

Policy	Restrictive practices policy	
Approved by:	Director Guardianship	Name: Amelia Barker
Date Effective	March 2020	Version 2
Application	All Office of the Public Guardian (OPG) staff	
Related	<p>Frameworks:</p> <ul style="list-style-type: none"> • Restrictive Practices Decision Making Framework • Structured Decision Making Framework • Community Visitor Practice Framework • Human Rights Decision-Making Framework <p>Policy: Consent to mental health treatment and care by the Public Guardian</p> <p>Practice Directions:</p> <ul style="list-style-type: none"> • Seeking adult’s views in relation to Restrictive Practices • Approval of Positive Behaviour Support Plans for Mechanical Restraint, Physical Restraint and Restricted Access to Objects • Conducting Guardianship Client Visits • Community Visitors—chemical restraint and medications: visiting adults in a DCCSDS or NDIS funded visitable site 	

A. Relevant Legislation

- A1. *Public Guardian Act 2014* (PGA)
- A2. *Guardianship and Administration Act 2000* (GAA)
- A3. *Disability Services Act 2006*
- A4. *Mental Health Act 2016* (MHA)
- A5. *Community Services Act 2007*
- A6. *National Disability Insurance Scheme Act 2013*
- A7. *National Disability Insurance Scheme (Behaviour Support) Rules 2018*
- A8. *Human Rights Act 2019*

B. Purpose

- B1. This policy defines the Public Guardian’s position on the use of restrictive practices in all sectors (whether disability, aged care, mental health, child protection, or in a detention setting) and the philosophy under which the Public Guardian and her delegates make decisions, monitor and advocate for all clients who are subject to restrictive practices.
- B2. This policy also affirms the commitment of the Public Guardian to reducing, and where possible, eliminating the use of restrictive practices, and promoting the full realisation of all human rights for our clients, including the right to liberty and security of the person, and freedom from exploitation, violence and abuse, in accordance with Articles 14 and 16 of the United Nations *Convention on the Rights of Persons with Disabilities*.

C. Roles and Responsibilities

- C1. All OPG staff are to perform their roles relating to decision making, monitoring and advocacy in the area of restrictive practices in accordance with this policy.

D. Definitions

- D1. This policy covers any actions that could be called 'restrictive practices' in all service sectors where the Public Guardian performs a decision making, monitoring or advocacy function.
- D2. While definitions vary across service sectors, for the purposes of this policy, 'restrictive practices' means any of the following actions, used to respond to the behavior of a person for the primary purpose of controlling or responding to behaviour that causes harm, or a serious risk of physical harm to the person, or others:
 - i. *Chemical restraint*—using medication, other than for the proper treatment of a diagnosed mental illness or physical condition.
 - ii. *Mechanical restraint*—using a device to restrict the free movement of the person, or to prevent or reduce self-injurious behaviour.
 - iii. *Physical restraint*—using any part of another person's body to restrict the free movement of the person.
 - iv. *Containment*—physically preventing the free exit of the person from premises where they receive services, other than by secluding the person.
 - v. *Seclusion*—physically confining the person alone, at any time of the day or night, in a room or area from which free exit is prevented.
 - vi. *Restricted access to objects*—restricting the person's access to an object at a place where they receive services.

E. Context

- E1. The Public Guardian is aware that at times, people who live with mental illness or an intellectual or cognitive disability may engage in behaviours that place themselves, and/or others at risk of harm, and in some circumstances, restrictive practices may be used by service-providers in response to these behaviours.
- E2. The use of restrictive practices must only occur where compatible with human rights as defined in the *Human Rights Act 2019*. A number of human rights may be engaged when using restrictive practices, and can only be limited if reasonable and demonstrably justifiable. The human rights engaged when using restrictive practices may include:
 - i. Right to recognition and equality before the law
 - ii. Right to protection from torture and cruel and inhuman or degrading treatment.
 - iii. Right to freedom of movement
 - iv. Right to liberty and security of person
 - v. Right to humane treatment when deprived of liberty.
- E3. *In the context of disability service-provision to adults*, Commonwealth and Queensland legislation govern the use of these restrictive practices, and the Public Guardian is empowered to make certain decisions under these pieces of legislation with respect to the use of restrictive practices, as outlined in the Public Guardian's 'Restrictive Practices Decision Making Framework'.
- E4. In other settings, such as mental health inpatient facilities and detention settings, Queensland legislation also facilitates the use of restrictive practices towards adults, as well as children and young people, but only in particular contexts and strictly in accordance

with specified safeguards. The Public Guardian is also aware that some people who reside in aged care facilities are subject to the use of restrictive practices where there is no legislative authorising framework governing its use. While the Public Guardian does not play a role in authorising restrictive practices in these settings delegates of the Public Guardian still play a vital role in questioning the use and proportionality in the exercise of restrictive practices. However in aged care facilities, this is limited to residents that have the Public Guardian appointed.

- E5. Many children, young people and adults who are subject to the use of restrictive practices are extremely vulnerable to human rights abuses. The OPG protects and promotes the rights and interests of our clients, by advocating for their human and legal rights, including that all less restrictive alternatives to ensure the safety of the client have been exhausted prior to the use of restrictive practices.
- i. For our adult clients, this means advocating for their rights, access to services, independence and choice as part of a supported decision-making model.
 - ii. For our children and young people clients, this means advocating for their rights, access to services and where appropriate, their independence and choice.
- E6. Advocacy means understanding the lives and views of our clients with the aim of promoting and protecting their individual human rights and interests. Advocacy can mean working to prevent or address discrimination, abuse or neglect. Advocacy does not mean taking over a client's life or problems, nor taking over the roles and responsibilities of other government agencies or service providers. Individual advocacy is the vehicle through which the OPG protects and promotes the rights and interests of our clients by making good decisions, and performing our functions with due diligence and care.
- E7. The Public Guardian has powers to make decisions, monitor and advocate in relation to the use of restrictive practices in many service sectors. Information regarding how the Public Guardian makes decisions regarding the use of Restrictive Practices can be located in the OPG's *Restrictive Practice Decision Making Framework*. Areas where the OPG has interface with restrictive practices include:
- i. when the Public Guardian is appointed as a substitute decision maker for restrictive practices (general, and/or respite) for an adult receiving funding from the Department of Communities, Child Safety and Disability Services (DCCSDS) or the National Disability Insurance Agency (NDIA) (ss 80ZD; 80ZE; 80ZF GAA)
 - ii. when the Public Guardian has been asked to consider an application for a Short Term Approval for the use of containment and/or seclusion, and other associated restrictive practices in relation to an adult receiving funding from the DCCSDS or the NDIA (ss 80ZH; 80ZI; 80ZK GAA)
 - iii. when the Public Guardian is appointed to seek help and make representation (restrictive practices) for an adult who is subject to containment and/or seclusion (s 12(1)(i) PGA)
 - iv. the Public Guardian is an *active party* to all restrictive practices proceedings that occur in the Queensland Civil and Administrative Tribunal; therefore, should the Public Guardian direct them to, the Public Guardian's delegates may appear as an active party in any restrictive practice proceedings (s 80ZQ(h) GAA)
 - v. when the Public Guardian is appointed as a substitute decision maker for an adult who resides in an aged care facility who may use restrictive practices in that facility (s 12(1)(f) GAA)
 - vi. when the Public Guardian is appointed as a substitute decision maker for an individual who is at least 17 ½ years old who may be subject to the use of restrictive practices prior to turning 18 years old (s 13 GAA)

- vii. when the Public Guardian is notified of the use of mechanical, or physical restraint, or seclusion on a minor in an authorised mental health service (s 274 MHA)
- viii. when a community visitor (adult), as a delegate of the Public Guardian, visits an authorised mental health service, the forensic disability service or another visitable site prescribed by a regulation, where an adult lives (Ch 3, Part 6 PGA)
- ix. when a community visitor (child), as a delegate of the Public Guardian, visits a child or young person in an authorised mental health service, residential care, disability service, youth detention or a visitable home (Ch 4, Part 1 PGA).

F. Policy and Operational Implications

- F1. All client-facing staff of the Office of the Public Guardian must be vigilant to the use of restrictive practices that occur in the settings where our clients are staying. Public Guardian delegates should be particularly attentive to gathering information regarding the use of restrictive practices. Even greater vigilance needs to occur in areas where there are gaps in regulatory oversight. Practices that should be questioned also include:
- i. Where a child or young person in care is subjected to the use of behavior modifying medications without an appropriate diagnosis, or where 'off-label usage' of medication is apparently being used to control a child's behavior rather than treat an underlying condition or illness.
 - ii. Where a client living in, or moving to an aged care facility is subjected to, or risks being subjected to the use of restrictive practices, and the actions contravene the service provider's policy, and/or the person's fundamental human rights.
- F2. Without the relevant authority and/or outside of these settings, the use of restrictive practices would otherwise constitute an assault, or other criminal offence against a person.
- F3. The use of restrictive practices, even when authorised, nonetheless remains contentious. There is considerable evidence supporting the findings that restrictive practices are not effective in managing behaviours of harm; may be counter-productive or lead to further and ongoing use of restrictive practices negatively impact on a person; lead to an escalation in challenging behaviours; and cause harm to the person.
- F4. Unauthorised, or excessive use of restrictive practices presents one of the greatest concerns for the Public Guardian given that the application of restrictive practices represents one of the greatest potential infringements of human rights the OPG deals with. Therefore monitoring and advocacy in relation to the use of restrictive practices remains one of the Public Guardian's greatest priorities.
- F5. The Public Guardian is cognisant that engaging in behaviours of concern and/or behaviours of harm are often a function of communication, and is aware that behaviours may arise when an individual's unique communication needs are not being met. As such, where restrictive practices are being used or proposed to be used, the Public Guardian seeks to establish whether the relevant assessments have been undertaken in relation to communication, and that appropriate strategies are being used to ensure the individual's views and wishes can be sought and understood.

G. The Key Principles of the Public Guardian's Position on Restrictive Practices

- G1. In keeping with legislative requirements, the *Convention on the Rights of Persons with Disabilities* and the *Convention on the Rights of the Child*, the guiding principles for the OPG in relation to restrictive practices are:
- i. The promotion and protection of the person's human rights is paramount. Staff must be **vigilant and safeguard against the unlawful application or inappropriate use of restrictive practices**, which is a serious infringement of the person's human rights. Reporting the unauthorised use of restrictive practices is a clear responsibility of both delegate guardians and community visitors.
 - ii. The use of restrictive practices should be prohibited except when necessary as a **last resort** to prevent imminent and serious harm to the person or others, **only in circumstances where all other less restrictive options have been exhausted**.
 - iii. The use of restrictive practices **should be the least restrictive option, should not cause humiliation or degradation, and should only be used for the shortest possible period** of time to ensure the safety of the person or others.
 - iv. The person's fundamental and basic human rights must be met, and the **use of restrictive practices must not be a substitute for a safe environment, adequate care, sufficient resourcing, appropriate community access opportunities, and respect** from support staff and their service providers. Restrictive practices must only occur where compatible with human rights as defined in the *Human Rights Act 2019*. Human rights must not be limited unless reasonable and demonstrably justifiable.
 - v. Any use of restrictive practices should be accompanied by a plan and/or strategy for **positive behaviour support and the reduction and elimination of the restrictive practice**, in keeping with legislative and policy obligations. The plan and/or strategy should be evidence-based, appropriate, realistic, and reflect the person's views and wishes.
 - vi. All efforts should be made by the appropriate service provider to **analyse and understand the driving causation and triggers of behaviours of harm, so that restrictive practices are minimised and therapeutic interventions** which will ultimately see their reduction and elimination are pursued. This specifically includes understanding and addressing past trauma (particularly childhood trauma or history of institutionalisation) as a cause or catalyst of behaviours of harm. It further includes assessing communication needs of the person and conducting sensory assessments to determine what inputs may be contributing to behaviours for the person.
 - vii. When considering the use of restrictive practices, appropriate communication strategies should be used to ensure **the person's views and wishes can be sought and understood**. This should also include appropriate consideration of a person's dignity of risk. Staff are to obtain and prioritise, to the greatest extent possible, the views and wishes of a client regarding the use of restrictive practices when performing a function of the Public Guardian relating to restrictive practices.

- viii. Service providers should actively **pursue and promote the reduction and elimination of restrictive practices** with their staff, and guard against any reliance or normalisation of poor practices in this area. The Public Guardian strongly advocates for the reduction and elimination of restrictive practices across all service sectors.
- ix. Restrictive practice **reduction and elimination strategies must be evaluated** in the months and years following their establishment. Strategies that were initially effective may be less successful long term.
- x. The use of restrictive practices in any service sector should be subject to **legislative regulation and independent oversight**. The Public Guardian supports the introduction of a national legislative framework and enforcement to regulate the use of restrictive practices in all service sectors for all persons across Australia.

H. Key State, National and International Documents

- H1. United Nations *Convention on the Rights of Persons with Disabilities*
- H2. United Nations *Convention on the Rights of the Child*
- H3. Australian *National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector*
- H4. Australian *National Mental Health Strategy*
- H5. Australian *National safety priorities in mental health: a national plan for reducing harm*
- H6. Queensland *Health Policy statement on reducing and where possible eliminating restraint and seclusion in Queensland mental health services*

Version #	Approved By and Role	Date	Changes from Last Version	E-docs #
2	Amelia Barker, Director Guardianship	06/03/2020	Updated to include Human Rights Act and Framework	#4057367
1	Natalie Siegel-Brown, Public Guardian	08/01/2018		#4057367