2.2.17 AVERSIVE, RESTRICTIVE AND INTRUSIVE TREATMENT PRACTICES

Preamble:

CBS delivers consumer focused and consumer directed services. Where the consumer is unable to direct the service due to cognitive impairment, being a young child, a person with delayed development or for any other reason, CBS receives instruction from a competent carer, appointed advocate or guardian on appropriate support options and these will be detailed on the care plan. CBS workers will not, however under any engage in behaviour modification activities such as restraint or other punishment.

Rationale:

The disciplining of consumers runs counter to our operational philosophy, being to treat all clients with dignity and respect while ensuring a high level of Duty of Care. This policy aims to guarantee CBS maintains this philosophy.

Policy:

CBS staff shall not engage in any aversive, restrictive and intrusive interventions in accordance with the DHHS Restrictive Interventions Guidelines 2012 (attached to this policy). There may, however be situations where the safety of the consumer or another person is at direct risk (refer Duty of Care in the attached guidelines and CBS Policy 9.1.6 Duty of Care vs Dignity of Risk). Such cases shall be treated by the staff member concerned as an Incident and formally reported to the CEO by the next working day at latest.

From time to time CBS may be asked to provide services that include a behaviour modification component. Where this has occurred in the past, CBS has refused such requests. On other occasions it has been assumed that CBS would attempt to modify client behaviour rather than deal with the issues concerned more formally (including, where necessary, the removal of services). However, CBS recognizes that its personnel operate in relatively unsupervised settings and that such power over consumers should only be exercised in carefully supervised settings.

There may be rare instances where there is little option, in the short term, but to engage in one or more of the above practices. However, EVERY instance shall occur only with the express approval of the CEO.

Definitions of the practices referred to in this policy can be found within of the DHHS Restrictive Interventions Guidelines 2012 (attached to this policy).
Restrictive Interventions Guidelines 2012
Application: Pursuant to the Disability Services Act 2011, this guideline applies to:

- All services directly managed by Disability and Community Services and all community based organisations funded by Disability and Community Services to provide services to people with disability. It applies to managers and support staff.
- All persons with disability who are receiving services from Disability and Community Services or from organisations, services or programs funded by Disability and Community Services.

Approved by: Director, Disability and Community Services

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1. **Introduction/Purpose**

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 document 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. This document outlines the requirements for the authorisation, reporting and monitoring of such practices within services managed or funded by Disability and Community Services. This guideline also ensures that the provisions regarding the regulation of restrictive interventions under the *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 Act in regard to restrictive interventions as well as to uphold the objectives, principles and standards contained within the Act. This document provides details of the processes that should be followed by service providers when considering the use of restrictive practices in the provision of services to people with disability.

2. **Background**

In the past, aversive, restrictive and intrusive practices have been used as methods of limiting or modifying the challenging behaviour of people with disability, particularly where the behaviour posed a threat to the safety of the person with disability and/or others.

Aversive practices are now prohibited within services managed or funded by Disability and Community Services, and restrictive interventions have been limited to be used only as a last resort and then only if they are the least restrictive method available under the circumstances.

Restrictive interventions are actions taken that restrict the rights or freedom of movement of a person with disability for the primary purpose of the behavioural control of the person. As such they are a denial of a basic human right and therefore pose serious ethical and legal considerations as to their appropriate use. It is important that service providers contact the Senior Practitioner to seek approval in relation to such practices.

Restrictive interventions can sometimes be necessary in situations where a person is likely to harm themselves or others, in medical emergencies or where they are required by law (i.e. the use of seat belts in moving vehicles).

This guideline is to be followed wherever the use of restrictive interventions is being considered. This applies to all organisations managed or funded by Disability and Community Services, Department of Health and Human Services, to provide services to people with disability.
3. **Principles**

3.1 *Disability Services Act 2011*

The Act contains a set of principles that apply to organisations and services funded by Disability and Community Services to provide services to people with disability.

The relevant principles in relation to restrictive interventions are 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. (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. (section 5 (2) (b) (iii)).

Disability and Community Services and community based funded service providers have a clear moral, professional and legal responsibility to provide an environment for clients that is the least restrictive possible under the circumstances.

The Act also requires that service providers limit the intrusion on persons receiving services:

- Programs and services are to be designed and administered so as to respect the rights of persons with disability to privacy and confidentiality. (Standard 16).

3.2 **Duty of Care**

In addition to the above the area of common law known as ‘duty of care’ is also relevant in the use of restrictive or intrusive interventions.

Duty of care is an important component of the law of negligence. The law of negligence allows for people and organisations to be held responsible if their actions do not meet an acceptable standard of care. To comply 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).

A duty of care may be breached if a service provider acts ‘unreasonably’. In particular situations failures to act may also be deemed unreasonable. A duty of care may therefore be breached by both ‘action’ and ‘inaction’.

(Further detailed information regarding the ‘duty of care’ is contained in the Disability and Community Services’ Duty of Care position paper).

2.3 **The Senior Practitioner**
The right of an individual with disability to be treated with dignity and respect and to be free from harm and abuse is affirmed in global charters of human rights such as 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.

The position of Senior Practitioner has been established under the Disability Services Act 2011 to protect these rights.

The primary functions of the Senior Practitioner include the authorisation and monitoring of restrictive practices in Disability and Community Services provided or funded services.

With a few exceptions (outlined in part 4) restrictive practices must not be used without endorsement from the Senior Practitioner and approval from the Secretary of the Department of Health and Human Services (DHHS).

The Senior Practitioner reports directly to the Secretary of DHHS and also provides advice and information to the Guardianship and Administration Board on matters related to restrictive practices.

3.4 Prohibition of Aversive Practices

Aversive therapy/treatment practices as methods of punitive control deprive people of basic human needs and rights and 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.

Examples of aversive treatment practices include, but are not limited to:

- Physical abuse or corporal punishment (e.g. hitting, hair pulling, slapping, pushing, spitting or pinching)
- Psychological abuse (verbal abuse, ridicule, threats, put-downs, emotional manipulation)
- Any practice involving the deliberate application of unpleasant conditions (e.g. cold baths, ‘hosing down’, squirting liquid into a person’s face, applying chilli paste to the hands to prevent biting)
- Depriving people of meals, sleep, clothes, outings or personal hygiene
- Taking or withholding personal property.

(Further information about abusive practices is contained in Disability and Community Services “Preventing and Responding to Abuse in Services Funded by Disability Services” Policy Statement and Guidelines P2010/1102-001).
4. Guidelines

4.1 Use of Restrictive Interventions

Most people with disability will go about their day-to-day lives without the need for interventions to manage behaviour or risk.

Disability and Community Services acknowledges that there may be occasions where some form of restrictive practice needs to be employed to manage specific instances of severe challenging or risk behaviour.

Apart from the exceptions noted below, 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 the carrying out of the proposed restrictive intervention and the Senior Practitioner.

4.2 Conditions of use

It is important to remember that whenever a restrictive practiced is proposed as a strategy within a behaviour management program this will involve a serious deprivation of an individual’s freedom and rights. As such any instance of a restrictive practice 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 Disability Services Act 2011
- Be carried out only for the primary purpose of ensuring the safety, health or wellbeing of the person or other persons
- Be 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
- Be time limited as required under Section 39 of the Act.

Please note that for the purposes of the Disability Services Act 2011, 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 1996 or an authorisation by the Guardianship Board under Section 42 of the Disability Services Act 2011.

4.3 Restrictive interventions not requiring authorisation

4.3.1 Emergency Situations

Disability and Community Services and funded service providers, like all community members, have a duty to take reasonable care to avoid injury to people through action or inaction. These people may be clients, family members or members of the general public who may be affected by the activities of Disability and Community Services and other service providers. The rights of staff members are also relevant as they are entitled to work in a safe environment.
Situations where a restrictive intervention is required immediately tend to involve medical emergencies (for example where the health of a client is significantly at risk) or instances where a client is at risk of harming themselves or others.

Generally speaking the use of restraint is only acceptable where it is required to meet the provision of ‘duty of care’ in emergency situations (i.e. to prevent harm or injury to the person with disability, staff or members of the public) or where it is required by law (i.e. use of seat belts in moving vehicles).

Restraint can only be used if the behaviour is of such an intensity and duration that it is highly likely it will cause injury to the person, staff members or others if restraint is not used. If incidences of risk or challenging behaviours recur a behaviour support plan must be developed for that person.

Incidents where restrictive practices are needed to prevent a breach of duty of care must still be the least intrusive type of restrictive intervention possible under the circumstances and must be reported to the Senior Practitioner as soon as practicable after the event.

4.3.2 Restrictive interventions for therapeutic purposes

The use of restraint is acceptable, and does not require approval under the Act where the restraint is used only for therapeutic purposes designed to enable the treatment of disease, illness, injury or to improve the client’s ability to function. In these circumstances the restraint must be the least restrictive alternative available, and be recommended by a Health Professional.

Examples of adaptive equipment that improves functioning and quality of life include leg callipers, wheelchairs or other equipment that improves the comfort, mobility, or the ability of a person to carry out tasks independently.

Mechanical devices that prevent injury caused by involuntary movements are included in this category (e.g. helmets to prevent injuries due to drop seizures or a modified seat belt to prevent a person from falling out of a chair.

The use of adaptive equipment to improve quality of life should only be chosen after all other options have been considered and only then following discussions with the client and/or a person nominated by the client, their person responsible and the Senior Practitioner.

4.3.3 Safe Transportation of Persons with Disability

Restrictive interventions that are employed for the sole purpose of enabling the safe transportation of the person with disability are acceptable and do not require approval under the Act provided that discussions have occurred with the client and/or person responsible and the Senior Practitioner.

4.4 Conditions of Approval

Before any restrictive intervention can be approved, the Secretary must be satisfied that consultation has occurred with the person with disability and/or a person nominated by the person
with disability, the primary carer, other interested parties, people who have expertise in carrying out
the type of proposed restrictive intervention and the Senior Practitioner.

The Secretary must also be convinced that the type of restrictive intervention is only carried out for
the primary purpose of ensuring the safety, health or wellbeing of the person or other persons and
the intervention is the least restrictive under the circumstances.

In situations where the proposed restriction is a ‘personal restriction’ under the meaning of the Act,
the Senior Practitioner will provide recommendations to the Guardianship and Administration Board
who will then consider the application in line with Part 6, Division 3 of the Act.

4.4.1 Involvement of ‘Significant Others’ and the Person Responsible

Due to the nature of restrictive practices it is important that challenging behaviour support plans/
personal support plans proposing the use of restrictive practices are devised in consultation with
family, carers, advocates and any other persons nominated by the client. Where the client is
incapable of providing consent or is unable to communicate or understand the proposed treatment,
consultation with these key people is essential.

Where the plan involves consent for medical or dental treatment then consent must be obtained in
accordance with the Guardianship and Administration Act 1995, usually this consent will come from
the person responsible.

It should be noted that there are some instances where consent or substitute consent to medical or
dental treatment is not needed, these instances are:

- When there is a medical or dental emergency – (this means the treatment is needed to save
  the person’s life, to prevent serious damage to the person’s health or to prevent the suffering
  of significant pain or distress)
- When the treatment is minor – (for example a visual examination of the person’s mouth, eyes,
  ears or throat, providing first aid or the administration of a non-prescription drug.

4.4.2 The Guardianship and Administration Board

In situations where a person with disability is unable to be effectively involved in the decision-
making process and has no ‘nominated person’ or ‘person responsible’, the Guardianship and
Administration Board may be required to appoint a legal guardian.

Where a legal guardian has been appointed, this person must be involved in all decision making
processes for developing any behaviour intervention or personal support plans.

Usually there is no need for the Guardianship and Administration Board to appoint a legal guardian
for the sole purpose of providing consent for the use of restrictive interventions. Examples of
situations where a legal guardian may need to be appointed include where the person with disability
objects to the restrictive practice being implemented or where there is an unresolved dispute
between interested parties.
<table>
<thead>
<tr>
<th><strong>Definitions</strong></th>
<th><strong>Adaptive equipment</strong></th>
<th>Equipment that improves functioning, comfort, mobility or the ability of a person to carry out tasks independently.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Aversive treatment practices</strong></td>
<td>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 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.</td>
<td></td>
</tr>
<tr>
<td><strong>Behaviour support plan</strong></td>
<td>A personal plan that includes a functional assessment of behaviour and describes methodologies for avoiding, minimising or managing specific behaviours.</td>
<td></td>
</tr>
<tr>
<td><strong>Duty of Care</strong></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td><strong>Emergency situations</strong></td>
<td>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.</td>
<td></td>
</tr>
<tr>
<td><strong>Intrusion/ intrusive practices</strong></td>
<td>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.</td>
<td></td>
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</tbody>
</table>
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 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 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.

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.
<table>
<thead>
<tr>
<th><strong>Personal restriction</strong></th>
<th>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.</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>The Act</strong></td>
<td>The Tasmanian <em>Disability Services Act 2011</em>.</td>
</tr>
<tr>
<td><strong>Therapeutic purposes</strong></td>
<td>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.</td>
</tr>
</tbody>
</table>
6. Relevant legislation

- Disability Services Act 2011
- Criminal Code Act 1924
- Police Offences Act 1935
- Personal Information Protection Act 2004
- Anti-Discrimination Act 1998
- Guardianship and Administration Act 1995
- Mental Health Act 1996
- Criminal Justice (Mental Impairment) Act 1999
- Children, Young Persons and their Families Act 1997