

Restrictive Practices NSW: Guide for Enduring Guardians

Author: Kylie Johnson
Email: kylie@ealawyers.com.au
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Restrictive Practices and Enduring Guardians in NSW: What Families Need to Know Before December 2026

From December 2026, significant changes to the law governing restrictive practices in New South Wales will come into effect. These reforms seek to introduce a clearer legal framework for when restrictive practices may be authorised and used for adults with decision-making disabilities.

The reforms are designed to better protect the rights, dignity and autonomy of vulnerable people while recognising that, in limited circumstances, restrictive practices may be necessary to prevent serious harm.

For families, enduring guardians, carers and disability service providers, understanding these changes is essential. The amendments will affect who can consent to restrictive practices, when they may be used, and the safeguards that must be followed.

What are restrictive practices?

A restrictive practice is any intervention or practice that restricts a person's rights or freedom of movement for the primary purpose of influencing their behaviour.

Restrictive practices are generally regarded as measures of last resort. They should only be considered where there is a genuine risk of harm to the person or others and where less restrictive alternatives have been attempted or are not reasonably available.

Examples of restrictive practices include:

- locking doors to prevent a person leaving a premises;
- preventing access to personal possessions;
- using physical restraint to stop a person from harming themselves or others;
- administering medication primarily to control behaviour rather than treat a medical condition; and
- using mechanical devices to limit a person's movement.

While some of these practices may appear necessary in particular circumstances, each involves limiting a person's fundamental human rights. As a result, they require careful regulation and oversight.

Why is consent to restrictive practices important?

A person who has decision making capacity can generally make their own decisions about their care.

The position becomes more complicated where the person no longer has capacity to provide informed consent.

A family member does not automatically have authority to consent to a restrictive practice simply because they are the person's spouse, child, carer or next of kin.

Similarly, an Enduring Guardian appointed under an Appointment of Enduring Guardian does not automatically have authority to consent to restrictive practices merely because they have been appointed to make health and lifestyle decisions.

In NSW, the authority given to the Enduring Guardian must be sufficiently broad and must specifically include the ability to make decisions concerning restrictive practices.

This is an important distinction for families completing their estate planning and later arranging residential aged care for a loved one.

Can an Enduring Guardian consent to restrictive practices in NSW?

An Enduring Guardian is a person appointed under an Appointment of Enduring Guardian to make certain personal, health and lifestyle decisions when the person who appointed them can no longer make those decisions themselves.

The appointment can specify the functions the Enduring Guardian is authorised to exercise.

Where restrictive practices may be required, the Appointment of Enduring Guardian should specifically authorise the Enduring Guardian to make decisions concerning restrictive practices.

A general authority covering accommodation, healthcare, medical treatment or services may not be sufficient.

This issue has become increasingly important as aged care providers seek confirmation that the person providing consent has appropriate legal authority.

Why were changes to the legislation necessary?

For many years, New South Wales has lacked a comprehensive legislative framework governing restrictive practices for adults who require substitute decision-making.

Instead, practitioners and families were required to navigate a combination of guardianship legislation, disability service policies, common law principles and human rights obligations. This created uncertainty about:

- who could lawfully authorise restrictive practices;
- what safeguards should apply;
- how decisions should be reviewed; and
- how to balance a person's safety with their right to autonomy.

The absence of clear legislation also resulted in inconsistent practices across the disability, health and aged care sectors.

As Australia's disability support system evolved under the National Disability Insurance Scheme (NDIS), the need for nationally consistent approaches to restrictive practices became increasingly apparent.

The NDIS Quality and Safeguards Framework already regulates the use of restrictive practices by registered NDIS providers. However, many adults receiving supports outside the NDIS did not benefit from equivalent legislative protections.

This inconsistency meant that people with similar disabilities could have significantly different legal protections depending upon the services they received.

The new framework seeks to address these gaps.

Moving towards supported decision-making

Modern guardianship law increasingly focuses on supported decision-making rather than substitute decision-making.

Rather than simply making decisions on behalf of another person, guardians are expected to support individuals to participate in decisions wherever possible.

The restrictive practices reforms reflect this contemporary approach.

Decision-makers will be required to consider whether the person's needs can be met through less restrictive alternatives before any restrictive practice is authorised.

Examples may include:

- modifying the person's environment;
- changing communication strategies;
- providing additional behavioural supports;
- implementing positive behaviour support plans; or
- increasing supervision without restricting liberty.

Only where these alternatives are ineffective or inappropriate should restrictive practices be considered.

What should an Enduring Guardian consider before providing consent?

The amendments also clarify the role of appointed guardians.

Enduring Guardians exercising decision-making authority regarding restrictive practices will have clearly defined responsibilities and statutory obligations.

An Enduring Guardian who has authority to make decisions about restrictive practices should consider the person's circumstances carefully. Rather than providing broad or indefinite consent, guardians will need to consider:

- whether the proposed restrictive practice is genuinely necessary;
- whether it represents the least restrictive available option;
- whether appropriate assessments have been completed;
- whether positive behaviour supports are in place; and
- whether ongoing review remains necessary.

These requirements encourage careful, evidence-based decision-making instead of routine approvals.

Importantly, guardians must continue to act in accordance with the general principles of the *Guardianship Act 1987* (NSW), including promoting the person's welfare while encouraging independence and participation in community life wherever possible.

What do these reforms mean for families?

Many family members appointed as private guardians face difficult decisions when caring for loved ones with dementia, acquired brain injuries, intellectual disability or significant cognitive impairment.

The use of restrictive practices isn't automatically permitted under existing Appointments of Enduring Guardian which ordinarily allow substituted health and lifestyle decision making for a person.

Where the use of restrictive practices is required, the Appointment of Enduring Guardian must now specifically permit that use. Without having that authorisation in place, a health care provider may refuse to provide restrictive practices.

Families should carefully review existing Appointments of Enduring Guardian and where the subject person still has the required mental capacity, consideration should be given to whether the document should be updated to include an authorisation for restrictive practices.

What if the Appointment of Enduring Guardian does not mention restrictive practices?

The available options will depend significantly on whether the person who made the Appointment of Enduring Guardian still has decision making capacity.

If the person still has capacity

Where the person continues to have the necessary capacity, they may be able to prepare a new or updated Appointment of Enduring Guardian that specifically gives their guardian authority to make decisions regarding restrictive practices.

Reviewing the document before the person enters aged care can avoid significant difficulty later.

If the person no longer has capacity

A person who has lost the capacity necessary to make a new Appointment of Enduring Guardian cannot simply sign an amended document.

It may instead be necessary to make an application to the NSW Civil and Administrative Tribunal, commonly known as NCAT.

NCAT can review an existing Enduring Guardianship appointment and may have power to vary the functions given to the Enduring Guardian, including by adding a restrictive practices function where appropriate.

Applications can become urgent where an aged care provider requires consent before particular care arrangements can be implemented.

Early planning can therefore avoid unnecessary stress, delay and expense for families.

How E&A Lawyers can assist

We can assist families regarding guardianship appointments, NCAT proceedings, substitute decision-making and the legal responsibilities of guardians.

If you are reviewing your estate planning or you or your family members are preparing for a move into residential aged care, considering these issues in advance can help ensure that the appropriate decision making arrangements are in place when they are needed.

If you have questions about how the reforms may affect you or a loved one, our team can provide practical advice tailored to your circumstances

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