



Authorisation of Restrictive Practices in Funded Disability Services Policy

1 Purpose

A restrictive practice is any practice or intervention that has the effect of restricting the rights or freedom of movement of a person with disability.

The State Government is committed to working towards the reduction and elimination of the use of restrictive practices for people with disability in Western Australia (WA) and has endorsed:

- the National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector; and
- the National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework (NDIS Framework).

Under the NDIS Framework, the State Government is responsible for establishing arrangements for the authorisation of restrictive practices in NDIS services in WA.

The Policy establishes the requirements for authorisation of restrictive practices in relation to people who are receiving disability services funded through the NDIS or by the State Government.

This Policy will operate for an interim period while a legislative framework is developed. This interim period is expected to coincide with the transition to full scheme NDIS in WA, which is due to be completed by 1 July 2023, but may conclude earlier with the commencement of legislation.

2 Scope

In the context of NDIS-funded services, the requirements set out in this Policy are additional to those set by the NDIS Quality and Safeguards Commission (NDIS Commission).

In the context of State-funded disability services, the requirements set out in this Policy are additional to the safeguarding requirements set by the Department of Communities (Department).

Should any conflict arise between this Policy and the requirements of the NDIS Commission, the requirements of the NDIS Commission take precedence.

A list of legislation and other related documents is set out in **Appendix 1** of this Policy.

2.1 Service providers and practitioners

This Policy applies to Implementing Providers and NDIS Behaviour Support Practitioners (NDIS Practitioners) (defined in **Appendix 2**) that are operating in WA.

2.2 Regulated restrictive practices

This Policy applies to practices that are defined as regulated restrictive practices in the NDIS (Restrictive Practices and Behaviour Support) Rules 2018 (reproduced at **Appendix 2**). The five categories of regulated restrictive practices that require authorisation are seclusion, chemical restraint, physical restraint, mechanical restraint and environmental restraint.

2.3 Out of scope

2.3.1 Prohibited practices

The use of prohibited practices (outlined in **Appendix 2**) must not be authorised under this Policy.

2.3.2 Therapeutic or safety devices or practices

Some devices or practices used for therapeutic or safety purposes impose a level of limitations on a person's freedoms, but do not constitute a regulated restrictive practice. However, where a person objects to a therapeutic or safety device or practice, its application is considered a regulated restrictive practice and authorisation is required in accordance with this Policy.

Under this Policy, denial or withdrawal of consent means a regulated restrictive practice is not authorised (see section 4.2 for more information).

2.3.3 Management of non-intentional risk

Some behaviours that represent a risk to the person or others occur as a result of circumstances rather than as a result of the person seeking to address a functional need. Strategies to manage non-intentional risk behaviours (defined in **Appendix 2**) do not require authorisation under this Policy. Implementing Providers must ensure an appropriate medical or allied health assessment is undertaken to identify whether behaviours do not serve a function for the person and are non-intentional risk behaviours.

Implementing Providers may seek advice from the NDIS Commission or the Department as appropriate regarding whether the circumstances require a Behaviour Support Plan and compliance with the NDIS (Restrictive Practices and Behaviour Support) Rules 2018.

2.3.4 Court orders

Where a practice that would otherwise be a regulated restrictive practice is in place due to a court order, authorisation is not required under this Policy.

Implementing Providers may seek advice from the NDIS Commission or the Department as appropriate regarding whether the circumstances require a Behaviour Support Plan and compliance with the NDIS (Restrictive Practices and Behaviour Support) Rules 2018.

3 Principles

- People with disability have the same rights as all people to:
 - equality before the law and equal protection under the law;
 - live free from abuse, neglect and exploitation;
 - have respect for their culture, individual worth and dignity;
 - determine their own best interests and exercise choice and control; and
 - access the support they need to make decisions and communicate their needs and choices.
- Positive outcomes and quality of life improvements for people with disability must be central in decision-making processes.
- People with disability are presumed to have capacity to make decisions, unless proven otherwise for a specific decision at a specific time.
- All people have the right to live and work in a safe environment and have access to the community.
- People with disability must have access to effective person-centred behaviour support, with restrictive practices only occurring as a last resort where they are proportionate and necessary to protect the rights or safety of the person and/or others.
- The vital role of families, carers and other significant persons with whom people with disability choose to share their life, is acknowledged and respected.

4 Policy requirements

4.1 Use of a regulated restrictive practice must be authorised

Authorisation must be obtained by an Implementing Provider for each regulated restrictive practice that is proposed to be implemented for a person with disability. This requires:

1. a Behaviour Support Plan;
2. consent; and
3. an authorisation decision by an Authorisation Panel.

4.1.1 Behaviour Support Plan (BSP)

A BSP must be developed for the person with disability by an NDIS Behaviour Support Practitioner. The person with disability exercises choice and control in selecting an NDIS Behaviour Support Practitioner to develop the BSP.

In addition to the requirements set out below,

- in the context of NDIS-funded services, Implementing Providers and NDIS Behaviour Support Practitioners are responsible for ensuring they meet all the requirements set out by the NDIS Commission in the NDIS (Restrictive Practices and Behaviour Support) Rules 2018.

- in the context of State-funded disability services, Implementing Providers are responsible for ensuring they meet all the safeguarding requirements set out by the Department.

Developing a BSP

In developing a BSP, the NDIS Behaviour Support Practitioner must take all reasonable steps to:

- reduce and eliminate the need for the use of regulated restrictive practices in relation to the person with disability;
- consider any previous behaviour support assessments and other assessments;
- make changes within the environment of the person with disability that may reduce or remove the need for the use of regulated restrictive practices;
- consult with the person with disability to ascertain their needs and preferences in a calm and supportive environment;
- consult with the person with disability's family, carers, guardian and/or other relevant person; and
- consult with the Implementing Provider who may use the regulated restrictive practice and other relevant specialists.

As part of the above consultation processes, the NDIS Behaviour Support Practitioner must provide details of the intention to include a regulated restrictive practice in the BSP in an appropriately accessible format to the person with disability and their family, carers, guardian or other relevant person.

In developing a BSP, the NDIS Behaviour Support Practitioner must undertake a behaviour support assessment, including a functional behavioural assessment, of the person with disability. In addition, a BSP that includes a regulated restrictive practice must be reviewed by an NDIS Behaviour Support practitioner at least every twelve months while the BSP is in effect.

What must be included in a BSP

The BSP must include strategies that are evidence-based and person-centred, and that address the person with disability's needs and the functions of the behaviour. In addition, any recommended regulated restrictive practices must:

- be clearly identified in the BSP;
- be used only as a last resort in response to a risk of harm to the person with disability and/or others, and after the Implementing Provider has explored and applied other evidence-based, person-centred and proactive strategies;
- be the least restrictive response possible in the circumstances to ensure the safety of the person and/or others;
- reduce the risk of harm to the person with disability and/or others;
- be in proportion to the potential negative consequence or risk of harm; and
- be used for the shortest possible time to ensure the safety of the person with disability and/or others.

In addition, the person with disability to whom the BSP applies must be given opportunities to participate in community activities and develop new skills that have the potential to reduce or eliminate the need for regulated restrictive practices in the future.

4.1.2 Consent

Consent is the permission given by the person with disability with capacity to consent, or a person with authority to consent on the person's behalf when the person with disability does not have capacity to consent.

Where a BSP includes a recommended regulated restrictive practice, the Implementing Provider must seek consent (defined in **Appendix 2**). If the person with disability is deemed not to have capacity to consent to the regulated restrictive practice, then the Implementing Provider must seek consent from the person with authority to make decisions on behalf of the person regarding the regulated restrictive practice.

Implementing Providers are responsible for developing internal policies and procedures to support consent processes that are person-centred and consistent with the law. This includes strategies to facilitate supported decision-making so that people with disability can access the support they need to make decisions and to communicate their needs and choices.

The person may deny or withdraw consent at any time. Denial or withdrawal of consent means a regulated restrictive practice is not authorised (see section 4.2 for more information).

4.1.3 Authorisation decision by an Authorisation Panel

The Implementing Provider must convene or access an Authorisation Panel.

The Implementing Provider must affirm to the Authorisation Panel that consent has been appropriately obtained for the regulated restrictive practice.

Authorisation by the Panel does not constitute consent; or replace the requirement for consent to use a regulated restrictive practice.

The Panel must review each regulated restrictive practice that is recommended in the BSP and decide whether to authorise each regulated restrictive practice.

Implementing Providers are responsible for developing internal policies and procedures to govern the operations of any Authorisation Panel that they convene.

Composition

An Authorisation Panel must consist of at least two members with a decision-making role:

1. A senior manager (or their delegate) of the Implementing Provider with operational knowledge and relevant experience in behaviour support; and
2. An independent NDIS Behaviour Support Practitioner (proficient level or above) who is external from the Implementing Provider and not the author of the BSP.

Authorisation decision

The Authorisation Panel's decision to authorise a restrictive practice must:

- be made on the condition that the Implementing Provider has affirmed that consent has been appropriately obtained;
- be a unanimous decision;

- specify the length of time for which the authorisation applies, which must not exceed twelve months;
- specify any conditions of authorisation; and
- be recorded in the Outcome Summary Report (see **Appendix 3**).

In the context of an NDIS service, the Outcomes Summary Report must be submitted to the NDIS Commission as evidence that authorisation has been obtained in accordance with this Policy.

Additional information

- There is no requirement for Panel meetings to be face-to-face. Teleconference and video conferencing facilities can be used.
- Additional members may be included in the Panel, in accordance with the Implementing Provider's policies and procedures, and the specific circumstances of the person with disability.

4.2 Unauthorised use of a regulated restrictive practice

Where a regulated restrictive practice is used without authorisation:

- in the context of an NDIS service, the Implementing Provider must refer to the NDIS Commission and comply with the NDIS (Incident Management and Reportable Incidents) Rules 2018.
- in the context of a State-funded disability service, the Implementing Provider must provide a Serious Incident Report (SIR) to the Department.

4.3 Complaints management

If a person has a complaint regarding any aspect of the authorisation process, the person may raise the matter with the Implementing Provider in the first instance. Where the complaint cannot be resolved by the Implementing Provider, the person may raise the issue with the Department.

Where the complaint cannot be resolved by either the Implementing Provider or the Department, the person may raise the issue with the Health and Disability Services Complaints Office (HaDSCO), an independent statutory authority providing an impartial resolution service for complaints relating to disability services provided in WA.

5 Responsibilities

5.1 Implementing Providers

- Comply with requirements set out in this Policy;
- Develop internal policies and procedures to:
 - ensure consent processes are person-centred, promote supported decision-making and are consistent with the law;
 - deliver behaviour support plan development processes that are person-centred ; and

- o govern the operations of their Authorisation Panel(s) and the use of restrictive practices (including risk assessment and mitigation).

5.2 NDIS Behaviour Support Practitioners

- Comply with requirements set out in this Policy.

5.3 Department of Communities

- Provide advice and support relating to the authorisation of restrictive practices, including assisting providers to develop their internal policies and procedures;
- Support the development of the behaviour support practitioner market in WA, in partnership with people with disability, families and carers, guardians, providers, the NDIS Commission and other stakeholders; and
- Manage complaints and serious incidents relating to State-funded disability services.

Document control

Publication date	May 2020
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Owner	Assistant Director General, Policy and Service Design
Custodian	Executive Director - Inclusion

This document can be available in alternative formats on request.

Amendments

Version	Date	Author	Description
1	March 2020	Executive Director - Inclusion	Approved by Communities Leadership Team



Appendix 1 – Legislation and other related documents

Commonwealth legislation

- [National Disability Insurance Scheme Act 2013](#)
- [National Disability Insurance Scheme \(Incident Management and Reportable Incidents\) Rules 2018](#)
- [National Disability Insurance Scheme \(Provider Registration and Practice Standards\) Rules 2018](#)
- [National Disability Insurance Scheme \(Restrictive Practices and Behaviour Support\) Rules 2018](#)

State legislation

- [Guardianship and Administration Act 1990](#)
- [Disability Services Act 1993](#)
- [Health and Disability Services \(Complaints\) Act 1995](#)

Frameworks, standards and international agreements

- [National Disability Insurance Scheme Quality and Safeguarding Framework](#) (2016)
- [National Framework for Reducing and Eliminating the Use of Restrictive Practices in the Disability Services Sector](#) (2014)
- [National Standards for Disability Services](#) (2013)
- [Positive Behaviour Support Capability Framework](#) (2019)
- [United Nations Convention on the Rights of Persons with Disabilities](#) (2006)
- [Universal Declaration of Human Rights](#) (1948)



Appendix 2 – Definitions

Table 1 – Definitions

Term	Definition
Capacity	<p>Capacity must be assessed on a case-by-case basis in the context of the particular decision to be made and the time when consent is sought.</p> <p>The person giving consent must have the capacity to understand the information provided to them and to make and communicate their decision.</p> <p>Capacity is not a static or permanent condition and can change over time and depending on the type of decision being made.</p>
Consent	<p>Generally, there are five core characteristics of appropriately obtained consent:</p> <ul style="list-style-type: none">• Voluntary – the person must make the decision themselves and must not be unduly influenced by anyone else (e.g. health professionals, family, friends);• Informed – the person must receive sufficient information about the proposed restrictive practice to enable them to make an informed decision;• Specific – it covers the restrictive practice to be used;• Capacity – the person can understand the information provided to them to make the decision; and• Current – the consent must be reviewed regularly, and at least as part of the annual BSP review to ensure the consent remains up to date. More frequent reviews of consent may be necessary, especially if the person's circumstances change.
Implementing Provider	<p>Implementing Provider means any service provider that is funded through the NDIS or by the State Government and uses a regulated restrictive practice in the course of delivering services and supports to a person with disability.</p>
NDIS Behaviour Support Practitioner	<p>NDIS Behaviour Support Practitioner means a person registered with the NDIS Quality and Safeguards Commission, who the NDIS Commissioner considers suitable to undertake behaviour support assessments (including functional behavioural assessments) and to develop BSPs that may include the use of restrictive practices.</p>

Term	Definition
<p>Non-intentional risk behaviours</p>	<p>Non-intentional risk behaviours are those behaviours that occur as a result of circumstances and do not serve a purpose for the person.</p> <p>These include:</p> <ul style="list-style-type: none"> • Behaviours that create physical risk: behaviours related to mobility, transitioning or accidental movement issues that involve a risk to the person. These risks are due to a physiological or neurological condition that can result in poor motor control (e.g. tardive dyskinesia) that may result in another person being inadvertently struck, the person accidentally hitting walls or other solid objects, or being at risk of falls. • Resistance to support for activities of daily living: behaviours that demonstrate discomfort associated with daily activities e.g. tooth brushing, or therapy routines. Assisting the person to complete activities of daily living may involve light physical support to assist the person to complete the activity. Resistance to this support may indicate that the person is experiencing an issue greater than discomfort, which will require further assessment to determine the cause of the resistance such as health/medical issues and the potential function of the behaviour. • Unsafe actions: behaviours that unintentionally place the person at risk. This may include having 'no knife safety' or 'sun safety' awareness, inadvertently reaching for a hot kettle or stove, or wandering towards roads without awareness of safety issues.

Term	Definition
Prohibited practices	<p>Certain physical restraints are prohibited, including:</p> <ul style="list-style-type: none"> • The use of prone or supine restraint; • Pin downs; • Basket holds; • Takedown techniques; • 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. <p>Punitive approaches are prohibited, including:</p> <ul style="list-style-type: none"> • Aversive practices; • Overcorrection; • Denial of key needs; • Practices related to degradation or vilification; • Practices that limit or deny access to culture; • Response cost punishment strategies.

Term	Definition
Regulated restrictive practices	<p>There are five categories of regulated restrictive practices:</p> <ol style="list-style-type: none"> 1. Seclusion is the sole confinement of a person with disability in a room or a physical space at any hour of the day or night where voluntary exit is prevented, or not facilitated, or it is implied that voluntary exit is not permitted. 2. Chemical restraint is 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. 3. Physical restraint is 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 include the use of a hands-on technique in a reflexive way to guide or redirect a person away from potential harm/injury, consistent with what could reasonably be considered the exercise of care towards a person. 4. Mechanical restraint is 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. 5. Environmental restraint involves restricting a person's free access to all parts of their environment, including items or activities.



Appendix 3 – Authorisation Panel Outcomes Summary Report

(An editable version of this form is available at <http://disability.wa.gov.au/disability-service-providers-/for-disability-service-providers/guidelines-and-policies/policies-relating-to-specific-types-of-services/#Behaviour%20Support>)

1. Client Details					
Full Name					
NDIS Participant ID	<i>N/A if not NDIS participant</i>	Date of Birth			
Address					
Suburb		State	Choose	Postcode	

2. Implementing Provider	
Name	
Provider ID	<i>Required in context of NDIS services only</i>

3. NDIS Behaviour Support Practitioner – Behaviour Support Plan (BSP) Author	
Name	
Practitioner ID	

4. NDIS Behaviour Support Practitioner – Panel Member	
Name	
Practitioner ID	

5. Proposed restrictive practice(s)	
Restrictive practice 1	
Service setting	
Behaviour of concern	
Regulated restrictive practice category	Choose an item.
Restrictive practice 2 <i>Delete section if not required or add more as needed</i>	
Service setting	
Behaviour of concern	
Regulated restrictive practice category	Choose an item.
Restrictive practice 3 <i>Delete section if not required or add more as needed</i>	
Service setting	
Behaviour of concern	
Regulated restrictive practice category	Choose an item.

6. Confirmation of consent	
Full name of person providing consent:	
Consent capacity	<input type="checkbox"/> Client <input type="checkbox"/> Other
Consent date	Consent expiry date
Description	
Consent document	

7. Supporting documents			
Document	<i>Delete rows if not required or add more rows as needed</i>	Description	
Document		Description	
Document		Description	

8. Authorisation Decision			
Panel Meeting date(s)		Decision date	
Restrictive Practice 1	Choose an item.		
Restrictive Practice 2	Choose an item.		
Restrictive Practice 3	Choose an item.		
Reason for decision(s)			
Conditions			
Authorisation expiry date		Next review date	

9. Documents required for next review			
<input type="checkbox"/>	Data collection summary	<input type="checkbox"/>	Medical report
<input type="checkbox"/>	BSP	<input type="checkbox"/>	Risk assessment
<input type="checkbox"/>	Evidence of Implementation Training	<input type="checkbox"/>	Legal conditions
<input type="checkbox"/>	Lifestyle and environmental review	<input type="checkbox"/>	Individual plan
<input type="checkbox"/>	PRN protocol	<input type="checkbox"/>	Court order
<input type="checkbox"/>	Other – Please specify:		

10. Panel member approval		
Name	Panel Role	Signature