



Restrictive Practices

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Outline

- * Legislation
- * Role of the Public Advocate
- * Informal arrangements
- * The role of SACAT
- * Guardianship orders
- * Restrictive Practices

South Australian Context

- * Legislation

- * *South Australian Civil and Administrative Tribunal Act, 2013*

- * *Guardianship and Administration Act, 1993*

- * *Mental Health Act, 2009*

- * *Consent to Medical Treatment and Palliative Care Act, 1995*

The Public Advocate

- * Established under the *Guardianship and Administration Act 1993 (GAA)*
- * Independent statutory position; reports to Minister and Parliament
- * Functions in the GAA:
 - * Promoting and protecting the rights of people with mental incapacity;
 - * Giving support to and promoting the interests of carers of mentally incapacitated persons;
 - * Identifying areas of unmet needs of people with mental incapacity;
 - * Giving advice on the Act and alternatives to guardianship;
 - * Acting as guardian of last resort.
- * Dispute Resolution Functions set out in *Advance Care Directives (ACD) Act 2013* & (amendments to) the *Consent to Medical Treatment and Palliative Care (Consent) Act 1995*

Informal Arrangements

- * Often, people with mental incapacity cannot make their own decisions, even with support, but do have family, friends, carers who make decisions for them.
- * This is called **Informal Arrangements**
- * The following decisions can be made under informal arrangements, without needing to be appointed guardian:
- * In home services
 - Can arrange for community support if the person does not object
- Accommodation
 - Can arrange for a person to move to residential care – if the person does not object to moving.

Informal Arrangements (cont)

- * Health Care /Medical Treatment
 - * if there is no Advance Care Directive and person making the decisions is a 'person responsible' under the *Consent to Medical Treatment and Palliative Care Act 1995*.
- * There is a 'hierarchy' in determining who the 'person responsible' is:
 - * Guardian appointed by SACAT (i.e. formal substitute decision maker);
 - * Prescribed relative with a close and continuing relationship, being:
 - * A spouse or domestic partner;
 - * Adult related by blood or marriage or adoption;
 - * Aboriginal or Torres Strait Islander kinship/marriage
 - * Adult friend with a close and continuing relationship;
 - * Adult charged with overseeing ongoing day-to-day supervision.

Informal Arrangements (cont)

- * If informal arrangements work well, there is no need to seek a guardianship order
- * Sometimes informal arrangements break down, eg:
 - * disagreement between family, friends or those involved in a person's care about who should make the decision or what decision to make
 - * disagreement between the carer and the person with a mental incapacity
 - * The person with impairment is refusing the decisions
- * Apply to SACAT for guardianship order if a decision is needed; including **restrictive practices**
- * www.sacat@sa.gov.au

Informal Arrangements (cont)

- * Restrictive Practices, in section 32 of the GAAct,
- * Cannot be approved through informal arrangements
- * If a need arises, generally a guardian must be appointed
- * Only a guardian (private or Public Advocate) can apply for special powers – to SACAT
- * SACAT gives authority

The Role of SACAT

- * The South Australian Civil and Administrative Tribunal (SACAT) helps people to resolve certain legal issues, including guardianship.
- * SACAT appoints guardians to make decisions about accommodation, health and lifestyle.
- * SACAT can also:
 - * Change or cancel a guardianship order;
 - * Provide advice or direction to a guardian;
 - * Agree to certain medical treatment;
 - * **Grant special powers that authorise detention and the use of force - restrictive practices (section 32 GAAct)**
 - * Approve ITOs and CTOs – Mental Health Act – restrictive practices can be used under these orders – time limited

Being a Guardian

- * Guardians are authorised to make substitute decisions with the same authority as if the person made the decision themselves.
- * Decisions about **accommodation, health, lifestyle** – depending on whether the guardianship order is full or limited.
- * If a restrictive practice is approved (eg locked fridge) by a guardian under a lifestyle decision, it requires a positive behaviour support plan

Special Powers (s 32 GAAct)

Restrictive Practices

The powers enable:

- * A direction to be given as to where **someone lives**
- * **Detaining a person**
- * The authorisation of the **use of force** as may be reasonably necessary for the purposes of:
 - * ensuring proper medical or dental treatment,
 - * day-to-day care and
 - * The well being of the person
 - * Only make an order if the **health or safety** of the person or others is seriously at risk (evidence needed)

Special Powers (cont)

- * Guardians are not able to authorise these kinds of restrictive practices under an ordinary order
- * To protect the rights and freedoms of people under guardianship, need to apply to SACAT for special powers to do this (s32 GAAct)
- * Only if the health or safety of the person, or the safety of others, is at risk
- * Last resort only because of the restriction on rights and freedoms

Positive Behaviour Support Plans

- * Public Advocate delegated guardians should only approve restrictive practices when a PBSP exists – not in SA legislation (OPA practice)
- * SACAT considering how it will address in its future processes
- * Must be provided to the NDIS QS Commission
- * Processes being developed between SA and QSC

OPA's Information Service

- * Operates between 9:00 – 5:00pm – Emergencies only after hours
- * Provides information on *Advance Care Directives Act 2013; Consent to Medical Treatment and Palliative Care Act 1995; Guardianship and Administration Act 1993; Mental Health Act 2009*
- * Written information – fact sheets
- * Presentations/education (involving relevant OPA staff)
- * Referrals to other agencies as appropriate

Private Guardians Manual

- * OPA recently produced a Private Guardians Manual – plain English and Easy Read versions
- * Provides information about decision-making and being a guardian
- * http://www.opa.sa.gov.au/resources/private_guardian_resources





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Thank you

Any questions?