

# Position statement

Protecting the human rights of adults with decision-making disabilities

## Restrictive Practices (Restraint)

The use of restrictive practices is a major infringement on a person's civil liberty and should only be an option of last resort.

The Public Advocate supports the concept of an environment free from restrictive practices and recommends that restrictive practices are only used when all alternative options have been explored and have failed or are considered inappropriate.

The primary purpose of a restrictive practice should always be the promotion and maintenance of a person's health, wellbeing and safety. The protection of others may also be a consideration.

There are regulatory processes in regard to the use of restrictive practices in both the aged care and disability sector. Service providers need to ensure they meet the regulations relevant to their service provision.

This position statement provides an overview of restrictive practices to assist in understanding this issue as it relates to the *Guardianship and Administration Act 1990*.

Restrictive practices would routinely only be used as part of a holistic intervention plan. This plan should be developed and approved by the service provider in consultation with the person and their family and with the consent of a guardian or enduring guardian (where appointed with the relevant authority).

Restrictive practices should not be used for staff convenience or to overcome lack of adequate staff support and supervision. Residential facilities must be able to address the conditions and support the requirements of individual residents.

Historically, the term 'restraint' was used to describe any practice, device or action that interfered with a person's ability to make a decision or restricted their free movement.

There has been a shift to using the term 'restrictive practice' rather than 'restraint'.



The *Quality of Care Principles 2014* and the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 (NDIS Rules)* define restrictive practices in the same way, except for the sections in bold, which apply only to the Quality of Care Principles:

- (a) **seclusion**, which is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted **for the primary purpose of influencing the person's behaviour/**
- (b) **chemical restraint**, which is the use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of, a diagnosed mental disorder, a physical illness, a physical condition, **or end-of-life care for the person.**
- (c) **mechanical restraint**, which is the use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes.
- (d) **physical restraint**, which is the use or action 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. Physical restraint does not include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person.
- (e) **environmental restraint**, which restrict a person's free access to all parts of their environment, including items or activities **for the primary purpose of influencing the person's behaviour.**

## Alternatives to the use of restrictive practices

Before deciding to use a restrictive practice or practices, the following less restrictive alternatives for managing behaviour should be considered:

- identify the specific behaviour that is problematic and identify the cause
- where possible, ensure the person's physical environment maximises their capability and reduces frustration
- consider possible health or medical factors which could contribute to or cause the behaviour
- ensure meaningful activities are provided
- ensure appropriate staff support is provided to enable safe movement around the facility
- avoid activities or situations that could provoke anxiety in the person.

## Consultation about the possible use of restrictive practices

Before deciding to use a restrictive practice or practices, the following consultation should occur:

- where possible, seek the view of the person with the decision-making disability
- seek the views of family members and other significant people in the person's life
- obtain information from service providers including the treating doctor.

## 'Treatment' versus restrictive practices

The key factor that differentiates restrictive practices from other forms of care or treatment is that restrictive practices are always applied intentionally to restrict the movement or behaviour of a person.

The appropriate use of drugs to reduce symptoms in the treatment of diagnosed medical conditions such as anxiety, depression or psychosis, **does not** constitute chemical restraint as related to restrictive practices.

It is also possible that **physical and / or mechanical** restraint could be considered 'treatment' under the *Guardianship and Administration Act 1990*. Some of the determining factors might include the reason for its use, the purpose to which it would be put and who prescribed its use.

When **chemical** restraint is being considered, an existing medical condition is also a factor. A medical practitioner may prescribe drugs to control the behaviour of a person with an underlying medical condition.

This may meet the definition of 'treatment' under Section 3 of the *Guardianship and Administration Act 1990*. For example, medication prescribed appropriately for some psychiatric conditions may have the effect of controlling a person's behaviour. The appropriate use of psychoactive medication to reduce symptoms in the treatment of medical conditions does not constitute a restrictive practice where there is a diagnosis.

However, if a drug were used for behaviour management for the convenience of staff or others, it would fall outside the definition of medical treatment (see the Public Advocate's position statement called 'Decisions about treatment' for further information). The question of whether the use of a restraint falls within the definition of treatment is to be determined on a case-by-case basis.

If physical or chemical restraint is considered to restrict a person's behaviour or movements other than for medical reasons and they are unable to give informed consent, then a guardian may need to be appointed. An application would need to be made to the State Administrative Tribunal.

The provisions under the *Guardianship and Administration Act 1990* which deal with treatment where there is a prescribed hierarchy of people authorised under the Act to give consent to medically treat a person with a decision-making disability, do not enable that person to make any decision about restrictive practices.

## **Safety measures vs environmental restraint**

A usual safety measure that people would use in day-to-day life that may restrict access to the environment is not considered an environmental restraint. For example, locking a door or gate at a property for security purposes would not be considered a restrictive practice. Similarly, locking car doors while driving to prevent people being able to get into the car at traffic lights, would not be considered a restrictive practice. However, if the process is applied to an individual to manage their behaviour, it is likely to be considered an environmental restraint.

## **Restrictive practices as an urgent response to behaviour**

Restrictive practices may be necessary if a person with a decision-making disability displays sudden, unusual behaviour which is likely to result in self harm or harm to others. Generally, consent to the use of a restrictive practice is essential, however in situations of emergency or necessity, the use of restrictive practices may be justified notwithstanding the absence of consent.

However, it will be essential for procedures to be established to ensure that the person is assessed, and proper consent processes are in place for any ongoing use of restrictive practices.

## **General principles for the use of restrictive practices**

The benefit of a restrictive practice to the individual person must outweigh the possible negative effect on the person and the risk involved if the restrictive practice is not used.

Consenting to the use of a restrictive practice should only be considered if there is clear evidence that the level of risk and potential harm outweigh the person's right to remain unrestrained. The following factors should also be taken into account:

- less restrictive alternatives have been tried and failed or are considered inappropriate
- the proposed restrictive practice is the least restrictive form available
- careful consideration has been given to the restrictive practice being proposed as a long-term management strategy rather than a short-term response to the situation
- adequate training in restrictive practices procedures must be provided to all staff involved in the provision of residential services.

## **Requirements under the NDIS and Aged Care regulatory processes:**

Where an adult is not able to make their own decisions about the use of a restrictive practice, a substitute decision-maker must make this decision. Under the *Guardianship and Administration Act 1990*, the substitute decision-maker would be either:

- a guardian or an enduring guardian, with plenary authority (authority to make all personal, lifestyle, treatment and medical research decisions)
- a guardian or an enduring guardian, with limited authority including the authority to make decisions regarding restrictive practices.

Before asking a guardian/enduring guardian to make a decision regarding a restrictive practice, ensure that a copy of the guardianship order or enduring power of guardianship form has been sighted to confirm that they have the required authority.

Any decision to consent to a restrictive practice requires:

- suitably qualified professionals have undertaken a thorough documented assessment (Behaviour Support Plan) of the person and the need for the restrictive practice
- a process is in place to ensure the Behaviour Support Plan will be regularly reviewed, and at a minimum, reviewed at least every 12 months
- the use of the restrictive practice is adequately recorded in the person's file, by the service provider/facility as per regulatory requirements
- a process is in place to regularly review the use of the restrictive practice by suitably qualified professionals and where appropriate, the guardian must be advised of the review process and outcome
- a process is in place to ensure that if/when the person's condition improves/changes, the restrictive practice is removed or a less restrictive alternative form of restrictive practice is used.

Private guardians and enduring guardians should be familiar with this process in the event they need to make a decision regarding a restrictive practice. If a decision regarding a proposed restrictive practice is required and the guardian/enduring guardian does not have authority, they will need to make an application to the State Administrative Tribunal.

## **The Public Advocate publishes position statements on:**

- Decisions about treatment
- **Restrictive Practices (Restraint)**
- The role of the Public Advocate as guardian of last resort with authority to make accommodation decisions
- The role of the Public Advocate as guardian of last resort with authority to make treatment decisions
- The role of the Public Advocate as guardian of last resort with authority to make contact decisions
- The role of the Public Advocate as guardian of last resort with authority to make treatment decisions: palliative care
- Decisions about medical research
- The role of the Public Advocate as guardian of last resort with authority to make decisions about restrictive practices

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