

Restrictive Interventions in Services for People with Disability Guideline

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Contact:	Senior Practitioner, Disability and Community Services
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Approval

Prepared by	Senior Program Officer Disability and Community Services	1300 135 513	4 October 2013
Through	Senior Practitioner Disability and Community Services	1300 135 513	6 December 2013
Through	Director Disability and Community Services	1300 135 513	25 February 2014
Approved by	Deputy Secretary Disability, Housing and Community Services	1300 135 513	25 February 2014

Revision History

Version	Approved by name	Approved by title	Amendment notes
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Introduction

- The purpose of this Guideline is to ensure that the inherent dignity and individual autonomy, including the freedom to make choices, of persons with disability are respected.
- This Guideline 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 Guidelines outline 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 guideline 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 and provides details of the processes that must be followed by service providers when considering the use of restrictive practices in the provision of services to people with disability.

Transition to the NDIS

- Until commencement of the Full Scheme NDIS on 1 July 2019 all providers delivering DCS funded specialist disability services and services to NDIS funded participants are required to maintain compliance with DCS policies and procedures.
- Working collaboratively, open communication and information sharing during this transition period are essential. Providers with questions about DCS policies and procedures should contact their DCS Area Office, Community Partnership Team for clarification.
- Existing arrangements relating to Quality and Safety will remain in place for all individuals and NDIS participants until a National Approach is finalised. Eg. providers are required to comply with the *DHHS Quality and Safety Standards Framework for Tasmania's Agency Funded Community Sector* and ensure compliance with the *Tasmanian Disability Services Act (2011)* and *Tasmanian Disability Services Regulations (2015)*. Providers will be notified formally of any change in arrangements relating to quality assurance.

Mandatory Requirements

- The *Tasmanian Disability Services Act 2011* is the legislative basis for the provision of specialist disability services.
- Regulation of Restrictive Interventions in the *Tasmanian Disability Services Act 2011* (Part 6) interprets:
 - Environmental restriction, in relation to a person with disability, as meaning 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 the *Tasmanian Disability Services Act 2011* relates specifically to a person with disability, meaning a restrictive intervention in relation to the person that consists wholly or partially of:

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- (a) Physical contact with the person so as to enable the behavioural control of the person:
or
 - (b) The taking of an action that restricts the liberty of movement of the person.
- The *Restrictive Interventions in Services for People with Disability Guideline* must be read in conjunction with the *Restrictive Interventions in Services for People with Disability Policy P2012/0177-001*.
 - This is a Department Health and Human Services (DHHS) wide policy, the policy must not be re-interpreted and no other policy replaces it.
 - **Failure to comply with this policy**, without providing a good reason for doing so, will lead to disciplinary action.
 - Disciplinary action in this context may be a Penalty under the Tasmanian Disability Services Act 2011 or constitute a breach of your Funding Agreement with the Department Health and Human Services (DHHS)

Guidelines

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 client or a person nominated by the client, persons who have expertise in carrying out the proposed restrictive intervention and the senior practitioner; and who have approval for the use of the restrictive intervention.
- 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 as required under section 38 of the Tasmanian *Disability Services Act 2011* (environmental restriction) or approved by the Guardianship and Administration Board 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 in place an authorisation by the Chief Forensic Psychiatrist under the Mental Health Act (2013) or Guardianship.

Approval process

- An environmental restriction can be approved by the Secretary of the Department for up to 90 days or by the Guardianship & Administration Board for up to 6 months after a hearing (section 38).
- A personal restriction can be approved by the Guardianship & Administration Board for up to 90 days without a hearing or for up to 6 months after a hearing (section 42).
- For those practices requiring approval 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

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- The applicant will need to provide a behaviour support plan to support the application
- The Senior Practitioner will seek additional information upon receipt of this application form.
- For those practices requiring approval under section 42 of the *Tasmanian Disability Services Act 2011*:
 - The Guardianship and Administration form 10 and the Health Care Professionals report and forward the Senior Practitioner. The Senior Practitioner will indicate the additional information required upon receipt of the application
 - An application made to the Guardianship and Administration Board under section 42 of the *Tasmanian Disability Services Act 2011* Act must have the approval of the Senior Practitioner

If approved, the Senior Practitioner will forward the application and statement of approval to the Guardianship and Administration Board. The Guardianship and Administration Board will then contact the applicant to determine the next course of action.

- The use of an unauthorised restrictive intervention is prohibited (part 6, section 36). If an intervention is deemed necessary to protect a person with disability, or another person from serious harm, this needs to be reported to the Senior Practitioner.
 - The form “reporting unauthorised restriction” needs to be completed as soon as practicable and forwarded to the Senior Practitioner. The Senior Practitioner will advise if further action is required.

Roles and Responsibilities/Delegations

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 Disability and Community Services to provide services to people with disability.
- Must communicate to all staff that the use of unauthorised restrictive, aversive and intrusive interventions is prohibited.
- 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 clients that is the least restrictive possible under the circumstances.

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- 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.
- Must ensure that a type of restrictive practice intervention is not carried out in relation to a person with disability who is under the care or control of the disability services provider or a funded private person (Tasmanian *Disability Services Act 2011* Part 6 section 36 subsection (1)).
- The right of an individual with disability is treated with dignity and respect and remains free from harm and abuse 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 Disability and Community Services provided or funded services
 - the Senior Practitioner provides advice and information to the Guardianship and Administration Board on matters related to restrictive practices
 - aversive therapy/treatment practices are not to be used under any circumstances by services managed or funded by Disability and Community Services
 - under the provisions of the *Criminal Code Act 1924* and the *Police Offences Act 1935*, certain forms of aversive practices may constitute an assault (e.g. [physical abuse, threats, or confinement without consent) and those responsible may potentially face criminal charges and prosecution by the police.

Key Definitions

Adaptive equipment

Equipment that improves functioning, comfort, mobility or the ability of a person to carry out tasks independently.

Applicant

The person who applies on the application that is made to the Guardianship and Administration Board.

Aversive treatment practices

An aversive practice is one that uses unpleasant physical or sensory stimuli in an attempt to reduce undesired behaviour and usually cannot be avoided or escaped and/or is pain inducing. Also refers to any

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withholding of basic human rights or needs, or of a person's goods, belongings or favoured activity for the purpose of behaviour management or control.

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.

Intrusion/ intrusive practices

Approaches that are placed or forced upon an individual without their invitation, consent or the right to do so. Includes, but is not limited to, entering without right or welcome into a person's personal environment, personal space or impinging on the rights or freedoms of a person by divulging personal information, making major life decisions without consent. Also includes using equipment that impinges on or reduces personal privacy, such as monitoring devices.

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.

Legal Guardian

A person appointed by the Guardianship and Administration Board to make decisions and provide consent on behalf of another person.

Mechanical devices

Equipment of appliances used to prevent injury caused by involuntary movements of the body or parts of the body.

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 Health and Human Services who, among other things, regulates and monitors the use of restrictive interventions.

Significant others

Family members, relatives, close friends or other persons that are important or influential in the life of the person with disability – all those who should be consulted about major changes in the person's life.

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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.

Person Responsible

As per the *Guardianship and Administration Act 1995*, a 'person responsible' can give consent or substitute consent to medical or dental treatment when the person with disability is unable to consent because of the nature of their disability.

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*.

Therapeutic purposes

Within the context of these Guidelines, the use of restraint designed to enable the treatment of disease, illness, injury or to improve the person with disability's ability to function.

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 1996
- Criminal Justice (Mental Impairment) Act 1999
- Children, Young Persons and their Families Act 1997
- United Nation's Declaration on the Rights of Mentally Retarded Persons 1971
- United Nation's Declaration on the Rights of Disabled Persons 1975
- United Nations Convention on the Rights of Persons with Disability 2006.

Attachments

1. Department Health and Human Services Website Link to Senior Practitioner
http://www.dhhs.tas.gov.au/disability/senior_practitioner
2. Restrictive Interventions in Services for People with Disability Policy P2012/0177-001

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