

## Restrictive Interventions in Services for People with Disability Procedure

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<b>Overarching Policy:</b>	P16/000490 Restrictive Interventions in Services for People with Disability Policy
<b>Effective From:</b>	November 2021
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<b>Custodian and Review Responsibility:</b>	Disability Services Policy and Programs
<b>Contact:</b>	Senior Practitioner, Disability and Community Services
<b>Applies to:</b>	All disability service providers and funded private persons receiving National Disability Insurance Scheme (NDIS) and/or Disability and Community Services (DCS) funding. All managers and support staff.
<b>Review Date:</b>	August 2023
<b>Key Words:</b>	Restrictive interventions, senior practitioner, disability, environmental & personal restrictions
<b>Routine Disclosure:</b>	Yes

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### Approval

Prepared by	Senior Practitioner - Disability and Community Services	1300 135 513	11/11/2021
Through	Director - Disability and Community Services	1300 135 513	16/11/2021
Approved by	Deputy Secretary - Disability, Housing and Community Services	1300 135 513	8/12/2021

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## Revision History

Version	Approved by name	Approved by title	Amendment notes
2	Disability Services Executive Group	Disability Services Executive Group	Update to reflect full scheme National Disability Insurance Scheme (NDIS) and the commencement of the NDIS Quality and Safeguards Commission
3	Disability Services Executive Group	Disability Services Executive Group	Update to reflect the NDIS Quality and Safeguards Commission guidelines on prohibited practices
	Name	Position Title	

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## Introduction

- The purpose of this procedure is to ensure that the inherent dignity and individual autonomy, including the freedom to make choices, of people with disability are respected.
- This procedure provides staff and management with a clear set of requirements to be followed for the acceptable, and legal, use of practices that are, or have the potential to be, restrictive.
- The procedure outlines the requirements for the authorisation, reporting and monitoring of such practices and ensures that the provisions regarding the regulation of restrictive interventions under the Tasmanian *Disability Services Act 2011* (the Act) are complied with.
- The intent of this procedure is to assist service providers to meet the requirements of the Tasmanian *Disability Services Act 2011* in regard to restrictive interventions, as well as to uphold the objectives, principles and standards contained within the Act. This procedure also provides details of the processes that must be followed by service providers and funded private persons when considering the use of restrictive practices in the provision of services to people with disability.
- This procedure is complementary to, and does not override or replace, the requirements of the NDIS Quality and Safeguards Commission.

## Mandatory Requirements

- The Tasmanian *Disability Services Act 2011* is the legislative basis for the provision of specialist disability services in Tasmania.
- This procedure applies to all disability service providers and funded private persons receiving National Disability Insurance Scheme (NDIS) and/or DCS funding.
- This procedure must be read in conjunction with the Restrictive Interventions in Services for People with Disability Policy PI6/000490.
- This procedure must also be read in conjunction with *the National Disability Insurance Scheme Act 2013* and all relevant NDIS Quality and Safeguards Commission rules, guidelines and policies, particularly the NDIS Commission's guideline ["Practices proposed to be prohibited"](#)

## Procedure

### Restrictive Interventions

- Section 4 of the Tasmanian *Disability Services Act 2011*, describes a restrictive intervention as: any action that is taken to restrict the rights or freedom of movement of a person with disability for the primary purpose of the behavioural control of the person, but does not include such an action that is:
  - (a) taken for therapeutic purposes; or
  - (b) taken to enable the safe transportation of the person; or
  - (c) authorised under any enactment relating to the provision of mental health services or to guardianship.
- The Tasmanian *Disability Services Act 2011* (section 34) describes two categories of restrictive intervention as being:

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- Environmental restriction, in relation to a person with disability, means a restrictive intervention in relation to the person that consists of the modification of an object, or the environment of the person, so as to enable the behavioural control of the person, but does not include personal restriction.
- Personal restriction, in relation to a person with disability, means a restrictive intervention in relation to the person that consists wholly or partially of:
  - (a) Physical contact with the person to enable the behavioural control of the person: or
  - (b) The taking of an action that restricts the liberty of movement of the person.

## **Disability Service Providers and Funded Private Persons**

### **Use of a restrictive intervention**

- Apart from the exceptions noted in the *Tasmanian Disability Services Act 2011*, restrictive interventions should only be used as part of a behaviour support plan which has been developed in consultation with the person with disability or a person nominated by the person with disability, persons who have expertise in carrying out the proposed restrictive intervention and the Senior Practitioner.
- A restrictive intervention must only be used if the particular intervention has been endorsed by the Senior Practitioner and approved by the Secretary of the Department of Communities Tasmania as required under section 38 of the *Tasmanian Disability Services Act 2011* (environmental restriction) or approved by the Tasmanian Civil & Administrative Tribunal – Guardianship Stream under section 42 of the *Tasmanian Disability Services Act 2011* (environmental or personal restriction).
- A relevant authorisation for the use of a restrictive intervention also exists if there is an authorisation by the Chief Psychiatrist under the Mental Health Act (2013) or approval by a Guardian appointed by Tasmanian Civil & Administrative Tribunal.’
- Disability service providers and funded private persons need to seek advice from a person of expertise (e.g. a general practitioner or occupational therapist) and consult with the Senior Practitioner if an action is likely to be for ‘safe transportation’ or ‘therapeutic purposes’.
- There are certain practices a disability service provider must **never** use as set out in the NDIS Commission’s guideline - ‘*Practices proposed to be prohibited*’. These practices include certain forms of physical restraint (e.g. prone or supine restraint, pin downs, ‘basket’ holds or ‘take downs’) which would never be considered a ‘least restrictive’ option and punitive approaches (e.g. aversive practices, denial of key needs, over correction, response cost) which would not be considered to be maintaining the health, wellbeing and safety of a person.

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## Approval process

- An environmental restriction can be approved by the Secretary of the Department of Communities Tasmania for up to 90 days (section 38), or by the Tasmanian Civil & Administrative Tribunal – Guardianship Stream for up to 2 years after a hearing (section 42).
- A personal restriction can be approved by the Tasmanian Civil & Administrative Tribunal – Guardianship Stream for up to 90 days without a hearing or for up to 2 years after a hearing (section 42).
- For those practices requiring approval by the Secretary of the Department of Communities, under section 38 of the Tasmanian *Disability Services Act 2011*:
  - The form “Application for approval to carry out Restrictive Intervention” should be completed and forwarded to the Senior Practitioner by email.
  - The applicant will need to provide a behaviour support plan to support the application, if a plan has been developed
  - The Senior Practitioner will seek additional information upon receipt of this application form.
  - Suggest some info re what happens next – does the SP forward onto the Secretary of the Department of Communities? And what is the process for being advised of the outcome?
- For those practices requiring approval by the Tasmanian Civil & Administrative Tribunal – Guardianship Stream under section 42 of the Tasmanian *Disability Services Act 2011*:
  - Tasmanian Civil & Administrative Tribunal – Guardianship Stream form 10 and the Health Care Professionals report should be forwarded to the Senior Practitioner. The Senior Practitioner will indicate the additional information required upon receipt of the application
  - An application made to the Tasmanian Civil & Administrative Tribunal – Guardianship Stream under section 42 of the Tasmanian *Disability Services Act 2011* Act must have the endorsement of the Senior Practitioner
  - The Senior Practitioner will then forward the application and statement of support to the Tasmanian Civil & Administrative Tribunal – Guardianship Stream. The Tasmanian Civil & Administrative Tribunal – Guardianship Stream will contact interested parties when a date of hearing has been arranged.
- The use of an unauthorised restrictive intervention is prohibited unless the following conditions are met (section 36 of the Tasmanian *Disability Services Act 2011*):
  - The action is used to prevent serious harm to a person with disability or others
  - The action is the least intrusive option available and
  - The Senior Practitioner is notified as soon as possible using the form “Reporting Unauthorised Restriction” The Senior Practitioner will advise if further action is required.
- All the forms mentioned above and further information about restrictive interventions and associated authorisation processes can be found on the Office of the Senior Practitioner page on the Communities website at:

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## Roles and Responsibilities/Delegations

### Disability Service Providers and Funded Private Persons

Disability service providers and funded private persons must:

- Comply with the Tasmanian *Disability Services Act 2011* and recognise the set of principles that apply to organisations and services funded by the National Disability Insurance Scheme and/or Disability and Community Services to provide services to people with disability.
- Educate all staff on the relevant principles in relation to restrictive interventions, as summarised below:
  - the needs and best interests of persons with disability are to be promoted and, as far as practicable, decisions or actions that may directly affect a person with disability should only be taken after the person has been consulted and their wishes have been taken into account. (Tasmanian *Disability Services Act 2011* section 5 (2) (a) and (b)).
  - relevant activities and decisions taken by service providers should only result in the restriction of the freedom of decision and action of the person, if at all, to the smallest extent that is practicable in the circumstances.
- Uphold at all times a clear moral, professional and legal responsibility to provide an environment for people with disability that is the least restrictive possible under the circumstances.
- Design and administer all services and programs so as to respect the rights of persons with disability to privacy and confidentiality.
- Comply at all times with the duty of care to protect the person with disability or others from harm, it may be necessary to use restrictive or intrusive practices in emergency situations (e.g. restraining a person from running onto a busy road).
- All emergency situations where an unauthorised restrictive intervention is used must be reported as soon as possible to the Disability and Community Services Senior Practitioner.
- Uphold and maintain the rights of the people they support as per the United Nation's *Declaration on the Rights of Mentally Retarded Persons 1971*, the United Nation's *Declaration on the Rights of Disabled Persons 1975*, and the United Nations *Convention on the Rights of Persons with Disability 2006*.
- Communicate to all staff:
  - the role and responsibilities of the Senior Practitioner that has been established under the Tasmanian *Disability Services Act 2011* to protect these rights.
  - the primary functions of the Senior Practitioner, including the authorisation and monitoring of restrictive practices in funded services.
  - that Restrictive Interventions can be used as long as they have been authorised under Sec 37 or 42 of the Act.

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- that an unauthorised Restrictive Intervention is allowed to be used if the action is to prevent harm, is the least restrictive option and the Senior Practitioner is notified.

## Key Definitions

### Applicant

The person who applies on the application that is made to the Senior Practitioner and/or Tasmanian Civil & Administrative Tribunal.

### Behaviour support plan

A personal plan that includes a functional assessment of behaviour and describes methodologies for avoiding, minimising or managing specific behaviours.

### Duty of Care

A component of the common law of negligence which allows for people or organisations to be held responsible if their actions do not meet an acceptable standard of care in relation to protecting a person with disability, or other persons, from harm, injury or loss.

### Emergency situations

Situations where the safety or wellbeing of the person with disability, support staff or other persons is put at significant risk. Emergency situations require an immediate response to reduce or eliminate the risk.

### Least restrictive alternative

A practice that (a) is not more restrictive or intrusive than necessary to prevent the person from inflicting harm on themselves or others; and (b) is applied no longer than necessary to prevent harm or danger.

### Restrictive intervention

As per the Tasmanian *Disability Services Act 2011*, any action that is taken to restrict the rights or freedom of movement of a person with disability for the primary purpose of the behavioural control of the person.

### Senior Practitioner

As per the Tasmanian *Disability Services Act 2011*, a person appointed by the Secretary of the Department of Communities Tasmania who, among other responsibilities, regulates and monitors the use of restrictive interventions.

### Environmental restriction

In relation to a person with disability, a restrictive intervention that consists of the modification of an object, or the environment, so as to enable the behavioural control of the person, but does not include a personal restriction.

### Personal restriction

In relation to a person with disability, a restrictive intervention that consists wholly or partly of physical contact to enable the behavioural control of the person or taking an action that restricts the liberty of movement of the person.

### The Act

The Tasmanian *Disability Services Act 2011*.

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## Therapeutic purposes

Under Part 1 Section 4 of the Tasmanian *Disability Services Act 2011*, therapeutic purposes “includes treating (by diagnosing, curing or relieving) a disease, disorder, ailment, defect or injury and facilitating such treatment, but does not include preventing or reducing the risk of ailment or injury.”

## Related Documents/Legislation

- Tasmanian Disability Services Act 2011
- Criminal Code Act 1924
- Police Offences Act 1935
- Personal Information Protection Act 2004
- Anti-Discrimination Act 1998
- Health Complaints Act 1995
- Guardianship and Administration Act 1995
- Mental Health Act 2013
- Criminal Justice (Mental Impairment) Act 1999
- Children, Young Persons and their Families Act 1997
- United Nations Declaration on the Rights of Mentally Retarded Persons 1971
- United Nations Declaration on the Rights of Disabled Persons 1975
- United Nations Convention on the Rights of Persons with Disability 2006.
- National Disability Insurance Scheme Act 2013 (NDIS Act)

## Attachments

1. [Department of Communities Tasmania - Senior Practitioner](#)



2. [riset](#) Access practice resources and restrictive intervention information via [RISET-TAS](#)
3. [National Disability Insurance Scheme Quality and Safeguards Commission](#)
4. [National Disability Insurance Scheme](#)

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