

Restrictive Practices Authorisation Framework

Guidelines for NDIS Service Providers

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3.0	10/11/2021	Rosa Nardone	Updates to: 4.1 – inclusion of role of primary implementing provider; 4.2 – additional assessment criteria; advice that the Senior Practitioner may contact the Behaviour Support Practitioner to request an update of the BSP.

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.

The requirements set out in these guidelines are in addition to those provided by the NDIS Quality and Safeguards Commission (the NDIS Commission). These guidelines should be read in conjunction with the:

- *National Disability Insurance Scheme (Authorisations) Act 2019*
- NDIS Commission Positive Behaviour Support Capability Framework
- *National Disability Insurance Scheme Act 2013*
- National Disability Insurance Scheme (Restrictive Practices and Behaviour Support) Rules 2018
- National Disability Insurance Scheme (Provider Registration and Practice Standard) Rules 2018
- National Disability Insurance Scheme Quality and Safeguarding Framework

2. Background

The National Disability Insurance Scheme (NDIS) Quality and Safeguarding Framework, endorsed by the Council of Australian Governments (COAG) in December 2016, committed states and territories to establish and operate restrictive practice authorisation processes for registered NDIS providers and registered NDIS behaviour support practitioners.

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.

In addition, the creation of the Senior Practitioner role within the Act reflects a developmental approach towards building capacity within the sector to deliver the least restrictive support services and move towards reducing and eliminating restrictive practices.

2.1. Positive Behaviour Support

Building individual capacity is the primary focus of all supports to better enable choice and control. Behaviour supports may be used where a person with disability exhibits behaviours that pose a risk and can have an impact on themselves and others in their environment.

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 reasonable 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.
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2.4. Prohibited restrictive practices

Prohibited restrictive 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.

Table 2 below provides further detail of prohibited restricted practices as defined in the Act.

Table 2: Categories of prohibited restrictive practices

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.
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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.

If the BSP includes restrictive practices, the use of the practice must meet the NDIS Commission requirements under the NDIS Rules. The restrictive practice must also adhere to the Restrictive Practices Authorisation Framework (the Authorisation Framework) outlined in the Act.

The primary implementing service provider must obtain authorisation of the restrictive practice in accordance with the Act. Once authorisation is obtained, evidence of authorisation must be lodged on the NDIS Commission portal by the behaviour support practitioner as per the NDIS Rules.

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 Authorisation Framework includes:

- Principles
- Functions of the Senior Practitioner
- Types of authorisation
- Authorisation process
- Period of authorisation
- Revocation of authorisation
- Review of authorisation decisions

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 BSP must be developed by a registered NDIS behaviour support practitioner. An interim authorisation is effective for no longer than six months. An interim authorisation may be appropriate after a critical incident or where an NDIS service provider first identifies the need for a restrictive practice as part of a participant's BSP.
- 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. A comprehensive BSP must be developed by a registered NDIS behaviour support practitioner after undertaking functional behaviour assessments and other assessments as required.

4. Authorisation process

Request for Authorisation

Request for Authorisation is submitted by the implementing provider to the Restrictive Practices Authorisation Unit with:

- Signed Disclosure Agreement (RPA-2A).
- Evidence of consultation with participant and their family, carers, guardian or other relevant person (RPA-2B).
- Copy of the BSP signed by the Behaviour Support Practitioner / Author.
- 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).

Assessment

The Senior Practitioner assesses the application in accordance with the:

- Assessment criteria
- Guiding principles of the *NDIS (Authorisations) Act 2019*
- Behaviour Support Plan-Quality Evaluation II (BSP-QEII)

Additional information

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

- The **Contact Officer** listed under the NDIS Service Provider Details will receive the request.
- Responses to this request are required within 28 days or the application will lapse.

Assessment outcome

The Senior Practitioner provides an assessment outcome to 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.**

Once authorisation is granted, it is the responsibility of the behaviour support practitioner to update the behaviour support plan status on the NDIS portal.

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.

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, an application can be made to the Northern Territory Civil Administration Tribunal (NTCAT).

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.

In instances where there is more than one NDIS provider using a restrictive practice as part of the BSP, the provider who is identified as the primary implementing provider is required to submit the application for authorisation and include all other providers (secondary providers) who are also implementing restrictive practices as part of the same BSP. For the purposes of applying for authorisation, the primary implementing provider is defined as the provider who is delivering the majority of hours of support to the participant, for example, the provider of SIL supports would be considered the primary implementing provider.

Where it is not clear who the primary implementing provider is, contact should be made with the participant's COS, Guardian or person who has oversight of the person's support package to identify the primary implementing provider.

The application for authorisation must include the following:

- Particulars of the restrictive practice proposed to be applied to the participant;
- A copy of the BSP (interim or comprehensive) that specifies the proposed restrictive practice;
- Evidence of consultation with the participant, their family, carers, guardian or other relevant person/s about the use of restricted practices as a component of their BSP;
- Particulars of the NDIS service providers who will apply the restrictive practice to the participant;
- A summary of every restrictive practice(s) applied (both authorised and unauthorised) from the date of application and the preceding 12 months.
- Any other information the NDIS service provider considers relevant to the application, such as reportable incidents and any medication information.

Note: Where the provider who is delivering the majority of hours of support is not using restrictive practices, the NDIS provider who is implementing the restrictive practices is required to submit an application for authorisation.

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
 - can be safely implemented.
- the overall quality of the BSP using the Behaviour Support Plan Quality Evaluation Tool version II (BSP QEII).

When assessing the application, the Senior Practitioner may request further information from the NDIS primary implementing provider making the application. **This information must be provided to the Senior Practitioner within 28 days or the application lapses.**

Prior to making a decision on the application, the Senior Practitioner may inspect the place where the restrictive practice is to be applied to the participant in order to assess whether the restrictive practice can be safely implemented.

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.

If there is a requirement for the restrictive practice to continue past the period specified by the Senior Practitioner, a new request for authorisation is required prior to the expiration of the existing authorisation. The request for authorisation and supporting documents should be submitted in a timely manner to ensure the continuity of behaviour support for the participant.

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.

5. Review of authorisation decisions

If an NDIS participant, their guardian, NDIS behaviour support practitioner or the service provider is not happy with the Senior Practitioner's decision, they may request a review of the decision. There are two stages to the review process.

5.1. Internal review

The applicant may apply to the CE, Department of Health, for an internal review of the decision.

A request for an internal review must be made within 28 days of receiving written notice of the Senior Practitioner's decision; unless the decision is a decision to authorise a restrictive practice, in which case an application can be made at any time during the period of authorisation or interim authorisation.

The CE will nominate an internal reviewer to review the decision and make a recommendation to the CE. The internal reviewer will recommend to:

- Affirm the decision of the Senior Practitioner; or
- Vary the decision of the Senior Practitioner; or
- Set aside the decision of the Senior Practitioner and substitute a new decision.

Once the CE has received the internal reviewer's recommendation, they will make a decision as to whether they will accept or vary the decision of the internal reviewer or whether they will set aside the decision and substitute a new decision. It should be noted that, under the Act, the CE is not bound by the recommendation of the internal reviewer.

The CE must notify the applicant for the internal review and any other person who, under section 22 of the Act, could have applied for an internal review. The notice of decision will include the CE's decision and the reasons for it, as well as details of the right the person has under the Act to apply to the Northern Territory Civil and Administrative Tribunal (NTCAT) for a review of the CE's decision.

5.2. Review by the Northern Territory Civil Administration Tribunal (NTCAT)

The NTCAT has jurisdiction to review a decision of the CEO. NTCAT will consider and determine applications for review of the merits of decisions made by the CE. It will reach a view as to what is the correct or preferable decision, by undertaking a thorough reconsideration of the matter (which may involve consideration of facts and materials that were not considered by the original decision maker).

More information about the NTCAT process can be found at <https://ntcat.nt.gov.au/>.