Authorisation of Restrictive Practices

This fact sheet explains how a disability services provider can seek authorisation to use a Restrictive Practice. For more information about what restrictive practices are, please see the fact sheet ‘[*Restrictive Practices: Information for Providers’*](https://www.dpac.tas.gov.au/divisions/cpp/community-and-disability-services/office-of-the-senior-practitioner)*.*

# Restrictive Practices

The *Disability Rights, Inclusion and Safeguarding Act 2024* (the Act):

* Defines a restrictive practice as any action that restricts the rights or freedom of movement or behaviour of a person.
* Regulates the use of restrictive practices in relation to people with disability.

Under the Act, the use of a restrictive practice must be authorised by the Senior Practitioner. Implementing a restriction without this authority is an offence and financial penalties may be imposed.

The use of an unauthorised restrictive practice in an emergency, to protect a person from harm that is both serious and imminent, may be necessary in some circumstances. In these instances, it is a defence to proceedings if the provider establishes that the use of the unauthorised restrictive practice was the least intrusive type of restricted practice that would have protected the person with disability.

The provider must notify the Senior Practitioner of the use of all unauthorised restrictive practices within 5 business days.

In an emergency situation, the use of an unauthorised restrictive practice should be the least restrictive action possible to protect the person. The repeated and consistent use of an unauthorised restrictive practice may be considered an offence.

# Restrictive Practices Framework

Any use of a restrictive practice in relation to a person with disability must be consistent with the Principles set out in Part 1 of the Act. The Principles promote the human rights of people with disability and reflect the *United Nations Convention on the Rights of Persons with Disability*.

These Principles apply to every person, entity and provider who is covered by the Act. The principles can be viewed in full here - [Part 1 of the Act.](https://www.legislation.tas.gov.au/view/whole/html/asmade/act-2024-021)

There are two principles specifically about restrictive practices. They are:

* Restrictive practices should only be used in very limited and specific circumstances as a last resort and utilising the least restrictive practice and for the shortest period of time possible in the circumstances.
* Restrictive practices should only be used where they are proportionate and justified in order to protect the rights or safety of the person with disability or others.

These principles mean that a restrictive practice should only be:

* Used in very limited and specific circumstances.
* Used as a last resort.
* The least restrictive practice possible.
* Used for the shortest time possible.
* In proportion and justified to protect the rights and safety of the person with disability or others.

Providers should also ensure compliance with the *National Disability Insurance Scheme Act 2013* (NDIS Act) and the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (NDIS Rules).

# Authorisation of Restrictive Practices

A disability services provider proposing to use restrictive practices in relation to a person with disability must apply for authorisation from the Senior Practitioner. The application must describe all restrictive practices the disability services provider proposes to use and be:

* Made using the form issued by the Senior Practitioner.
* Accompanied by a behaviour support plan that is prepared for the person with disability.

For more information on who is a disability services provider see the fact sheet ‘[*Who is a Disability Services Provider*](https://www.dpac.tas.gov.au/divisions/cpp/community-and-disability-services/disability-inclusion-and-safeguarding-act-2024)*?*’.

# Behaviour Support Plans

An application to use a restrictive practice in relation to a person with a disability must be accompanied by a behaviour support plan. Section 57 of the Act sets out requirements for the preparation of behaviour support plans. The plan must be prepared by a behaviour support practitioner and must:

* State the circumstances in which the proposed type of restrictive practice is to be used for behaviour support.
* Explain how the use of a restrictive practice will be of benefit to the person with disability.
* Demonstrate that the use of a restrictive practice is the option which is the least restrictive of the person as is possible in the circumstances.
* Include strategies to reduce or eliminate the need for a restrictive practice to be used on the person with disability.
* Take into account any:
* previous behaviour assessments.
* other relevant assessments.
* Include the changes to be made to the environment of the person to reduce or eliminate the need for the restrictive practice to be used on the person.

Where the person with disability is a NDIS participant there are also requirements under the *NDIS Act 2018* and the NDIS Rules that must be complied with when preparing a behaviour support plan.

If a behaviour support plan has not been developed, or cannot be provided with an application, an authorisation cannot be made. Providers are encouraged to discuss this situation with the Senior Practitioner.

# Consultation

The Senior Practitioner may only grant authorisation to use a restrictive practice if the Senior Practitioner or their delegate has consulted with:

* The person with disability about the restrictive practice to be used, or a person nominated by that person.
* Any other person, if any, who has expertise in the use of the restrictive practices proposed to be used.

# What if there is more than one provider?

Where there is more than one provider proposing to use a restrictive practice for a person with disability, a single provider can make an application on behalf of all the providers who will be implementing the practice.

Alternatively, each provider proposing to use the restrictive practice can make an individual application to the Senior Practitioner.

All providers implementing the practice must ensure they have each appointed an APO that has been approved by the Senior Practitioner.

Only one Independent Person is required for each person with disability.

The Senior Practitioner may authorise the use of a restrictive practice by the provider who made the application; or by all providers who provide services to the person with disability.

# Supporting Roles

A disability services provider proposing to use restrictive practices in relation to a person with disability must also:

* Appoint an Appointed Program Officer.
* Ensure the person with a disability has an Independent Person.

The role of the Appointed Program Officer (APO) is to ensure that the Act and any relevant rules, policy, procedure or guidelines in relation to the use of a restrictive practices are followed by the provider. The APO does not have any role in authorising the use of a restrictive practice. For more information on the role of the Appointed Program Officer see the fact sheet ‘[*Appointed Program Office*r](https://www.dpac.tas.gov.au/divisions/cpp/community-and-disability-services/office-of-the-senior-practitioner)’.

The role of the Independent Person is to protect the human rights and support the safety, wellbeing and health of a person with disability for whom a restrictive practice is proposed. For more information on the role of the Independent Person see the fact sheet ‘[*Independent Person’*](https://www.dpac.tas.gov.au/divisions/cpp/community-and-disability-services/office-of-the-senior-practitioner).

# Senior Practitioner’s decision

The Senior Practitioner may approve or refuse the application to use restrictive practices. If the application is approved this is known as the authorisation. The Senior Practitioner may place conditions on the authorisation, such as a requirement to provide reports to the Senior Practitioner regarding the use of the restrictive practice. Failing to comply with the conditions of an authorisation is an offence under the Act and financial penalties may be imposed.

The Senior Practitioner will provide a written notice of any decision to approve or refuse an application for restrictive practices to the disability services provider and the person with disability to whom the application relates.

# Review of an Authorisation

If the Senior Practitioner grants an authorisation to use a restrictive practice, they may review that decision at any time. The Senior Practitioner may also conduct a review if the person with disability, disability services provider, or independent person requests them to. After reviewing an authorisation the Senior Practitioner may retain the original decision, amend or revoke the authorisation. Whilst a decision is being reviewed the original decision remains in force.

The following decisions of the Senior Practitioner are ‘reviewable decisions’ under the Act. A decision to:

* Authorise, or refuse to authorise, the use of a type of restrictive practice, or a specific restrictive practice, in relation to a person with disability.
* Impose any condition or limitation on the grant of an authorisation for the use of a type of restrictive practice in relation to a person with disability.
* Amend or revoke an authorisation following a review.

A person who does not agree with the outcome of a reviewable decision can apply to the Senior Practitioner for a review. In undertaking a review, the Senior Practitioner must ensure that any delegate of the Senior Practitioner who is engaged in the review process was not involved in making the original decision.

If a person does not agree with the outcome of an internal review undertaken by the Senior Practitioner, that person may apply in writing to the Tasmanian Civil and Administrative Tribunal for an external review of the decision.

# More Information

This Factsheet is a summary about the authorisation of restrictive practices in Tasmania. If you are interested in how this is described in the Act please read Part 7 of the [*Disability Rights, Inclusion and Safeguarding Act 2024 (the Act)*](https://www.legislation.tas.gov.au/view/whole/html/asmade/act-2024-021)

Additional resources on positive behaviour support and restrictive practices can also be found on the NDIS website: [Behaviour support resources | NDIS Quality and Safeguards Commission](https://www.ndiscommission.gov.au/rules-and-standards/behaviour-support-and-restrictive-practices/behaviour-support-resources)

For more information the Office of the Senior Practitioner can be contacted on seniorpractitioner@dpac.tas.gov.au or 6166 9199.