

Position statement

Protecting the human rights of adults with decision-making disabilities

Role of the Public Advocate as guardian of last resort with authority to make decisions about restrictive practices

The *Guardianship and Administration Act 1990* (the Act) recognises that people who are not capable of making reasoned decisions for themselves may need additional support and assistance not only to ensure their quality of life is maintained, but also to protect them from the risk of neglect, exploitation and abuse.

Under the Act, the State Administrative Tribunal (the Tribunal) may appoint a guardian for a person with a decision-making disability. Guardians are substitute decision-makers who make personal, lifestyle and treatment decisions in the best interests of people who are not capable of making reasoned decisions for themselves due to conditions such as dementia, intellectual disability, mental illness or an acquired brain injury.

The Tribunal can appoint the Public Advocate as guardian of last resort only when there is no one else suitable, willing and available to act as the person's guardian. The decision-making authority of the Public Advocate may be limited to specific areas such as treatment and contact (limited order), or it may apply to all areas of the person's life (plenary order).

When appointed guardian of last resort with the authority to make decisions about whether to give or withhold consent to the use of **restrictive practices**, the Public Advocate is responsible for giving or withholding consent to any proposal to use restrictive practices on the represented person.

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 be to prevent harm to the person. The protection of others may also be a consideration.

The specific tasks the Public Advocate undertakes in the process of decision-making about restrictive practices are listed below.

The Public Advocate as guardian:

- ensures that interested parties are advised of the Public Advocate's restrictive practices authority and are told about their own responsibilities in relation to seeking consent for decisions about restrictive practices from the Public Advocate
- provides consent to the current Behaviour Support Plan developed with regard to the represented person

OR

- where no plan is in place, liaises with service providers and health and disability professionals to progress the development of this plan.

Before making any decision to consent to the use of a proposed restrictive practice as defined in the Behaviour Support Plan, the delegated guardian from the Office of the Public Advocate will:

- ascertain the view of the person with the decision-making disability, where possible
- seek the views of family members and other significant people in the person's life
- have information from service providers or health professionals that less restrictive alternatives have been tried and failed or are considered inappropriate
- clarify that the proposed restrictive practice is the least restrictive form available in relation to the person and is in line with the Behaviour Support Plan
- confirm that the restrictive practice will be removed when the person's condition improves or it becomes feasible to use a less restrictive alternative form of restrictive practice.
- ensure the plan is reviewed and seek to be advised of the review process, and consent as required
- clarify the use of restrictive practices is in the best interests of the person.

Additionally, where restrictive practices are approved via the Behaviour Support Plan and relevant to service provision, if new services are engaged, the delegated guardian should provide detailed referrals to new providers to ensure they have capacity to provide the appropriate support.

The Public Advocate as guardian may also:

- request or attend case conferences/other meetings to discuss restrictive practices issues
- participate in a discussion between the represented person and their treating doctor and/or Behaviour Support Plan specialist, to gain more information regarding complex decisions about restrictive practices and the views of both parties
- make complaints to appropriate authorities, on the person's behalf, about their disability and/or health care matters.

The Public Advocate does not undertake the following in relation to decisions about restrictive practices:

- consent to the use of a restrictive practice without information from a suitably qualified professional regarding the proposed restrictive practice
- make practical arrangements for appointments in relation to developing a Behaviour Support Plan, such as transport arrangements
- attend routine appointments with the person in relation to restrictive practices
- provide or administer any form of restrictive practice
- supervise the restrictive practice or ensure compliance with the Behaviour Support Plan
- develop Behaviour Support Plans, or pay for the development of plans, where fees apply.

The Public Advocate publishes position statements on:

- Decisions about treatment.
- Restrictive Practices .
- 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.**
- Role of the Public Advocate as guardian of last resort with authority to make decisions about services: NDIS.

For further information contact

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