



Restrictive Practices Decision Making Framework

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Contents

1. Relevant Legislation	3
2. Purpose	3
3. The Public Guardian's policy and approach to restrictive practices and positive behaviour support	4
4. Legislation that guides and empowers the Public Guardian to make Restrictive Practice decisions	5
5. Decision Making Framework	6
5.1 Different types of restrictive practices and our decision making	6
○ Containment and/or Seclusion	6
○ For Containment and/or Seclusion	7
○ For Seclusion	7
○ For Containment	7
○ Locked Gates Doors and Windows	8
○ Locking of bedroom doors during overnight disability support	8
○ Chemical Restraint (Fixed dose and PRN)	8
○ Information on the consent to the use of anti-libidinal medication as chemical restraint	10
○ Physical Restraint	10
○ Restricted Access to Objects (RATO)	11
○ Mechanical Restraint	11
5.2 The purpose of Short Term Approval	12
5.3 Short Term Approval – Exceptional Circumstances	12
5.4 Length of consent	13
5.5 Short Term Approvals	13
5.6 Positive Behaviour Support Plans	13
5.7 Reviewing and Processing a Positive Behaviours Support Plan for consent	13
5.8 Consenting to the use of restrictive practices in compliance with a Positive Behaviour Support Plan	13

5.9 Operation of s169 <i>Disability Service Act 2006</i>	14
5.10 Reviewing and Process a Short Term Approval Application for approval	15
5.11 Conditional Consent	15
5.12 Changes to the use of restrictive practices during consent period	16
5.13 Amending a Positive Behaviour Support Plan	16
5.14 Amending a Short Term Approval	16
5.15 Seeking Help and Making Representations (Restrictive Practices)	17
6 Related documents	18

1. Relevant Legislation

A1. *Guardianship and Administration Act 2000*

A2. *Disability Services Act 2006*

A3. *Public Guardian Act 2014*

A4. *Human Rights Act 2019*

2. Human Rights

The Public Guardian will only consider approving the use of restrictive practices, if considered to be compatible with human rights as defined in the *Human Rights Act 2019*. Several 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 often include:

- Right to recognition and equality before the law
- Right to protection from torture and cruel inhuman or degrading treatment
- Right to freedom of movement
- Right to liberty and security of person
- Right to humane treatment when deprived of liberty

3. Purpose

This decision-making framework is intended to guide service providers (in particular services funded by Disability Services or through the National Disability Insurance Scheme (NDIS)) regarding the decision making process that the Public Guardian will use to make decisions in relation to both Short Term Approvals and other decisions relating to Restrictive Practices for Guardianship clients of the Office of the Public Guardian.

The decision-making framework is one of the key ways in which the Office of the Public Guardian gives life to the agency's overarching Policy regarding Restrictive Practices and contributes to the overall human rights quest of governments and the sector to reduce and eliminate restrictive practices.

The use of the term 'adult' refers to both formal guardianship clients, and adults for whom a Short Term Approval for the use of restrictive practices, is sought from the Public Guardian. Importantly, this document is also intended to inform those people upon whom Restrictive Practices will be used, of the process by which the Public Guardian arrives at its decisions. This Framework should also serve as a guide for people who play a significant role in the life of an adult about how such decisions are made.

The guiding principles for Restrictive Practice decision-making by the Public Guardian are:

- The protection and promotion of the human rights of the adult. Pursuant to the General Principles contained in Schedule 1 of the *Guardianship and Administration Act 2000*, this includes ascertaining and prioritising the views of the adult in all decision-making with respect to restrictive practices.

- Ensure that all decisions relating to the use of restrictive practices are made in accordance with the *Human Rights Act 2019*. The use of a restrictive practice is a significant restriction on the adult's human rights, and therefore must be demonstrably justified and reasonable.¹
- In line with the NDIS Quality and Safeguards Framework and the purpose of Positive Behaviour Support under the *Disability Services Act 2006* (s 139), vigilant efforts to ensure restrictive practices are reduced or eliminated.
- A focus on the least restrictive option to respond to behaviours of harm.
- All efforts should be made to ensure that behaviours that cause harm to the adult or others have been properly understood and analysed as to their driving causation and triggers, so that restrictive practices are minimised and therapeutic interventions which will ultimately see their reduction and elimination are pursued (as per *Disability Services Act 2006* s148).
NOTE: This specifically includes understanding and addressing past trauma (particularly childhood trauma) as a cause or catalyst of behaviours of harm. It further includes assessing the communication needs of the adult and conducting sensory assessments to determine what inputs may be contributing to behaviours for the adult.
- The life goals and quality of life of the adult. This relates to the imperative that efforts are being made simultaneously to explore and develop the adult's life aspirations (s142 and 148(3)(c)(i) *Disability Services Act 2006*).
- An understanding of, and appropriate consideration given to the 'dignity of risk'; that is, the fact that accompanying every endeavour is the element of risk, and that every opportunity for growth carries with it the potential for failure, noting that people learn from taking risks and trying new things and often learn as much from mistakes as successes (Deegan, 2001). This principle is a core component of the UN's Guiding Principles of the UN Convention on the Rights of People with Disability.

4. The Public Guardian's policy and approach to restrictive practices and positive behaviour support.

The Public Guardian is an independent statutory officer with specific powers and responsibilities to promote and protect the rights and interests of adults with impaired capacity.² In accordance with the United Nations Convention on the Rights of Persons with Disabilities, the Office of the Public Guardian (OPG) has developed this framework with a commitment to 'promote and ensure the full and equal enjoyment of all human rights and fundamental freedoms by all persons with disabilities, and to promote respect for their inherent dignity'.³

The Public Guardian's decisions must also be compatible with human rights as defined in the *Human Rights Act 2019*. Human rights must not be limited unless reasonable and demonstrably justifiable. Restrictive practices are often a significant restriction on a number of rights including; right to recognition and equality before the law, protection from torture and cruel, inhuman or degrading treatment, and right to liberty and security of person.

The Public Guardian is aware that at times, adults who live with 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 are used in response to these behaviours.

The Public Guardian is cognisant that engaging in behaviours of concern and/or behaviours of

¹ Under section 13 of the *Human Rights Act 2019*, any limit to a human right must be subject under law only to reasonable limits that can be demonstrably justified based on human dignity, equality and freedom.

² *Public Guardian Act 2014*

³ Article 1, Convention on the Human Rights of Persons with Disabilities

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, when considering requests to approve the use of restrictive practices, the Public Guardian must be satisfied that relevant assessments have been undertaken in relation to communication, and that appropriate strategies are being used to ensure the adult's views and wishes can be sought and understood. When considering requests to approve the use of restrictive practices, the Public Guardian must also be satisfied that the adult has their fundamental human rights met, and that the request for approval to use restrictive practices is not in lieu of a safe environment to live in, appropriate community access opportunities, adequate healthcare and respect from support staff and their service provider(s).⁴

The use of a restrictive practice is not a substitute for inadequate or inappropriate resources, and the Public Guardian is of the view that the use of a restrictive practice in this circumstance is a serious contravention of client rights. The Public Guardian, where appropriate, will make representations and advocate to ensure that clients are in receipt of the support, housing and healthcare they need.

The Public Guardian understands that the use of restrictive practices should always be considered as a last resort. As such, the Public Guardian will seek information to evidence that this is the case.

The Public Guardian is mindful of the significant role that past trauma can play in triggering behaviours of harm. As a result, the Public Guardian will always query whether such indicia are present for a client, and if so, whether appropriate trauma-responsive, therapeutic interventions (such as counselling and support) have been engaged. This is with a view to determining whether an appropriate long term strategy has been introduced to ensure the causes of behaviours of harm are reduced and that the use of proposed restrictive practices themselves do not trigger further trauma.

As such, the Public Guardian views information regarding assessment to identify possible triggers, the development of strategies to address these, and trauma informed care as critical to the decision-making processes.

The Public Guardian has an unwavering commitment to an adult's right to participate, to the greatest extent practicable, in decisions affecting the adult's life.⁵ Furthermore, the Public Guardian is committed to engaging in supported decision-making, and must act in accordance with the General Principles of the *Guardianship and Administration Act 2000*. As such, when making decisions regarding restrictive practices, the Public Guardian seeks to ensure that the adult's views and wishes, including any objections regarding the use of restrictive practices are included in, and can have an effect on the decision-making process. The Public Guardian believes that a person-centred focus is crucial in the provision of disability services, and that people with a disability are the natural authorities for their own lives and as such, endeavours to always recognise this authority.⁶

The Public Guardian is committed to ensuring that all restrictive practice decisions are undertaken with a firm focus on least restrictive and evidence based practices, and expects that relevant service providers develop and enact Positive Behaviour Support Plans that reflect a strong commitment to sections 139 and 142 of the *Disability Services Act 2006*, which provide safeguards to protect the rights of adults with an intellectual or cognitive disability.

⁴ Australian Psychological Society *Evidence-based guidelines to reduce the need for restrictive practices in the disability sector* (2011) p.13

⁵ Schedule 1, Part 1, *Guardianship and Administration Act 2000*

⁶ National Framework for Reducing and Eliminating the use of Restrictive Practices in the Disability Service Sector (2014)

The Public Guardian understands that for a significant number of adults that display behaviours of concern and/or harm, it should be possible to eliminate the use of restrictive practices over time by understanding and responding to the issues underlying the behaviours,⁷ and expects that relevant service providers formulate and execute appropriate reduction and/or elimination plans.

5. Legislation that guides and empowers the Public Guardian to make Restrictive Practice decisions.

Pursuant to the provisions outlined in the *Guardianship and Administration Act 2000* and the *Disability Services Act 2006*, relevant service providers may apply to the Public Guardian to consider a request to:

- a) When the Public Guardian is appointed as decision maker for restrictive practices (general or respite), consent to the use of restrictive practices other than containment or seclusion. This application must be supported by a Positive Behaviour Support Plan, or
- b) Approve the use of containment and/or seclusion and other restrictive practices through a Short Term Approval application.
- c) A relevant service provider means a service that supports an adult who:
 - Has an intellectual or cognitive disability, and
 - Behaves in a way that either causes harm, or represents a serious risk of harm to themselves or others, and
 - Has impaired decision making capacity about restrictive practices, and
 - Is receiving services provided or funded by Department of Seniors, Disability Services and Aboriginal and Torres Strait Islander Partnerships (DSDSATSIP), or services prescribed by regulation and funded under a NDIS participant plan.

The Public Guardian's statutory obligation when authorising the use of restrictive practices is to apply the relevant legislative provisions in a way that is consistent with the General Principles and the overall policy intent of the authorising legislation, in particular, section 13 of the *Human Rights Act 2019*, Part 6 of the *Disability Services Act 2006* and Chapter 5B of the *Guardianship and Administrative Act 2000*.

The Queensland Civil and Administrative Tribunal (QCAT) may also appoint the Public Guardian to Seek Help and Make Representation (in relation to restrictive practices) for adults with impaired capacity who may be subject to containment and/or seclusion and other restrictive practices.

Pursuant to sections 44 and 80ZL(2)(a) and (b) of the *Guardianship and Administration Act 2000*, the Public Guardian has the right to all information that the Public Guardian deems necessary to make an informed decision. Further information and documentation the Public Guardian may request in relation to individual restrictive practices is outlined in this framework.

The Public Guardian will only consider approving the use of restrictive practices, if considered to be compatible with human rights as defined in the *Human Rights Act 2019*. Several rights may be engaged with using restrictive practices and can only be limited if reasonable and demonstrably justifiable. The human rights engaged when using restrictive practices often include:

- Right to recognition and equality before the law

⁷ NDIS Quality Safeguarding Framework (2016) p.66

- Right to protection from torture and cruel inhuman or degrading treatment
- Right to freedom of movement
- Right to liberty and security of person
- Right to humane treatment when deprived of liberty

6. Decision-Making Framework

The Public Guardian will make decisions about the use of restrictive practices in line with the Guiding Principles (which have been founded on the legislation) at '1' above and in accordance with the Public Guardian's human rights decision-making framework. However, the following additional considerations will apply to specific types of requests for restrictive practice decisions:

5.1 Different types of restrictive practices and our decision making:

5.1.1 Containment and/or Seclusion

The Public Guardian may give approval for the use of containment and or seclusion under a Short Term Approval pursuant to Chapter 5B, Part 4 of the *Guardianship and Administration Act 2000*. The Public Guardian is cognisant that the use of containment and/or seclusion in almost any other situation in the community would be considered a criminal offence, and considers applications for the approval for the use of these restrictive practices extremely seriously. The Public Guardian must be satisfied that all possible, less restrictive alternatives to ensure the safety of the adult and/or others have been exhausted. That is, it must be demonstrated that the use of containment and/or seclusion is being proposed as a last resort. Pursuant to section 80ZL(2)(a) and (b) of the *Guardianship and Administration Act 2000*, when considering a request to consent to the use of containment and/or seclusion, the Public Guardian may request information from the relevant service provider to assist in the decision-making process.

This information includes, but is not limited to the following areas:

5.1.2 For Containment and/or Seclusion

- The adult's views on the use of containment and/or seclusion, including how those views were obtained
- Incident reports and documentation recording behaviour
- A containment and/or seclusion protocol outlining details of what actions, including positive behaviour support strategies and less restrictive options support staff will attempt before enacting containment and/or seclusion, as well as how support staff will assess that seclusion and/or containment can end
- The maximum period for which containment and/or seclusion may be used at any one time
- Information detailing other strategies, including alternative restrictive practices that have been used to prevent the adult's behaviour resulting in harm to the adult or others, and an
- explanation as to why the proposed restrictive practices are the preferred option,
- Information regarding what support and comfort will be provided to the adult whilst being subject to containment and/or seclusion
- Indications as to whether the use of either seclusion or containment may be associated with past trauma or triggers for further behaviours of harm, and

- A diagram (hand drawn is acceptable) of the adult's premises that clearly indicates the areas of the residence in which the adult will be contained and/or secluded as well as detailed information about the environment in which the adult will be contained and/or secluded.

5.1.3 For Seclusion

- Information about how the adult will be monitored during seclusion, including details on whether support staff can view the adult, and how often support staff will communicate with the adult whilst in seclusion
- Details of the adult's access to: sufficient bedding, clothing, food and drink; adequate heating and cooling; toilet facilities, and the adult's medication as prescribed by a doctor during the period of seclusion (section 165(a)–(e) *Disability Services Act 2006*)
- The maximum duration and frequency of the seclusion in any 24 hour period, and
- A reduction and/or elimination plan that details how support staff will test whether seclusion needs to remain in place, i.e. how will the adult be given opportunities to demonstrate that the restriction may no longer be required at the current level, or at all.

5.1.4 For Containment

- Detailed information on community access arrangements in place for the adult and how those community access arrangements are linked to the adult's goals and aspirations
- Detailed information about how the relevant service provider will explain the use of containment to the adult including information regarding how and when support staff will inform the adult that containment is being enacted, and how and when support staff will inform the adult that containment is being ceased, and
- A reduction and/or elimination plan that details how support staff will test whether containment needs to remain in place, i.e. how will the adult be given opportunities to demonstrate that the restriction may no longer be required at the current level, or at all.

5.1.5 Locked Gates Doors and Windows

- The Public Guardian is aware that pursuant to section 218 of the *Disability Services Act 2006*, a relevant service provider may enact locking gates, doors and windows to prevent physical harm being caused to an adult with a skills deficit. It is the Public Guardian's view that a skills deficit should be independently assessed under a validated framework. The Public Guardian may therefore request information from relevant service providers to gain a detailed understanding of how a skills deficit has been determined, and to ensure that the practice of locking gates, doors or windows is the least restrictive way of ensuring the adult's safety.
- As with all restrictive practice decisions, the Public Guardian may also enquire into how dignity of risk for the adult has been considered when assessments for the use of locked gates doors and windows are undertaken. The Public Guardian is aware that the DSDSATSIP procedure that relates to locked gates doors and windows states that the assessment process will involve the adult's support network, which includes a guardian, and as such, where relevant, expects to be involved in these matters.

5.1.6 Locking of bedroom doors during overnight disability support

- The Public Guardian is aware that some support staff lock their bedroom door at a premises in which an adult is receiving passive overnight support.
- From the Public Guardian's point of view, the practice of a support worker locking their

bedroom door at a premises in which an adult is receiving passive overnight disability support, does not fall within the definition of the restrictive practices of *seclusion* or *containment* in circumstances where the adult is otherwise free to exit the premises and is not in response to a behaviour causing harm.

- However, it is the Public Guardian's position that a service provider still has a duty of care to ensure the adult's safety at all times. For example, in the case of an emergency such as a fire, or medical emergency, it is expected that the service provider has policies, practices and procedures to guide staff in managing and responding to such risks that are not inhibited by the locking of the door.
- A Guardian may seek clarification on a service provider's policies, practices and procedures regarding staff locking their bedroom door during overnight disability support to ensure that the rights and interest of the adult are being adequately protected.

5.1.7 Chemical Restraint (Fixed dose and PRN)

The Public Guardian may provide consent to the use of chemical restraint in compliance with a Positive Behaviour Support Plan or Short Term Approval (where containment and/or seclusion is also being used) to assist in the management of behaviours of harm. When considering the request to consent to the use of chemical restraint, the Public Guardian seeks to gain a holistic view of the adult's social, behavioural and medical situation. Pursuant to sections 44 and 80ZL(2)(a) and (b) of the *Guardianship and Administration Act 2000* when making decisions regarding the use of chemical restraint, the Public Guardian may request information from the relevant service provider to assist in the decision-making process. NOTE: As per section 44(1) of the *Public Guardian Act 2014*, The Public Guardian has a right to all the information that the adult would have been entitled to if the adult had capacity. This information may include, but is not limited to:

- **Documentation from the adult's prescribing physician, signed and dated within the previous 12 months that clearly indicates the primary purpose of the medication being prescribed.** The question that the Public Guardian will seek to answer from this documentation includes whether it is for the primary purpose of controlling the adult's behaviour that causes harm to themselves or others, or rather for the primary purpose of the proper treatment of a diagnosed mental illness or physical condition. This documentation may be a medical report, a letter from a physician, a 'Clarification of Purpose of Medication' form, or any other documentation that satisfies this explanation. The documentation must include information regarding dose, route and frequency of the medication. It is important that the documentation includes all medication prescribed to the adult, not just the medication the physician considers chemical restraint.
- **Proof of diagnoses of physical or mental health conditions.** This may constitute a recent letter from the treating physician or specialist, mental health assessments, or allied health reports. This may also include information relating to how diagnoses were made, for example, how a diagnosis of anxiety was made if the adult is non-verbal.
- **Historical information regarding how diagnoses were made, and how the adult continues to receive appropriate healthcare relating to diagnoses.** For example, if a doctor indicates that an adult with impaired capacity is prescribed Sodium Valproate for the primary purpose of treating Epilepsy (and the adult is also subject to chemical restraint, and/or other restrictive practices), the Public Guardian may request information about when/how the adult was diagnosed with Epilepsy and information about the most recent neurological review. As Sodium Valproate is commonly prescribed as a chemical restraint, the Public Guardian will seek this information to ensure a comprehensive overview of the adult's health and medical history is undertaken.
- **Information on therapeutic interventions that the adult receives in conjunction with prescribed medication.** For example, if a doctor indicates that an adult with impaired

capacity is prescribed Zyprexa for the primary purpose of treating Anxiety (and the adult is also subject to chemical restraint, and/or other restrictive practices), the Public Guardian may request information to clarify the veracity of the diagnosis. As Zyprexa is commonly prescribed as a chemical restraint, in this example the Public Guardian would need to be satisfied that Zyprexa is:

- Being prescribed in conjunction with appropriate and best practice therapeutic interventions
 - Is not inadvertently being prescribed for the primary purpose of managing behaviour, and
- Information regarding how long the adult has been prescribed and administered the medication and whether it contra-indicates with other medications the adult may be taking, or whether there is a potential for long term toxicity from the continued use of the medication.
 - For chemical restraint (PRN), a PRN Protocol which clearly provides instructions to staff on how and when to administer the PRN medication in accordance with the prescribing doctor's recommendations.
 - A reduction and/or elimination plan, and/or detailed information on previous reduction and/or elimination trials and the outcomes of those trials.

5.1.8 Information on the consent to the use of anti-libidinal medication as chemical restraint

In the instance that the Public Guardian is requested to consent to the use of anti-libidinal medication as a chemical restraint, further information will be requested to inform the decision-making process. This information may include, but is not limited to:

- The adult's views regarding the use of anti-libidinal medication as chemical restraint
- A second opinion from a forensic psychiatrist about the use of anti-libidinal medication as chemical restraint
- Evidence that it is successful in achieving its impact as a chemical restraint.
- Evidence that appropriate specialist supports are either in place or are being actively sought to therapeutically address the behaviour of harm.
- If the adult is already being prescribed anti-libidinal medication, current and historical information regarding the impact of the medication on the adult's health and well-being including written results of relevant health checks undertaken within the last six months
- If the adult is already being prescribed anti-libidinal medication, historical information regarding when and why the medication was initially prescribed, and any information available regarding previous trials of reducing the medication, and the outcomes of those trials
- If the adult is also subject to other restrictive practices that may address the behaviours of harm (such as containment), justification as to the need for the use of anti-libidinal medication as chemical restraint as an additional restrictive practice
- The views of all relevant stakeholders regarding the use of anti-libidinal medication as a chemical restraint, and
- Conditions placed on the consent to ensure that information is provided to the Public Guardian during the consent period regarding observations of side-effects, outcomes of relevant health checks and evidence to support the continuing use of anti-libidinal medication.

5.1.9 Physical restraint

The Public Guardian may provide consent for a service provider to use physical restraint to ensure the safety of an adult with impaired capacity and/or others. Pursuant to section 80ZL(2)(a) and (b) of the *Guardianship and Administration Act 2000*, when making decisions regarding the use of physical restraint, the Public Guardian may request information from the relevant service provider to assist in the decision-making process. This information may include, but is not limited to:

- Pictorial diagrams of each physical restraint for which consent is being sought (this may be included in the body of the Positive Behaviour Support Plan or within a Physical Restraint Protocol).
- Information regarding training that support staff have received specifically in relation the use of physical restraint
- Information that demonstrates that the proposed physical restraint manoeuvres are either standard, accredited manoeuvres, or have been designed by an appropriate professional (or example, an occupational therapist) and are evidenced based,
- The maximum duration of use per instance for each individual manoeuvre, and why the maximum time per use is the least restrictive way of ensuring the safety of the adult and/or others, and
- A reduction and/or elimination plan that details how support staff will test whether physical restraint needs to remain in place, i.e. how will the adult be given opportunities to demonstrate that the restriction may no longer be required at the current level, or at all.

5.1.10 Restricted Access to Objects (RATO)

The Public Guardian may provide consent for service providers to restrict the access of adult with impaired capacity to certain objects due to the risk of harm to the adult and or others. Pursuant to section 80ZL(2)(a) and (b) of the *Guardianship and Administration Act 2000*, when making decisions regarding the use of Restricted Access to Objects, the Public Guardian may request information from the relevant service provider to assist in the decision-making process. This information may include, but is not limited to:

- Detailed information that clearly links the proposed restriction to behaviours of harm displayed by the adult
- Detailed information that clearly demonstrates how restricting the adult's access will reduce the likelihood of harm
- Information that demonstrates that all possible steps have been taken to reduce the impact of the restriction on the adult's ability to live a life pursuant to generally accepted community standards. For example, if the adult is subject to restricted access to the refrigerator due to gorging behaviours, the Pubic Guardian will seek confirmation that the service provider has ensured that the adult has free access to healthy snacks, or an alternative refrigerator that contains foods that do not place the adult at risk is accessible at all times, and
- Information on how the relevant service provider will test whether the restriction needs to remain in place, i.e. how will the adult be given opportunities to demonstrate that the restriction may no longer be necessary, in particular, skills development in relation to appropriate usage of the item/s subject of the restriction.

In general, the Public Guardian does not consider the smoking of cigarettes and consuming alcohol to meet the legislative definition of a behaviour of harm pursuant to section 144 of the *Disability Services Act 2006*. The Public Guardian seeks to uphold the rights of adults with impaired capacity to make lifestyle choices that others may not agree with. The Public

Guardian acknowledges that restricting an adult's access to cigarettes and/or alcohol may at times be required due to financial constraints (when the adult cannot afford to smoke cigarettes or consume alcohol as much as they wish to), or due to the manner in which cigarettes and/or alcohol may interact with certain medications. It is the Public Guardian's view that in these instances, any restrictions on access to cigarettes and/or alcohol should be developed in conjunction with the appropriate stakeholders, i.e. the adult's treating physician, allied health professionals, the administrator, and the adult's substitute decision-maker for healthcare.

5.1.11 Mechanical restraint

The Public Guardian may provide consent for a service provider to use mechanical restraint to ensure the safety of an adult with impaired capacity and/or others. Pursuant to section 80ZL(2)(a) and (b) of the *Guardianship and Administration Act 2000*, when making decisions regarding the use of mechanical restraint, the Public Guardian may request information from the relevant service provider to assist in the decision-making process. This information may include, but is not limited to:

- Pictorial diagrams of each proposed mechanical restraint that consent is being sought for
- Information regarding training that support staff have received specifically in relation the use of the proposed mechanical restraint
- Indications as to whether the use of the proposed mechanical restraint may be associated with past trauma or triggers for further behaviours of harm,
- Information that demonstrates that the proposed mechanical restraint devices are standard, accredited manoeuvres, or have been designed by an appropriate professional (or example, an occupational therapist) and are evidenced based,
- The maximum duration of use per instance for each proposed mechanical restraint, and why the maximum time per use is the least restrictive way of ensuring the safety of the adult and/or others;
- The maximum frequency of use per 24-hour period; and
- A reduction and/or elimination plan that details how support staff will test whether the use of mechanical restraint needs to remain in place, i.e. how will the adult be given opportunities to demonstrate that the restriction may no longer be required at the current level, or at all.

5.2 The purpose of a Short Term Approval

A Short Term Approval provides time-limited authority to use a restrictive practice. The Public Guardian understands that the purpose of a Short Term Approval is to give a service provider lawful authority to use a restrictive practice while the service provider arranges for an assessment of the individual, the development of a Positive Behaviour Support Plan and approval or consent under the full legislative scheme.

The Public Guardian is cognisant that the legislative requirements that must be met to provide a Short Term Approval are significantly lower than the requirements for an approval under the full scheme (where an approved Positive Behaviour Support Plan is in place, approved by Queensland Civil and Administration Tribunal (QCAT). Given this therefore potentially involves making a more restrictive decision, the Public Guardian expects that service providers will apply to QCAT for a containment and/or seclusion and other restrictive practices hearing as soon as practicable after applying to the Public Guardian for a Short Term Approval. The Public Guardian expects that arrangements have been made for the adult's assessment at the same time as applying to the Public Guardian for a Short Term Approval and a Positive Behaviour Support Plan will be developed for the adult immediately upon completion of the adult's

assessment.

Despite the fact that a Short Term Approval does not need to be predicated on the submission of a full Positive Behaviour Support Plan, the Public Guardian nonetheless will require details of sufficient positive behaviour support strategies within the application, in line with s142 of the *Disability Services Act 2006*.

The application form for relevant service providers to apply for a Short Term Approval can be found on the Office of the Public Guardian's website.

5.3 Short Term Approvals – Exceptional Circumstances

If a Short Term Approval ends, and the relevant service provider applies for a subsequent Short Term Approval, it will only be considered under exceptional circumstances (section 80ZH(4) *Guardianship and Administration Act 2000*). The Public Guardian considers that an even higher threshold again must be met to be satisfied that exceptional circumstances exist. The Public Guardian does not, in general, consider the following to be exceptional circumstances:

- That an application to QCAT for a hearing to approve the use of containment, seclusion or other restrictive practices has not yet been made
- Staffing issues exist within the service provider organisation or within another relevant stakeholder organisation, and
- Waiting times for assessments; medical appointments etc., when the adult has not been referred to required assessments, medical appointments etc. in a timely manner.

Service providers are encouraged to contact the OPG with any questions they may have regarding Short Term Approvals—Exceptional Circumstances. A delegate guardian will be able to discuss the specific situation to determine whether exceptional circumstances may be considered to exist.

5.4 Length of consent

5.4.2 Short Term Approvals

The Public Guardian may give approval for the use of containment and/or seclusion for a period of up to six months (section 80ZH(6) *Guardianship and Administration Act 2000*). However, the Public Guardian is not required to give the approval for the maximum time permitted by the legislation, and as such, the decision regarding the length of approval is a discretionary one, and will be made on a case by case basis. Given the infringements to human rights entailed by restrictive practices, the maximum time period will only be consented to where robust evidence supports the need for the full 6 month approval.

5.4.3 Positive Behaviour Support Plans

It is the policy of the OPG that consent to use restrictive practices in compliance with a Positive Behaviour Support Plan may be provided for a period of up to 12 months. This policy is pursuant to section 150(3) of the *Disability Services Act 2006*, however there may be instances where the Public Guardian provides consent for a shorter period. This may be due to the number and type of conditions placed on the consent, further information that is required, the quality of the Positive Behaviour Support Plan, or impending service provider changes. Most importantly, the Public Guardian would expect to see relevant, evidence based positive behaviour support being provided to the adult as well as genuine efforts being made to address the causes of behaviours of harm and a consequent 'stepping down' of restrictive practices

within the shortest period possible.

5.5 Reviewing and Processing a Positive Behaviour Support Plan for consent

5.5.1 Consenting to the use of restrictive practices in compliance with a Positive Behaviour Support Plan

The Public Guardian requires the adult's views and wishes in relation the proposed use of restrictive practices to be presented in the request for consent, and as such, requests that relevant service providers and plan authors include this information either within the adult's Positive Behaviour Support Plan, or as an attachment to the PBSP. This requirement is pursuant to the General Principles of the Guardianship and Administration Act 2000, in particular, General Principle number

7(1)—‘An adult’s right to participate, to the greatest extent practicable, in decisions affecting the adult’s life, including the development of policies, programs and services for people with impaired capacity for a matter, must be recognised and taken into account, and 7(3)(b) ‘to the greatest extent practicable, for exercising power for a matter for the adult, the adult’s views and wishes are to be sought and taken into account’.

The Public Guardian requests that relevant service providers submit Positive Behaviour Support Plans at least 30 days before the current consent expires. Relevant service providers will be requested by the Public Guardian to submit a copy of the ‘*Client Record of Restrictive Practices Usage*’ when submitting a Positive Behaviour Support Plan. This Client Record is a part of the relevant service provider’s reporting requirements (Online Data Collection). This will provide evidence to support the ongoing need for the use of restrictive practice. When the OPG receives a Positive Behaviour Support Plan, it will be allocated to a delegate guardian who will contact the relevant service provider to acknowledge its receipt. The delegate guardian will then review the Positive Behaviour Support Plan and may contact the service provider several times after its submission to request further information or documentation, or to clarify information in the Positive Behaviour Support Plan. The Positive Behaviour Support Plan is then submitted by the delegate guardian to a delegated consenting officer in the OPG who will also review the Positive Behaviour Support Plan. The delegated consenting officer will issue a notice of decision (either providing, or not providing, consent) to the delegate guardian who will inform the service provider of the outcome of their request. Stakeholders are encouraged to contact the delegate guardian to discuss any questions or concerns they may have regarding the outcome.

5.5.2 Operation of section 169 Disability Services Act 2006

A service provider’s ability to rely on section 169 of the DSA is not an extension of the existing consent to use a restrictive practice. The OPG will in all instances, where possible, attempt to process the new application for consent by the original expiry date and not rely on the additional “grace period” afforded by section 169, unless there are genuine Plan related concerns which prevent the provision of consent by the existing expiry date. A service provider is not required to seek approval from the Public Guardian to enact s169 of the *Disability Services Act 2006*. If the requirements of s169 apply, the service provider automatically has immunity for the use of the previously approved restrictive practices under this section.

Section 169 of the *Disability Services Act 2006* states the following:

Using chemical, mechanical or physical restraint, or restricting access, if consent ended

- (1) This section applies if—
 - (a) the guardian for a restrictive practice matter for an adult with an intellectual or cognitive disability is the public guardian; and
 - (b) the public guardian has given consent (the existing consent) to the use of a restrictive practice, other than containment or seclusion, in relation to the adult
- (2) A relevant service provider may use the restrictive practice after the existing consent ends if—
 - (a) at least 30 days before the existing consent ends, the relevant service provider asks the public guardian, in writing, to consent to the use of the restrictive practice in relation to the adult; and
 - (b) at the time the existing consent ends, the public guardian has not decided whether to give the consent; and
 - (c) use of the restrictive practice—
 - I. is necessary to prevent the adult’s behaviour causing harm to the adult or others; and
 - II. is the least restrictive way of ensuring the safety of the adult or others; and
 - III. complies with the existing consent and the positive behaviour support plan or respite/community access plan for the adult.
- (3) However, the relevant service provider may only use the restrictive practice under this section until the earlier of the following—
 - (a) the public guardian gives the relevant service provider notice about the public guardian’s decision whether to give the consent;
 - (b) 30 days after the existing consent ends.

For a service provider to enact s169, the service provider must submit a PBSP which details their request for consent for the use of restrictive practices (the relevant service provider asks the Public Guardian in writing to consent to the use of restrictive practices) at least 30 days prior to the end date of the existing consent. Should a decision by the Public Guardian not be finalised by the date that the current consent expires, the service provider can enact s169 as long as the requirements of the Act are met (e.g. that the PBSP has been submitted at least 30 days prior to end date of consent, there is no change in the previously approved restrictive practices, that the service continues to implement the existing PBSP).

5.6 Reviewing and Processing a Short Term Approval Application for approval

Once a service provider has submitted a Short Term Approval application, an acknowledgement of receipt of the application will be emailed by a delegate guardian. The delegate guardian will review the application and may request further information before progressing it to the Public Guardian, who is the authorised consenting officer for all containment and/or seclusions approvals.

The Public Guardian is aware that pursuant to section 154 of the *Disability Services Act 2006*, a relevant service provider may have legislative immunity to contain and/or seclude an adult for up to 30 days before a decision on a Short Term Approval is made. Due to this time constraint, it is imperative that relevant service providers submit all relevant documentation and information to the OPG at the same time that the Short Term Approval request is submitted, or as soon as practicable after it is requested by the delegate guardian. The Public Guardian endeavours to provide an outcome to all Short Term Approval requests within 30 days of submission; however, the Public Guardian must be satisfied that all relevant information is

provided to ensure a thorough decision-making process is undertaken and therefore it should be expected that further questions will be asked of the service-provider in relation to the application before an approval can be considered.

The service provider will receive a notice of decision via email. This document will outline the approval that has/has not been provided by the Public Guardian. If approval has been provided, there may be conditions attached, so please read this document carefully. If the service provider has any questions or concerns regarding the approval provided, they are to contact the delegate guardian. The delegate guardian will discuss any questions or concerns with the service provider and will provide information regarding options to address them.

5.7 Conditional consent

The Public Guardian may approve the use of restrictive practices subject to conditions. There are several reasons as to why service providers may receive conditional consent. These reasons may include, but are not limited to:

- The Positive Behaviour Support Plan is substantially compliant; however, the Public Guardian considers that there is additional information or documentation needed to satisfy the legislative and decision-making framework requirements. In this instance, service providers may be required to either satisfy the conditions in a certain timeframe (for example, one month from the date of consent), or may be required to satisfy the conditions upon the next submission of a Positive Behaviour Support Plan (at the end of the consent period), and
- The Short Term Approval application is substantially compliant; however, the Public Guardian wishes to ensure that certain actions are taken during the consent period. For example, these actions may be that an application to QCAT is made for a containment and seclusion hearing to occur, or that the use of a particular restrictive practice is reviewed, or that a medication review is complete.

Please note:

- The Public Guardian may provide consent to a Short Term Approval subject to the conditions the Public Guardian considers appropriate (section 80ZH(5) *Guardianship and Administration Act 2000*).
- As the guardian for restrictive practice (general) matters, the Public Guardian may provide consent subject to conditions (section 80ZE(3) *Guardianship and Administration Act 2000*).
- If the Public Guardian considers that conditions have not been met, the following may occur:
 - I. Short term approvals—the current consent may cease.
 - II. Positive Behaviour Support Plans—the current consent may cease and/or future consents may be affected (i.e be subject to more stringent conditions, or be provided for shorter periods of time). Relevant service providers are encouraged to contact OPG as soon as possible regarding conditional consent to discuss any questions or concerns.

5.8 Changes in the use of restrictive practices during consent period

5.8.1 Amending a Positive Behaviour Support Plan

If the relevant service provider is proposing to change a restrictive practice that the Public Guardian has provided consent for, the relevant service provider must submit an updated Positive Behaviour Support Plan that includes, if relevant, updated data (frequency, intensity,

duration) and documentation that supports the amendment. The amended Positive Behaviour Support Plan will be reviewed pursuant to all relevant legislative and decision-making frameworks.

If the relevant service provider is proposing to use a new restrictive practice (other than containment and/or seclusion), it may be appropriate to apply for a Short Term Approval to DSDSATSIP pursuant to section 178(2)(c)(ii) of the *Disability Services Act 2006* to allow time for appropriate assessments to be undertaken, and the outcomes of these assessments to be included in an amended Positive Behaviour Support Plan.

Please note that if the proposed change is a reduction in chemical restraint, the relevant service provider is not required to submit an updated Positive Behaviour Support Plan. The Public Guardian requests that in this situation, the relevant service provider submits updated documentation from the adult's treating physician that supports the reduction.

5.8.2 Amending a Short Term Approval

The Public Guardian may be able to amend Short Term Approvals if provided with relevant evidence that supports the amendment. If, at any time during the approval period, the relevant service provider wishes to seek an amendment to the approval (for example, current behaviours change, or new behaviours emerge), please contact the OPG.

Please note that the period of time the Short Term Approval has been made for cannot be extended, and pursuant to section 80ZH(4) of the *Guardianship and Administration Act 2000*, any application to the Public Guardian seeking an extension of the approval period will be considered as an application for a Short Term Approval - Exceptional Circumstances.

5.9 Seeking Help and Making Representation (Restrictive Practices)

QCAT may appoint the Public Guardian to Seek Help and Make Representation (restrictive practices) for adults with impaired capacity who may be subject to containment and/or seclusion and other restrictive practices. The Public Guardian considers this appointment, and representations made to QCAT under this appointment, operate within the same framework as making decisions about the use of containment and/or seclusion and other restrictive practices. The Public Guardian robustly administers the role of seeking help and making representation in relation to restrictive practices and as such, where necessary, delegates of the Public Guardian will take the following steps to ensure the role is exercised appropriately by:

- Making submissions to QCAT regarding the use of restrictive practices
- Referring the adult to a range of advocacy services in relation to restrictive practices and/or other personal matters
- Visiting the adult in their home to gain their views on the use of restrictive practices
- Attending stakeholder meetings
- Requesting information and documentation from the relevant service provider. This may include updates on current behaviours, reporting data on use of restrictive practices, details on use of positive behaviour support strategies and any other information the delegate guardian deems necessary
- Providing advocacy on behalf of the adult to ensure appropriate assessments and reviews are undertaken, and
- Providing advocacy on behalf of the adult to ensure the adult has access to appropriate healthcare, housing, quality of life, and community access.

If appointed to Seek Help and Make Representation (restrictive practices) by the Tribunal, The

Public Guardian requests that DSDSATSIP and relevant service providers submit the adult's Positive Behaviour Support Plan to OPG no less than ten business days before the relevant QCAT hearing. This allows for a delegate guardian to review the Positive Behaviour Support Plan and provide a comprehensive submission to QCAT. Relevant service providers must note that if the Positive Behaviour Support Plan is not submitted to the OPG more than ten business days before the relevant QCAT hearing, the Public Guardian may seek an adjournment of the hearing.

The Public Guardian expects that the adult's views and wishes in relation the proposed use of restrictive practices are presented to QCAT, and as such, requests that relevant service providers and plan authors include this information in the adult's Positive Behaviour Support Plan.

6. Related documents

Short Term Approval application form

Fact Sheet for adults subject to restrictive practices