



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



# Authorisation of Restrictive Practices in Funded Disability Services Policy

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## Amendments

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1	March 2020	Executive Director – Inclusion	Approved by Communities Leadership Team
2	November 2020	Director, Inclusion Policy and Design	Authorisation requirements revised. Staged approach to reflect regulatory environment. Approved by Communities Leadership Team

## Policy

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 regulated restrictive practices (also referred to as “restrictive practices” for short throughout this Policy) 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.

## 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 (the 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 (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 the person with disability 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.

### 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.

## 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.

## 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 by complying with the authorisation requirements contained in this Policy and the Authorisation Policy Procedural Guide, which provides more detailed information about the requirements for each stage.

In recognition of the changing regulatory environment, a staged approach to the implementation of authorisation requirements is being taken in WA. The authorisation requirements and evidence for each stage is summarised in **Table 1**.

This Policy must be read in conjunction with the Guidance Notes at **Appendix 3** and the Authorisation of Restrictive Practices in Funded Disability Services Policy Quick Reference Guide and Procedural Guide.

**Table 1: Authorisation and evidence requirements**

Stage	BSP commencement or review date	Authorisation requirements for restrictive practices to be deemed authorised (refer to Appendix 3 Guidance Notes and Authorisation Policy Procedural Guide)	Evidence of Authorisation
Transition	On or before 30 November 2020	<b>Mandatory:</b> Restrictive practice(s) included in an existing Behaviour Support Plan (existing BSP)  (Refer to Appendix 3 Guidance Notes for BSP requirements).	A copy of the existing BSP
Stage One Authorisation	From 1 December 2020 to 30 April 2021	<b>Mandatory:</b> Restrictive practice(s) included in a Behaviour Support Plan (BSP)  (Refer to Appendix 3 Guidance Notes for BSP requirements).  <b>Recommended:</b> Undertake a Quality Assurance process.	A copy of the BSP
Stage Two Authorisation	From 1 May 2021 onwards, until legislation is developed	<b>Mandatory:</b> Restrictive practice(s) included in a BSP (Refer to Appendix 3 Guidance Notes for BSP requirements). Undertake a Quality Assurance process.	A copy of the Quality Assurance Process Report (Refer to Authorisation Policy Procedural Guide).



## 4.2 Unauthorised use of a regulated restrictive practice

Where a regulated restrictive practice is used without authorisation as required under this Policy (noting prohibited practices cannot be authorised under any circumstances):

- 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. Recognising that a complaints process for some individuals may be challenging, particularly those with complex needs, the person may need the support of advocates, guardians and/or a representative. Further information is available in the Authorisation Policy Procedural Guide.

Where the complaint cannot be resolved by the Implementing Provider, the person may raise the issue with the Department.

# Responsibilities

## 5.1 Implementing Providers

- Comply with Authorisation Requirements set out in this Policy and the Authorisation Policy Procedural Guide.

### Stage One Authorisation:

- Develop internal policies and procedures to:
  - deliver BSP development processes that are person-centred and
  - ensure consent processes are person-centred, promote supported decision-making.

### Stage Two Authorisation:

- In addition to Stage One Authorisation responsibilities, develop internal policies and procedures to govern the operations of their Quality Assurance Process and the use of restrictive practices (including risk assessment and mitigation).

## 5.2 NDIS Behaviour Support Practitioners

- Comply with Authorisation Requirements set out in this Policy and the Authorisation Policy Procedural Guide.

### **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.
- Manage complaints and serious incidents relating to State-funded disability services.

## 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

### Implementing Provider

Implementing Provider means any service provider that is funded through the NDIS or by the Department of Communities to deliver disability services to a person with disability.

### NDIS Behaviour Support Practitioner

NDIS Behaviour Support Practitioner means a person employed by a registered specialist behaviour support provider (registration group 110) or registered themselves under registration group 110 with the NDIS 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.

### Non-intentional risk behaviours

Non-intentional risk behaviours are those behaviours that occur as a result of circumstances and do not serve a purpose for the person. These include:

- **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.

### Prohibited practices

The following physical restraints are prohibited:

- 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.

The following punitive approaches are prohibited:

- 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.

## Regulated restrictive practices

There are five categories of regulated restrictive practices:

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: Guidance Notes

### 1 Behaviour Support Plan (BSP) requirements

- A summary of BSP requirements is outlined below.
- For the Transition Stage, an **existing BSP** is required and for the purposes of Table 1, this means a document that was completed on or before 30 November 2020 and:
  - describes the proposed restrictive practice(s)
  - generally describes when and how the restrictive practice(s) will be used
  - contains alternative behaviour support strategies and
  - specifies a review date, which is not more than 12 months from the start date or if there is a change in circumstances which requires the plan to be amended – as soon as practicable after the change occurs.
- From 1 December 2020 new BSPs need to follow Stage One and Two authorisation (see page 8).
- For Stage One Authorisation and Stage Two Authorisation, please refer to the Authorisation Policy Procedural Guide for detailed BSP requirements.
- For NDIS-funded services, Implementing Providers and NDIS Behaviour Support Practitioners are responsible for ensuring they meet all the requirements for the development of BSPs set out by the NDIS Quality and Safeguards Commission (NDIS Commission) in the [NDIS \(Restrictive Practices and Behaviour Support\) Rules 2018 \(NDIS Rules, 2018\)](#). More information is available on the NDIS Commission's [behaviour support webpage](#) and [regulated restrictive practices webpage](#).
- The NDIS Commission has issued guidance on what will constitute “reasonable steps” for Implementing Providers in the context of facilitating the development of a BSP with restrictive practices, which can be found on the NDIS Commission's [website](#).
- For State-funded disability services, Implementing Providers are responsible for ensuring they meet the BSP requirements outlined in the Authorisation Policy Procedural Guide. These guidelines mirror the requirements for BSPs outlined in the NDIS (Restrictive Practices and Behaviour Support) Rules 2018.

### 2 Quality Assurance (QA) process

- A summary of the QA process is outlined below, please refer to the Authorisation Policy Procedural Guide for detailed QA process requirements.
- This process is recommended at Stage One Authorisation and mandatory at Stage Two Authorisation.
- The QA process involves an independent expert review of proposed restrictive practice(s) in BSPs by a QA Panel.
- The QA Panel:
  - reviews each regulated restrictive practice that is recommended in the BSP and

- where appropriate, identifies opportunities for improvement in the BSP and then makes recommendations to the Implementing Provider.
- In Stage Two, following a review, the QA Panel will sign a QA Process Report when satisfied that:
  - where relevant, the QA Panel's recommendations have been implemented in the BSP and
  - the restrictive practices should be authorised.
- The signing of a QA Process Report by a QA Panel is evidence of authorisation for the purposes of Stage Two.
- A QA Panel for the purposes of fulfilling a QA process must include at a minimum a senior manager (or their delegate) of the Implementing Provider and an independent NDIS Behaviour Support Practitioner who is external to the Implementing Provider and not the author of the BSP. Implementing Providers can access a Department-funded independent NDIS Behaviour Support Practitioner if required.

### **3 Future authorisation process and legislation**

The Authorisation 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.

The Department will be undertaking a public consultation process in 2021 to inform the development of the future long-term authorisation model and relevant legislation. It is intended that the new authorisation process and enabling legislation will commence in 2023.

The consultation may also inform any amendments to this policy, if needed.

#### **3.1 National Principles**

Currently, there are different authorisation models in each Australian State and Territory, which can be particularly confusing for service providers operating across Australia.

The Commonwealth Government is working with all States and Territories to achieve national consistency in the regulation of the authorisation of restrictive practices. The NDIS Commission in consultation with States and Territories has developed the 10 Principles for Nationally Consistent Authorisation of Restrictive Practices (National Principles). It is intended that the authorisation model and relevant legislation will be, as much as is practicable, consistent with the National Principles.