Government of **Western Australia**
Department of **Communities**

Non-intentional risk

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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 with the primary purpose of protecting the person or others from harm.

There are five types of regulated restrictive practices outlined in the Authorisation of Restrictive Practice in Funded Disability Services Policy (Policy) that require authorisation in Western Australia. There are also other restrictive practices that are not considered within the scope of the Policy and do not require authorisation. These include practices that may be used to manage non-intentional risk behaviours.

While authorisation may not apply to some types of restrictive practices, it is important that Implementing Providers seek advice directly from the NDIS Quality and Safeguards Commission around any reporting and regulatory requirements that may be relevant in the case of non-intentional risk behaviours.

What is non-intentional risk?

Non-intentional risk behaviours are involuntary behaviours that present a risk of harm to the person or others because of specific circumstances or a condition, rather than because the person is seeking to meet a need.

Where a behaviour has an identifiable function for the person, it would be considered intentional and any restrictive practices used in response would be in scope of the Policy.

Non-intentional risk and restrictive practices

Examples of non-intentional risk behaviours are described in the Policy as:

- **Behaviours that create physical risk**: behaviours related to mobility, transitioning or accidental movement issues that involve a risk to the person or to others. These risks are due to a physiological or neurological condition that can result in poor motor control (for example, tardive dyskinesia, Parkinson) that may result in another person being inadvertently hit, the person accidentally making contact with walls or other solid objects or being at risk of falls.
- **Resistance to support for activities of daily living**: behaviours that demonstrate discomfort for the person during daily activities for example, 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 more than just 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 or others at risk. This may include having 'no knife safety' or 'road safety' awareness, inadvertently reaching for a hot kettle or stove, or wandering towards the road without intention or awareness of safety issues.

Determining if behaviour is non-intentional

It is important to work from an understanding that in most instances a person's behaviour is seeking to address a functional need, unless evidence is gathered during the assessment process that clearly indicates it is not. Non-intentional risk behaviour arises relatively rarely. Where there is doubt as to whether a behaviour is non-intentional, it must be viewed as intentional and any restrictions that are imposed to safeguard the person and/or others need to be authorised under the Policy as a regulated restrictive practice.

Strategies to manage non-intentional risk behaviours do not require authorisation, but may emphasise risk minimisation, without directly addressing the behaviour.

To determine whether a behaviour is non-intentional, there must be a thorough assessment by the appropriately qualified medical practitioner and/or allied health professional to determine that the behaviour does not meet a functional need. A functional behaviour assessment will also help to determine whether there may be a specific function to the behaviour.

Some examples of non-intentional behaviours provided in the Policy can be seen as functional, however, on assessment, the function is not specific to the behaviour that causes the risk. For example:

- A person may seek to explore objects and while trying to meet that need, inadvertently grab a knife. The knife could be the closest available object and not the specific target of the behaviour. The person's need to explore objects may be met by the same behaviour with reduction or removal of the risk.
- A person may wander onto a road when going out to enjoy a walk but being on the road does not meet their need to wander. The person would still be able to enjoy a wander, walking freely outside in environments other than near a road.

These examples demonstrate how a behaviour (for example, grabbing items to touch/explore, wandering/walking freely) may be considered non-intentional when the behaviour creates a risk in a specific context (for example, grabbing a knife to explore it, wandering onto a road during a walk), but not in other contexts. The behaviour and circumstances must be carefully examined to ensure that there are no other functional needs that lead to the person's behaviour and subsequent exposure to a risk of harm.

Responding to non-intentional risk using the principles of authorisation

Whilst a restrictive practice may be in response to non-intentional risk and not require authorisation, the decision to use any practice that is restrictive should be guided by the principles for the use of restrictive practices to ensure the protection of people's human rights in Section 4.1.2 of the Procedure Guidelines for Authorisation of Restrictive Practices in NDIS Funded Disability Services. The restrictive practice should:

- be used only as a last resort in response to a risk of harm to the person with disability 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 or others
- reduce the risk of harm to the person with disability or others
- be in proportion to the potential negative consequence of the behaviour, or the risk of harm of not using the practice
- be used for the shortest possible time to ensure the safety of the person with disability or others.

It is important that Implementing Providers seek advice directly from the NDIS Quality and Safeguards Commission around any reporting and regulatory requirements that may be relevant in the case of non-intentional risk behaviours.

Contact information

For more information, please contact the Department of Communities Behaviour Support Consultancy Team:

Email: ARP@communities.wa.gov.au
Phone: 08 6217 6888 or free call 1800 176 888
Voice relay: 1300 555 727
Teletypewriter (TTY): 133 677
SMS relay: 0423 677 767