

Policy statement about requests for consent from the Public Guardian to apply restrictive practices to an individual receiving ‘funded aged care services’¹

Role of the Office of the Public Guardian

The Office of the Public Guardian (OPG) is an independent statutory office established to, amongst other things, protect the rights and interests of adults with impaired decision-making capacity. The statutory powers and functions of the Public Guardian (and their delegates)² are contained in the *Public Guardian Act 2014* (Qld) and the *Guardianship and Administration Act 2000* (Qld).³

The functions of the Public Guardian include acting as a substitute decision-maker of last resort, protecting adults from neglect, exploitation and abuse by exercising investigative powers, and providing visiting and individual advocacy to protect their rights, access to services, independence and choice. It also means supporting them to raise formal complaints with relevant agencies.

The Queensland Civil and Administrative Tribunal (QCAT) may appoint the Public Guardian as guardian for an adult only if there is no other appropriate person available for appointment for the matter.⁴ The Public Guardian can only be appointed to make decisions relating to some or all of an individual’s personal matters, not financial matters. This may include giving or withholding informed consent on behalf of an individual for a registered aged care provider to use ‘restrictive practices’,⁵ as defined in section 17-5(1) of the *Aged Care Rules 2025*.

When nominated by an adult, the Public Guardian can act as an Enduring Power of Attorney. This means that in the event the adult loses decision-making capacity, the Public Guardian can make decisions relating to personal matters as set out by the enduring document.⁶ Where the Enduring Power of Attorney nominating the Public Guardian is for all personal matters, the Public Guardian, as attorney, has the maximum power that could be given to an attorney by the enduring document, pursuant to the *Powers of Attorney Act 1998* (Qld).⁷ The nomination therefore includes the power for the Public Guardian to give or withhold consent on behalf of the individual for a registered aged care provider to use ‘restrictive practices’.

Policy statement

For an individual receiving funded aged care services from a registered provider, a restrictive practice is any practice or intervention that has the effect of restricting their rights or freedom of movement.⁸

Each of the following is a restrictive practice in relation to an individual:

- chemical restraint
- environmental restraint
- mechanical restraint

¹ As defined under s 9(1) of the *Aged Care Act 2024* (Cth).

² Use of the term ‘Public Guardian’ in this document encompasses delegates of the Public Guardian.

³ Part 5B of the *Guardianship and Administration Act 2000* (Qld) does not apply to restrictive practices in aged care.

⁴ *Guardianship and Administration Act 2000* (Qld) s 14(2).

⁵ *Guardianship and Administration Act 2000* (Qld) s 12; NJ [2022] QCAT 283.

⁶ *Public Guardian Act 2014* (Qld), s 12(e); *Powers of Attorney Act 1998* (Qld) s 67.

⁷ *Powers of Attorney Act 1998* (Qld) ss 67, 77.

⁸ *Aged Care Act 2024* (Cth) s 17(1).

- physical restraint
- seclusion.⁹

The use of restrictive practices in residential aged care is a significant limitation of a person’s human rights. Due to the significant nature of restrictive practices, the Public Guardian does not generally support the practice of QCAT appointing the Public Guardian to make decisions about the use of restrictive practices in aged care, under an interim order.¹⁰ Interim orders for guardianship in relation to various appointment areas are routinely made by Tribunal Members ‘on the papers’ (without a formal hearing, and only on consideration of the filed application material and by reference to overarching legislation). Usually, there is no thorough investigation by QCAT of the adult’s decision-making capacity in advance of the hearing, and often there is limited or no engagement with the adult subject to the proceedings.

As an active party to QCAT guardianship proceedings, the Public Guardian will, to the extent possible, advocate for an oral hearing before QCAT (rather than an ‘on the papers’ hearing) to enable the subject of the application to be supported to participate, or for their views and wishes to be taken into account. Any representative for the Public Guardian at the hearing will advocate for consideration of all requirements of the *Guardianship and Administration Act 2000* (Qld), and the *Human Rights Act 2019* (Qld) by the presiding QCAT Member, in determining whether a decision-maker should be appointed for the use of restrictive practices on the individual.

The *Guardianship and Administration Act 2000* (Qld) acknowledges:¹¹

- An adult’s right to make decisions is fundamental to the adult’s inherent dignity;
- The right to make decisions includes the right to make decisions with which others may not agree;
- The capacity of an adult to make decisions may differ according to:
 - The nature of decision to be made, including, for example, the complexity of the decision to be made; and
 - The support available from members of the adult’s existing support network;
- The right of an adult with impaired capacity to make decisions should be restricted, and interfered with, to the least possible extent;
- An adult with impaired capacity has a right to adequate and appropriate support for decision-making.

When an OPG guardian/attorney is making a decision for an adult, they must apply:

- The General Principles of the *Guardianship and Administration Act 2000* (Qld)¹² and the *Powers of Attorney Act 1998* (Qld)¹³;
- The *Human Rights Act 2019* (Qld); and
- The Office of the Public Guardian’s frameworks:
 - [‘Human Rights Act 2019 – Decision-making framework for the performance of the Public Guardian’s functions and powers’](#); and
 - [‘Structured Decision-Making Framework’](#).

⁹ *Aged Care Rules 2025* (Cth) s17-5(1).

¹⁰ *Guardianship and Administration Act 2000* (Qld) s 129.

¹¹ *Guardianship and Administration Act 2000* (Qld) s 5.

¹² *Guardianship and Administration Act 2000* (Qld) s 11B-11C.

¹³ *Powers of Attorney Act 1999* (Qld) s 6C-6D.

The starting point for all decisions is to recognise and preserve, to the greatest extent practicable, the adult’s right to make their own decisions, and if possible, to support the adult to make those decisions.

The adult must be consulted on a decision regarding the proposed use of a restrictive practice, and if they are unable to be consulted, steps should be taken to ascertain their likely views, wishes and preferences by other means¹⁴ before making a substituted decision. The adult must, where possible, be able to choose whether to be assisted with decision-making support by a particular person, and to cease being supported at any time.

Wherever possible, an OPG guardian will visit the adult to seek their views, wishes and preferences, and to observe the circumstances of any existing or proposed restrictive practice/s.

Whilst OPG can provide consent for restrictive practice/s, OPG is not the regulator of approved aged care providers and aged care services and will not oversee or determine compliance with the *Aged Care Act 2024* (Cth), or the *Aged Care Rules 2025*. If the Public Guardian suspects an adult may be at risk of harm from a provider’s non-compliance with the *Aged Care Act 2024* (Cth) and/or the *Aged Care Rules 2025*, OPG will determine on a case-by-case basis whether protective action or referral to the Aged Care Quality and Safety Commission is required.

The Public Guardian requires the approved aged care provider to provide a signed declaration of its compliance with the relevant *Aged Care Rules 2025*, Aged Care Quality Standards, and the Aged Care Code of Conduct, when applying for consent to use restrictive practices on an individual.

Relevant authority to provide, or refuse to provide, consent

Restrictive practices are applied for the primary purpose of influencing a person’s behaviour/s of harm. Restrictive practices do not include, for example, use of medication prescribed to treat:

- a diagnosed mental disorder
- a physical illness or condition
- end of life care.¹⁵

The health care of an adult, is care or treatment of, or a service or procedure:

- to diagnose, maintain, or treat the adult’s physical or mental condition; and
- carried out by, or under the direction of, a health provider.¹⁶

Consequently, use of restrictive practices is not a health care matter.

OPG can make a decision in relation to the use of restrictive practices when appointed by QCAT for all personal matters for an adult, or where the appointment specifically relates to the use of restrictive practices in aged care. When considering decisions as an attorney for an adult, the Enduring Power of Attorney document must relate to all personal matters, or specifically relate to the use of restrictive practices in aged care. If the enduring document does not state the extent of the power of the Public

¹⁴ For example, this may include consideration of the adult’s prior expressed views, wishes and preferences, or views, wishes and preferences inferred from previous or historical behaviours/actions.

¹⁵ *Aged Care Rules 2025* (Cth) s 17-5(2).

¹⁶ *Guardianship and Administration Act 2000* (Qld) sch 2, s 5(1).

Guardian as attorney, it is assumed under the *Powers of Attorney Act 1998* (Qld) that the attorney is taken to have the maximum power that *could* be given to the attorney by the enduring document.¹⁷ This section applies where there is no inconsistent section under the *Guardianship and Administration Act 2000* (Qld).

A restrictive practice used to influence behaviour/s of harm is not a health care matter. Consequently, neither a QCAT appointment to make decisions for health care matters, nor an Enduring Power of Attorney or Advance Health Directive for health care matters, is a sufficient authority to decide whether to give or withhold consent for the use of a restrictive practice in aged care. Furthermore, the Public Guardian does not have authority as a Statutory Health Attorney to make a decision to give or withhold consent for the use of a restrictive practice in aged care.¹⁸

An OPG guardian's role in decision-making for an individual may be limited or conditional based on directions given by QCAT, or for an attorney, any conditions stipulated within an enduring document.

Making a decision to provide or refuse consent

When considering a request for consent to the use of restrictive practices, it is first acknowledged that the use of any restrictive practice limits the individual's human rights. OPG's focus is therefore on ensuring that restrictive practice/s are only used as a last resort and in the least restrictive way. The use of restrictive practices should also be reduced or eliminated over time.

An OPG guardian will seek and obtain comprehensive information to satisfy themselves whether a limitation on the individual's human rights is reasonable and demonstrably justifiable¹⁹ for their specific circumstances. Consent will only be given by an OPG guardian if the proposed restrictive practice/s are demonstrated to be reasonable and justifiable and the relevant provisions in the *Aged Care Act 2024*, are met.²⁰ The following points are examples of where consent could be given for use of restrictive practice/s:

- To respond to or prevent a behaviour likely to cause harm to the individual or other persons.
- As a last resort, after less restrictive options have been exhausted.
- To be implemented with the goal to reduce and eliminate use over time.
- Used in conjunction with other non-restrictive supports.
- Used in the least restrictive way for the shortest amount of time.
- Based on recent assessments by an expert in behavioural support in aged care.
- Supported by the information and evidence required under the *Aged Care Rules 2025*.

Consent for use of restrictive practice/s will be decided on a case-by-case basis. If consent is provided by an OPG guardian, consent for the use of a chemical restraint will be provided for a maximum of up to three months. Conversely, consent for all other restrictive practices could be provided up to a maximum of six months.

As outlined above, the Public Guardian does not generally support the practice of QCAT appointing the Public Guardian to make decisions about consenting to restrictive practices in aged care under an interim order. In circumstances where an approved age care provider is not yet able to obtain consent but believes

¹⁷ *Powers of Attorney Act 1998* (Qld) s 77.

¹⁸ *Aged Care Rules 2025* (Cth) s 6-20.

¹⁹ *Human Rights Act 2019* (Qld) s 13.

²⁰ *Aged Care Act 2024* (Cth) s18(1)(a)-(g)

the use of restrictive practices is immediately necessary, the approved aged care provider should consider the relevant provisions of the *Aged Care Act 2024 (Cth)*/*Aged Care Rules 2025* and seek advice from the Aged Care Quality and Safety Commission.