

An application can be made to the Guardianship and Administration Board 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* 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 Health and Human Services](#) for up to 90 days without a hearing or by the Guardianship and Administration Board for up to 6 months after a hearing.

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 Guardianship and Administration Board for up to 90 days without a hearing or for up to 6 months after a hearing.

When is approval of a restrictive intervention required?

A restrictive intervention undertaken by a service funded in accordance with the *Disability Services Act* must have approval of the Guardianship and Administration Board or the Secretary of the Department of Health and Human Services.

However approval is not required for 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 use of unauthorised restrictive interventions by a service funded in accordance with the *Disability Services Act* may result in prosecution for an offence under that Act. If a service has a continuing practice of using a restrictive intervention, it is recommended that they apply for a 90 day approval as soon as possible and follow up with an application for longer term approval or for appointment of a guardian.

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.

please see next page

Who can make an application?

A disability services provider or a funded private person can apply to the Board 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 (or their nominee) may apply for a review of the approval, as can the disability services provider.

When is approval granted by the Board?

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 Guardianship and Administration Board if the Board 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 Guardianship and Administration Board 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.

What happens at a hearing?

The Board must consult with the person to whom the restrictive intervention applies or a person nominated by the person and any persons who have expertise in the carrying out of restrictive interventions of that type. The Board then considers the tests set out above in discussion with all of the parties, including the disability services provider, the person with a disability, their family, friends or advocates and the Senior Practitioner.

What is the result of a hearing?

The Board 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, for 90 days or 6 months, the Board will conduct another hearing on application of the parties when that time expires. The approval can be reviewed before the expiry. The Board 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 [application forms](#).

Other fact sheets available in this series:

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Guardianship and Administration Board

Level 1, 54 Victoria Street, Hobart Tasmania 7000

Phone: 1300 799 625 / 03 6165 7500 Fax: 03 6233 4509

Email: Guardianship@justice.tas.gov.au Website: www.guardianship.tas.gov.au