

Restrictive Practices Authorisation Framework

Guidelines for NDIS Service Providers

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4.0	8/11/2022		Updates to 2.4 Prohibited Restrictive Practices – inclusion of physical restraint; remove of word restrictive; 4.1 – Application for authorisation – inclusion of required documents. 4.2 – Assessment of applications – updated assessment criteria.

Acronyms	Full form
NDIS	National Disability Insurance Scheme
NT	Northern Territory

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1. Purpose

These guidelines have been developed for National Disability Insurance Scheme (NDIS) service providers that require the authorisation of restrictive practices to be used as part of the provision of behaviour support to NDIS participants (participants). These guidelines have been developed and are issued under the functions of the NT Senior Practitioner, section 10 and 12 of the NDIS Authorisations Act 2019.

2. Background

The Northern Territory *National Disability Insurance Scheme (Authorisations) Act 2019* (the Act) provides a statutory framework for the authorisation of restrictive practices to NDIS participants by NDIS service providers in the delivery of services to participants who have behaviour(s) that have the potential to cause harm to themselves or others.

The introduction of a statutory framework aims to ensure that NDIS participants living in the NT have the highest level of safeguarding provided through regulation of the authorisation of restrictive practices; and ensuring alignment with the *National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018* (NDIS Rules) and National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.

2.1. Positive Behaviour Support

Positive behaviour support is the term used to describe the integration of the contemporary ideology of disability service provision with the clinical framework of applied behaviour analysis. Positive behaviour supports are supported by evidence encompassing strategies and methods that aim to increase the person's quality of life and reduce challenging behaviour (Source note: Carr, et al., 2002; Singer & Wang, 2009).

Positive behaviour support provides the opportunity to improve the quality of life and build the individual capacity of a person with disability. A person centred behaviour support approach promotes inclusion, choice, participation and equality.

While the primary goal of behaviour support is to enhance the quality of life of a person with a disability, a secondary, although no less important goal, is to reduce or eliminate the need to use restrictive practices during the provision of support.

The NDIS Commission has developed specific requirements for the provision of positive behaviour support to participants. This is supported by the *Behaviour Support Capability Framework* which includes guiding principles to assist in the delivery of positive behaviour support.

2.2. Behaviours of Concern

A small proportion of people with disability may need additional supports to address behaviours of concern that are of such intensity, frequency or duration that the safety of the person or others is placed in jeopardy; or may cause a risk of harm.

In limited circumstances, these supports may include restrictive practices. The primary purpose of the use of restrictive practices must be to respond to a person with disability's behaviour of concern and to protect that person or others from harm.

2.3. Restrictive Practices

A restrictive practice is any practice or intervention used to restrict the rights or freedom of movement of persons with disability, for the purpose of managing their behaviour in order to protect the person, other people or property from harm.

Restrictive practices requiring authorisation are those outlined in the Act and NDIS Rules. Table 1 below provides further detail in relation to the five categories of restrictive practices.

Table 1: Categories of restrictive practices

Category	Description
Seclusion	The sole confinement of a person with a disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, not facilitated, or it is implied that voluntary exit is not permitted.
Chemical restraint	The use of medication or chemical substance for the primary purpose of influencing a person's behaviour. It does not include the use of medication prescribed by a medical practitioner for the treatment of, or to enable treatment of a diagnosed mental disorder, a physical illness or a physical condition.
Mechanical restraint	The use of a device to prevent, restrict, or subdue a person's movement for the primary purpose of influencing a person's behaviour but does not include the use of devices for therapeutic or non-behavioural purposes.
Physical restraint	The use or action of physical force to prevent, restrict or subdue movement of a person's body, or part of their body, for the primary purpose of influencing their behaviour. Physical restraint does not including the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential injury/harm, consistent with what could reasonably be considered the exercise of care towards a person.* *In the NT, authorisation will not be granted for the use of supine (face up position) or prone (face down) restraint.
Environmental restraint	Restricts a person's free access to all parts of their environment, including personal belongings, other items or preferred activities.

2.4. Prohibited practices

Prohibited practices are those practices that will not be authorised in the NT under any circumstances. These practices do not align with best practice, may be considered unlawful or unethical, violate the United Nations Convention on the Rights of Persons with Disabilities and could result in significant injury or death.

Tables 2 and 3 below on pages 6 and 7, provide further detail of prohibited practices as defined in the Act.

Table 2: Prohibited practices – punitive approaches

Category	Description
Aversion	Any practice or action that may be experienced by a person as noxious, unpleasant or painful.
Overcorrection	Any practice where the response to an event is disproportionate to the event itself.
Misuse of medication	When medication is administered to a person, contrary to the instructions of the prescriber, for the purpose of influencing the person's behaviour, mood or arousal levels.
Denial of key needs	Any practice to prevent a person's access to basic needs or personal supports including the following: <ul style="list-style-type: none"> • family • friends • peers • advocates • possessions
Practices related to degradation or vilification	Actions that: <ul style="list-style-type: none"> • are degrading or demeaning to the person • may be perceived by the person or their guardian as harassment or vilification • are unethical
Practices which limit or deny access to community, culture and language	Actions that limit participation opportunities or access to community, culture and language, including the denial of access to interpreters.
Seclusion of a person under the age of 18 years	This includes the isolation of a child or young person (under 18 years of age) in a setting from which they are unable to leave.

Table 3: Prohibited practices – specific forms of physical restraint

Category	Description
Physical restraint	The use of prone restraint, which is subduing a person by forcing them into a face-down position.
	The use of supine restraint, which is subduing a person by forcing them into a face-up position.
	Pin downs, which is subduing a person by holding down their limbs or any part of the body, such as their arms or legs.
	Basket holds, which is subduing a person by wrapping your arm/s around their upper and or lower body.
	Takedown techniques, which is subduing a person by forcing them to free-fall to the floor or by forcing them to fall to the floor with support.
	Any physical restraint that has the purpose or effect of restraining or inhibiting a person's respiratory or digestive functioning.
	Any physical restraint that has the effect of pushing the person's head forward onto their chest.
	Any physical restraint that has the purpose or effect of compelling a person's compliance through the infliction of pain, hyperextension of joints, or by applying pressure to the chest or joints.

2.5. Behaviour Support Plan (BSP)

A BSP includes a range of evidence-based and person-centred, proactive strategies that focus on the specific needs of the participant and includes positive behaviour support to:

- build on the person's strengths;
- increase the opportunities to participate in community activities; and
- increase their life skills

It is developed following a comprehensive assessment of the participant's needs in consultation with the participant, their family, carers, guardian, and other relevant people, as well as all service providers who will be implementing the BSP.

The BSP can also include details of any use of restrictive practices that may be required.

3. Restrictive Practices Authorisation Framework

In the Northern Territory, the Authorisation Framework applies to adults and children who are NDIS participants and have a BSP developed by a registered NDIS behaviour support practitioner. The request for authorisation can only be submitted by a registered NDIS service provider who will be implementing the BSP and associated restrictive practices. The Framework guides NDIS providers who are seeking authorisation for the use of RPs.

3.1. Principles

The principles of the Act are aligned with the United Nations Convention on the Rights of Persons with Disabilities, Northern Territory Disability Services Act 1993, National Disability Insurance Scheme Act and the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Service Sector.

The principles which must be taken into consideration by NDIS service providers when delivering services to participants are:

- a) participants are individuals who have the inherent right to respect for their human worth and dignity; and
- b) participants, whatever the origin of the participant's disability, nature, type and degree of disability; have the same basic human rights as other members of Australian society; and
- c) participants have the same rights as other members of Australian society to realise their individual capacities for physical, social, emotional and intellectual development; and
- d) participants have the same right as other members of Australian society to services that will support their attaining a reasonable quality of life; and
- e) participants and their families have the same right as other members of Australian society to participate in decisions that affect their lives; and
- f) participants receiving services have the same right as other members of Australian society to be able to determine their own best interests in relation to those services, including the right to exercise choice and control; and
- g) participants have the same right as other members of Australian society to be connected to family, community, culture and country; and
- h) participants have the same right as other members of Australian society to engage as equals and actively participate in decisions that will affect their lives, support and care to the full extent of their capacity, including in the provision of behaviour support; and
- i) participants receiving services have the same right as other members of Australian society to receive those services in a manner that results in the least restriction of their rights and opportunities; and
- j) participants receiving services should actively participate in decisions about their lives, support and care; including behaviour support that is informed by evidenced-based best practice.

Services must be provided in a way that:

- a) aims to reduce or eliminate the need to use restrictive practices; and
- b) recognises that:
 - i. restrictive practices should occur in limited and specific circumstances; and
 - ii. restrictive practices should be used as a last resort; and
- c) utilises the least restrictive practice for the shortest period of time practical in the circumstances; and
- d) ensures transparency and accountability in the use of restrictive practices; and
- e) recognises that restrictive practices should not be used punitively or in response to behaviour that does not cause harm to the participant or others; and
- f) ensures that any restrictive practices are only used in a way that is consistent with a behaviour support plan or an interim behaviour support plan for the participant.

3.2. Functions of the Senior Practitioner

The Senior Practitioner will be responsible for the oversight of the Authorisation Framework. The Act outlines the functions of the Senior Practitioner. The Senior Practitioner will:

- i. Authorise the use of restrictive practices;
- ii. Disallow inappropriate requests for restrictive practices;
- iii. Produce and disseminate policies, standard and guidelines to promote best practice, lead sector capacity building and improve awareness to minimise the use of restrictive practices; and
- iv. Capture and record the authorisation of restrictive practices that are deemed to be necessary.

3.3. Types of authorisation

The Authorisation Framework provides for two types of authorisation:

- a) An **interim authorisation** is provided when a participant has an interim BSP that includes the use of a restrictive practice. An interim authorisation is effective for no longer than six months.
- b) **Authorisation** is provided when a participant has a comprehensive BSP that includes the use of a restrictive practice. An authorisation is effective for no longer than 12 months.

4. Authorisation process

4.1. Application for authorisation

Registered NDIS service providers must submit an application for authorisation for the use of a restrictive practice to the Senior Practitioner on the Restrictive Practices Authorisation System.

Applications must include:

- Signed Disclosure Agreement (RPA-2A)
- Evidence of consultation with participant and their family, carers, guardian or other relevant person (RPA-2B)
- Current and up to date copy of the BSP, signed by the Behaviour Support Practitioner
- Any other information the NDIS provider considers relevant to the application (e.g. assessment reports, incident reports, photos, medication purpose form, medical reports for medication)

4.2. Assessment of applications

The assessment of the application will be undertaken by the Senior Practitioner.

The Senior Practitioner will assess:

- **The Behaviour Support Plan:**
 - is consistent with the principles of the Act;
 - is consistent with the requirements of the NDIS Rules;
 - contains opportunities relevant to the participant's unique needs and abilities to participate in community activities and develop new skills that have the potential to reduce or eliminate the need for regulated restrictive practices as part of their support plan; and
 - contains strategies to reduce or eliminate the use of restrictive practices with the participant over time.

During the assessment process, where elements of the BSP are not consistent with the abovementioned criteria, the Senior Practitioner may contact the Behaviour Support Practitioner, and provider (if relevant), and request a review of the BSP.

- **The Restrictive Practice(s):**
 - is necessary to prevent harm to the participant or others; and
 - occurs in time limited and specific circumstances only; and
 - is used as a last resort; and
 - is the least restrictive approach reasonably available for the participant; and
 - is proportional to any possible negative outcome(s) or risk of harm; and
 - can be safely implemented.
- The overall quality of the BSP using the Behaviour Support Plan Quality Evaluation Tool version II (BSP QEII).

4.3. Outcome of assessment

Following the assessment of the application, there are three possible outcomes:

- authorisation will be granted; or
- authorisation will be refused; or
- an alternative restrictive practice will be proposed.

The Senior Practitioner will send a Notice of Authorisation with their decision to the NDIS participant and their guardian; the Behaviour Support Practitioner; as well as to the NDIS provider(s) for their information and action.

4.4. Period of authorisation

Authorisation is effective for up to 12 months and an interim authorisation is effective for up to six months from the date the authorisation is granted, as specified by the Senior Practitioner.

4.5. Revocation of authorisation

The Senior Practitioner may become aware of circumstances that require the revocation of the authorisation for a restrictive practice. These may include:

- non-compliance with requirements of the Act;
- an issue with the NDIS registration of the service provider; or
- any other circumstances that the Senior Practitioner considers relevant.

The Senior Practitioner may revoke an authorisation or interim authorisation at any time. If this occurs, the Senior Practitioner will give written notice of the revocation detailing the reasons to the participant, their guardian and the NDIS provider who made the application for authorisation.

An NDIS participant, their guardian, NDIS behaviour support practitioner or the service provider can contact the Senior Practitioner to discuss their circumstances at any time.

Change in circumstances

If an NDIS Participant has a change in circumstances which results in no longer requiring involvement with the NT Restrictive Practices Authorisation Unit, the Service Provider must notify the Restrictive Practice Authorisation Unit via email as soon as practicably possible following the change in circumstance. Changes in circumstances may include, but are not limited to, an elimination of restrictive practice, interstate move, exiting the NDIS or notification of deceased participant.

Authorisations only apply to the jurisdiction they are made in

If an NDIS Participant with a restrictive practice(s) in place moves to the Northern Territory from another jurisdiction, a new authorisation application will need to be made to the NT Senior Practitioner to ensure the restrictive practice meets the requirements of the Authorisation Framework.

4.6. Authorisation process - summary

Request for Authorisation

A provider who is using restrictive practices submits a request for authorisation to the Senior Practitioner along with the Positive Behaviour Support Plan and other documents.

Assessment

The Senior Practitioner assesses the application in accordance with the assessment criteria which includes:

- is consistent with the principles of the Act;
- is consistent with the requirements of the NDIS Rules;
- contains opportunities relevant to the participant's unique needs and abilities to participate in community activities and develop new skills that have the potential to reduce or eliminate the need for regulated restrictive practices as part of their support plan; and
- contains strategies to reduce or eliminate the use of restrictive practices with the participant over time.

Additional information

The Senior Practitioner may sometimes require additional information to help with assessing the application.

Assessment outcome

The Senior Practitioner will advise the implementing provider, behaviour support practitioner, participant and guardian. The outcome will either be:

- Authorisation is granted** (period of authorisation is notified) or
- Authorisation is not granted** or
- An alternate practice will be recommended.**

Request for review

All decisions made by the Senior Practitioner are reviewable.

The participant, their guardian, behaviour support practitioner or service provider can submit a request for review to the CEO, Department of Health.

5. Review of authorisation decisions

All decisions made by the Senior Practitioner are reviewable. The participant, their guardian, behaviour support practitioner or service provider can submit a request for review to the Chief Executive, Department of Health.

The application for review must be made within 28 days of receiving the decision; unless the decision is to implement the restrictive practice, in which case an application for review can be made at any time. If the applicant is unhappy with the outcome of the review, an application can be made to the Northern Territory Civil Administration Tribunal (NTCAT). More information about the NTCAT process can be found at <https://ntcat.nt.gov.au/>.