACAT in an emergency or urgent hearing, or in situations where restrictive practices are applied immediately to manage a behavioural emergency.

In these situations this policy permits a guardian to give consent for the use of a restrictive practice on an emergency basis for a 7 day period without the provision of an assessment or the provision of advice from the provider that other non-restraint options have been seriously considered or trialed.

This consent may be renewed for further 7 day periods, up to 28 days total, but it is expected that providers will then be in a position to comply with the requirements of this policy.

## Recommendation and Consent

Form of restrictive intervention	Practitioner Recommendation as per Disability Organisation's own policy.	Managers Recommendation as per Disability Organisation's own policy.	Consent
	(Disability Services Guideline as example in this table)	(Disability Services Guideline as example in this table)	
<b>Detention</b>	Service Unit Manager	Senior Manager	An appropriate authority (a guardian or substitute decision maker) expressly authorised by SACAT under s.32(1)(b) to detain the protected person in the place in which he or she will so reside but only to the extent authorised by SACAT.
<b>Seclusion</b>	Psychologist or Psychiatrist	Senior Manager	An appropriate authority (a guardian or substitute decision maker) expressly authorised by SACAT under s.32(1)(b) to detain the protected person in the place in which he or she will so reside.
<b>Physical restraint</b>	Service Unit Manager	Senior Manager of persons involved in the care of the protected person, expressly authorised by SACAT under s.32(1)(c) to use such force as may be reasonably necessary for the purpose of ensuring the proper medical or dental treatment, day-to-day care and well-being of the person but only to the extent authorised by SACAT.	An appropriate authority (a guardian or substitute decision maker).

Form of restrictive intervention	Practitioner Recommendation as per Disability Organisation's own policy.	Managers Recommendation as per Disability Organisation's own policy.	Consent
	(Disability Services Guideline as example in this table)	(Disability Services Guideline as example in this table)	
<b>Mechanical Restraint</b>	<p>Treating Health Professionals</p> <p>This includes the use of lap belts designed to prevent movement, tabletops designed to stop a person standing, posey restraints, bed rails put in place to stop a person getting out of bed (as opposed to accidentally falling out) and deep chairs from which a person cannot stand unassisted.</p> <p>Individual analysis of each person's situation is likely to be necessary to determine if a mechanical device is being used only for safety purposes or is being used to restrain a person's behavior.</p>	<p>Senior Manager of persons involved in the care of the protected person, expressly authorised by SACAT under s.32(1)(c) to use such force as may be reasonably necessary for the purpose of ensuring the proper medical or dental treatment, day-to-day care and well-being of the person but only to the extent authorised by SACAT.</p>	<p>An appropriate authority (a guardian or substitute decision maker).</p>

Form of restrictive intervention	Practitioner Recommendation as per Disability Organisation's own policy.	Managers Recommendation as per Disability Organisation's own policy.	Consent
	(Disability Services Guideline as example in this table)	(Disability Services Guideline as example in this table)	
<b>Chemical Restraint (of behaviour not due to a mental illness)</b>	Medical officer, GP or psychiatrist	Senior Manager	A substitute decision maker appointed under an advance care directive ( <i>ACD Act 2013</i> ) subject to any instructions and directions in the Advance Care Directive (see <i>ACD Act 2013</i> s.35).
<i>Not requiring the use of force to administer medication.</i>			A person responsible for a patient ( <i>Consent Act</i> ) which means (in hierarchical order):
			Guardian for healthcare appointed under the <i>GAA</i> , s.29, subject to any conditions or limitations (s.29(6)).
			A prescribed relative of the patient who has a close and continuing relationship.
			An adult friend who has a close and continuing relationship.
			SACAT.
			<i>Please note: Although a person overseeing ongoing day to day supervision, care and wellbeing of a patient can provide health consent generally, the ACD Regulations forbid such a person providing consent to chemical restraint.</i>

<p><b>Chemical Restraint (of behaviour not due to a mental illness)</b></p>	<p>Medical officer, GP or psychiatrist</p>	<p>Senior Manager of persons involved in the care of the protected person, expressly authorised by SACAT under s.32(1)(c) to use such force as may be reasonably necessary for the purpose of ensuring the proper medical or dental treatment, day-to-day care and well-being of the person but only to the extent authorised by SACAT.</p>	<p>A substitute decision maker appointed under an advance care directive (<i>ACD Act 2013</i>) ) subject to any instructions and directions in the Advance Care Directive (see <i>ACD Act 2013</i> s.35).</p>
<p><i>Requiring the use of force to administer medication.</i></p>			<p>Guardian for healthcare appointed under the GAA, s.29, subject to any conditions or limitations (s.29(6)).</p>
<p><b>Psychiatric treatment (medication prescribed for treatment of a mental illness)</b></p>	<p>Medical practitioner, authorised health professional, SACAT (<i>Mental Health Act 2009</i>)</p>	<p>Not applicable.</p>	<p>Not applicable.</p> <p>Not applicable. A guardian or substitute decision maker should not consent for involuntary psychiatric treatment, but defer to the provisions of the <i>Mental Health Act 2009</i>, for such treatment.</p> <p>In this situation a <i>Community Treatment Order</i> would be made subject to the provisions of the <i>Mental Health Act 2009</i>.</p>

## Recommendation and Consent Examples of best practice in disability settings

<i>Practice</i>	<i>Further notes</i>	
An Assessment	Identifies <b>past harm</b> .  Identifies a risk of <b>future harm</b> .	Document how the person's behaviour has previously caused harm to the person or to others.  Indicate how there is a serious risk that, if the consent is not given, the person's behaviour will cause harm to the person or others.
	Identifies the <b>function</b> of the behaviour of concern.	The assessment gives a good understanding of the problem.  It explains the function of the behaviour of concern.
Behaviour Support Plan	There is a <b>clear link between the assessment and the plan</b> .  The plan identifies why it is the <b>least restrictive option</b> .	Restrictive practices can only be implemented if described in a Behaviour Support Plan.  The recommendation to use the restrictive practice is based on assessment findings.  If the recommendation to use a restrictive practice is made by a different professional then the recommendations should also be supported by the person who assessed the person.  Case made that the restrictive practice is the least restrictive option.  The plan describes evidence of less restrictive options that have been tried and explains why they have been unsuccessful.
	The plan has been checked against the <b>key quality elements</b> of a Behaviour Support Plan (See 6 items in the next column)  If the plan does not meet these criteria it may be subject to revision.  If there is ongoing disagreement about a plan a second professional opinion is to be sought.	<ol style="list-style-type: none"> <li>1. Plan identifies the function of the behaviour of concern.</li> <li>2. Environmental factors that support the behaviour of concern are identified.</li> <li>3. The plan introduces both environmental change and supports new behaviours.</li> <li>4. Reinforcement of new behaviours is identified.</li> <li>5. Response to recurrence of behaviour of concern is described.</li> <li>6. Plan contains strategy to communicate between stakeholders.</li> </ol>
	The plan identifies how <b>outcomes of the plan</b> can be determined.	The plan should have evidence that it will be monitored and reviewed to evaluate its effectiveness.

	The plan identifies how <b>it will reduce risk of harm</b> if effective.	If the positive behaviour support plan is implemented the risk of the person's behaviour causing harm will be reduced or eliminated.
	The plan identifies how it will improve the <b>person's quality of life</b> .	The person's quality of life will be improved in the long term.

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Date of Approval      1 July 2014

Review Date            1 September 2014