

Restrictive Practices and Special Powers

Applications to SACAT for Special Powers Orders

What are restrictive practices?

A restrictive practice is an intervention used in the care of a person that may restrict the rights or freedoms of movement of a person for their own safety or the safety of others.

In South Australia, if a person can provide their own consent to the use of restrictive practices, including the administration of sedative medication, then there is no need for substituted consent.

If a person cannot provide consent the following category of persons can give certain consents or authorise the use of these practices as part of the health care of the person:

- **Substitute decision-makers** under an Advance Care Directive can give consent to certain types of health care. For more information about the decisions substitute decision-makers can make, please see the [Advance Care Directives website](#) and section 23 of the [Advance Care Directives Act 2013](#).
- A **'person responsible'** under the *Consent to Medical Treatment and Palliative Care Act* can also give consent to certain types of health care. This includes a guardian, relative, friend, or a day-to-day care provider. For more information about person's responsible, please see the Public Advocate's [website](#) and section 14 of [the Act](#).
- A **guardian** appointed by SACAT under the *Guardianship and Administration Act 1993* for a person with the decision-making functions or roles of the guardian extending to health care decisions.

Some common functions of a guardian or substitute decision-maker (SDM) include:

- Making health care decisions for the person including consenting to care, service, procedures or treatment provided by or under the supervision of a health practitioner, including giving consent to medical, dental and allied health treatment and certain restrictive practices to control behaviours (*health care function*);
- Making residential and accommodation arrangements (*accommodation function*);
- Deciding what services the person will be provided (*services function*);
- Deciding who should have contact with the person (*access function*);
- Advocating for the person's rights (*advocacy function*).

If the person is a NDIS participant, then a legal guardian or parent cannot authorise a regulated restrictive practice implemented by a NDIS service provider. This requires that the care provider obtains authorisation under the Restrictive Practices Authorisation scheme.

Restrictive practices which a guardian, person responsible or SDM can authorise

Some types of restrictive practices require SACAT's specific authorisation.

Other types of restrictive practices used for the proper care of a person can be authorised by an appointed health care guardian who is authorised to give consent to the use of restrictive practices.

An SDM or “person responsible” can also authorise these practices but only if the restrictive practices are provided by or under the supervision of a registered health practitioner. If the practices are not provided by, or supervised by, a health practitioner a guardian will need to be appointed to give consent.

These restrictive practices are:

- **Chemical restraint** – where medication is used for the primary purpose of influencing a person’s behaviour, or is aimed to address behavioural issues and to minimise harm, and where no force is used in the administration of the medication. (But refer to regulation 5 of the *Consent to Medical Treatment and Palliative Care Regulations 2014* for an exception meaning that day to day care providers cannot give consent to chemical restraint.)
- **Environmental restraint** – where a person’s access to parts of their environment, including food, items or activities (such as the use of computers or telephones) is restricted and where no force is used in the use of the practice.
- **Mechanical restraint** – where a device is used 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 and where no force is used in the use of the practice.

Special Powers Authorisations by SACAT

Only SACAT can authorise other types of restrictive practices. These are called special powers orders.

SACAT can only make a special powers order on the application of an appointed guardian or a substitute decision-maker.

SACAT can only make these orders if it is satisfied that, if the order was not made and carried out, the health or safety of the person or the safety of others would be seriously at risk.

What types of special powers orders can be made by SACAT?

Directed residence/enforceable environmental restraint (section 32(1)(a) of the *Guardianship and Administration Act 1993*)

SACAT can make an order to direct that a person reside in a specified place, or in such place as the guardian or substitute decision-maker from time to time thinks fit.

A directed residence order will authorise the subject person’s residence in the specified place and will enable the guardian or SDM to ensure the person can be brought back if they leave that place (with police assistance if necessary)

Detention or seclusions of the person in the place in they are directed to reside (section 32(1)(b) of the *Guardianship and Administration Act 1993*)

SACAT can make an order to authorise detention, namely, that direct or indirect restrictions are placed on the person’s liberty or freedom of movement so that they may not freely come and go from a place, or any part of the place. The order will authorise restraints on the person leaving and will enable the person to be brought back if they leave or are removed from that place (with police assistance if necessary)

Physical restraint/use of force in care or treatment (section 32(1)(c) of the *Guardianship and Administration Act 1993*)

SACAT can make an order to authorise persons involved in the care of a person to use such force as may be reasonably necessary for the purpose of ensuring the proper medical or dental treatment or day to day care and wellbeing of the person.

This order will authorise care providers to use physical force/restraint as necessary to prevent or restrict a person's movements when administering medical treatment or health care including in the use of any type of chemical, environmental or mechanical restraint.

Who can apply for special powers?

SACAT can only make a special powers order on the application of a guardian or substitute decision-maker.

What evidence is needed for a restrictive practices or special powers order?

Applicants for guardianship orders for restrictive practices authorisations or for special powers authorisations must provide sufficient evidence to the Tribunal to enable it to consider the factual basis for the making of orders.

The Tribunal considers:

- Medical evidence about the extent of the person's mental incapacity
- Interim behaviour support plans **or** a document providing a summary of the behaviours, an assessment of the extent of the behaviours, and what positive approaches are being taken to address the behaviours
- What restrictive practices by way of chemical, mechanical or environmental restraint, detention, seclusion, directed residence or the use of force, are necessary for the purpose of ensuring the proper medical or dental treatment, day to day care and wellbeing of the person
- Whether the person's behaviours can possibly be managed without using restrictive practices and whether the person's health or safety or the safety of others would be seriously at risk if the orders were not made
- The views of the person about the proposed practices (if they can be ascertained)

Evidence from the person's family and friends and from the person's treating medical professionals, carers and disability support service providers will be of assistance to SACAT.

It is important that treating medical practitioners, accommodation and care providers are available to provide evidence to the Tribunal in writing, or by telephone, video conference or in person.

Review of guardianship orders and special powers orders

Guardianship orders and special powers orders are always subject to regular periodic review.

Defined persons can also request a variation or revocation of orders at any time.

When reviewing an order regarding special powers, SACAT needs up to date evidence about:

- The matters referred to above
- How and when restrictive practices or seclusion, detention or force have been used
- Why their ongoing use will ensure that the person's health or safety or the safety of others would be protected such that they would not be seriously at risk

The Restrictive Practices Authorisation Scheme

The Restrictive Practices Authorisation Scheme came into operation in May 2022. The Scheme provides a framework for the authorisation of restrictive practices for National Disability Insurance Scheme (NDIS) participants in South Australia. The Scheme is independent and operates in parallel to SACAT.

This means that the authorisation for the use of restrictive practices may fall solely under the Scheme, fall solely with SACAT or some combination of the two.

If you are seeking authorisation for the use of restrictive practices for a person who is a NDIS participant, please contact the [Restrictive Practices Unit](#) on **1800 862 004** for guidance.

Detention

Please be aware that, generally, the restrictive practice of detention or seclusion may only be authorised by SACAT.

Who to consult with about restrictive practices

You can contact the Public Advocate for information. You can seek your own legal advice from a solicitor or the Legal Services Commission or a Community Legal Centre.

Stakeholders can also contact NDIS Quality and Safeguards Commission's Behaviour Support Team on 1800 035 544 or via sabehavioursupport@ndiscommission.gov.au

For NDIS participants, contact the Restrictive Practices Unit on 1800 862 004 for further information about the Restrictive Practices Authorisation Scheme.

Helpful Resources

NDIS: National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018 is available [here](#).

Information on Behaviour Support is also available on the National Disability Insurance Scheme website [here](#)

SA Office of the Public Advocate (OPA)

You can contact the Public Advocate for information on 1800 066 969 (toll free) or email opa@agd.sa.gov.au or visit their website at www.opa.sa.gov.au

OPA have recently produced a Private Guardians Manual in plain English and easy read versions. It is called "Now You Are a Guardian" and is available on their website.

Restrictive Practices Unit

The Restrictive Practices Guidelines are available [here](#).

Information about the Restrictive Practices Unit is available [here](#).