

Restrictive Interventions

An application can be made to the Tasmanian Civil and Administrative Tribunal, Guardianship stream (the Tribunal) for approval of a restrictive intervention where that application has the approval of the Senior Practitioner.

What is a restrictive intervention?

For disability services funded in accordance with the *Disability Services Act 2011* (Tas) (the Act) a “restrictive intervention” means 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.

There are two types of restrictive interventions defined in the Act:

An environmental restriction:

- 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 a personal restriction;
- Can be approved by the Secretary of the Department of Communities for up to 90 days without a hearing or by the Tribunal for up to 6 months after a hearing, or such other period not exceeding 2 years, as agreed to by the Senior Practitioner and specified in the Approval.

A personal restriction:

- Means a restrictive intervention in relation to the person that consists wholly or partially of–
 - 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.
- Can be approved by the Tribunal for up to 90 days without a hearing or for up to 6 months after a hearing, or such other period not exceeding 2 years, as agreed to by the Senior Practitioner and specified in the Approval.

When is approval of a restrictive intervention required?

A restrictive intervention undertaken by a service funded in accordance with the Act must have approval of the Tribunal or the Secretary of the Department of Communities. However approval is not required for an action that is:

- a) taken for therapeutic purposes (“therapeutic purposes” is defined in section 4 of the Act), 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 use of unauthorised restrictive interventions by a service funded in accordance with the Act may result in prosecution for an offence under that Act.

Where a restrictive intervention is carried out for less than 72 hours and does not have prior approval, it may be lawful if the disability services or private funded provider:

- a) establishes that the carrying out of the restrictive intervention in relation to the person with disability was required to protect the person with disability, or another person, from serious harm, and
- b) ensures that the restrictive intervention carried out was the least intrusive type of restrictive intervention that would have protected the person with disability, or another person, from serious harm, and
- c) notifies the Senior Practitioner as soon as practicable after the restrictive intervention was carried out.

This defence does not apply to a continuing practice, only to emergency responses to dangerous behaviours.

Who can make an application?

A disability services provider or a funded private person can apply to the Tribunal if their application is accompanied by a recommendation by the Senior Practitioner.

It is recommended that a disability services provider consult with the Senior Practitioner before making an application.

A person to whom an approval relates may apply for a review of the approval, as can the disability services provider.

When is approval granted by the Tribunal?

An approval for the carrying out of a type of restrictive intervention in relation to a person with disability may only be granted by the Tribunal if the Tribunal is satisfied that –

- a) the type of restrictive intervention will be carried out only for the primary purpose of ensuring the safety, health or wellbeing of the person or other persons; and
- b) the restrictive intervention is the type of restrictive intervention that is the least restrictive of the person's freedom of decision and action as is practicable in the circumstances.

The Tribunal must have regard to -

- a) the best interests of the person with disability; and
- b) the consequences to the person with disability if restrictive intervention of that type is carried out in relation to the person; and
- c) the consequences to the person with disability, or other persons, if restrictive intervention of that type is not carried out in relation to the person with disability; and

- d) any alternative method reasonably suitable and able to be used in relation to the person with disability to control the behaviour for which the type of restrictive intervention has been proposed; and
- e) the nature and degree of any significant risks to the person with disability if the restrictive intervention is carried out; and
- f) whether and the extent to which, carrying out the restrictive intervention will promote or reduce the safety, health and wellbeing of the person with disability.

The Tribunal will either approve or not approve of the restrictive intervention or give directions about whether that intervention is lawful for other reasons. If a restrictive intervention is approved, the approval can be reviewed on a further application being filed with the Tribunal before the expiry. The Tribunal can also appoint a [guardian](#) after hearing an application or give directions about the use of a restrictive intervention.

More information

Please refer to the applications.