

Restrictive Practices and Guardianship

What is a restrictive practice?

A restrictive practice means any action that is taken to restrict the rights or freedom of movement of a person. A restrictive practice is usually used for the primary purpose of influencing or controlling the behaviour of the person.

Types of restrictive practices

Restrictive practices can generally take the following forms:

- Physical (personal) restraint – involves the use of physical force to prevent, restrict or subdue movement of a person's body or part of their body for the primary purpose of influencing their behaviour.
- Mechanical restraint – the use of a device to prevent, restrict or subdue a person's movement for the primary purpose of influencing their behaviour.
- Environmental restraint – restricts a person's free access to all parts of their environment, including items and activities.
- Seclusion – the solitary confinement of a person with disability in a room or physical space and where their exit is prevented or not permitted.
- Chemical restraint – the use of medication or other chemical substance for the primary purpose of influencing behaviour and not for treatment of a diagnosed mental disorder, physical illness or physical condition.

Who can consent to the use of a restrictive practice?

A guardian appointed by the Tasmanian Civil and Administrative Tribunal with a restrictive practices power or an enduring guardian with full powers under section 25 of the *Guardianship and Administration Act 1995* or a specific restrictive practice power can make decisions about the use of restrictive practices.

A Person Responsible can give consent to medical treatment. Regulation 12(a) of the *Guardianship and Administration Regulations 2017* provides that treatment includes: treatment which is continuing or ongoing and involves the administration of a restricted substance primarily to control the conduct of the person to whom it is given.

When can a guardian be given a restrictive practice function

Section 20 of the *Guardianship and Administration Act 1995* provides when the Tribunal can make a guardianship order. The Tribunal, on receiving an Application, must consider at hearing whether a person has a disability, whether because of the disability the person is unable to make reasonable judgments about their person or circumstances, and whether the person is in need of a guardian. In considering whether there is a need, the Tribunal must consider whether the needs of the person could be met by other means less restrictive of the person's freedom of decision and action.

An order appointing a guardian will indicate the specific powers with which the guardian has been appointed. A guardian can make decisions about the use of a restrictive practise if the guardian has been given that specific power or plenary powers under a guardianship order or Instrument appointing an Enduring Guardian.

Before determining whether a guardian should be appointed with a restrictive practice function, the Tribunal will also consider:

- the views of the person and their best interests; and
- any behaviour support plan or functional assessment on the person; and
- evidence from medical professionals, carers, providers, family and friends.

Helpful Resources

Factsheets on Guardianship; and Medical and Dental Treatment - Person Responsible Factsheet.

Explanatory Statement issued by the Minister for Senior Australians and Aged Care Services, Aged care legislation Amendment (Royal Commission response No 1.1) Principles 2021.

The Aged Care Quality and Safety Commission resources on Restrictive Practices minimising the use of restraint resources.