



Government
of South Australia

Department of Human Services

Restrictive Practices Background Paper – Regulations

In December 2020 and January 2021, the Department of Human Services held a public consultation about a new National Disability Insurance Scheme (NDIS) restrictive practices authorisation regime for South Australia. The broad public consultation across the community was complemented by a targeted consultation with key stakeholders in the sector (including people with lived experience of disability and restrictive practices).

The outcomes of the public consultation informed the finalisation of the *Disability Inclusion (Restrictive Practices – NDIS) Amendment Bill 2021*, which was passed on 11 May 2021.

Your feedback is valuable, and every piece of feedback is carefully considered.

Some of the consultation feedback related to matters that were best addressed through regulations, which provide further detail about how the laws will be implemented. This is how your feedback has helped us to shape the regulations:

Level 1 and Level 2 Restrictive Practices

Respondents told us that while all restrictive practices were intrusive, some were more intrusive on a person's rights and liberties and posed more risks. Respondents also told us that the same restrictive practices could be experienced in different ways by people with disability, based on their past experiences and current circumstances.

To reflect this feedback, the regulations prescribe that most environmental, chemical and mechanical restraints are Level 1, with some exceptions where their use had greater risk and impact on a person with disability. These exceptions included situations where:

- The use of force was required to implement the restrictive practice
- The items being limited were essential to a person's means of mobility and communication.

Tell us more:

- Are there situations that should require greater safeguards and accountability through authorisation by the Senior Authorising Officer?
- Are there priority populations such as children in care who require greater safeguards and accountability through authorisation by the Senior Authorising Officer?

Skills and Experience of the Senior Authorising Officer

Respondents told us that the Senior Authorising Officer must be skilled and have significant experience. The feedback indicated this role would benefit from a degree in allied health or law, experience in working with people with disability, and leadership experience.

To reflect this feedback, the regulations prescribe that the Senior Authorising Officer must have a tertiary degree in allied health or a relevant discipline and experience in leading human services initiatives.

Tell us more:

- Should a minimal length of experience be identified?
- Are there other qualifications that should be identified?

Skills and Experience of the Authorised Program Officer

Respondents told us that the Authorised Program Officer must be skilled and have experience in working with people with disability. The feedback indicated this role would benefit from a degree in a relevant area, and experience in working with people with disability.

To reflect this feedback, the regulations prescribe that the Authorised Program Officer must have a tertiary degree in a relevant area, and experience in behaviour support.

Tell us more:

- Should a minimal length of experience be identified?
- Are there other qualifications that should be identified?

Prohibited Practices

Some respondents told us that the NDIS Commission's position statement on prohibited practices should be the basis of the prohibited practices in the regulations. They indicated that it was important to be nationally consistent with the other states and territories. Other respondents stated that children should have additional safeguards through prohibiting the use of seclusion and corporal punishments.

To reflect this feedback, the regulations prescribe that the physical restraints in the NDIS Commission's statement are prohibited practices.

Tell us more:

- Should certain practices be prohibited for children or specific populations?
- Should the use of specific items or equipment be prohibited?

Monitoring of the use of restrictive practices

Respondents told us that accountability and transparency were very important to reduce the use of restrictive practices. To reflect this feedback, we amended the Bill to include annual reporting to the parliament about the use of restrictive practices.

We also prescribed in the regulations requirements for the NDIS Provider to report to the Senior Authorising Officer about the use of restrictive practices for a person with disability. To manage administrative burdens, the NDIS Provider can provide a report of all restrictive practices usage in a period of time for example, every 6 months.

Tell us more:

- What is the maximum period of time that can be covered by each report?