



Restrictive Practices and Special Powers

Guardianship Orders, Restrictive Practices and Special Powers Orders from SACAT

THE FOLLOWING INFORMATION EXPLAINS WHEN SACAT MAY MAKE GUARDIANSHIP ORDERS TO AUTHORISE RESTRICTIVE PRACTICES AND ORDERS AUTHORISING SPECIAL POWERS

Role of SACAT in authorising restrictive practices and special powers orders

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 SA 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 Advance Care Directives Act have the roles, functions and responsibilities set out in s 23 of that Act and can give consent to certain types of health care.

A 'person responsible' can also give consent to certain types of health care. Refer to the Consent to Medical Treatment and Palliative Care Act 1995 for a definition of a 'person responsible' (see attachment).

A guardian appointed by SACAT 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)

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

Some types of restrictive practices require SACAT's specific authorisation under s 32 of the Act (see below).

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" under the Consent Act 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 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 Regulations 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 by issuing orders under s 32 of the Act. These are called special powers orders.

Applications: 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 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.

- A. Special powers order under s 32 (1) (a) – directed residence/enforceable environmental restraint – 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)
- B. Special powers order under s 32 (1) (b) – detention or seclusion of the person in the place in which he or she is directed to reside under s 32 (1) (a) – 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)
- C. Special powers order under s 32(1) (c) - physical restraint/use of force in care or treatment - 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.

Applications for a guardian to consent to the use of restrictive practices, or for a special powers order: What evidence is needed?

Applicants for guardianship orders for restrictive practices authorisations or for special powers authorisations under s 32 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.

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

NDIS service providers and hospitals may need other approvals before using restrictive

practices for a person in their care. Service providers should consult with the NDIS about their responsibilities under NDIS legislation.

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 8342 8200, toll free 1800 066 099 or email opasa@opa.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.

Case law: Re KF, Re ZT, Re WD [2019] SACAT.

Consent to the use of restrictive practices under the Consent to Medical Treatment and Palliative Care Act 1995 – Person Responsible

Consent by a substitute decision maker under an advance care directive.

If substituted consent is needed to the administration of medication for any purpose (including chemical restraint) or to any other type of health care (including environmental and mechanical restraint) a medical practitioner or health practitioner may seek the consent of a substitute decision maker under an advance care directive OR a ‘person responsible’ under the Consent to Medical Treatment and Palliative Care Act 1995.

A ‘person responsible’ under the Consent Act is defined to include:

- A guardian, or a ‘prescribed relative’ or adult friend of the patient who has a close and continuing relationship with the patient and who is available and willing to give that consent
- An adult who is charged with overseeing the ongoing day to day care, supervision, care and wellbeing of the patient *, or
- If none of the preceding paragraphs apply the Tribunal may give permission for the consent to the administration of medications or health care (an application to SACAT must be made).

A ‘prescribed relative’ is defined as:

- an adult domestic partner of the patient (within the meaning of the Family Relationships Act 1975
- and whether declared as such under that Act or not);
- an adult related to the patient by blood or marriage
- an adult related to the patient by reason of adoption
- an adult of Aboriginal or Torres Strait Islander descent who is related to the patient according to Aboriginal kinship rules or Torres Strait Islander kinship rules (as the case requires).
- If a man and woman are married according to Aboriginal tradition, they will be regarded as legally married for the purposes of this Part.

Exceptions:

- (a) *A person who is overseeing the ongoing day to day care, supervision and wellbeing of the patient (such as a staff member in an aged care facility) is authorised to give consent to the administration of care and medication for treatment of a medical condition but is not authorised to do so if the medication is principally for the purpose of controlling the behaviour of the person.

This means that day to day care providers are not authorised under the Consent Act to consent to the administration of medication by way of chemical restraint. (Regulation 5 Consent Regulations)

- (b) This type of substituted consent by persons responsible and substitute decision makers is only permissible if the health care practice is provided under the supervision of a registered health practitioner (which includes a medical practitioner).
- (c) Persons responsible or substitute decision makers cannot give consent to restrictive powers involving the use of force, detention seclusion or directed residence.

It is not the role of SACAT to provide legal advice. SACAT does not guarantee the accuracy or completeness of this Fact Sheet and does not accept any responsibility if you rely on it. You should read the relevant legislation and always seek your own legal advice