



Government of South Australia
Department of Human Services

Public Consultation Outcomes

Restrictive Practices Guidelines

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Executive summary

In May 2021, the *Disability Inclusion (Restrictive Practices-NDIS) Amendment Bill 2021* was passed by the South Australian parliament. The amendments establish a legislative framework for the authorisation of restrictive practices by NDIS service providers for NDIS participants in South Australia.

In September 2021, the Governor made the *Disability Inclusion (Restrictive Practices – NDIS) Regulations 2021* in Executive Council. The Act and Regulations are expected to commence at the same time in the first half of 2022.

A public consultation process opened on the YourSAy online platform on 24 August 2021 to seek feedback about the draft *Restrictive Practices Guidelines*. The consultation closed on 20 September 2021. During this period:

- 413 respondents raised their awareness of the restrictive practices authorisation scheme by visiting this site
- 178 respondents informed themselves by viewing or downloading content from the site
- 6 respondents engaged by taking the online survey.

The Department of Human Services provided four public webinars for community members, NDIS participants and NDIS service providers. These webinars were offered both during business hours and after hours to meet the needs of shift workers and families.

The broad community consultation was complemented by nine targeted workshops, meetings and forums for NDIS service providers and other key stakeholders. These included NDIS service providers focused on supporting children and Aboriginal and Torres Strait Islander people.

The department engaged JFA Purple Orange to conduct two workshops with people with disability, their families and carers. One workshop occurred in the Adelaide metropolitan area and another in a regional location.

Across the feedback received from all stakeholders, there were some areas of broad agreement and similar points of clarification were made. Where this occurred, the guidelines were redrafted to reflect this feedback. In other areas, there was notable variance in the feedback provided, indicating that there was no clear consensus.

In their feedback, respondents grappled with balancing competing priorities such as the need for visibility and transparency in the use of restrictive practices, the risk of further intrusion in the lives of people with disability to oversee such practices, and the importance of maintaining a focus on high quality practice and service delivery. Their reflections

highlight the complexity of restrictive practices, and various lenses through which the issue can be viewed. Without exception, the feedback was thoughtful, nuanced and grounded in a deep commitment to supporting the safety and wellbeing of people with disability.

The consultation feedback was considered in the context of national requirements, restrictive practices systems in other states and territories, and the objectives of the legislation. The guidelines were redrafted as follows:

- The practice context was amended to emphasise the impact of restrictive practices on a person with disability's sense of agency and loss of quality of life
- Further information was added about the need for regular reviews and monitoring progress in the positive behaviour support content
- The practice principles were expanded to reflect further details about the different stages where people with disability could contribute to decisions
- The concept of "last resort" was expanded
- Further information was added about the use of risk assessments
- Further details were added to the definitions and details about restrictive practices, including the use of unauthorised restrictive practices.
- Additional guidance was provided about the use of force and concealment
- The content about the use of restrictive practices for children was expanded
- Additional requirements were identified for the use of searches, including the need for registered NDIS providers to develop internal guidance to oversee searches.
- The appeals section was updated to allow the use of restrictive practices where it was required to achieve safety while a decision was being appealed
- Details were added about people with disability and their families being able to provide information to authorisers for their consideration.

Not all feedback that was provided in this consultation process related to the content of the guidelines. Many respondents discussed the importance of supporting people with disability, their families, and registered NDIS service providers to understand and transition to the new authorisation scheme. They highlighted the importance of developing simple and accessible resources, including templates, fact sheets, and flow charts.

Respondents emphasised the need for ongoing education, awareness-raising and professional development to support a shared understanding of behaviours of concern and restrictive practices by people with disability, their families and NDIS service providers. They advocated for strong systems to track and analyse data about the use of restrictive practices to identify trends and patterns of usage. This, they stated, should inform training and was essential to reducing and eliminating the use of restrictive practices over time. This feedback will inform the next stage of implementation.

Public consultation process

The public consultation on the draft guidelines is a part of the Department of Human Services' phased approach to consultation on the new authorisation scheme for restrictive practices. Each stage has involved:

- Broad community consultation
- Targeted consultation with NDIS service providers, peak bodies, and statutory authorities
- Consultation with people who have lived experience of disability and their families.

The consultation on the *Disability Inclusion (Restrictive Practices-NDIS) Amendment Bill 2021* elicited feedback on the bill, but also provided valuable content that informed the development of the draft regulations. The consultation on the regulations elicited feedback about the regulations, and shaped the foundation of the guidelines. This phased approach to consultation allows each piece of work to cascade into the next and provide further detail.

The consultation approach reflects the department's commitment to ongoing dialogue with people with disability, their families, NDIS service providers and other key stakeholders.

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- 413 respondents raised their awareness of the restrictive practices authorisation scheme by visiting this site
- 178 respondents informed themselves by viewing or downloading content from the site
- 6 respondents completed the online survey.

In addition to these online engagements, responders could also:

- Participate in online forums and webinars
- Participate in face-to-face forums.
- Ask questions of the Restrictive Practices team
- Provide a written submission

The department provided four webinars for community members, NDIS participants and NDIS service providers. These webinars were offered both during business hours and after hours to meet the needs of shift workers and families.

The broad community consultation was complemented by nine targeted workshops, meetings and forums for NDIS service providers and other key stakeholders. These included NDIS service providers focused on supporting children and Aboriginal and Torres Strait Islander people.

The department engaged JFA Purple Orange to conduct two workshops with people with disability and their families. One workshop occurred in the Adelaide metropolitan area and another in a regional location.

Stakeholders who provided written submissions to the previous consultations were also contacted and invited to contribute to the guidelines.

Practice context

The draft guidelines placed inclusive, person-centred practice at the heart of the authorisation scheme, emphasising that it was essential to reducing and eliminating restrictive practices. There was strong support for this approach, and most survey respondents identified that this had been reflected in the draft guidelines. Respondents in targeted forums expressed that they were “pleasantly surprised” to see such a strong focus on the practice context and principles, and supported the elements identified in this section. The sections on trauma-informed practice and cultural safety were particularly well received.

People with lived experience of disability highlighted the “emotional complexity” of restrictive practices, and noted the impact of restrictive practices on a person with disability’s sense of agency, and loss of quality of life. They recommended further guidance about debriefing and providing mental health support following the use of restrictive practices. The guidelines were updated to reflect this feedback.

People with lived experience also identified an opportunity to strengthen the content on positive behaviour support by expanding further on the need for regular reviews, documentation of behaviour change, and monitoring progress towards eliminating restrictive practices. While the guidelines were updated to reflect this, further details about these requirements will be provided in operational procedures.

Practice principles

There was strong support for the practice principles identified in the guidelines, with one group of respondents identifying that the framework of supported decision making should be elevated to the Act and regulations. More broadly, there was consensus that people with

disability should be involved in decisions about their lives to the greatest extent possible. Respondents suggested further details about the stages at which this could occur, including:

- Contributing to the behaviour support plan
- Providing informed consent (or informed refusal) to the use of restrictive practices
- Contributing to the authorisation decision.

The guidelines were updated to reflect this feedback, and this issue is also addressed further in this report.

Respondents identified the need to provide more details about the concept of “last resort”, as this could be interpreted in a few ways. The guidelines were updated to reflect that the concept of “last resort” should be applied at two levels:

- The use of the behaviour support planning process to systematically evaluate the use of a continuum of responses (including preventative, early intervention and reactive strategies to address behaviours of concern) to ensure that the use of restrictive practices was avoided where possible
- The importance of understanding the stages of a behaviour incident, and the opportunities to prevent, redirect and minimise behaviours of concern before the behaviour escalates to an unsafe level that requires the use of a restrictive practice.

One respondent highlighted the importance of using risk assessments to understand the risks involved with a behaviour of concern, and with the use of restrictive practices. The use of risk assessments was added to the guidelines, and this issue will be articulated further in operational resources.

Restrictive practices

The section on restrictive practices elicited a high degree of feedback, with respondents identifying opportunities to provide further clarification.

Chemical restraint

Respondents sought further clarification of the use of chemical restraints. One respondent identified that informed consent to use contraceptives to manage menstrual pain should not be considered a restrictive practice, as it was a form of medical treatment even though it did not relate to a diagnosed medical condition. The language of the guidelines was updated to reflect treatment of a “physical illness or a physical condition”, per the language of the national definition.

More broadly, the respondent identified that the use of contraceptives with informed consent as menstrual management should not be considered a restrictive practice. This feedback was considered but was not updated in the guidelines as “menstrual management” was a term that covered a range of practices that could include menstrual management to prevent or address behaviours of concern.

The respondent identified that registered NDIS providers should not be responsible for seeking a second medical opinion if there are concerns about the use of medication to address behaviours of concern. They argued that implementing providers *should recommend and encourage* the person with disability and their decision makers to seek a second medical opinion. The guidelines were rephrased to reflect this.

Mechanical restraint

One survey respondent sought clarification about whether the use of lap belts for postural support (not for preventing the person from getting out of the wheelchair) were mechanical restraints. The guidelines state “Mechanical restraints do not include therapeutic devices that support body position, balance, posture, or alignment” and this guidance was considered sufficient to address this feedback. The use of lap belts will be provided as an example in supporting resources for the scheme.

Physical restraint

One group of respondents suggested that where physical restraint was required, consideration should be given to seeking medical advice as to whether the person had any underlying medical conditions that may result in greater impact from the use of physical force. The guidelines were updated to reflect this feedback.

Environmental restraint

The issue of environmental restraints elicited a high degree of feedback in the consultation process. One respondent indicated that the content about the use of CCTV should be expanded to provide guidance about other electronic monitoring devices, non-electronic means such as peep holes and observation windows, and monitoring in private spaces such as bedrooms, bathrooms and private living areas. Further details were provided in this section of the guidelines.

Some respondents sought further clarification about the withdrawal of support in emergency situations, highlighting the differences in the way that the national definition of seclusion was operationalised in South Australia. The guidelines were amended to provided additional details.

There were a range of views offered by respondents about whether different requirements should be identified for environmental restraints that are implemented in a private home compared to those implemented in shared residential services. While some respondents articulated that a higher level of privacy should be afforded in private homes than in shared residential services, others indicated that it was preferable to keep the rules the same for all settings. Given the variance of opinions on this issue, no changes were made to the guidelines on this issue.

A survey respondent highlighted that “line of sight” supervision is described differently by different providers, and another identified that NDIS participants may have 1:1 continuous accompaniment for safety reasons (such as risk of falls) rather than due to behaviours of concern. The guidelines were amended to provide additional clarity on these situations.

Unauthorised restrictive practices

Several respondents highlighted the need to explicitly state where restrictive practices were required to ensure safety but had not been authorised, they could still be used and reported as an unauthorised restrictive practice. The respondents noted the higher degree of reporting to the NDIS Commission for unauthorised restrictive practices. The guidelines were updated to reflect this feedback, and to provide additional guidance that the use of unauthorised restrictive practices may reflect that:

- the person with disability’s needs are not being met by the existing arrangements and that the behaviour support plan should be reviewed
- consideration of whether additional/different restrictive practices may be required, or orders should be sought from SACAT for special powers.

Use of force

There was support for the guidance provided about the use of force, with some respondents highlighting that psycho-social pressures were often the “hidden” way in which force was exerted. In consultation discussions, respondents identified the need to recognise the value-laden judgements that may be applied to people with disability and their families, and how these can manifest as restrictive practices.

Respondents highlighted that a well-intentioned focus on the best interests of people with disability may have the unintended consequence of restricting people from taking informed risks, or making lifestyle choices that allowed them to exercise their agency and improve their quality of life. Respondents asked for these issues to be explicitly discussed in the guidelines, and the guidelines were updated to reflect this feedback.

One respondent identified that concealment was restrictive and its authorisation needed to reflect this, but that it was not a separate restrictive practice in its own right such as physical restraint. The guidelines were updated to reflect this feedback.

Children and the use of restrictive practices

Respondents discussed the importance of recognising children and young people's needs in restrictive practices as being distinct from adult needs. They noted there were community standards about reasonable measures that adults should take to keep children and young people safe (eg. locking doors to prevent young children wandering onto roads). Respondents identified that these community standards could at times mask unreasonable measures that should be considered a restrictive practice.

Respondents highlighted that children and young people had specific developmental needs to be considered in the continual process of evaluating whether a restrictive practice was required; what was appropriate for a six year old may be an inappropriate restrictive practice for a teenager. In particular, respondents highlighted that learning to take appropriate risks was an important developmental step for teenagers and that restrictive practices could impede this important learning process.

Several respondents highlighted the importance of being explicit about the rights of children and young people, and being transparent about when children could refuse an intervention or a restrictive practice. In one discussion, the respondent proposed that where the legal guardian of a child in care does not consent to the use of a restrictive practice, the matter should be referred to the Senior Authorising Officer for authorisation.

The guidelines were updated to reflect this feedback.

Authority to enter, search and retain items

The search provisions in the Act and the guidelines elicited varied feedback from respondents. Some respondents expressed concern about the broad scope of the provisions in the Act, but noted that the guidelines provided some caveats to narrow that scope. Others expressed concern that the provisions placed workers at risk if the person with disability resists the search.

One respondent stated where the use of physical force is required to implement the search, this should be documented in the behaviour support plan and need to be authorised like any

other physical restraint. Another respondent highlighted the importance of having another person present to provide “dignity and protection” for all parties.

Several respondents indicated that the guidelines should specify that service providers needed to have a suspicion on reasonable grounds that the person with disability may cause harm to themselves or others before undertaking a search. They indicated that organisations should develop internal processes to inform and approve decisions to undertake a search. They suggested that the Senior Authorising Officer provide an annotated template to support consistent approaches by NDIS providers about the thresholds for searches, approval processes, conduct of searches, debriefing, reporting and documentation.

This feedback informed the update to the guidelines, and will be used to develop operational resources and supporting materials.

Appeals and complaints

There was strong support for the authorisation scheme to have robust complaints and appeal processes, and respondents supported the content provided in the guidelines. People with lived experience of disability emphasised that complaints and appeal processes need to be person-centred. They highlighted the importance of advocacy and support for people with disability and their families to engage in complaints and appeal processes.

There was strong consensus among respondents that restrictive practices should be able to be implemented while an appeal was pending, but only if the practice was required to maintain the safety of the person with disability and those around them, or where there was a serious risk of harm.

One respondent noted that restrictive practices should only be sought when they were required for safety, so there should not be any matters where the authorisation decision could be safely stayed until the appeal was heard. Another respondent highlighted that appellants should be able to flag where there have been procedural errors such as insufficient consultation with the person or their family. The guidelines were updated to reflect this feedback.

Input into the authorisation decision

Respondents were keen to ensure that people with disability, their family members and nominated advocates had a way to provide information to be considered in the authorisation decision by the Authorised Program Officer or the Senior Authorising Officer. Only one respondent indicated that the person's contribution to the behaviour support plan was sufficient for this purpose.

Some respondents identified that there might be some hesitancy about this approach as this may create a workload pressure for authorisers. Respondents also identified that there was a potential for family members to "undermine" the service provider through having direct contact with the authoriser.

Conversely, other respondents identified that this might reduce the number of appeals if people were confident their views were presented directly to the authoriser. They indicated that this would ensure that perspectives were not misunderstood or misrepresented. They also said that this would support NDIS service providers in situations where family members thought a restrictive practice was required but the provider did not agree.

Generally, most respondents agreed that a person-centred approach should enable people with disability and their families to contribute directly to the authorisation. One survey respondent stated "if we don't listen to the participant their guardian or advocate we are taking away their input into their own life". People with disability stated that they should be involved in decision making to the greatest extent possible and at every step throughout the development of the Behaviour Support Plan and obtaining an authorisation.

One respondent reflected that such an approach would require authorisers to be skilled at creating inclusive, welcoming and culturally safe spaces where Aboriginal people could express their views. Along the same lines, other respondents stated that authorisers would need to be skilled at communicating with people with diverse communication needs, including those who were not able to navigate phone and online methods.

The guidelines were amended to reflect this feedback, and further operational documents will be required to implement this approach.

Other feedback

The consultation elicited feedback that could not be incorporated in the guidelines for a number of reasons.

Several respondents provided significant feedback about the broader context in which the authorisation scheme was being established. People with disability and their carers spoke in detail about the challenges they experienced in accessing services and supports in a timely manner, particularly in regional areas. They highlighted the complexity of the disability sector after considerable changes in the sector in recent years, and the confusion that occurred when people with disability had to navigate state and national systems.

Many respondents, including people with disability spoke about the interplay between the use of restrictive practices within the NDIS system, within the disability sector more broadly and in other contexts such as child protection and education. Respondents highlighted that there needed to be consistency within this scheme and broader approaches to regulating the use of restrictive practices overall.

People with disability expressed a degree of pragmatism about the extent to which documents such as the guidelines could influence change. They identified that supports for people with disability were informed by the personal and professional values of the people involved, and the culture of organisations.

While this feedback could not be incorporated into the guidelines, the feedback has been reflected in this report to demonstrate its importance to understanding the context of the authorisation scheme.

Several respondents discussed the value of ensuring strategies exist to track, collect and analyse data over time to know if restrictive practices were being reduced. One respondent identified that it would be helpful to see trends in the use of restrictive practices for a person with disability over the course of a year, as well as organisation level data. This feedback will be considered in the development of the reporting functions in the ICT system.

Implementation and transitions

Many respondents expressed a keen interest in the implementation phase of the authorisation scheme, and provided feedback about the operational materials that would support people with disability, their families, NDIS providers and others to transition to the new system.

Most respondents identified that it would be helpful to have:

- flow charts and process maps about key functions
- annotated templates to provide prompts for providers, and ensure consistency across providers
- fact sheets and guides about common concerns

- Tables of different restrictive practices and who could authorise the practice

People with disability identified that these resources need to be accessible for people with disability (especially those with intellectual disability), and co-designed wherever possible.

Several respondents (including people with disability) also highlighted the importance of the Senior Authorising Officer and the authorisation team being visible and availability to stakeholders, particularly in regional areas. People with disability indicated having familiarity and continuity in this contact was important for building their confidence in the system. They suggested that the Senior Authorising Officer and the authorisation team visit regional centres on a regular basis to build these relationships.

Respondents highlighted that further work needed to be done to raise awareness about the new authorisation scheme, and the use of restrictive practices more broadly. One respondent identified that there can be inconsistencies in approaches and understanding about restrictive practices by family members and service providers. She identified that these inconsistencies emphasised the importance of training to develop a shared understanding.

This feedback continues to inform the establishment of the scheme and the development of the transition processes. A third stage of targeted consultation and implementation will occur with NDIS service providers from the end of 2021 to support them to transition to the new authorisation scheme.